

AUSTIN W. WAISANEN, WSB # 8-7023  
Email: awaisanen@pacificlegal.org  
Pacific Legal Foundation  
508 17th Street  
Cody, WY 82414  
Telephone: (307) 213-0511

DAVID J. DEERSON, Cal. Bar. No. 322947\*  
Email: ddeerson@pacificlegal.org  
Pacific Legal Foundation  
555 Capitol Mall, Suite 1290  
Sacramento, CA 95814  
Telephone: (916) 419-7111

BRIAN T. HODGES, Wash. Bar No. 31976\*  
Email: bhodges@pacificlegal.org  
Pacific Legal Foundation  
1425 Broadway, #429  
Seattle, WA 98122  
Telephone: (425) 576-0484

*Attorneys for Plaintiffs*  
*\*Pro hac vice*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

SHELBY AND VERNON  
SHARP,

Civil Action No.  
2:25-cv-00128-KHR

Plaintiffs,

vs.

**CIVIL RIGHTS  
42 U.S.C. § 1983**

BOARD OF COUNTY COMMISSIONERS  
OF TETON COUNTY,

Defendant.

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**PLAINTIFFS' RESPONSE IN OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS**

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## INTRODUCTION

Teton County’s motion to dismiss relies on a faulty premise. The Scharps were not required to pursue administrative relief when Teton County imposed on them an unconstitutional and intolerable quid pro quo: pay for other people’s housing before we will give you a permit to build your own. The Scharps’ civil rights claim ripened and became justiciable the moment Teton County made a final decision regarding the applicability of its affordable workforce housing standards to the Scharps and imposed its affordable workforce housing fee as a condition of approving the Scharps’ building permit. The motion to dismiss should be denied.

## ARGUMENT

### **1. Exhaustion of Administrative Remedies Is Not a Prerequisite to a Civil Rights Claim**

Teton County argues that the Scharps “have failed to exhaust their administrative remedies prior to filing this lawsuit” and that “[b]y not exhausting their administrative remedies, the Plaintiffs have not presented a claim upon which relief can be granted.” Def’s Mem. in Support of Mot. to Dismiss, Dkt. No. 13 at 10, 14. But “[t]he Civil Rights Act of 1871 ... guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials, and the settled rule is that exhaustion of state remedies is not a prerequisite to an action under 42 U.S.C. § 1983.” *Knick v. Twp. of Scott*, 588 U.S. 180, 185, 195–96 (2019) (citation modified); *see also Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 480 (2021).

*Pakdel* is illustrative. There, property owners in San Francisco sought a permit to convert their apartment building, held by the owners as tenants-in-common, into individual condominium ownership. *Id.* at 474–75. Unlike apartments, condos are not subject to rent control in San Francisco. With the stated goal of protecting affordable housing, San Francisco closely regulates apartment-condominium conversions. *See id.* at 476. Its ordinances provide inter alia that owners must apply for and receive permission to form a condominium, and that as a condition of receiving

such permission, owners must offer a “Lifetime Lease” to any tenants who are currently renting the would-be condos. *Id.* Plaintiff owners acquiesced to San Francisco’s demand and later brought an action under 42 U.S.C. § 1983, alleging an unconstitutional condition among other claims. *Id.*

San Francisco moved to dismiss, arguing that the Plaintiffs were required to exhaust administrative remedies provided by San Francisco code. *Pakdel v. City & Cnty. of San Francisco*, No. 17-CV-03638-RS, 2017 WL 6403074, at \*8 (N.D. Cal. Nov. 20, 2017). The District Court agreed, dismissing the Plaintiffs’ claims and holding that “[i]n order to bring a judicial challenge to a decision of an administrative agency, a party must demonstrate that it has exhausted all available administrative procedures, including all available appeals of the agency’s decision.” *Id.* Plaintiffs appealed. *See Pakdel v. City & Cnty. of San Francisco*, 952 F.3d 1157, 1163 (9th Cir. 2020).

While appeal of *Pakdel* was pending at the Ninth Circuit, the Supreme Court decided in a separate case—*Knick v. Township of Scott*—that there is no obligation to pursue state-provided remedies for an uncompensated or illegal taking of private property, including remedies which may be provided by an administrative body empowered under state law. 588 U.S. at 206. *Knick* thus overruled a requirement from *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 175 (1985), that a takings plaintiff must pursue state law remedies before bringing an action in federal court.

Nevertheless, San Francisco contended on appeal at the Ninth Circuit that *Knick* left *Williamson County*’s separate “finality” requirement intact, that is, that a plaintiff may not sue “until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” *Pakdel*, 952 F.3d at 1163. Therefore, rather than arguing that the Plaintiffs were barred from federal court for failure

to pursue administrative remedies, the City shifted its argument to claim that the Plaintiffs' failure to exhaust meant that San Francisco had not made a final decision. Ignoring *Knick's* repudiation of an exhaustion requirement, the Ninth Circuit agreed, holding that San Francisco's decision on the "Lifetime Lease" requirement was not final because there was still a chance San Francisco might "soften the strictures of the general regulations it administers" *Id.* at 1164 (citation modified).

The Ninth Circuit's decision was unanimously reversed by the Supreme Court, which derided the Ninth Circuit's apparent attempt to turn *Williamson County's* finality requirement into the type of administrative exhaustion requirement it had just overruled in *Knick*. The Supreme Court spurned the Ninth Circuit's reasoning that "a conclusive decision is not really 'final' if the plaintiff did not give the agency the opportunity to exercise its flexibility or discretion in reaching the decision." *See Pakdel*, 594 U.S. at 478 (citation modified). The Court held that "the Ninth Circuit's view of finality is incorrect[,]" noting that "[t]he finality requirement is relatively modest. All a plaintiff must show is that there is no question about how the regulations at issue apply to the particular land in question." *Id.* (citation modified).

Thus, the County's argument that the Scharps "did not exhaust all of their available [administrative] remedies" is a legal irrelevancy and does not support dismissal. Def's Mem. in Support of Mot. to Dismiss, Dkt. No. 13 at 10. What matters is not exhaustion but finality. As shown below, the Scharps' claims easily satisfy the finality requirement.

## **2. Teton County's Imposition of the Affordable Workforce Housing Standards Was Final**

Administrative exhaustion is not required, only finality is—and finality is met here. Teton County's rules clearly state that developments like the Scharp residence must satisfy the affordable

workforce housing standards before receiving a building permit, and that's exactly what happened in this case.

First, in February 2022, during planning review, Teton County officials told the Scharps that they would have to pay an affordable housing fee for a newly constructed home when considering their application to make their existing home (the cabin) an accessory dwelling unit. *See* Exhibit 1 (“fee will be due for SFD ... [f]ee due at issuance of single family residence building permit”). Then, in March of 2023, County officials again stated that as a condition of approving their building permit application, “Affordable Housing Fees must be paid in full of \$24,325.05.” *See* Exhibit 2, Condition No. 6. A month passed, and the Scharps sought to obtain a building permit so that they could begin construction. Pursuant to Teton County LDR § 6.3.5.D.5.d (*see* Complaint, Dkt. No. 1 at 37) which provides that “[t]he in-lieu fee shall be paid prior to the granting of the applicable building permit,” the Scharps paid the fee on April 27, 2023. Only then could the Scharps receive their building permit. *See* LDR § 6.3.5.D.5.d.

As the Supreme Court noted, the finality requirement is “relatively modest” and here, as in *Pakdel*, “there is no question about the [County]’s position[.]” 594 U.S. at 478. The Scharps were told in clear terms that approval of their building permit was contingent on compliance with the County’s affordable workforce housing requirements. That was a final decision. *See* Exhibit 2, Condition No. 6; LDR § 6.3.5.D.5.d.

The relatively modest “finality” rule should be even easier for Plaintiffs bringing an unconstitutional condition claim to satisfy than other Fifth Amendment plaintiffs. In *Williamson County*, *Pakdel*, and *Knick*, plaintiffs challenged government actions that resulted in uncompensated takings. In some of these cases, ripeness may turn on whether additional applications or variances, that have some likelihood of being approved, would allow the landowner

to avoid the claimed injury. For example, in *N. Mill St., LLC v. City of Aspen*, the Tenth Circuit held that a regulatory takings claim was unripe where the developer could still have sought approval through a “planned development” process. 6 F.4th 1216, 1226 (10th Cir. 2021). But this is “not an administrative exhaustion requirement,” and property owners are not required to comply with “an agency’s deadlines and other critical procedural rules” before bringing a takings claim. *Id.* (citing *Pakdel*).

Unconstitutional conditions claims, such as the Scharps’, raise a different question: not whether the government has functionally or physically taken a property for public use, but rather, whether it has used its permitting authority to condition approval on the surrender of a constitutional right—namely, the right not to have private property taken without just compensation. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612 (2013). As the Supreme Court recently explained, the issue in such cases is whether the government has “leverag[ed] its permitting monopoly to exact private property without paying for it,” or merely engaged in “responsible land-use policy” by “insisting that landowners internalize the negative externalities of their conduct.” *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 275 (2024); *Koontz*, 570 U.S. at 605. The doctrine’s nexus and proportionality tests serve to distinguish lawful permit conditions from unconstitutional ones, and form a specific application of the broader unconstitutional conditions doctrine. *Koontz*, 570 U.S. at 604–05.

Unlike some takings claims, an unconstitutional condition claim ripens and becomes justiciable at the moment the government makes the demand. As *Koontz* explained: “Our unconstitutional conditions cases have long refused to attach significance to [the status of the permit.]” *Id.* at 607. This is because “the impermissible denial of a governmental benefit is a constitutionally cognizable injury” regardless of whether the government ultimately succeeds in

pressuring someone into forfeiting a constitutional right. *Id.* Thus, a plaintiff need not wait for a permit denial, file a variance, or pursue administrative workarounds in order to state a claim. Nor does subsequent negotiation, reduction, or even acquiescence to the demand eliminate the injury. *See id.* The constitutional violation is not defined by the final amount paid or whether the government was successful in its demands, but by the coercive use of government power to force a rights-holder to choose between exercising their right or receiving a public benefit—here, a permit to build a family home. *Koontz*, 570 U.S. at 607–08.

When Teton County conditioned the Scharps’ building permit on first paying for other people’s housing needs, the injury occurred immediately. The County forced them into a coercive choice: pay the fee (and thus suffer a waiver of their right to compensation for a taking), or forgo their project. *Koontz*, 570 U.S. at 604–05. That coercion gave rise to a constitutionally cognizable injury, even if the Scharps had never paid the fee, the County would later offer to reduce the fee, or if the Scharps had eventually obtained the permit subject only to lawful conditions. None of those hypothetical later developments could undo the original coercive demand, which is the constitutionally cognizable injury suffered by the Scharps. *See id.* at 607. Nor is it of any import that the Scharps paid a fee-in-lieu, rather than designating their old cabin—the ARU—“as a deed restricted affordable housing unit.” *See* Dkt. No. 13 at 10. Such non-fee exactions take property as well. *See* Dkt. No. 1 at 10 ¶ 54; *Koontz*, 570 U.S. at 613. And of course, the Scharps *did* pay the fee as the County required, and thus there is no question that they have “actually been injured by the Government’s action and [are] not prematurely suing over a hypothetical harm.” *Pakdel*, 594 U.S. at 479 (citation modified). That is all the ‘finality’ necessary. *Id.*

### 3. “Independent Calculation” Procedure Would Have Been Futile Anyway

Teton County argues that “the independent calculation is an administrative remedy provided by the Teton County Land Development Regulations to address the concern being posed by the Plaintiffs” and that “[t]he Defendant should be given the opportunity to rectify the situation if the independent calculation shows a lesser amount owed.” Dkt. No. 13 at 12.

Even assuming *arguendo* that Teton County’s two-years-later reduction of the fee could repair the injury the Scharps suffered in April 2023, the Scharps could not then—nor now—show that they are entitled to an independent calculation under the County’s LDRs. Pursuing one would have been futile.

Teton County speculates that the “[Scharps’] style of living may be less than other residents living in large homes” and that “by assisting with construction tasks and clean-up,” the Scharps might be “generating” less need for housing for “plumber, electrician, housekeeping, fire service, etc.” employees than the “0.117 units,” Teton County forced the Scharps to pay for. *See* Ex. 2 at 5; Dkt. No. 13 at 8, 12.

But the independent calculation provision provides a means “to identify a requirement **for an industry** that is proportional to the demand for affordable workforce housing that industry generates.” LDR § 6.3.3.B (emphasis added). The Scharps are building a single-family residence and their use of the property is not an “industry” by any common definition, or “industrial use” as that term is defined by County regulations. LDR § 6.1.9 (defining industrial use as the “manufacturing, assembly, processing or distribution of material”).

Even if the County stretched the applicability of the section, the standards for submitting an independent calculation are too rigid to yield any relief. Applicants “shall use the methodology used in the Teton County and Town of Jackson Employee Generation Land Use Study” including

a complicated equation in which only some values can be alternated, and any alternate values must come from *industry-specific* data—not individual-specific circumstances. LDR § 6.3.3.B.2–3; Dkt No.1 at 28 (“[T]he alternate value proposed shall be calculated using ... [d]ata that is industry specific rather than business specific[.]”) (emphasis added). This means the Scharps’ perceived style of living, or their handiness in managing their own jobsite, even if documented, is legally irrelevant. And for good reason: the County would want to guard against applicants tailoring calculations to their personal situation, knowing ownership could change at any moment. Development impact fees and other exactions rarely yield to specifics about an owner—rather they turn on specifics about a project and development type. Teton County’s independent calculation is no different by requiring industry-level data rather than “business-specific” data.

Finally, the Scharps’ complaint does not primarily concern proportionality—i.e., the amount of property (or money) taken for mitigation measures. Instead, the gravamen of the complaint challenges the very existence of the County’s affordable housing exactions based on the absence of an “essential nexus” between building a home and a supposed negative effect on other people’s ability to afford a home. *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 837 (1987) (describing government’s burden to show an “essential nexus” between a development’s impact and an exaction). The LDRs themselves state the independent calculation is a proportionality tool, not a nexus-scrutiny mechanism. LDR § 6.3.3.B (describing a tool “to identify a requirement for an industry **that is proportional** to the demand for affordable workforce housing that industry generates”) (emphasis added). The tool can be used to adjust how much affordable workforce housing need a project supposedly generates, not whether it generates such need in the first place.

If the County believes that the independent calculation could have yielded a \$0.00 fee or zero impact consistent with its methodological constraints, it is free to explain how. But the

Scharps were under no legal duty to file “applications for their own sake.” *N. Mill St.*, 6 F.4th at 1230.

In any event, a post-lawsuit reduction does not retroactively cure a constitutionally cognizable injury. As *Koontz* makes clear, the injury from an unconstitutional condition occurs when the demand is made—not when (or whether) the government ultimately exacts something. The futility of the administrative remedy here only underscores that the Scharps’ claim was based on a final—and actionable—decision from the moment it arose.

### CONCLUSION

Administrative exhaustion is not required, only “de facto finality,” *Pakdel*, 594 U.S. at 479, and that standard was met here when Teton County unequivocally told the Scharps that, as a condition of approving their building permit, “Affordable Housing Fees must be paid in full of \$24,325.05.” Dkt. No. 1 at 12 ¶ 65, Ex. 2 at 6 (Condition No. 6). “Once the government is committed to a position ... the dispute is ripe for judicial resolution.” *Pakdel*, 594 U.S. at 479. The Scharps have stated a claim that Teton County “condition[ed] the approval of a land-use application on the owner’s relinquishment of a portion of his property...” *Koontz*, 570 U.S. at 599, and Teton County’s motion should be denied.

DATED: August 5, 2025.

/s/ Austin W. Waisanen  
 AUSTIN W. WAISANEN, WSB # 8-7023  
 Email: [awaisanen@pacificlegal.org](mailto:awaisanen@pacificlegal.org)  
 Pacific Legal Foundation  
 508 17th Street  
 Cody, WY 82414  
 Telephone: (916) 419-7111  
 Facsimile: (916) 419-7747

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Pacific Legal Foundation  
1425 Broadway, #429  
Seattle, WA 98122  
Telephone: (425) 576-0484

*Attorneys for Plaintiffs*

*\*Pro hac vice*

**CERTIFICATE OF SERVICE**

I certify that on August 5, 2025, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system, which will send notice of this submission to all counsel of record.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the District Court's CM/ECF system.

*s/ Austin W. Waisanen*  
AUSTIN W. WAISANEN

*Attorney for Plaintiffs*

# Exhibit 1



## LDR Review Checklist

Application: PAP2022-0012

Purpose: The Scharp Residence

Subpermits: N/A

Associated Applications: N/A

Prerequisite Applications: N/A

Agent/Applicant: Owner

Property Owner: Vernon & Shelby Scharp

Reviewer: Chandler Windom

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Recommendation: not applicable      Date: 2/23/2022

- Notes:**
1. Certificate of Placement required for all new structures
  2. Bear-proof trash containers required during and after construction.
  3. Exterior Lighting Regulations shall apply, lumens may not exceed 1.5\*Proposed site development
  4. R2 Zone Site development Setbacks: Street Setback-30 ft/Non-street setback-15'
  5. R2 Zone Structure Setbacks: Street Setback-30'/Non-street setback 30'
  6. Site development limited to 23,719 sf
  7. Affordable Housing Fees do apply with SFD>2500 sf habitable (Includes basement habitable). Example fee for 2,800 sf = \$15,383
  8. Maximum Point height of 30'
  9. Site Floor Area Allowance of 10,000 sf gross- only 8,000 sf of that Habitable (basement exempt from both)
  10. Demo permit required from the Building Official if owner wants to demolish the pole barn prior to receiving building permit for new residence.
  11. Wildland Urban Interface review required from the Fire Department prior to BDR submittal and WUI memo must be **printed** on BDR plans
  12. Naturally occurring slopes over 30% may not be disturbed during construction.
  13. Residential Density may not exceed 1 single family home and 1 accessory residential unit (ARU)
  14. ARU may not exceed 1,000 sf of gross floor area including basement. Gross floor area includes both habitable and non-habitable spaces.
  15. A Basic Use Permit is required to designate the existing cabin as the Accessory Residential Unit. Must demonstrate how existing cabin complies with maximum scale of ARU. For Basic Use permit:  
<http://tetoncountywy.gov/DocumentCenter/View/10110/Planning-Permit-Application>  
<http://tetoncountywy.gov/DocumentCenter/View/3383/Basic-Use-Permit-BUP-Checklist-PDF>

### SITE DESCRIPTION

Address: 1400 E Horse Creek Road  
 Type: Other Metes & Bounds  
 Lot: N/A  
 PIDN: 22-39-16-14-4-00-026  
 Subarea: 15.1 Large Outlying Parcels  
 Zone: R2  
 Overlay: NRO  
 Comments: Previously zoned NC

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### SITE AREA

Gross Site Area (GSA): 5.00  
 Road Easement:  
 Rivers/Streams:  
 Ponds > 1 acre:  
 Conservation Easement:  
 Slopes >30%:  
 Driveway:  
 Base Site Area (BSA):  
 Adjusted Site Area (ASA):  
 Comments:

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PHYSICAL DEVELOPMENT (§ ZONE.B, ARTICLE 5)				COMPLIES
	LDR Standard	Existing	Application	Proposed Result
Location of Development in Natural Resources				Complies
River Setback (min) (§ 5.1.1)	150		N/A	
Stream Setback (min) (§ 5.1.1)	50-150		N/A	
Pond Setback (min) (§ 5.1.1)	50-150		N/A	
Wetland Setback (min) (§ 5.1.1)	30		N/A	
Ditch Setback (min) (§ 7.7.4.D)	15		N/A	
Elk Habitat (5.2.1.G.1)	NRO		N/A	
Mule Deer Habitat (5.2.1.G.2)	"		N/A	
Moose Habitat (5.2.1.G.3)	"		N/A	
Swan Habitat (5.2.1.G.4)	300' nest/not in winter habitat		>1 mile	
Trout Spawning (5.2.1.G.5)	150'		>150	
Bald Eagle Habitat (5.2.1.G.6)	660'		>660	
Vegetative Cover (5.2.1.F)	N/A		N/A	
Environmental Analysis (8.2.2)	Exempt	Single family residential, R-2 previously zoned NC		
Comments:				
Scenic Resources Overlay (5.3.2)				not applicable
Foreground (5.3.2.G)	No SRO		N/A	
Skyline (5.3.2.H)	No SRO		N/A	
Comments:				
Site Development (§ Zone.B)				Choose an item
Site Development (max)	23,719			
Street Setback (min)	30'			
Side Setback (min) (Non-Street)	15'			
Landscaping (min)	1 PU	Existing exceeds		
Comments:-				
Structure Dimensions (§ Zone.B)				Complies as Conditioned
Street Setback (min)	30'			
Non-Street Setback (min)	30'			
Architectural Projections	N/A			
Point Height (max)	30.0			
Overall Height (max)	37.5'			
Roof Materials	Earth tone and non-reflective			
Siding Materials	Earth tone and non-reflective			
Comments:				

PHYSICAL DEVELOPMENT (§ ZONE.B, ARTICLE 5)				COMPLIES
	LDR Standard	Existing	Application	Proposed Result
Structure Scale (§ Zone.B)				Complies
<b>Building: SFD</b>				
Above Grade Floor Area (sf)	10,000 sf			
Basement Floor Area (sf)	Exempt			
<b>Building: ARU</b>				
Above Grade Floor Area (sf)	1,000 sf			
Basement Floor Area (sf)	See above			
<b>Site Total</b>				
Above Grade Floor Area (sf)	10,000 sf			
Basement Floor Area (sf)	Exempt			
<b>Comments:</b> Existing cabin being converted into accessory residential unit.				
Exterior Lighting (5.3.1)				Complies as Conditioned
Unshielded Lumens (max)	4000			
Total Lumens (max)	Max Lumens allowed:			
Light Trespass	No trespass			
<b>Comments:</b> 1.5 x proposed site development. Site may not exceed 60,000 lumens. If keeping any lighting (such as ARU) please include lumens for existing & proposed.				
Other Physical Dev. Standards				Complies as Conditioned
Wildlife Friendly Fencing (§ 5.1.2)	Shall comply		None proposed	
Wildlife Feeding (§ 5.1.3)	N/A		N/A	
Bear Resistance (§ 5.2.2)	Area 1		Provide bear resistance trash containers during and after construction	Condition
Steep Slopes (§ 5.4.1)	No development >30%		Not development of slopes >30%	
Unstable Soils (§ 5.4.2)	GEC PAP		Unknown	
Fault Areas (§ 5.4.3)	Possible Fault		Unknown	
Floodplains (§ 5.4.4)	N/A		N/A	
WUI (§ 5.4.5)	WUI		Required prior to BDR- print memo on plans	
Signs (§ 5.6.2)	N/A		N/A	
Grading (§ 5.7.2)	Required GEC PAP		GEC permit required	
Erosion Control (§ 5.7.3)	GEC PAP		"	
Stormwater (§ 5.7.4)	GEC PAP		"	
GEX Exempt Water Feature	N/A		N/A	
<b>Comments:</b>				

USE (§ ZONE.C, ARTICLE 6)				COMPLIES
	LDR Standard	Existing	Application	Proposed Result
Allowed Use (§ Zone.C.1): not applicable				Complies
Site Area (min) (§ Zone.C.1)	N/A			
Density (max) (§ Zone.C.1)	1 SFD/ 1 ARU	1 SFD	1 SFD/ 1 ARU	
Scale (max) (§ Zone.C.1)	N/A			
Habitable Floor Area	8,000 sf			
Gross Floor Area	10,000 sf			
Use Standards (§ 6.1, § Zone.E.)				
Comments:				
Parking (§ Zone.C.2, Div. 6.2)				Complies
Required Parking (min)	2 per unit		2+	
Parking Location	On-site		On-site	
Required Loading (min)	N/A		N/A	
Loading Location	N/A		N/A	
Comments:				
Employee Housing (§ Zone.C.3, Div. 6.3)				not applicable
Employees Housed (min)	N/A		N/A	
Housing Method	N/A		N/A	
Comments:				
Operational Standards				not applicable
Outside Storage (§ 6.4.1)	N/A		N/A	
Refuse and Recycling (§ 6.4.2)	N/A		N/A	
Noise (§ 6.4.3)	N/A		N/A	
Vibration (§ 6.4.4)	N/A		N/A	
Electrical Disturbance (§ 6.4.5)	N/A		N/A	
Fire/Explosive Hazard (§ 6.4.6)	N/A		N/A	
Heat/Humidity (§ 6.4.7)	N/A		N/A	
Radioactivity (§ 6.4.8)	N/A		N/A	
Other Prohibitions (§ 6.4.9)	N/A		N/A	
Comments:				

DEVELOPMENT OPTION & SUBDIVISION (§ ZONE.D, ARTICLE 7)				COMPLIES
	LDR Standard	Existing	Application	Proposed Result
Development or Subdivision Option (§ Zone.D.1): Choose an item				not applicable
Lot Size (min)	N/A		N/A	
Rural Area (min)	N/A		N/A	
Conservation Area (min)	N/A		N/A	
Development Area (max)	N/A		N/A	
Density (max)	N/A		N/A	
Additional Floor Area (max)	N/A		N/A	
Comments:				
Affordable Housing (Div. 7.4)				Complies as Conditioned
People to be Housed (min)	Calculator		TBD	
Housing Method	Fee in -lieu		Due at BDR issuance	
Comments: Fee will be due for SFD w/ Habitable Floor area over 2500 sf including basements. Example fee for 2,800 sf habitable = \$15,383. Fee due at issuance of single family residence building permit				

**DEVELOPMENT OPTION & SUBDIVISION (§ ZONE.D, ARTICLE 7) COMPLIES**

	LDR Standard	Existing	Application	Proposed Result
<b>Schools and Parks Exactions (Div. 7.5)</b> <span style="float: right;">not applicable</span>				
Required Land (min)	N/A		N/A	
Exaction Method	N/A		N/A	

Comments: Existing parcel with residence.

**Transportation and Utilities Complies**

Access (§ 7.6.2)	Legal		Horse Creek	
Road Standards (§ 7.6.4)	private		Private	
Easement Dedication (§ 7.6.5)	N/A		N/A	
Intersection Clear View (§ 7.6.6)	N/A		N/A	
Potable Water (§ 7.7.2)	well		Show Well on plans.	
Wastewater Treatment (§ 7.7.3)	Individual system		SWF permit required	
Irrigation/Water Rights (§ 7.7.4)	N/A		N/A	
Utility Burial/Easement (§ 7.7.5)	Burial required		Buried required	

Comments:

**OTHER COUNTY RESOLUTIONS NOT APPLICABLE**

	Standard	Existing	Application	Proposed Result
<b>Other County Resolutions</b> <span style="float: right;">not applicable</span>				
Solar Access Resolution	N/A		N/A	
Jackson Hole Airport Resolution	N/A		N/A	
Open Space Resource Resolution	N/A		N/A	

Comments:

# Exhibit 2



## LDR Review Checklist

Application: BDR2022-0087

Purpose: Scharp's SFD

Subpermits: BUP2022-0027, GEC2022-0069

Associated Applications: PAP 2022-0012

Prerequisite Applications: SWF2022-0055

Agent/Applicant: Shelby & Vernon J. Scharp III

Property Owner: Shelby & Vernon J. Scharp III

Reviewer: Grace Kelley

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Recommendation: Approval with Conditions    Date: 3/28/2023

- Conditions:
1. Certificate of Placement required.
  2. Exterior lighting shall comply. Project approved for **7 Seagull Lighting Barn Sconces**
  3. Bear resistant trash containers are required during and after construction.
  4. All building materials shall be earth toned and non-reflective prior to installation.
  5. Prior to Certificate of Occupancy 1 Plant Unit must be maintained
  6. Affordable Housing Fees must be paid in full of **\$24,325.05**

### SITE DESCRIPTION

Address: 2400 Horse Creek Road  
 Type: Other Metes & Bounds  
 Lot: N/A  
 PIDN: 22-39-16-15-5-00-026  
 Subarea: 15-County Periphery  
 Zone: Rural 2  
 Overlay: NRO

Comments:

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### SITE AREA

Gross Site Area (GSA): 5 ac  
 Road Easement:  
 Rivers/Streams: N/A  
 Ponds > 1 acre: N/A  
 Conservation Easement: N/A  
 Slopes >30%: N/A  
 Driveway:  
 Base Site Area (BSA): 5 ac  
 Adjusted Site Area (ASA):

Comments:

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PHYSICAL DEVELOPMENT (§ ZONE.B, ARTICLE 5)			COMPLIES AS CONDITIONED	
	LDR Standard	Existing	Application	Proposed Result
Location of Development in Natural Resources				Complies
River Setback (min) (§ 5.1.1)	150		N/A	
Stream Setback (min) (§ 5.1.1)	50-150		N/A	
Pond Setback (min) (§ 5.1.1)	50-150		N/A	
Wetland Setback (min) (§ 5.1.1)	30		N/A	
Ditch Setback (min) (§ 7.7.4.D)	15		N/A	
Elk Habitat (5.2.1.G.1)	NRO Overlay		NRO Overlay	
Mule Deer Habitat (5.2.1.G.2)	NRO Overlay		NRO Overlay	
Moose Habitat (5.2.1.G.3)	NRO Overlay		NRO Overlay	
Swan Habitat (5.2.1.G.4)	300' nest/not in winter habitat		>300	
Trout Spawning (5.2.1.G.5)	150'		>150	
Bald Eagle Habitat (5.2.1.G.6)	660'		>660	
Vegetative Cover (5.2.1.F)	N/A		N/A (Mixed native vegetation)	
Environmental Analysis (8.2.2)	Exempt	NRO Overlay		
Comments: Previously zoned Neighborhood Conservation (NC)				
Scenic Resources Overlay (5.3.2)				Complies
Foreground (5.3.2.G)	ID Foreground	N/A	N/A	N/A
Skyline (5.3.2.H)	ID Skyline	N/A	No concerns	N/A
Comments: Not in SRO				
Site Development (§ Zone.B)				Complies
Site Development (max)	23,719	17076	3744	21,400
Street Setback (min)	50		50	
Rear Setback (min)	15		15	
Side Setback (min)	15		15	
Side Setback (min)	15		35	
Landscaping (min)	1 pu		Existing	Condition
Comments: Final site plan proposes only 21,400sf for site development. Reclaiming additional site development to be below maximum allotment of 23719sf.				
Structure Dimensions (§ Zone.B)n/a				Complies
Street Setback (min)	50		>50	
Rear Setback (min)	30		>30	
Side Setback (min)	30		>30	
Side Setback (min)	30		>30	
Architectural Projections	6		N/A	
Point Height (max)	30		27' 3"	
Overall Height (max)	37.5		32	
Roof Materials	Earth tone and non-reflective		Standing Seam Metal- Black	Condition
Siding Materials	Earth tone and non-reflective		Acrylic Stucco- White & Vertical Steel Siding	Condition
Comments:				

PHYSICAL DEVELOPMENT (§ ZONE.B, ARTICLE 5)		COMPLIES AS CONDITIONED		
	LDR Standard	Existing	Application	Proposed Result
<b>Structure Scale (§ Zone.B)</b>				Complies
<b>Building: SFD + attached garage</b>				
Above Grade Floor Area (sf)	10,000	976	2915 + 774	4665
Basement Floor Area (sf)	Exempt	976	1150	2126
<b>Building: ARU</b>				
Above Grade Floor Area (sf)	1,000 (TCHPB)	1008	0	1008 (TCHPB)
Basement Floor Area (sf)		1008	0	1008
<b>Building: Barn</b>				
Above Grade Floor Area (sf)	10,000	888	0	888
Basement Floor Area (sf)	Exempt	0	0	0
<b>Site Total:</b>				
Above Grade Floor Area (sf)	10,000	2872	3689	6561
Basement Floor Area (sf)	Exempt	1984	1150	3134
<b>Comments:</b> ARU has been designated as Historical under the Teton County Historic Preservation Board. Is allowed to exceed 1000sf via LDR article 6.1.11 (g) The excess floor area still needs to be below 8,000sf. Basement is not exempt in ARU square footage but is allowed via TCHPB.				
<b>Unshielded Lumens (max)</b>				
	4,000	0		
<b>Total Lumens (max)</b>				
	15,294	3300	8800	12,100
<b>Light Trespass</b>				
	No Trespass			
<b>Comments:</b> Project approved for 7 Seagull Lighting Barn Sconces				
<b>Other Physical Dev. Standards</b>				Complies as Conditioned
Wildlife Friendly Fencing (§ 5.1.2)	Shall comply		No new fencing proposed	
Wildlife Feeding (§ 5.1.3)	N/A		Not permitted	
Bear Resistance (§ 5.2.2)	All Zones		Bear resistant trash containers required	condition
Steep Slopes (§ 5.4.1)	No development >30%		N/A	
Unstable Soils (§ 5.4.2)	N/A		N/A	
Fault Areas (§ 5.4.3)	N/A		unknown	
Floodplains (§ 5.4.4)	FEMA=X		N/A	
WUI (§ 5.4.5)	WUI		Letter dated 1/7/2022	
Signs (§ 5.6.2)	N/A		None proposed	
Grading (§ 5.7.2)	GEC2022-0069		GEC2022-0069	
Erosion Control (§ 5.7.3)	"		"	
Stormwater (§ 5.7.4)	"		"	
GEX Exempt Water Feature	N/A		N/A	
<b>Comments:</b>				

**USE (§ ZONE.C, ARTICLE 6) COMPLIES**

	LDR Standard	Existing	Application	Proposed Result
<b>Allowed Use (§ Zone.C.1): Choose an item.</b> <span style="float: right;">Complies</span>				
Site Area (min) (§ Zone.C.1)	N/A			
Density (max) (§ Zone.C.1)	1 DU/1 ARU	1 DU/1 ARU	1 DU	1 DU/1 ARU
Scale (max) (§ Zone.C.1)				
Habitable Floor Area	8,000	1750	2915	4665
Gross Floor Area	10,000	4856	4839	9695

**Use Standards (§ 6.1, § Zone.E.)**

**Comments:** ARU: 2016 SF exempted size limit because it is historically significant via Teton County Historic Preservation Board. Affordable Housing Fee not applied to ARU or to Basement Floor Area. Multiple revisions but last revision sheet stated 4665 would be final sf for habitable floor area. Habitable floor area does not include ARU square footage.

**Parking (§ Zone.C.2, Div. 6.2) Complies**

	LDR Standard	Existing	Application	Proposed Result
Required Parking (min)	2	2	4	6
Parking Location	On-site		On-site	On-site
Required Loading (min)	N/A		N/A	N/A
Loading Location	N/A		N/A	N/A

**Comments:**

**Employee Housing (§ Zone.C.3, Div. 6.3) not applicable**

	LDR Standard	Existing	Application	Proposed Result
Employees Housed (min)	N/A	N/A	N/A	N/A
Housing Method	N/A	N/A	N/A	N/A

**Comments:**

**Operational Standards not applicable**

	LDR Standard	Existing	Application	Proposed Result
Outside Storage (§ 6.4.1)	N/A	N/A	N/A	N/A
Refuse and Recycling (§ 6.4.2)	N/A	N/A	N/A	N/A
Noise (§ 6.4.3)	N/A	N/A	N/A	N/A
Vibration (§ 6.4.4)	N/A	N/A	N/A	N/A
Electrical Disturbance (§ 6.4.5)	N/A	N/A	N/A	N/A
Fire/Explosive Hazard (§ 6.4.6)	N/A	N/A	N/A	N/A
Heat/Humidity (§ 6.4.7)	N/A	N/A	N/A	N/A
Radioactivity (§ 6.4.8)	N/A	N/A	N/A	N/A
Other Prohibitions (§ 6.4.9)	N/A	N/A	N/A	N/A

**Comments:**

**DEVELOPMENT OPTION & SUBDIVISION (§ ZONE.D, ARTICLE 7) NOT APPLICABLE**

	LDR Standard	Existing	Application	Proposed Result
<b>Development or Subdivision Option (§ Zone.D.1): Choose an item</b> <span style="float: right;">not applicable</span>				
Lot Size (min)	N/A	N/A	N/A	N/A
Rural Area (min)	N/A	N/A	N/A	N/A
Conservation Area (min)	N/A	N/A	N/A	N/A
Development Area (max)	N/A	N/A	N/A	N/A
Density (max)	N/A	N/A	N/A	N/A
Additional Floor Area (max)	N/A	N/A	N/A	N/A

**Comments:**

<b>DEVELOPMENT OPTION &amp; SUBDIVISION (§ ZONE.D, ARTICLE 7)</b>	<b>NOT APPLICABLE</b>
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	LDR Standard	Existing	Application	Proposed Result
<b>Affordable Housing (Div. 7.4)</b>				Complies as Conditioned
People to be Housed (min)	calculator	0	4665sf	
Housing Method	Fee in -lieu		\$24,325.05	Condition

**Comments:** 976 of habitable floor area existing. 3,689sf proposed totaling 4,665sf

**Step 2: Existing Development**

Housing is only required for new development. Please describe the existing use of the site so that it can be credited from the housing requirement. The definition of existing use is Section 6.3.2.A.1 of the LDRs. Generally, the existing use to enter is the use with the highest housing requirement that either existed in 1995, or has been permitted since 1995. Please attach proof of

Existing Use (Sec. 6.3.2.A)	Housing Requirement (Sec. 6.3.3.A)	Use Size: bedrooms	Use Size: habitable sf	Use Quantity	Housing Required
Detached Single-Family Unit (Un	$0.000017 * sf + (Exp(-15.49 + 1.59 * Ln(sf))) / 2.176$	1	976	1	0.022

Existing Workforce Housing Credit      0.022

**Step 3: Proposed Development**

Please describe the proposed use of the site to determine if affordable workforce housing is required as part of the development. Describe the end result of the proposed development. (For example: in the case of an addition do not enter the square footage of the addition, enter the size of the unit upon completion of the addition.)

Proposed Use	Housing Requirement (Sec. 6.3.3.A)	Use Size: bedrooms	Use Size: habitable sf	Use Quantity	Housing Required
Detached Single-Family Unit (Un	$0.000017 * sf + (Exp(-15.49 + 1.59 * Ln(sf))) / 2.176$	3	4665	1	0.138

Affordable Workforce Housing Required: 0.117 units      Fee-in-Lieu Amount: \$ 24,325.05

If the amount of required affordable workforce housing is less than one unit, you may pay the above fee in-lieu of providing the required housing. If you elect to pay the fee, your Housing Mitigation Plan is complete. If the requirement is greater than one unit, or you would like to provide a unit to meet the requirement, please proceed to the [Unit Type Sheet](#).

<b>Schools and Parks Exactions (Div. 7.5)</b>	<b>not applicable</b>
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	LDR Standard	Existing	Application	Proposed Result
Required Land (min)	N/A			N/A
Exaction Method	N/A			N/A

**Comments:**

<b>Transportation and Utilities</b>	<b>Complies as Conditioned</b>
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	LDR Standard	Existing	Application	Proposed Result
Access (§ 7.6.2)	Legal	Legal Private	Private s/d access	Private s/d access
Road Standards (§ 7.6.4)	Horse Creek Road	Horse Creek Road	Private s/d road	Horse Creek Road
Easement Dedication (§ 7.6.5)	N/A		N/A	
Intersection Clear View (§ 7.6.6)	N/A		N/A	
Potable Water (§ 7.7.2)	Individual system		SWF2022-0055	
Wastewater Treatment (§ 7.7.3)	Individual system		SWF2022-0055	
Irrigation/Water Rights (§ 7.7.4)	N/A		N/A	
Utility Burial/Easement (§ 7.7.5)	Burial required		Buried	

**Comments:**

OTHER COUNTY RESOLUTIONS				NOT APPLICABLE
	Standard	Existing	Application	Proposed Result
Other County Resolutions				not applicable
Solar Access Resolution	N/A	N/A	N/A	N/A
Jackson Hole Airport Resolution	N/A	N/A	N/A	N/A
Open Space Resource Resolution	N/A	N/A	N/A	N/A
Comments:				