PARSONS BEHLE & LATIMER

[address redacted] Suite 300
[address redacted]
Main [phone redacted]
Fax [phone redacted]

A Professional
Law Corporation

Jon A. Stenquist
Attorney at Law
Direct [phone redacted]
[email redacted]

April 23, 2026

VIA EMAIL

Teton County Board of County Commissioners
Joshua Chase, Teton County Planning Administrator
Billie Siddoway, Teton County Administrator
150 Courthouse Dr
Suite 109
[address redacted]
Email: jchase@tetoncountyidaho.gov
bsiddoway@tetoncountyidaho.gov
pz@tetoncountyidaho.gov

Andrew Rawlings
Hopkins Roden
[address redacted]
[address redacted]
Email: [email redacted]

Re: Sweetwater Ranch Phase I Substantial Plat Amendment ("Sweetwater Application"); Response to Request for Reconsideration and to Open Public Comment submitted March 20, 2026 ("Request")

Dear Board, Mr. Chase, Ms. Siddoway, and Mr. Rawlings,

As you know, this firm represents Driggs Idaho Real Estate, LLC ("DIRE") in connection with the Sweetwater Application. We write on DIRE's behalf in response to the Request recently submitted by Howard Garber, et al. ("Requestors") pertaining to the Board's April 13, 2026 final decision ("Final Decision") on the Sweetwater Application.

We urge the Board to decline to entertain the Request at all because the Requestors lack standing as "affected persons" under LLUPA. Alternatively, and only if the Board elects to entertain the Request, we request that the Board consider this response and affirm its Final Decision, as the Request identifies no particular deficiency in the Final Decision.

A. <u>The Requestors lack standing as "affected persons" under LLUPA and the Request should be dismissed without consideration</u>.

i. *Standing under LLUPA*.

LLUPA strictly limits who may seek reconsideration of a land use decision. Idaho Code § 67-6521(1)(a) defines an "affected person" as "one having a bona fide interest in real property which may be adversely affected by [t]he approval, denial or failure to act upon an application for a subdivision . . . ."

This definition is narrow and purposeful. It is not enough for a county resident simply to disagree with a land use decision or to harbor generalized concerns about nearby development. Rather, the person must demonstrate that *their actual interest in <u>real property</u>*, not their supposed health or other unrelated interests, may be adversely affected in a legally cognizable way.

Idaho Code § 67-6535(b) reinforces this threshold requirement, providing that only an "applicant or *affected person*" may seek reconsideration of an agency's final decision. The Idaho Supreme Court has recently confirmed that this "affected person" standard governs standing not only for judicial review but also for administrative reconsideration proceedings under LLUPA. *Crookham v. Cnty. of Canyon*, 582 P.3d 1071, 1077 (Idaho 2026) (holding that the "affected person" standard under section 67-6521 is the applicable standing inquiry for LLUPA proceedings, as Idaho's standing doctrine is a "self-imposed constraint").

Relative proximity to and animus toward a project, without more, does not establish standing for purposes of LLUPA. A person requesting reconsideration must demonstrate that their bona fide real property interests "may be adversely affected" in a concrete, particularized sense beyond speculation or conjecture. *Id*.[1]

ii. The Requestors have not demonstrated any adverse effect on a real property interest.

The Requestors have failed to identify any specific, cognizable adverse effect on any of their interests in real property arising from the Board's approval of the Sweetwater Application. The Request consists only of generalized objections and speculative concerns about health, noise, and other unrelated issues, rather than any factual showing of harm to real property as is required for standing under LLUPA.

The first and second paragraphs of Dr. Garber's list of grounds for the Request, for example, have nothing to do with real property interests at all. They simply make a series of conclusory and unsupported remarks about speculative health risks and their alleged association with air pollution and aircraft. Notably, the first paragraph also specifically admits that the

[address redacted] in *Crookham*, despite there being a number of declarations in the record detailing substantially more harm to real property than Requestors have alleged here, still remanded the case to the district court to make a finding as to whether such substantial amounts of harm were sufficient to establish standing as "affected persons."

"county planning department met the letter of the law" by providing the required notice to affected property owners for the public hearing on our clients' Application. We also note that upon review of the listed addresses provided by the Requestors, none of their properties are even close to being within 300 feet of the Sweetwater Subdivision, and many of them live more than a mile away.

Similarly, the third paragraph addresses vague concerns about noise around the City of Driggs due to aircraft and "health and safety impacts." Again, this is not relevant to the Board's decision on a rezoning application, nor does it establish LLUPA standing.

The fourth paragraph touches on what the Requestors deem to be potential legal risks associated with the Sweetwater Application, but those risks, if they exist, are risks of the potential buyers of the lots within the subdivision itself. They are irrelevant to the Final Decision, and they do not, in any way, show that the *Requestors'* bona fide real property interests are adversely affected by the approval of the Sweetwater Application.

It is unclear what point the Requestors intend to make in paragraph five. They reference alleged *ex parte* communications and incorrectly claim they were "scolded" by the applicant's counsel, but they do not articulate any legal basis for relief or any real property interest that was adversely affected. They neither request that the Board consider any specific *ex parte* communication (which would be improper under Idaho law) nor provide the evidence substantiating such allegations that they claim are in their possession.

In paragraph six, the Requestors again admit that the Board acted within the law, as they state that the Sweetwater Application "is a discretionary decision by the [Board]." And similar to the fourth paragraph, they then raise additional speculative concerns that, if relevant at all, would pertain to prospective purchasers within the subdivision—not to the Requestors' own real property interests. These assertions do not establish standing and do not support reconsideration.

Paragraph 7 alleges that "the updated CCR's [sic] were not available for review by the public" prior to the (conceded) public hearing on February 23, 2026. To be clear, the "public" does not need to review CCRs for the Board to make findings regarding the same. And so, the Requestors have confused the standards and criteria necessary for the appropriate authority (the Board) to consider as if their approval must also be met. This is inapposite to the law. And as to any concern that the Requestors were somehow harmed by failing to see a February 11, 2026 letter from the Airport Advisory Board, again, there has been no showing of how that alleged omission has caused actual harm to bona fide interests in real property affected by the decision to approve the Sweetwater Application. It appears the Requestors would like to litigate their aversion to airports altogether through this subdivision application. Discussions around the expansion and improvement of the airport were properly brought, handled, and decided through a wholly independent proceeding years ago and it is improper to continue to permit critics to abuse this forum to seek redress for their perceived grievances. Requestors do not indicate what objections, if any, they may have to the CC&Rs and Airport Advisory Board letter and they do not seek to limit the hearing to any such issues, underscoring the lack of actual merit to Requestors' objections.

The remaining points raised in the Request are either irrelevant, vague, or address FAA issues (discussed below).

iii. The Board should decline to entertain the request on standing grounds.

As the Board has already found through the public hearing process, open deliberations, and its Final Decision, the Sweetwater Application complies with all applicable standards under the Teton County Code and state law. The Requestors participated, or had the opportunity to participate, in that hearing process. Their disagreement with the outcome does not transform them into affected persons within the meaning of that term under LLUPA nor does it entitle them to relitigate the matter through "reopened public comment" as requested which could invite legal error and infect the proceedings as a whole.

Because the Requestors have not demonstrated standing as affected persons under LLUPA, the Request is legally deficient on its face. The Board has the authority, and we respectfully submit the obligation, to decline to entertain the Request without reaching its merits. Allowing a party without standing to seek reconsideration would erode the gatekeeping function the Idaho Legislature embedded in LLUPA and expose the County to risk—not only by setting a precedent that any landowner may request reconsideration regardless of standing, but also by inviting additional litigation, including petitions for judicial review on jurisdictional and procedural grounds.

We respectfully ask the Board, on the advice of the County Attorney, to make a threshold finding that the Requestors are not affected persons under LLUPA and to dismiss the Request without further proceedings.

B. <u>Even if the Board considers the Request, it lacks any substantive merit, and the Board should affirm its Final Decision.</u>

Should the Board choose to consider the Request on the merits, it should readily conclude that the Request provides no adequate basis to reverse or modify the Final Decision. We address this in the alternative to a request that the reconsideration request be dispensed with from the outset.

i. The legal standard governing reconsideration under LLUPA.

Idaho Code § 67-6535(b) provides that a written request for reconsideration must "identify specific deficiencies in the decision for which reconsideration is sought." Upon reconsideration, the Board may affirm, reverse, or modify its decision. Importantly, however, section 67-6535 further provides that "[o]nly those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision." This is a high bar that the Requestors have plainly not met.

ii. The Request identifies no specific deficiency in the Final Decision.

The Request fails to identify any specific procedural or substantive deficiency in the Board's Final Decision. In fact, the Request does not reference the Final Decision at all as it was submitted prematurely and prior to the issuance of the Final Decision. Notwithstanding the unusual timing of the Request, it still fails to demonstrate any actual harm to real property or violation of fundamental rights. The Board's decision was issued following a properly noticed public hearing, with full opportunity for public comment. The Final Decision reflects the Board's lawful exercise of its authority under LLUPA and the County's subdivision ordinances.

The Request amounts only to a generalized re-argument of positions already heard and rejected by the Board. LLUPA's reconsideration process is not a mechanism to re-litigate the merits of a decision that was made correctly. Because the Request does not identify any specific deficiency or conflict with the enumerated criteria for approval, the Board has no legitimate basis under LLUPA to reverse its decision.

iii. To the extent the Request raises FAA or federal legal issues, those are beyond the County's jurisdiction and are preempted by federal law.

The Request (including the submission by Frank M. Russo) purports to raise concerns relating to federal aviation matters, including issues that appear to fall within the jurisdiction of the Federal Aviation Administration ("FAA"). To the extent the Request invites the Board to adjudicate, reconsider, condition, or reverse its Final Decision based upon FAA regulatory requirements, air quality control, or federal airspace considerations, the Board lacks the authority to do so. These matters are exclusively within federal jurisdiction.

While local governments in Idaho retain authority over land use and planning, they do not have authority to regulate airspace, flight, or airport operations, which remain exclusively federal matters. The County's land use authority under LLUPA does not include the power to impose conditions or denials based on federal airspace regulatory requirements. Any attempt by the Board to make decisions predicated upon FAA regulatory standards would represent an improper intrusion into a field that Congress has reserved exclusively to the federal government.

Enclosed herewith is a letter from DIRE's special FAA counsel, JetLaw, addressing the FAA issues raised in the Request. That letter confirms that the FAA issues raised are without merit under federal law and further underscores that those matters are beyond this Board's jurisdiction in any event. We respectfully request that the Board and the County Attorney review that letter in conjunction with this correspondence.

C. Conclusion

For the above reasons, the Board should dismiss the Request without further proceedings because the Requestors are not "affected persons" under Idaho Code § 67-6521(1)(a) and therefore lack standing to seek reconsideration. In the alternative, if the Board elects to consider the Request, it should affirm its prior approval of the plat amendment in full, as the Request

identifies no specific deficiency and fails to satisfy the standard for reversal under Idaho Code § 67-6535.

We request that this letter along with the enclosed JetLaw letter, be placed in the record for the Sweetwater Application. We appreciate the Board's time and consideration of this matter.

Respectfully submitted,

PARSONS BEHLE & LATIMER

Jon A. Stenquist
Attorney at law

Enclosure

JETLAW
ATTORNEYS & COUNSELORS

[address redacted] NW SUITE 1102 WASHINGTON, DC 20036
[phone redacted] WWW.JETLAW.COM

April 6, 2026

Board of County Commission
Teton County
150 Courthouse Drive
Driggs, ID 83422

RE: Request to Reconsideration Sweetwater Subdivision Replat

To the Board of County Commissioners:

The appeal and reconsideration petition submitted on March 20, 2026, contains assertations that are beyond the scope of the County's review and implicate issues of Federal preemption. The petitioners desire to reopen not only the replat procedure, but also the planning process for the Driggs-Reed Memorial Airport. The issues in the petition related to federal preemption and the federal planning process are addressed in this letter: Paragraphs 1-4 on Pages 1 and 2 and the Statement on Page 4.

Paragraph 1 on Page 1. The Federal Aviation Administration Reauthorization Act of 2024 contains Section 827 related to the EAGLE (Eliminate Aviation Gasoline Lead Emission) Initiative. Section 770 of the Act creates a new grant assurance that restricts local sponsors from restricting the sale or use of 100 low lead aviation fuel on federally obligated airports. Congress' current action in combination with the Airport Noise and Capacity Act and prior case law related to preemption under the Federal Aviation Act indicate not only implied but expressed preemption of any issue related to aviation fuel concerns. Paragraph 1 contains no specific deficiency within the scope of Teton County review.

The Petition is, in fact, questioning the 2022 Driggs-Reed Master Plan. The Driggs Master Plan in Terminal Area Drawing 1 and 2 shows the addition of approximately 564,900 square feet of hangar space above Runway 4-22 and approximately 206,500 square feet below or West of the runway. There are also approximately 100 tie-down spaces on the North side and 44 tie-down spaces on the South side. 771,400 square feet could permit 771 more aircraft on the field, assuming the 1,000 square foot T-hangar as the minimum space required for an aircraft. The Master Plan, therefore, envisions an increase of roughly 900 additional aircraft on the field. The density proposed by Sweetwater is less than 5% of the density contemplated by the Master Plan. The Master Planning Process was a public process subject to notice and comment. Any concern regarding density was subject to timely objection in 2022. The appropriate time to object was during the Master Planning process. Paragraph 1 contains a complaint generally applicable to any airport, not a specific deficiency of the replat. The County should defer to the City's Master Plan document for all issues related to density. The City affirmed to the FAA that the Master Planning document was good and appropriate planning.

Paragraph 2 on Page 1. The petition is concerned with and related to prior planning activity at the Driggs-Reed Memorial Airport and is presented out of time. The City of Driggs Master Plan was

adopted in 2022. The petition states that "Increasing in density of hangar homes in the Sweetwater Ranch Subdivision will contribute to additional flight traffic, air pollution, and health risks." All issues related to air traffic are strictly preempted by ANCA. The safety of aircraft in flight, including the density of operations, is governed by FAA, not local or state enactments. See *Town of East Hampton, New York v. Friends of the East Hampton Airport, Inc*. 841 F.3d 133 (2nd Cir. 2018), Cert. Denied 582 U.S. 948 (2017).

The petition requests the evaluation of environmental concerns related to the airport, not solely or specifically the replat. Environmental issues related to airports are governed by federal law. As discussed above, Congress specifically retained authority over aviation fuel issues. The petition contains generalized complaints regarding airports and small aircraft; not specific issues related to the replat. Accepting the petitioner's objection to a user or subset of users of the airport as grounds to stop the plat is tantamount to denying a request for a restaurant because cars drive to restaurants and that drives demand for the use of highways that pollute. The Supreme Court dismissed this kind of circuitous reasoning in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025).[1]

Paragraph 3 on Page 1. The petition requests the regulation of noise at the airport. This is specifically preempted by ANCA. This paragraph also poses a vague question about general airport planning, not a specific issue regarding the replat. Operational issues regarding the airport were thoroughly vetted in the Master Plan that contemplated hundreds of additional aircraft.

Paragraph 4 on Page 2. The FAA does not grant through the fence agreements. See FAA Compliance Guidance Letter 2021-03. The FAA reviews access agreements and access plans. This paragraph asks for a legal opinion and does not make any statement of fact or law upon which a petition could be granted. There is no specific issue in this paragraph related to the replat.

Statement on Page 4. The petitioner, Frank Russo, presents no discernible evidence for the statements presented. It does not definitively state that the proponents are or are not disclosing rules and regulations. It provides no written documentation from the FAA. It does not address the significant changes in federal oversight that specifically permit Residential Through the Fence facilities under Section 136 of the FAA Reauthorization Act of 2012 or Section 185 of FAA Reauthorization Act of 2018. This statement contains no specific deficiency in the replat.

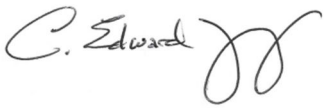
As presented, the petition for reconsideration presents no specific deficiency in the replat based on airport related issues. The issues presented are not within the scope of County review. The issues that are presented are either directly addressed by Congress or are general airport operational issues that were subject to appropriate administrative review as a part of the Master Plan.

Regards,

---

[1] "An agency need not assess the environmental effects of other separate projects simply because those projects (and effects) might not materialize but for the project at hand, or are in some sense foreseeable."

JETLAW, LLC



C. Edward Young
Senior Attorney

Biographic Reference:

C. Edward Young, Senior Attorney, Jetlaw. Principal Investigator – Airport Cooperative Research Program, Legal Research Digest 48, *Legal Issues Concerning the Safety and Security of General Aviation Airports*, Published by the Transportation Research Board (2024). Co-Author – *Jetlaw Explained, Airport Edition* (2023). Professor of Airport Environmental Planning, Kansas State University. Former Director of Aviation, State of Kansas. University of Kansas (BA, MPA, JD). Graduate Embry Riddle Aeronautical University (Certificate Airport Risk Management and Safety).