



Board of County Commissioners - Staff Report

Meeting Date: February 15, 2022

Presenter: Hamilton Smith

Submitting Dept: Planning & Building Services

Agent: Brian Remlinger, Alder Environmental LLC

Property Owner: Douglas Matthew Schrier Living Trust

Subject: MSC2021-0063: Habitat Mitigation Plan Approval

REQUESTED ACTION

Miscellaneous Planning Request to amend a Habitat Enhancement Plan pursuant to Section 5.2.1.E of the Land Development Regulations.

PROJECT DESCRIPTION

The applicant is requesting an amendment to an approved Habitat Mitigation Plan for impacts to sagebrush and aspen cover types located within the Natural Resources Overlay (NRO). This application was submitted concurrently with a request to amend a Teton County Scenic Preserve Trust (TCSPT) easement on the property (EAS2021-0003). Staff became aware of violations to the easement and failure to adequately implement required mitigation and initiated an enforcement action against the landowner on August 11, 2021 (ENF2021-0013). The Notice of Violation states that, pursuant to Land Development Regulation (LDR) Section 8.9.2.F., *"Activities that constitute a violation include, but are not limited to, the following: 1. Development of land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions."*

The landowner is seeking approval of a revised Habitat Mitigation Plan for the following:

- To retain the planted landscaping of sod with ornamental evergreens within the development area where sagebrush shrub reclamation was specified in the original Habitat Mitigation and Reclamation Plan (Biota, 2019, as amended 2020).
- To mitigate for impacts incurred through unauthorized grading and landscaping within the TCSPT easement, through easement area amendment.

Approval of habitat mitigation plans are typically handled through an administrative review process within the Planning and Building Services Department; however, given the nexus with the concurrent easement amendment application, the Planning Director chose to elevate this application such that it runs concurrently with the easement amendment application. The final motion for this application will be dependent upon the decision of the TCSPT board on the easement amendment request.

EXISTING CONDITIONS

The 16.56-acre parcel was, with the neighboring 6.02 acres, the subject of a Planned Residential Development (PRD) in the late 1990's. The acreage encumbered under conservation easement falls entirely within Lot 2 of the subdivision. Prior to physical development permits obtained in 2019 the majority of the lot was identified as sagebrush (84%) and deciduous forest-mature aspen (16%). A 2-track road through the aspen stand was the extent of disturbance (approx. 4,600 sf), and otherwise the lot provided habitat designated as crucial mule deer winter range. Variation in seasonal usage of vegetative cover types was documented in the original baseline inventory prepared by Biota in 1997, given that the aspen stands provide escape cover (thermal, protective and escape) and sagebrush was primarily foraging habitat.

Presently a single-family dwelling and accessory residential unit are developed on the property. Access is gained from Saddle Butte Way. Enforcement actions were undertaken given that grading of the site and removal of vegetation occurred across a lot line, as well as across the TCSPT easement boundary to the north, east, and southeast. In addition, the native vegetation was almost completely removed from the 2.34-acre development

area, and the landowner landscaped nearly the entirety of this area, in addition to those areas of easement encroachment, in violation of the approved mitigation plan.

MITIGATION REQUIREMENT

The habitat mitigation plan before the Board reflects a revision of the development impact area. The landowner wishes to retain the landscaped lawn which was identified for sagebrush reclamation in the original mitigation plan. This results in a 0.56 acre increase of impacts, to 1.76 acres of total permanent impacts. A half-acre of mitigation has been completed, which reduces the overall requirement to 3.03 acres, as indicated in Table 2 of the Revision to Habitat Enhancement/Mitigation Plan presented in this application, below.

TABLE 2. As-Built Development Impacts and Revised Mitigation Calculations

DEVELOPMENT IMPACT SUMMARY	Square Feet	Acres
Buildings, Driveway, Solar	27,802	0.64
Lawn	48,994	1.12
Total Permanent Impacts	76,796	1.76
Mitigation Required 2:1	153,592	3.53

HABITAT MITIGATION SUMMARY	Square Feet	Acres
Completed Mitigation Nov 2021	21,715	0.50
Revised Mitigation Areas Jan 2022	131,883	3.03

LOCATION

505 W Saddle Butte Ranch is located on Saddle Butte, accessed through the Town of Jackson.

Legal Description: Lot 2, Saddle Butte Ranch Subdivision

PIDN: 22-41-16-28-1-03-001

Site Size: 16.56 acres

Character District: 9: County Valley

Subarea: 9.4: Gros Ventre Buttes

Zone: Rural-3 (R-3)

Overlay: Scenic Resources Overlay (SRO) and Natural Resources Overlay (NRO)

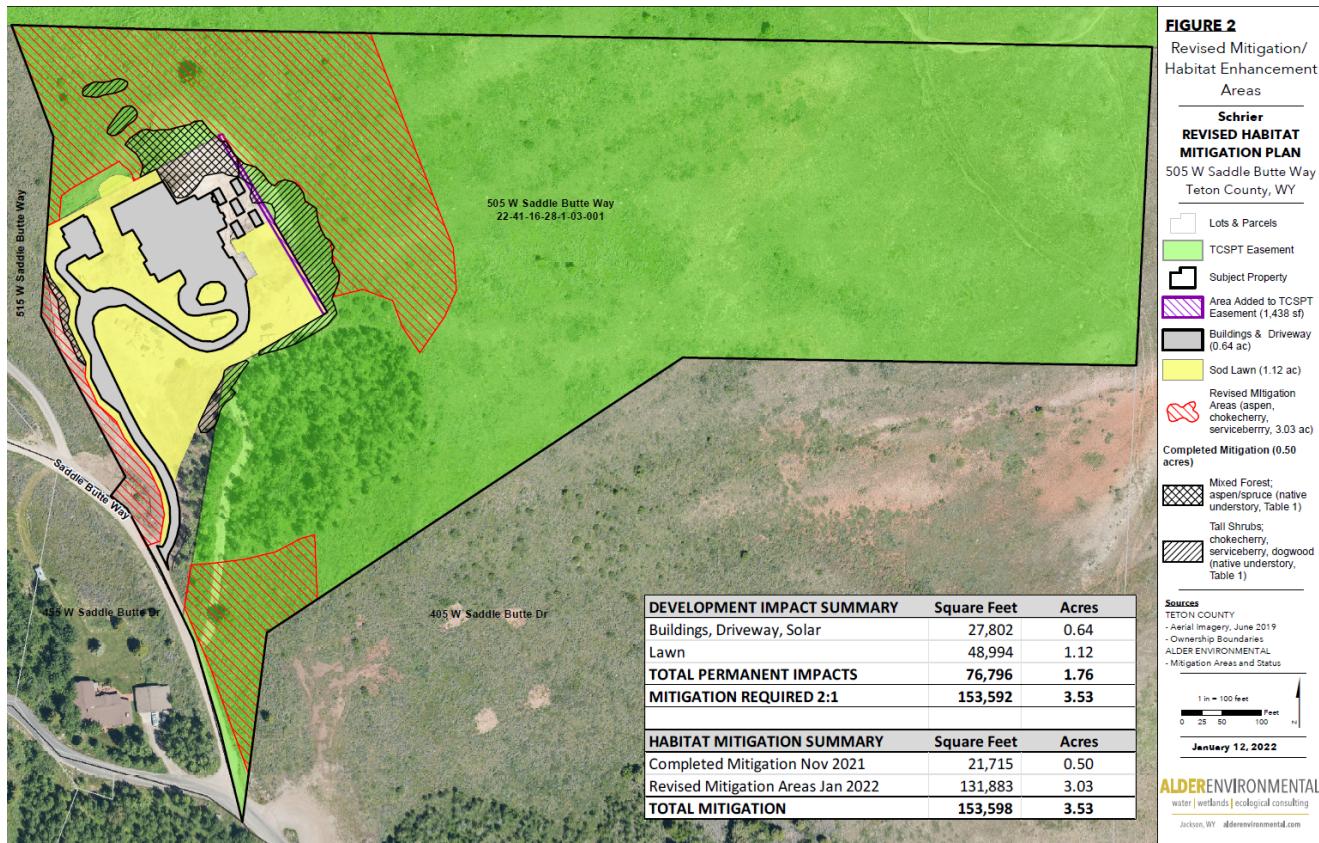
VICINITY MAP



HABITAT AND RECLAMATION SITE PLAN (BIOTA, APPROVED 2019)



PROPOSED REVISION TO HABITAT AND RECLAMATION SITE PLAN (ALDER, 2021)

STAFF ANALYSIS

To address unauthorized development as cited in the open enforcement action ENF2021-0013 the landowner has taken two steps to remedy the violations. The first step is a proposal to amend the TCSPT easement to allow 719 sf of unauthorized grading and landscaping to remain along the northern edge of the development area. In exchange an area of twice this size (1,438 sf) is proposed as added area to the easement, along the eastern boundary of the development area. In addition to the easement amendment, a concurrent application to amend an existing, approved habitat mitigation plan has been submitted. The revised mitigation plan accounts for the removal of sagebrush reclamation from within the development area to allow landscaping to remain, and in return the plan proposes an increased area of habitat enhancement, as follows (MSC2021-0063):

Mr. Schrier is planning to complete 3.03 acres of additional habitat enhancement to compensate for as-built permanent impacts that have not been mitigated for or are in addition to the Biota 2019 and 2020 Habitat Mitigation Plans... by planting native aspen trees and serviceberry and chokecherry shrubs plantings (Ordinal Ranking 7) to achieve a minimum of 33% areal cover of the mitigation areas selected.

To achieve this cover, 230 native trees and shrubs a minimum 8-10' tall will be planted in clusters. Drip irrigation lines will provide supplemental water to these shrubs until established in 3-4 years. Fencing and other wildlife herbivory prevention will consist of wire or plastic mesh design at least 7 feet tall and able to withstand snow loading and ungulate pressure. Each shrub/tree cluster of 8 plants spaced 15 feet apart will be fenced. Additional rodent guards may need to be placed or wrapped around the base of each planting to prevent damage. All planting holes will be hand dug and no wheeled or tracked machinery or vehicles will enter the TCSPT easement area.

Pursuant to Section 5.2.1.E of the LDRs, *Impacting the NRO, “Where densities/intensities permitted cannot be achieved by locating development outside of the NRO, then lands protected by the NRO may be impacted pursuant to the standards of this Subsection”*. Habitat Enhancement is required under such circumstances with the expectation that, *“the developer provides mitigation and habitat enhancement for the land impacted, either on-site or off-site, on a basis of 2 acres of mitigation/habitat enhancement for every one acre of land impact.”*

The LDRs also list appropriate methods of providing mitigation, in order of priority, being:

- I. On-Site, In-Kind
- II. On-Site, Out-of-Kind
- III. Off-site, In -Kind, Private Land
- IV. Off-Site, Out-of Kind, Private Land

The proposed methodology to enhance the aspen and tall shrub components of existing mesic shrub sagebrush cover types is considered On-Site, Out-of-Kind, to which the following standard applies:

If the developer can demonstrate that it is not practical to create the habitats or vegetative cover types impacted, then creation of habitats or vegetative cover types other than what is impacted shall be allowed on site if the applicant can demonstrate that greater environmental benefits would be provided. Creation of a higher-ranking cover type, as listed in F.4.a. may be one of several acceptable methods of demonstrating greater environmental benefit.

The proposed plan seeks to enhance the cover and browse component of the native sagebrush cover type by planting elements of a tall shrub community that are beneficial to the primary species protected in this area of the Natural Resources Overlay (NRO). This methodology was a component of the approved Biota mitigation plan in 2019, and the current revision seeks to expand that treatment in lieu of reclaiming the sagebrush habitat within the development area. Vegetative cover types are protected according to their importance to wildlife and its survival. The LDRs define ordinal ranking priority levels for cover types with the highest priority levels being the most important. The proposed plan amendment seeks to elevate the mesic shrub sagebrush with an Ordinal Ranking Priority level of 5 to a mixture of immature aspen and tall shrub, with Ordinal Ranking Priority levels of 7 and 8, respectively (LDR Section 5.2.1.F.4.a).

Staff finds that the proposed revision to the Habitat Mitigation and Reclamation Plan is sufficient with regards to the standards for impacting the NRO. In the event that the concurrent TCSPT easement amendment is approved, staff recommends approval with a condition that prior to recordation of the TCSPT easement amendment the submittal by the landowner or the landowner's agent of a Sufficient Surety Agreement is required to secure a bond or other financial surety in the amount of \$42,250.00 for completion of Habitat Mitigation and mitigation monitoring as described in the application MSC2021-0063, as submitted on January 12, 2022.

STAKEHOLDER ANALYSIS

DEPARTMENTAL REVIEWS

The application was not sent to any additional departments and agencies for review.

PUBLIC COMMENT

Notice of the hearing was mailed to property owners within 800 feet of the site on January 14, 2022. As of the publishing of this report one written public comment has been received. This letter is provided as an attachment to this staff report.

LEGAL REVIEW

Gingery

RECOMMENDATIONS

PLANNING DIRECTOR RECOMMENDATION

The Planning Director recommends **APPROVAL** of **MSC2021-0063**, to amend a Habitat Enhancement Plan pursuant to Section 5.2.1.E of the Land Development Regulations, with one recommended condition.

1. Prior to recordation of the TCSPT easement amendment the landowner or the landowner's agent shall submit to Teton County, WY a sufficient Surety Agreement and associated bond or other financial surety in the amount of \$42,250.00 for completion of Habitat Mitigation and Mitigation Monitoring as described in application MSC2021-0063 as submitted on January 12, 2022.

ATTACHMENTS

- Application, accessed on the following web page via the link titled Schrier_RevisedMitigationPlan_110321rev011222.pdf:
<https://developmentrecords.tetoncountywy.gov/Portal/Planning/StatusReference?referenceNumber=MSC2021-0063>
- Teton County Weed and Pest Invasive Species Management Plan, 505 Saddle Butte Way
- Public Comment

SUGGESTED MOTION

I move to approve **MSC2021-0063**, to amend a Habitat Enhancement Plan pursuant to Section 5.2.1.E of the Land Development Regulations, with one recommended condition.

1. Prior to recordation of the TCSPT easement amendment the landowner or the landowner's agent shall submit to Teton County, WY a sufficient Surety Agreement and associated bond or other financial surety in the amount of \$42,250.00 for completion of Habitat Mitigation and Mitigation Monitoring as described in application MSC2021-0063 as submitted on January 12, 2022.

Invasive Species Management Plan

505 Saddle Butte Way

Management Plan Prepared By: Lesley Beckworth, Teton County Weed & Pest

Pre-Construction Management Strategies:

1. Known infestations will be treated at least two weeks prior to construction using methods listed below.

Active Construction Management Strategies (include on construction documents):

1. All construction equipment will be cleaned prior to entering the site.
2. Soil stockpiles will be routinely checked and treated for invasive species.
3. Disturbance outside of the construction zone and in areas where invasive species are present will be minimized.
4. All areas outside of the construction zone will be kept on active management using the methods listed below. This area will be monitored and treated at least twice each growing season.

Post-Construction Management Strategies (include on construction documents):

1. Revegetation will occur immediately after construction is complete to prevent the establishment of invasive species in the disturbed areas.
2. Nursery stock will be used in accordance with W.S. 11-9-101 – 109 (Wyoming Nursery Stock Law), accompanied by a valid health certificate, and acquired through a dealer licensed by the Wyoming Department of Agriculture. Seeds will be used in accordance with W.S. 11-12-101 – 125 (Wyoming Seed Law), certified weed free, and acquired through a dealer licensed by the Wyoming Department of Agriculture.
3. Certified weed free straw, gravel, and soil will be utilized as possible.
4. **TCWP will be contacted to create a post-construction inventory.**

Dear Teton County Commissioners and TC Planning Department,

This letter is in response to an application that the owner of 505 Saddle Butte Way, Douglas Schrier, has requested from Teton County. I apologize that this letter is coming to you anonymously, but the character of Mr. Schrier ensures that if I put my name on this letter litigation, in one way or another, will follow. The intention of my letter is not to try and get in the way of Schrier's application, but to bring to light some of Mr. Schrier's activities in this neighborhood and the county rules that are being broken. 505 Saddle Butte is in both NRO and SRO, which I believe has restrictions on brightness of lights. Mr. Schrier has numerous outdoor lights that are not in compliance with these overlays. I realize there is nothing the county can do about the interior lights, but Mr. Schrier likes to leave every single light on in his 10,000-sf house all night long. 505 Saddle Butte sits above most of the houses on Saddle Butte way, which means every person on the street suffers from his light pollution.

Mr. Schrier has also rented his home for commercial use which impacted our neighborhood drastically. The commercial event involved a three-week event with shuttle buses and mass amount of cars came up a private road that normally has very limited traffic. For three weeks an armed security guard sat at the bottom of his driveway intimidating neighbors walking by. I believe the Saddle Butte HOA has drafted a complaint letter to the county about this event.

I realize this is not the venue to complain about a neighbor, so I am going to bullet point the rest of Mr. Schrier's activities.

- Refusal to pay HOA dues, forcing the HOA to record a lien (In the works)
- Calling the TC sheriff on members of our HOA trying to meet with Mr. Schrier about construction work taking place on the weekends and into the night keeping neighbors awake.
- Putting construction equipment and contractor parking on the road for months when they could have parked on his property.

I am going to stop there because I think you get the point. One last point I would like to make is that Mr. Schrier is applying to move an easement that was on the property when he purchased it, an easement that has been there since 1998. He knew exactly where this easement started and stopped, which is clear by looking at TC GIS server with the Conservation Easement layer on. From this picture you can see he knew where the line was because he bulldozed everything within the building envelope matching the lines exactly. In many places, his disturbance line went over his property line, and into the easement. He knew exactly what he was doing when he landscaped in the TCSPT easement and didn't care that he was doing it. Mr. Schrier has no respect for anyone else, or the county that governs these laws. Granting him a "pass" on this application will only condone his behavior and lack of respect for our community.