



V A R D

March 2, 2009

Teton County P&Z  
89 North Main Street  
Driggs, Idaho 83422

RE: Adoption of the Preferred Land Use Map (PLUM).

Dear Commissioners,

We at Valley Advocates for Responsible Development (VARD) totally support the county's efforts to finally create and adopt the PLUM, which has been a statutory requirement since 1975. This valley has seen its share of booms and busts over the years, and now for the first time, the county is mapping their vision for the future of this valley in light of the comprehensive plan. Although the adoption of this map is 34 years overdue, it is better late than never.

We wholly support the adoption of the PLUM, but have two (2) concerns regarding the seven (7) small study areas that are based on the historical townsites and areas where there is high-density housing and the presence of mixed commercial and industrial uses.

CONCERN #1: These study areas are contrary to the policies of the Comprehensive Plan.

These seven (7) study areas have the potential to create high-density housing, commercial, and industrial sprawl in the rural county which is contrary to the goals and policies of the comprehensive plan. The PLUM was designed to not reflect the ground-truth of what is already built in the county, but instead reflect the goals and policies of the comprehensive plan

from 2004-2010 in light of the community's *projected* land use needs.<sup>1</sup> Like the comprehensive plan, it is supposed to be a forward-looking document.

Between the comments offered by the Victor and Driggs planners at the recent PLUM work meetings, as well as the comprehensive plan itself, it is clear that the economic viability of the valley is based on the three cities, and that is where we should focus our housing and commercial/industrial uses.<sup>2</sup> It could be argued by extension that the townsites along the highways may be suitable for small area plans. Using this logic, the designation of the Felt and Clawson study areas may be supported by the policies in the comprehensive plan.

Our concern however, rests with the five (5) study areas in the Driggs Centre, MD Nursery, Fox Creek, Grand Teton Log Homes, and Darby locations. This Commission made the deliberate decision that the PLUM would not include the ground-truth of what was already built

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<sup>1</sup> A land use map "shall be prepared indicated suitable *projected* land uses for the jurisdiction." I.C. § 67-6508.

<sup>2</sup> Teton County Comprehensive Plan 2004-2010, adopted December 12, 2004:

Policy 1: It is the intent of the Comprehensive Plan to encourage orderly growth. (Page 27.)

Policy 3: One of the county's prime economic values is the attraction of a rural, small town lifestyle, magnificent views, clean air and water, and abundances of outdoors recreational opportunities. (Page 27.)

Implementation 2: City impact areas and municipalities and industrial zoned areas are the desirable locations for industries and retail commercial activities. (Page 28.)

Policy 3: Concentrate higher-density development in the cities or in their areas of impact. (Page 31.)

Policy 4: Higher density developments should be located within or near the cities or within or near their areas of impact. (Page 31.)

Policy 6: Encourage industrial use in existing industrial zones and accommodate desirable industrial developments and uses in appropriate areas within the county. (Page 31.)

Policy 7: Foster the economic viability of the cities by encouraging development of most types of commercial enterprises in or near the cities or their impact areas. (Page 31.)

Implementation 11: The grand fathered zoned and the Ag PUD (sic) retain all existing rights, characteristics, and obligations and shall never be expanded. (Page 33.)

Policy 2: Encourage the preservation of the county's rural character. (Page 53.)

in the county, (because most of it is already contrary to the aims of the comprehensive plan anyways) but instead reflect the ideal goals and policies of the comprehensive plan. However, these five (5) study areas were selected because of certain ground-truth characteristics such as high-density housing and pre-existing commercial and industrial uses on site.<sup>3</sup> Thus, these study areas were selected under the very premise that this Commission sought to ignore.

Then there is the issue of what it means to be a “study area.” Really, the Commission is opening the floodgates to expanded uses in these locations. Once again, the role of the PLUM is to reflect the goals and vision of the comprehensive plan, and we all know the comprehensive plan simply does not support expanded commercial uses and high-density housing out in the rural county. (See Footnote 2.)

CONCERN #2: Some study areas are based on zone changes granted without a PLUM in place.

Many of these proposed study areas with commercial and industrial zoning were the result of zone changes granted at a time when the county did not have a land use map in place pursuant to I.C. §§ 67-6508 and 67-6511. More specifically, the commercial and industrial uses existing in the Driggs Centre, MD Nursery, Fox Creek, and Grand Teton Log Homes study areas were the result of zone changes, conditional use permits (CUP’s), and planned unit developments (PUD’s) approved before the Teton County comprehensive plan included a land use map.

The problem is, these study areas are predicated on zone changes and *defacto* zone changes<sup>4</sup> that lack the support of a valid comprehensive plan. In *Sprenger, Grubb & Associates*,

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<sup>3</sup> More specifically, the MD Nursery, Driggs Centre, and Grand Teton Log Homes study areas are characterized by a combination of commercial and industrial uses out in the rural county. The Fox Creek study area is characterized by several high-density housing developments out in the rural county. The Darby study area is located far away from transportation corridors.

<sup>4</sup> Courts have treated the approval of a PUD as equivalent to a rezoning. See, *South Creek Assoc. v. Bixby & Assoc., Inc.*, 781 P.2d 1027, 1032 (Colo. 1989.). In Teton County, CUP’s have also historically been used to create *defacto* commercial and industrial zoning.

*Inc. v. Hailey*, 133 Idaho 320, 322 (1999), the Idaho Supreme Court made it clear that the absence of a PLUM or land use map renders a comprehensive plan invalid and “a valid comprehensive plan is a precondition to the validity of zoning ordinances.”<sup>5</sup> In the case of *Sprenger Grubb*, the court invalidated Hailey’s zoning Ordinance No. 691 because their comprehensive plan lacked the statutorily required PLUM. The zone changes and *defacto* zone changes in these four (4) study areas were granted without a valid comprehensive plan in place, and are thus vulnerable under the *Sprenger Grubb* rule: If the current comprehensive plan is invalid, the zoning actions taken after the plan’s adoption are also invalid.<sup>6</sup>

Because the uses in these four (4) study areas are already on shaky ground (legally speaking) and contrary to the goals of the comprehensive plan, they should not be used as a basis for exploring future expanded uses. Moreover, these study areas cannot be bootstrapped into validity by now becoming part of the county’s quiver of planning tools.

### Conclusion

The act of designating a special study area carries with it a significant implication: the county will be opening the door to future expanded uses. This issue should be broached extremely cautiously, and only in the few locations that can be justified in light of the goals of the comprehensive plan. Afterall, that is the entire purpose of the PLUM.

Thank you once again for all of your thoughtful consideration.

Sincerely,

Anna Trentadue

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<sup>5</sup> *Sprenger, Grubb & Associates, Inc. v. Hailey*, 133 Idaho 320, 322 (1999). *See also, Love v. Board of County Commissioners of Bingham County*, 105 Idaho 558, 559 (1983).

<sup>6</sup> Givens Pursley LLP letter to Teton County Prosecutor Bart Birch regarding the effect of a deficient comprehensive plan, dated November 12, 2008.