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May 20, 2025

City of Lander
240 Lincoln St.
Lander, WY

RE: Appeal of Zoning Compliance Certificate
filed April 21, 2025

To Whom It May Concern:

I am writing this letter as an official appeal, as allowed by Lander city statute 4-4-3 – Appeals (Exhibit A), of a Certificate of Zoning Compliance filed with and approved by the city of Lander on April 21, 2025 (Exhibit B). The approved Certificate of Zoning is for the property with a legal of TWP 33N RNG 099W SEC 20 TR in NE/4. This property is adjacent to my property TWP 33N RNG 99W SEC 20 TR in NE/4, also known as 23 Smith Creek Rd, Lander.

The referenced certificate certifies the applicant's proposed business, a sawmill, is a permitted use on the proposed lot which is zoned "Agriculture." My appeal of this certificate is based on federal, state, and local statutes and regulations that lend to support a sawmill is not an agricultural activity; but rather, an industrial one. In the paragraphs to follow I will reference laws, regulations, and simple definitions which support my position and appeal.

The first layer defining uses permitted within Agricultural zoning is defined in Lander city code 4-12-1 District Regulations – Agriculture District (A) (Exhibit C). Section B, in part, states "The following uses may be operated as permitted uses in the district." (Part B(3)) "Agriculture (shall include horticulture uses, nurseries and the production of crops and livestock.)" A sawmill, by its definition, action, and purpose does not fit within the city code's definition of "permitted use" in Lander city statute.

Stepping up to the state level as further support how a sawmill is not considered "agriculture" in the context of zoning and purpose, I would like to reference two Wyoming Statutes. First, Wyoming Statute (W. S.) 39-17-101-Definitions (Exhibit D). W. S. 39-17-101(a)(i) "Agricultural Purpose" means the cultivation of soil, raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, grazing, training and management of livestock, bees, poultry, furbearing animals and wildlife for gain, sale or profit, but excluding a custom operation." Second, Wyoming Statute (W.S.) 39-11-101 (Exhibit E) – W.S 39-11-101(a)(xiv), in part, reads "Property used for industrial purposes" includes (A) "Manufacturing, milling, converting, producing, processing or fabricating materials". Based on the state of Wyoming's definition of Agricultural Purpose, and the states definition of Industrial Purposes it would be reasonable to believe a sawmill does not fit within the definition or purpose of agricultural.

In the preceding paragraphs, I have cited city and state codes and statutes which have highlighted the fact a sawmill is not considered agriculture or an agricultural endeavor. A review of the Code of Federal Regulations (CFR) 780.200 and CFR 780.203 provides further evidence, on the federal level, a sawmill is neither agriculture nor an agricultural endeavor. CFR 780.200 (Exhibit F), states, in part, "forestry or lumbering operations is expressly included in agriculture *if* the operations are performed "by a farmer or on a farm as an incident to or in conjunction with such farming operation." The land on which the proposed sawmill will be installed is NOT a farm and the sawmill operations are not incident to or in conjunction with the non-existent farming operations. Additionally, CFR 780.203 (Exhibit G) states "Logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs or the resulting lumber by a contract logger or sawmill owner are not within the scope of agriculture unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to "such farming operations." Again, the proposed sawmill is not being placed on a farm and is not incidental to farming operations.

The Oxford English Dictionary defines a sawmill as "A factory in which logs are sawed into lumber by machine."

The Oxford English Dictionary defines agriculture as "The science or practice of farming, including cultivation of the soil for the growing of crops and the rearing of animals to provide food, wool, and other products."

The Oxford English Dictionary defines industry as "Economic activity concerned with the processing of raw materials and manufacture of goods in factories."

A certificate of zoning compliance was approved and filed wherein the applicant seeks to place a sawmill, an industrial and commercial activity, on land zoned as agriculture.

The basis of this appeal is simple. With facts presented in this appeal I believe there was an oversight in approving the Certificate of Zoning Compliance and another layer of review should have been completed to provide the full deserved due diligence. I do understand the situation did not fit a perfect mold to render a clear decision initially. As stated by a city staff member the certificate was approved as there is nothing in the city code which expressly prohibits a sawmill on land zoned as agricultural. With local code not providing direct guidance additional research should have been completed at state and federal levels. When putting together the Lander City Codes, Wyoming State Statute, and Federal Code of Regulations it is fully supported the proposed sawmill is NOT an agricultural activity. With the facts shown here in this appeal I believe it would be prudent for the city to reverse its decision to approve the zoning compliance.

I look forward to participating in the public hearing on this matter and the discussions to be presented

Respectfully:

Robert K. Zuspan
23 Smith Creek Rd
Lander, WY

Exhibits

- Exhibit A – Copy of Lander City Code 4-4-3 Appeals
- Exhibit B – Copy of Request for Zoning Compliance and Certificate of Zoning Compliance.
- Exhibit C – Copy of Lander City Code 4-12-1
- Exhibit D – Copy of Wyoming Statute 39-17-101
- Exhibit E – Copy of Wyoming Statute 39-11-101
- Exhibit F - Copy of CFR 780.200
- Exhibit G – Copy of CFG 780.203

4-4-3 Appeals

- A. Any order or decision of the City of Lander may be appealed to the Board of Adjustment by any person or agency affected by any such order or decision. Any such appeal shall be filed within 30 days from the date of the action appealed from by filing a written notice of appeal specifying the grounds for the appeal with the City of Lander. Forms shall be provided for this purpose by the City of Lander. Upon receipt of a notice of appeal, the City of Lander shall transmit to the Board of Adjustment the notice of appeal and all of the original documents, or true copies thereof, constituting the record upon which the action being appealed from was filed.
- B. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City of Lander certifies to the Board of Adjustment after notice of appeal has been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. The Board of Adjustment after receipt of the certificate and after a public hearing may allow the original order or decision to stand or the Board of Adjustment may stay the original order or decision appealed. If the Board reaffirms the order or decision of the City of Lander, proceedings shall not be stayed except by a restraining order which may be granted by a court of record after giving due notice to the City of Lander.

HISTORY

Amended by Ord. 1152 on 1/13/2009

EXHIBIT A



City of Lander
Planning Department
240 Lincoln Street

REQUEST CERTIFICATE OF ZONING COMPLIANCE

Use this form to request a Certificate of Compliance when needed for title research or real estate transaction. **Submit all materials to the City Administrator for the planning department.** This form documents use that is appropriate for the Lander Municipal Code adopted in 1979 as amended. The use can remain when it is determined that it is in keeping with the current character of the neighborhood.

Date of Request: 4/07/2025

Contact Phone Number: 307-349-2825

Applicant of Record: Kim & Kimberlee McKinney

Name of Agency requesting the Certificate if not the Property Owner William Bayless

Property Address: Tract of land adjacent to 35 Smith Creek Road in T33N, R99W, Sec 20

Is this certificate needed for a real estate transaction? Yes/No No If yes, note date required by: _____

Please describe the condition of the property that does with Title 4:

Crosscut Lumber and Timberworks, LLC will have a Small scale, portable saw mill for the purpose of wood processing and wood products for retail sale.

This production falls under the Department of Agriculture and is located in an Agriculture District and complies with all the zoning rules of the City of Lander Codes

I hereby affirm that the information shown by my attached documentation is true and correct and request that a Certificate of Zoning Compliance be issued.

Current Owner of Record (print): Kim McKinney

Current Owner of Record Signature: Kim O. McKinney

Sign and submit this form to the Building Inspector WITH the following if they are not on file with the Building Inspector:

If Applicable <small>N/A</small>	
Drawing of Property layout <small>See attached</small>	
Other Documents Required in Conditional Approval	<u>See attached Home Business application</u>

NOTES:

The City of Lander processes Certificate of Zoning Compliance requests in the order they are received. The City Hall Staff will research the property and conduct an inspection and issue the Certificate as permitted.

This zoning certificate verifies that operations of processing timber products are a permitted use on a lot zoned Agricultural in Lander City Code 4-12-1.

The attached Home Business application was not processed as there is no residential structure on this property at this time.

Created 04/2018

EXHIBIT B



Certificate of Zoning Compliance

Property Address 35 Smith Creek Road, a tract of land in T33N, R99W section 20

[Signature]

Approved by City Administration, Planning Department

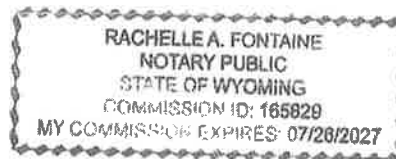
Date 4/21/25

County of Fremont)
) ss.
State of Wyoming)

The foregoing instrument was acknowledged before me by Rafaela Strube Fossen
This 21 day of April, 2025

[Signature]
Notary Public

My commission expires: 07/26/2027



4-12-1 District Regulations - Agricultural District (A)

- A. Intent. This district is intended to provide for a compatible mixture of single family residential dwellings and agricultural uses at a density slightly lower than that for single family districts alone, plus accessory public and semi-public uses offering services to the surrounding areas. This zone encourages animal husbandry, agriculture, viniculture, horticulture, aquaculture and family or small commercial farming. Such areas will by nature be on the outer fringes of the City.
- B. Permitted Uses. The following uses may be operated as permitted uses in the district:
1. single family detached dwellings;
 2. manufactured homes;
 3. agricultural (shall include horticultural uses, nurseries and the production of crops and livestock).
- C. Permitted Accessory Uses: Any use which complies with all of the following conditions may be operated as an accessory use:
1. is clearly incidental and customary to and commonly associated with the operation of the permitted use;
 2. is operated and maintained under the same ownership and on the same lot as the permitted use;
 3. does not include structures or structural features inconsistent with the permitted use;
 4. to include one secondary residential unit;
 5. if operated wholly or partly within a structure containing the permitted use, the gross floor area utilized by the accessory use shall not exceed 30% of the gross floor area of the permitted use;
- D. Minimum area of lot: 1 acre.
- E. Minimum width of lot: 100 feet.
- F. Minimum setback requirements for structures:
1. front yard: 33 feet;
 2. side yard: 12 feet;
 3. rear yard: 20 feet;
 4. side yard on flanking street or corner lot: 28 feet;
 5. When a lot or parcel of ground in the district adjoins a residential district, the setback requirements that apply to the yard area of that residential district shall be required.
- G. Maximum Number of single family or manufactured homes per lot: one per lot. Maximum number of agricultural structures: three per acre.
- H. Maximum Height of Structures: 30 feet.

HISTORY

Amended by Ord. 1152 on 1/13/2009

EXHIBIT C

39-16-310. Statute of limitations.

There are no specific applicable provisions for a general statute of limitations for this article.

39-16-311. Distribution.

There are no specific applicable provisions for distribution for this article.

CHAPTER 17 - FUEL TAX

ARTICLE 1 - GASOLINE TAX

39-17-101. Definitions.

(a) As used in this article:

(i) "Agricultural purposes" means the cultivation of soil, raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, grazing, training and management of livestock, bees, poultry, furbearing animals and wildlife for gain, sale or profit, but excluding a custom operation;

(ii) "Bulk gasoline" means thirty-five (35) gallons or more purchased and delivered at one (1) time, excluding gasoline delivered into the attached gasoline tanks or auxiliary tanks of a licensed motor vehicle;

(iii) "Bulk plant" means a fuel storage and distribution facility, other than a terminal, from which accountable product may be removed at a rack;

(iv) "Custom operation" means any agricultural purpose done for hire;

(v) "Dealer" means any person who sells or offers to sell gasoline at a specific location in the state, including any person selling or offering to sell aviation gasoline or aviation fuel at Wyoming airports;

(vi) "Department" means the department of transportation;

39-6-903. Repealed By Laws 1998, ch. 5, § 4.
39-6-904. Repealed By Laws 1998, ch. 5, § 4.
39-6-905. Repealed By Laws 1998, ch. 5, § 4.
39-6-906. Repealed By Laws 1998, ch. 5, § 4.
39-6-907. Repealed By Laws 1998, ch. 5, § 4.
39-6-908. Repealed By Laws 1998, ch. 5, § 4.
39-6-909. Repealed By Laws 1998, ch. 5, § 4.
39-6-910. Repealed By Laws 1998, ch. 5, § 4.
39-6-911. Repealed By Laws 1998, ch. 5, § 4.
39-6-912. Repealed By Laws 1998, ch. 5, § 4.
39-6-913. Repealed By Laws 1998, ch. 5, § 4.
39-6-914. Repealed By Laws 1998, ch. 5, § 4.

ARTICLE 10 - TAXPAYER REVENUE ACCOUNTS

39-6-1001. Repealed By Laws 1998, ch. 5, § 4.
39-6-1002. Repealed By Laws 1998, ch. 5, § 4.

ARTICLE 11 - COMMUNITY COLLEGE PROPERTY TAX

39-6-1101. Repealed By Laws 1998, ch. 5, § 4.

CHAPTER 7 - INCOME TAXES

39-7-101. Repealed By Laws 1998, ch. 5, § 4.

CHAPTER 8 - [RESERVED]

CHAPTER 9 - [RESERVED]

CHAPTER 10 - [RESERVED]

CHAPTER 11 - ADMINISTRATION

39-11-101. Definitions.

(a) As used in this act unless otherwise specifically provided:

(i) "Assessed value" means taxable value;

(ii) "Assessment roll" means the official list of taxable property for the ensuing tax year and may include taxes due thereon;

(iii) "Board" means the state board of equalization or its authorized agent;

(iv) "Department" means the department of revenue or its authorized agent;

(v) "Director" means the director of the department of revenue;

(vi) "Fair market value" means the amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time, except, fair market value of agricultural land shall be determined as provided by W.S. 39-13-103(b) (x) and fair market value of mine products shall be determined as provided by W.S. 39-14-103(b), 39-14-203(b), 39-14-303(b), 39-14-403(b), 39-14-503(b), 39-14-603(b) and 39-14-703(b);

(vii) "Intangible personal property" means personal property that lacks mass and cannot be seen, felt, weighed, measured or otherwise perceived by the senses; property that has no physical existence beyond merely representational. Intangible property's value lies chiefly in what it represents, and its existence may be evidenced by a document;

(viii) "In transit property" means manufactured goods, wares, seed, feed, fertilizer, tools, supplies and merchandise which is in interstate commerce, or, Wyoming assembled or manufactured products being held for out-of-state sale, which are consigned or placed in any storage area in Wyoming for storage, repackaging, processing, fabricating, milling, disassembly or assembly in transit to a final destination outside Wyoming whether the destination is specified before or after the transportation begins;

(ix) "Inventories" means any personal property held for resale consisting of goods, wares or merchandise including stocks of raw or finished material, unassembled parts, work in progress or finished products constituting the inventory of a merchant or manufacturer;

(x) "Livestock" means horses, cattle, mules and asses, sheep, swine, goats and all other animals commonly thought of as livestock;

(xi) "Manufacturer" means any person who purchases, receives or holds personal property for the purpose of adding to the value thereof, by any process of manufacturing, refining, purifying, or by the combination of different materials, and with a purpose to make a gain or profit by sale thereof;

(xii) "Merchant" means any person owning, possessing or controlling personal property with a purpose to sell the property at an advanced price or profit, or any person controlling personal property which has been consigned to the person from outside Wyoming to be sold within Wyoming;

(xiii) "Person" means an individual, partnership, corporation, company or any other type of association and any agent or officer of any partnership, corporation, company or other type of association;

(xiv) "Property used for industrial purposes" means those properties valued under W.S. 39-13-102(m) (ii) through (x), excluding W.S. 39-13-102(m) (vi) and (ix), and those properties used or held for use for:

(A) Manufacturing, milling, converting, producing, processing or fabricating materials;

(B) The extraction or processing of minerals;

(C) The mechanical, chemical or electronic transformation of property into new products.

(xv) "Real property" means land and appurtenances, including structures, affixed thereto, and any intangible characteristic which contributes to the fair market value thereof;

This content is from the eCFR and is authoritative but unofficial.

Title 29 – Labor**Subtitle B – Regulations Relating to Labor****Chapter V – Wage and Hour Division, Department of Labor****Subchapter B – Statements of General Policy or Interpretation Not Directly Related to Regulations****Part 780 – Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects Under the Fair Labor Standards Act****Subpart C – Agriculture as It Relates to Specific Situations****Forestry or Lumbering Operations**

Authority: Secs. 1-19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201-219. Pub. L. 105-78, 111 Stat. 1467.

Source: 37 FR 12084, June 17, 1972, unless otherwise noted.

§ 780.200 Inclusion of forestry or lumbering operations in agriculture is limited.

Employment in forestry or lumbering operations is expressly included in agriculture if the operations are performed "by a farmer or on a farm as an incident to or in conjunction with such farming operation." While "agriculture" is sometimes used in a broad sense as including the science and art of cultivating forests, the language quoted in the preceding sentence is a limitation on the forestry and lumbering operations which will be considered agricultural for purposes of section 3(f). It follows that employees of an employer engaged exclusively in forestry or lumbering operations are not considered agricultural employees.

This content is from the eCFR and is authoritative but unofficial.

Title 29 — Labor

Subtitle B — Regulations Relating to Labor

Chapter V — Wage and Hour Division, Department of Labor

Subchapter B — Statements of General Policy or Interpretation Not Directly Related to Regulations

Part 780 — Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects Under the Fair Labor Standards Act

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Forestry or Lumbering Operations

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Source: 37 FR 12084, June 17, 1972, unless otherwise noted.

§ 780.203 Performance of operations on a farm but not by the farmer.

Logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs or the resulting lumber by a contract logger or sawmill owner are not within the scope of agriculture unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to "such farming operations."

CITY OF LANDER
240 LINCOLN STREET
LANDER WY 82520

307-332-2870

Receipt No: 3.000200221

May 20, 2025

ROBBIEVZUSPAN

Previous Balance:	.00
MISC. REVENUE - MISCELLANEOUS-APPEAL	500.00
10-362-8800 MISCELLANEOUS	
Total:	500.00
CHECK	500.00
Check No: 2053	
Payor: ROBBIE VZUSPAN	
Total Applied:	500.00
Change Tendered:	.00

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