SWEETWATER PHASE I SIGNIFICANT PLAT AMENDMENT TRULOVE
BOCC PRELIMINARY PLAT - RECONSIDERATION

FOR: Dan Christensen, Driggs Idaho Real Estate LLC
WHERE: Sweetwater Subdivision Phase I, (Lots 8-25)
PREPARED FOR: Board of County Commissioners – Public Hearing on April 27, 2026

LANDOWNER: Dan Christensen
APPLICANT: Howard Garber

APPLICABLE COUNTY CODE: Teton County Code Title 7 Chapter 1- Driggs Area of City Impact Ordinance specifies, under A.3., Teton-County Subdivision Regulations apply, with exceptions to include City of Driggs Subdivision Design Standards (Title 1, Chapter 4), City of Driggs Subdivision Improvement Standards (Title 10, Chapter 5), and City of Driggs PUD Regulations (Title 10, Chapter6). Applicable County subdivision regulations are Title 9-7-1-B. Changes to Recorded Plats (revised 5/16/2013); City of Driggs Comprehensive Plan (dated January 19, 2010).
Title 9 of Teton County Code does not include provisions for a Request for Reconsideration. This review is based on provisions of Idaho Code §6765-35.

LEGAL DESCRIPTION: LOTS 8-25 SWEETWATER PHASE I SEC 24 T5N R45E;
LOCATION: Sweetwater Subdivision, Phase I, North of Driggs
ZONING DISTRICT: ADR-1.0 Driggs Impact Area 1.0-Acre Avg.
Density Residential (at time of application)
PROPERTY SIZE: Total project acreage – 61.20 acres

Applicable Standards and Criteria for Application Evaluation: Teton County Code (TCC) – Chapter 9-3-2(C)(8).
Request for Reconsideration, Title 9 Does not include specific provisions for a request for reconsideration. Although the current County Land Development Code does include provisions for a Request for Reconsideration, the application predates the adoption of the LDC. This request relies on provision and follows requirements outlined in Idaho Code § 67-6535. Specifically:

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

RECONSIDERATION: The applicants request reconsideration of the Sweetwater Phase I Significant Plat Amendment (BoCC Preliminary Plat) for the limited purpose of reopening the public comment portion of the hearing. No additional or specific criteria have been identified by the applicants to support this request.

In evaluating the request for reconsideration, the Board should consider the full record, including: (1) materials submitted with the original application; (2) the applicable review criteria for the Preliminary Plat; (3) information and findings developed during the Board's prior deliberations; and (4) materials submitted in support of the present request for reconsideration.

Planning staff has included relevant attachments and referenced documents to assist the Board in its review.

These criteria require that:

CRITERIA FOR APPROVAL

Applications to vacate or make changes to recorded rights of way, easements, recorded plats, or master plans shall be reviewed using the following Criteria for approval:

I. The Master Plan and plat for a subdivision or Planned Unit Development, including the proposed changes, shall comply with all applicable criteria and standards of the current county regulations. (or applicable regulations as specified in the impact area agreement).

II. Any proposed changes to a recorded plat or master plan that increase direct or indirect impacts may require additional mitigation pursuant to the criteria and standards of county regulations. The applicants have completed additional studies to explore the potential need for mitigation. The applicants have proposed off-site park space and an adjacent trail system, while not compromising the need for exclusion from the airfield.



Figure 1. Aerial Image Figure 2 Sweetwater Subdivision Phase 1 No existing development

SPECIFIC REQUIREMENTS FOR PUBLIC HEARING NOTICE:

It is understood that the notice and review procedures established for a Preliminary Plat review by the County are the appropriate requirements for a review of the related Reconsideration. These are found in Title 9, Section 3-2-(D-2) of the Teton County Code. The public hearing for the Board of County Commission was duly noticed in the Teton Valley News on April 8 & 15, 2026. A notification was sent via mail to surrounding property owners within a 300-foot buffer area on April 3, 2026. A notice was also posted on the property providing information about the public hearing on April 14, 2026.

Procedures for Appeals and Requests for Reconsideration.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought.

The request for reconsideration was received on March 20, 2026. At that time, the written decision for the Sweetwater Phase I Significant Plat Amendment (Trulove BoCC Preliminary Plat) had not yet been prepared. As of April 21, 2026, the written decision has been completed.

Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

The County is endeavoring to consider the request promptly in order to render a subsequent written decision to the appellant within the 60-day timeframe, however we would consider the date of the written decision for approval of the preliminary plat as establishing a start point for the window to receive any request for reconsideration, as this request for reconsideration was submitted early, before the written decision was issued. This was discussed to some extent in conversation with the appellant, as well as the fact that there would be an additional opportunity to submit comments in the final plat hearing process.

No other specific criteria are provided for consideration of this request. The Board should consider the information from the original application, the review criteria for the Final Plat, the information provided from the Board's deliberation and written decision document, and the information submitted in the applicant's request. Planning staff have included what appear to be relevant attachments, including referenced documents, to address these questions.

PUBLIC COMMENT:

Staff has received one additional written comment on this application for reconsideration as of April 22, 2026.

FINDINGS OF FACT:

Howard Garber submitted an application requesting reconsideration on March 20, 2023, before drafting and approval of the written decision. A written decision was approved and signed on April 13, 2026.

PROJECT HISTORY:

Pre-application Conference: A meeting was held 11/21/23 with Teton County, the applicant and the City of Driggs.
Because this project is a significant plat amendment, it starts the process at Preliminary Plat with a joint City of Driggs and Teton County Planning Commission review.

Joint PZC September 11 2024: The Joint Teton County and City of Driggs made the following motion:

Commissioner Barker made a motion to table the application to a future public hearing in order to obtain additional information discussed and and to include the staff report conditions of approval 1-12. Commissioner Moseley seconded, motion to table passed all in favor.
Many of the conditions of approval were requests for additional information or a request for resolution of certain questions or issues.

Joint PZC June 11 2025: The Joint PZC met again on June 11th for further deliberation on the application. The PZC identified several areas which they felt were still not addressed in the original list of 12 items and identified four points they wanted to be addressed.

Joint PZC August 12, 2025 Although the applicant presented their narrative memo at the last August meeting the JPZC also wanted to review this document further, which was not attached to the report materials for review prior to the August meeting. The Commission also requested resolution of concerns raised by the Airport Board.

> MOVER: Carol Barker
> SECONDER: Carl Kohut
> I move to table the plat amendment request for Sweetwater Phase I in order to obtain additional information from the applicant and to review the information that was not included in the packet for this meeting as well as the opinions from a meeting with the airport advisory board and the applicant.
>
> AYES (4): Carl Kohut, Guyon Moseley, Carol Barker, and Patrick Hertz NAYS: (1): James Weber PZC 8/12/2025
> 6 Absent (5): Tyler Wertenbruch, Wyatt Penfold, Wade Kaufman, Rebeca A Baker, and Tom Braun; Adopted (4 to 1)

Joint PZC January 13, 2026 The JPZC held another public hearing where they reviewed some

additional material and received comment from the City of Driggs. The stated need for continuing the hearing was to review the narrative the applicant had previously prepared and to demonstrate a resolution on questions related to access to the Driggs Airport concerns raised by the Airport Board. **Following the hearing the JPZC voted unanimously to recommend approval of the Preliminary Plat with conditions.**
The 11 conditions included in the staff report and one additional condition that "the Airport Board and the City of Driggs address potential security issues with the proposed access to the airport."
Voting JPZC members were Commissioners Weber (chair) and Nolan, representing the county and Commissioners Smith and Kirkpatrick representing the City of Driggs PZC.

BoCC February 23, 2026 The Board had extensive conversations regarding the short term rentals and ADU's. Commissioner Powers expressed the need to review the conditions of approval prior to making a motion and asked to continue the item. MOVER: Dan Powers SECONDER: **Ron James Move to continue the deliberation of the Sweetwater Phase I replat to 10:50 AM in order to further review the conditions of approval.** AYES (3): Brad Wolfe, Ron James, and Dan Powers Adopted (3 to 0)

BoCC March 9, 2026 The Board made a statement that they had received additional information regarding pollution both in writing and during open mic. However, the Board is aware that they cannot consider that information during this deliberation.

The applicant was given the opportunity for rebuttal. Courtney Stallings, representing the applicant, spoke about the ex parte information sent to the Board. She stated that the City of Driggs approved a plan in 2022 for expanding use at the airport. She asked the Board to reject the improper attempts to influence approval of this project. Board deliberation. Commissioner Powers suggested re-opening the public hearing to accept and discuss the additional information. Chair Wolfe felt the process had been followed and that the Board should vote on the application. Commissioner Powers stated that he would need to recuse himself from any vote as he can't unhear what was said during open mic.

MOVER: Brad Wolfe
SECONDER: Ron James
AYES (2): Brad Wolfe, Ron James,
ABSTAINED: Dan Powers
Adopted (2 to 1)

STAFF ANALYSIS AND RECOMMENDATIONS:
Staff comments below are in blue

The request for reconsideration is composed of a few different parts. The initial application form includes a "supplemental page" with signatures collected from 12 individuals, including the applicant on the face and signature line of the form, noting that "several folks contributed to $500 application

fee." One of these individuals, Frank Russo, submitted written comments along with and in support of Mr. Garber's statements. Mr. Russo specifically states his support of re-opening the hearing to consider his concerns with FAA approval of residential through-the-fence (RTTF) agreements. He notes that he believes there is a legal requirement for the developer to disclose to potential property buyers of FAA requirements related to RTTF agreements.

After significant discussion of RTTF agreements, the county was informed that these agreements could not be issued or negotiated except with future landowners after this review process is concluded. Therefore, it is not timely to try to resolve in this review process.

Mr. Garber makes the following arguments.

1. "Teton County, Idaho County Commissioners and Planning Department failed to adequately hear evidence and address the health and safety of residents when they approved the preliminary plat," specifically discussing air pollution associated with aircraft use.

   Significant comment was considered, initially by the Joint Planning and Zoning Commission, and subsequently the Board, on an array of health, safety and welfare topics, including fundamental design aspects of the project related to controlling access into the project, firefighting considerations, overall public health needs related to connection to recreation trails, aircraft and automobile routing within the project, and others. No mention was made by any party, prior to the closing of the Preliminary Plat hearing, related to air quality concerns related to aircraft emissions.

   Although the County can and does try to identify substantive issues that fall within the scope of county regulations or broader health and safety concerns, county staff are not experts on all aspects of public health. Notice is given to other agencies providing services in the jurisdiction, who may have additional expertise, and occasionally bring things to the County's attention for discussion, as well as concerns from the interested public. Planning staff does not believe there was negligence on the part of the county and would point to extensive opportunities that were provided for in this review process, with multiple iterative meetings with the JPZC, before coming to the BoCC. The applicant's attorney did address some questions related to the County's jurisdiction regarding aircraft fuels and emissions, prior to the BoCC decision.

2. "Increasing the density of hanger homes in Sweetwater Ranch Subdivision will contribute to additional flight traffic, air pollution, and health risks." Mr Garber calls for studies to be conducted related to air pollution and blood lead levels in children.

   It is unclear whether the county has the authority to mandate blood testing for lead levels in school children or the general population, particularly relying on anecdotal information, in the process of reviewing a plat amendment. Perhaps the Health District or Idaho Department of Environmental Quality has this authority if there is strong evidence of a localized health concern. It would seem that a broader approach would have to be taken to address this issue beyond limiting further subdivision platting, such as a moratorium on all building in an affected area. It is also unclear how the cost of this should be allocated. Studies of the broader

impacts of the existing operating airport do not seem to be exclusively associated with this proposal at this specific time, more so than the overall development of this area. This subdivision is existing and has not seen any development in this phase since it was platted in December 1992. Given this there is some uncertainty as to when development will occur, and if it will be subject to different local or federal requirements at that time. Although Staff agrees that it is a laudable effort to reduce the air pollution, including lead emissions, the relationship between this project and definitive evidence of the specific concerns raised has not been clearly demonstrated in staff's opinion.

3. "Hundreds of Teton County residents are impacted by noise from low flying aircraft in and around Driggs." Has the FAA or Driggs Airport Board given a recommendation regarding safety for 44 additional pilots access taxiways and runways at an airport with no tower?"

   This is posed more in the form of a statement and question rather than a finding that a code criterion has not been met. This was also discussed to a limited extent in the BoCC meeting prior to issuing a decision, where the applicant stated that the County does not have specific jurisdiction to regulate air traffic patterns in this area. Access to the runway has received substantial comment and has been the subject of extensive discussion.

4. Mr. Garber raises concerns of legal liability related to granting approval of "these 44 hanger homes" prior to RTTF agreements being issued.

   See previous comments related to this matter.

5. At the BoCC meeting interested public including health care and education professionals "were told their opinions would not be considered in any county decision-making because public comment was closed."

   This is correct. The County followed legal recommendations to ensure that its decision would be based on the record, including information from the previous hearings where substantial public comment was received. In conversation with Mr. Garber, before receipt of the request for reconsideration, Planning staff made it known that additional public comment would be taken in the Final Plat review process. The appellants have availed themselves of the reconsideration process, and the public hearing is now before the Board as a result. If it is determined that the applicants have demonstrated standing, additional information could be considered at this time. If not, there will be a subsequent hearing called for in the County review process.

6. The proposal more than doubles the currently approved density and is a discretionary decision. "It is irresponsible not to require the developer to connect to the City of Driggs sewer system."

   BoCC discretion for this decision is still bound by the parameters of the county code as to what should be properly considered by the county. Unless there are findings that the proposal is either not allowed or inconsistent with review criteria, there is a compelling argument to grant a requested change consistent with the regulations in place at the time of an application

which may include additional requirements for mitigation. Perhaps the county could mandate connection to the City of Driggs sewer line, if there was evidence of soil conditions or other limiting factors, but the city is not bound by that requirement to allow connection, particularly if there are capacity concerns or issues with proximity to existing lines and easements. Discussion of future annexation has been recommended by the City of Driggs. The applicant has a preliminary approval from Eastern Idaho Public Health, which supports the use of individual septic systems. At early stages of the review, when a Nutrient Pathogen Evaluation could have been contemplated, no requirement for one was determined. The Board did have some discussion about increased onsite wastewater treatment in their deliberation and questioned the applicants on this matter.

7. "Updated CCR's were not available for review prior to the public hearing Feb 23," as well as a letter from the City of Driggs. "This warrants reopening public comments for the preliminary plat hearing…".

   The referenced documents are attached to this report.

   The conclusory statement also states "we have documented proof that ex parte communication occurred by Commissioner James on March 3, prior to the BoCC meeting on March 9, and it was not disclosed. Therefore you should re-advertise and re-open the public hearing to cure these violations, and to take additional information on the health effects of increasing flights."

TCC 9-7-1(B) (3) (b), (Substantial Change – Increase Scale, Impact) includes two review criteria that the BoCC must find.

i. The master plan and plat for a subdivision or Planned Unit Development, including the proposed change, shall comply with all applicable criteria and standards of the current county regulations.
ii. Any proposed changes to a record plat or master plan that increase direct or indirect impacts may require additional mitigation pursuant to the criteria and standards of county regulations.

The first review criterion gives broad authority to require compliance with current regulations at the time of application. This was reviewed and documented in the staff report prepared for the Preliminary Plat hearing and is not fully presented again in this report. The second criterion does give the Board some latitude to require other mitigation measures if it determines that there are increased direct or indirect impacts.

Planning Staff Recommendations:

The application has provided limited information related to the question of affected persons; however, it fails to document how each of the signers who added their names to the application is an affected person. It does provide mailing addresses for each of the signers. The Board may want to ask for additional information initially to determine this matter. The arguments made have some components related to legal considerations such as liability in making approvals, while other matters

are largely related to public health, safety and welfare which might be taken up for further consideration under the code language "direct or indirect impacts."

Although it seems difficult to directly tie the proposal to additional aircraft noise and exhaust emissions in any particular timeframe, it is not unreasonable to consider these as indirect impacts, but it is unclear what measures the county could require of the developer to offset those impacts. There are questions as to what reasonable mitigation measures may be available as allowed for by the code and the county's jurisdiction in a land use decision. Although the request for reconsideration raises questions that may be important to public health and safety, it does not suggest mitigations other than to deny expansion and or require connection to the City's wastewater treatment system.

The request calls for additional studies but does not present clear evidence of an existing health condition or threat related to this specific proposal, and is unclear whether the suggested study would yield a definitive answer as to whether this proposal should be approved or denied. The larger operation of the airport exists outside of this specific request, though an expansion of the number of lots could exacerbate any existing concerns that are discussed by the applicant. Staff does not see a clear path for making recommendations on this proposal. Issues related to access to the runway, however were thoroughly discussed in earlier stages of project review, and staff does not believe additional time should be focused on this issue.

In summary, the Board should initially determine if the appellants have standing, and then identify if it finds compelling arguments to make modifications or modify or overturn its initial decision, otherwise it should affirm its decision.

BOARD OF COUNTY COMMISSIONERS ACTION:

A. AFFIRM the previous BoCC decision to approve the Preliminary Plat and related conditions of approval, having provided the reasons and justifications for the affirmation.
B. OVERTURN the previous BoCC decision to approve the Preliminary Plat, having provided the reasons and justifications for overturning the decision, thus denying the Final Plat.
C. MODIFY the previous BoCC decision to approve the Preliminary Plat, specifying how the request is modified and providing the reasons and justifications for the modifications to the application request, or adding conditions.
D. Continue to a future BoCC Public Hearing with reasons given as to the continuation or need for additional information.

MOTIONS:

AFFIRMATION

Having concluded that the Review Criteria of a Preliminary Plat and other relevant code have been met, I move to AFFIRM the approval of the Preliminary Plat for Sweetwater Phase I Significant Plat Amendment as described in the motion made on March 9, 2026 with the following findings:

OVERTURNING

Having concluded that the Review Criteria of a Preliminary Plat and other relevant code have not been met, I move to OVERTURN the BoCC decision and DENY the Approval of the Preliminary Plat for

Sweetwater Phase I Significant Plat Amendment as described in the motion made on March 9, 2026 with the following findings:

MODIFICATION
Having Reviewed the Criteria of a Preliminary Plat or other relevant code found in the Teton County Land Subdivision Ordinance, I move to MODIFY the BoCC decision Approving the Preliminary Plat for Sweetwater Phase I Significant Plat Amendment as described in the motion made on March 9, 2026**,** in the following way and with the following findings:

CONTINUATION
Having Reviewed the request for reconsideration of the Preliminary Plat for Sweetwater Phase I Significant Plat Amendment as described in the motion made on March 9, 2026, I move to CONTINUE the Board of County Commissioner's Public Hearing with reasons given as to the continuation or need for additional information to a specific future date & time.

Prepared by: Mitzi Van Arsdell Associate Planner, reviewed by Joshua Chase

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Attachments:

- **A. Application for Reconsideration (consolidated 7 pages).**
- **B. CCRs Received 2/18/2026**
- **C. Letter from City of Driggs 2/11/2026**
- **D. Staff report from BoCC preliminary plat hearing (19 pages).**
- **E. Legal statement from property owners Note that other lengthy attachments are included in a linked folder.**

End of Staff Report