

A LAND USE LAW ANALYSIS TO EMPOWER SMALL-SCALE AGRICULTURE IN TETON COUNTY, WYOMING

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INTRODUCTION

Localizing or regionalizing food systems can provide an effective alternative to help remedy the adverse environmental, social, and economic outcomes resulting from conventional food systems.² Local or community food systems are “a collaborative effort to integrate agricultural production with food distribution to enhance the economic, environmental, and social well-being of a particular place.”³

In Teton County, Wyoming, interest in and demand for a community food system is increasing. Teton Conservation District (TCD) is a local government entity working with many stakeholders to conserve natural resources in Teton County for the “health and benefit of the people and the environment.”⁴ While many components of a Teton County community food system warrant exploration, TCD has a particular interest in small-scale agricultural production based on unique conditions within the County.⁵ As

2. Naomi Robert & Kent Mullinix, *Municipal Policy Enabling Regional Food Systems in British Columbia, Canada: Assessing Focal Areas and Gaps*, 8 J. AGRIC., FOOD SYS., & CMTY. DEV. 115, 116 (2018); Rachel Carey et al., *Integrating Agriculture and Food Policy to Achieve Sustainable Peri-Urban Fruit and Vegetable Production in Victoria, Australia*, 1 J. AGRIC., FOOD SYS., & CMTY. DEV. 181, 183–84 (2011).

3. Carrie Edgar & Laura Brown, *A Review of Definitions of Community Food Systems*, UNIV. OF WIS. COOP. EXTENSION, <https://fyi.extension.wisc.edu/cfsi/files/2012/10/CFS-definitions-5-21-13.pdf> (last updated May 2013) (citation omitted).

4. *Mission and History (About)*, TETON CONSERVATION DIST., <https://www.tetonconservation.org/about> (last visited Nov. 30, 2023).

5. Telephone Interview with R. Sgroi, Land Resources Specialist, Teton Conservation Dist. (Feb. 27, 2020). Throughout this Article, the term “small-scale agriculture” is used to provide consistency, given that the term “small agriculture” is used in the 2020 and 2021 Teton Conservation District Annual Reports. While there is no specific definition for small-scale agriculture, we use it to denote agriculture in a variety of unused or abandoned spaces that can be supported by infrastructure like greenhouses, hoop houses, raised beds, containers, building walls, and hydroponics. TETON CONSERVATION DIST., TETON CONSERVATION DISTRICT ANNUAL REPORT: JULY 1, 2019 – JUNE 30, 2020, 13 (2020); TETON CONSERVATION DIST., TETON CONSERVATION DISTRICT ANNUAL REPORT: JULY 1, 2020 – JUNE 30, 2021, 16 (2021).

the population of the western United States continues to grow, more counties are facing challenges similar to those faced by Teton County.⁶ This analysis offers solutions that could apply to a number of similarly situated western counties and municipalities.

The first unique condition driving TCD's focus on production is that 97% of Teton County is public land.⁷ Not only does the prevalence of publicly owned land limit the land available to produce food, but the remaining 3% of privately owned greenspace is rapidly developing for residential and commercial purposes.⁸ Second, communities in Teton County are surrounded by large mountain ranges and vast areas of forested public land. Consequently, importing food over often snow-covered roads can be challenging.⁹ Third, current local production capacity cannot meet tourists' and residents' increasing demand for locally produced food.¹⁰ All these conditions combine to challenge the resilience of Teton County's food system. Teton County, Idaho; Gallatin County, Montana; and many others inside the Greater Yellowstone Ecosystem and the broader Intermountain West face similar conditions and challenges.¹¹

Small-scale agriculture provides one avenue toward local and sustainable production methods. In Teton County, small-scale agriculture could provide a conservation tool to keep limited greenspace and private land from further development while also utilizing uniquely situated spaces for local food production. Additionally, local food production through small-scale agriculture can support communities in building resilient and accessible food systems. Local food systems that utilize small-scale agriculture can help communities withstand national and multinational supply interruptions and reduce the unsustainable importation of food.¹² Small-scale agriculture could also help to fill the current gap between demand and supply of locally produced food in Teton County, increasing access to healthy food while also supporting local farmers and businesses. However, Teton County lacks a comprehensive, shared understanding of the barriers to local food production

6. See Arthur Middleton et al., *The Role of Private Lands in Conserving Yellowstone's Wildlife in the Twenty-First Century*, 22 WYO. L. REV. 237, 249–50 (2022).

7. Susan Marsh, *Is Development on Private Land in Jackson Hole Causing the Community to Burst at its Seams?*, MOUNTAIN J. (May 6, 2019), <https://mountainjournal.org/growth-is-pushing-parts-of-jackson-hole-to-burst-at-its-seams>.

8. *Id.*

9. Telephone Interview with R. Sgroi, Land Res. Specialist, Teton Conservation Dist. (Feb. 27, 2020).

10. *Id.*

11. See Marsh, *supra* note 7 (describing the contemporary threats and obstacles facing public land management and conservation in the Greater Yellowstone Ecosystem); TETON CNTY., IDAHO, COMPREHENSIVE PLAN 9 (2012); GALLATIN CNTY., MONT., GALLATIN GROWTH POLICY 7-1 to -25 (2021).

12. Robert & Mullinix, *supra* note 2.

and opportunities offered by small-scale agriculture, including around policy and planning.

Local and regional policy and planning can play an influential role in creating food policy and systems change.¹³ However, policy and planning practices addressing unsustainable conventional food systems and navigating toward a community food system are absent in many communities.¹⁴ Food policy is essential at the local and regional planning levels and should be “comprehensive in scope and attentive to the temporal dimensions and spatial interconnections among important facets of community life” that cannot be addressed in isolation.¹⁵ Land use policies found in comprehensive plans can “assist in securing access to and ensuring the preservation of land for agricultural uses” and drive future community development approaches.¹⁶

This Article analyzes three important local land use planning and regulatory frameworks in Teton County: the Jackson/Teton County Comprehensive Plan (the Comprehensive Plan); the Teton County land development regulations (LDRs); and the Town of Jackson LDRs.¹⁷ Given the identification of land use planning as influential on a community food system and its future development, this Article primarily focuses on the Comprehensive Plan.

That said, the Comprehensive Plan “is a policy document that articulates the community Vision and does not have a regulatory effect or the force of law.”¹⁸ While the Comprehensive Plan’s Vision can support a sustainable and resilient community food system, some mechanism with regulatory effect or the force of law is necessary to ultimately enact that vision.¹⁹ Therefore, this Article briefly analyzes components of the Teton County

13. Megan Masson-Minock & Deirdra Stockmann, *Creating a Legal Framework for Urban Agriculture: Lessons from Flint, Michigan*, 1 J. AGRIC., FOOD SYS., & CMTY. DEV. 91, 92 (2010) (citation omitted).

14. Julia Freedgood et al., *Emerging Assessment Tools to Inform Food System Planning*, 2 J. AGRIC., FOOD SYS., & CMTY. DEV. 83, 98 (2011).

15. *APA Policy Guide on Community and Regional Food Planning*, AM. PLAN. ASS’N (May 11, 2007), <https://www.planning.org/policy/guides/adopted/food.htm>; see Robert & Mullinix, *supra* note 2 (discussing food policy in Canada).

16. HEATHER WOOTEN & AMY ACKERMAN, NAT’L POL’Y & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY, *SEEDING THE CITY: LAND USE POLICIES TO PROMOTE URBAN AGRICULTURE* 5 (2011).

17. The Comprehensive Plan, Teton County LDRs, and Town of Jackson LDRs are not the only planning and regulatory frameworks that could support small-scale agriculture. See discussion *infra* Sections I(B), II(B) (explaining other frameworks that, while not the focus of this article, could support small-scale agricultural production in Teton County, Wyoming).

18. JACKSON, WYO. & TETON CNTY., WYO., *JACKSON/TETON COUNTY COMPREHENSIVE PLAN AV-19 (2020)* [hereinafter *COMPREHENSIVE PLAN*].

19. *Id.*

LDRs and Town of Jackson LDRs that, if integrated with certain elements of the Comprehensive Plan, would enable the Plan to carry the force of law.²⁰

While each component of a community food system could receive better support through targeted revisions to these land use planning and regulatory frameworks, this research specifically focuses on small-scale agricultural production. This Article explores the legal frameworks that impact small-scale agricultural production in three discussions: (1) how Teton County's three existing frameworks both support and challenge small-scale agricultural production in Teton County; (2) how other communities use similar land use planning and regulatory frameworks to support their small-scale agricultural production; and (3) how Teton County could adopt these land use planning and regulatory frameworks to better support small-scale agricultural production. Finally, this Article provides examples of policy or planning approaches that other geographically and socially similar counties in the West could replicate or adapt.

Each of the following two Parts begins with a brief overview of the planning or regulatory document's pertinent features. Then, each Section A summarizes the organization of each respective framework and identifies the provisions that support or challenge small-scale agricultural production in Teton County. Then, each Section B discusses the approaches (e.g., regulatory structure and language) other communities have used in their comprehensive plans and land use regulations to support small-scale agricultural production. Finally, each Section C synthesizes the preceding Sections to make recommendations for adapting each Teton County planning and regulatory framework to better support small-scale agricultural production.

I. JACKSON/TETON COUNTY COMPREHENSIVE PLAN

Through state statute, the State of Wyoming directs municipalities to develop comprehensive plans for physical development and gives them statutory authority, or “the power and duties assigned to a government official or agency through a law passed by . . . state legislature,” to do so.²¹ The Town of Jackson obtains its statutory authority from Wyoming Statutes §§ 15-1-501 through 15-1-506.²² Teton County obtains its statutory authority

20. While other sources have described incorporating food policy into comprehensive plans as a successful strategy, this Article will not deeply analyze whether this strategy is more effective than amendments to LDRs. See Freedgood et al., *supra* note 14, at 97. Rather, this Article discusses the advisory role of the Comprehensive Plan, the regulatory authority and legally binding role of the Teton County and Town of Jackson LDRs, and the relationship between these two frameworks.

21. WYO. STAT. ANN. § 9-8-301 (2023); *Statutory Authority*, BALLOTPEdia, https://ballotpedia.org/Statutory_authority (last visited Dec. 3, 2023).

22. WYO. STAT. ANN. §§ 18-5-201, 15-1-501 to -506 (2023).

from Wyoming Statutes §§ 18-5-201 through 18-5-202.²³ The Comprehensive Plan is a planning document developed by a collaborative group of Teton County stakeholders, technical advisors, elected officials, and planning staff.²⁴ To guide Teton County officials and agencies with regulatory authority, a coalition of government and community organizations completed the current framework for the Comprehensive Plan in 2012.²⁵ In 2020, these entities updated the Comprehensive Plan as a result of a Growth Management Program review process, which was triggered by a 5% growth in residential units between 2016 and 2020.²⁶

The Comprehensive Plan's Vision is to "[p]reserve and protect the area's ecosystem in order to ensure a healthy environment, community[,] and economy for current and future generations."²⁷ Because 97% of Teton County is public land, including a portion of the Greater Yellowstone Ecosystem, this Vision emphasizes the relationship between Teton County residents, tourists, wildlife, and the natural landscape.²⁸ The Comprehensive Plan commits to three Common Values meant to strengthen the Vision: "Ecosystem Stewardship," "Growth Management," and "Quality of Life."²⁹ The 2020 Vision and the three Common Values remain the same as those set by the 2012 version.³⁰

The first eight of 10 chapters of the Comprehensive Plan focus on the Plan's Common Values. These chapters reflect the most important land management and planning issues for the County.³¹ Each chapter contains a "Chapter Goal," an articulation of the goal, principles, and policies for each principle that aim to achieve that chapter's Common Value. Additionally, each chapter provides "starting-point" strategies, and completed strategies are indicated with a checkmark symbol. Chapters 9 and 10 focus on adaptive management and plan implementation that "provide how this Plan will remain current and consistently implemented."³²

23. *Id.* §§ 18-5-201 to -202.

24. COMPREHENSIVE PLAN, *supra* note 18, at v.

25. *Id.* at iv-vi.

26. *Growth Management Program Review & Comp Plan Update*, JACKSON/TETON CNTY. LONG-RANGE PLAN., <http://jacksontetonplan.com/315/Growth-Management-Program-GMP-Review-Upd> (last visited Dec. 3, 2023).

27. COMPREHENSIVE PLAN, *supra* note 18, at ES-2.

28. *Id.* at CV-1-2.

29. *Id.* at AV-18.

30. *Id.* app. at B-25.

31. *See infra* Table 1.

32. COMPREHENSIVE PLAN, *supra* note 18, at AV-1.

Table 1 *Chapter Goals of the Three Common Values*³³

<u>Common Value</u>	<u>Chapter</u>	<u>Chapter Goal</u>
Ecosystem Stewardship	Chapter 1. Stewardship of Wildlife, Natural Resources, and Scenery	Maintain healthy populations of all native species and preserve the ability of future generations to enjoy the quality natural, scenic, and agricultural resources that largely define our community character.
Ecosystem Stewardship	Chapter 2. Climate Sustainability	Emit less greenhouse gases than we did in 2012.
Growth Management	Chapter 3. Responsible Growth Management	Direct at least 60% of future growth into Complete Neighborhoods to preserve habitat, scenery and open space and provide workforce housing opportunities.
Growth Management	Chapter 4. Town as Heart of the Region - The Central Complete Neighborhood	The Town of Jackson will continue to be the primary location for jobs, housing, shopping, educational and cultural activities.
Quality of Life	Chapter 5. Local Workforce Housing	Ensure a variety of workforce housing opportunities exist so that at least 65% of those employed locally also live locally.
Quality of Life	Chapter 6. A Diverse and Balanced Economy	Develop a sustainable, vibrant, stable and diversified local economy.
Quality of Life	Chapter 7. Multimodal Transportation	Travel by walk, bike, carpool, or transit will be more convenient than travel by single-occupancy vehicle.

33. *Id.* at CV-1-2 to CV-3-28.

Quality of Life	Chapter 8. Quality Community Service Provision	Timely, efficiently, and safely deliver quality services and facilities in a fiscally responsible and coordinated manner.
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Additionally, the Comprehensive Plan identifies 15 “Character Districts,” which divide the county into “Rural Areas” or “Complete Neighborhoods,” then suggests different policies based on the characteristics of the district.³⁴ A Character District can either be a Rural Area focused on the Ecosystem Stewardship Common Value or a Complete Neighborhood focused on enhancing the Quality of Life Common Value.³⁵ Each Character District also includes “Subareas” with one of four classifications: preservation, conservation, stable, or transitional.³⁶ Each classification has character priorities that help achieve the desired future character of the Subarea. These priorities are depicted by “Character Defining Features” and “Neighborhood Forms.”³⁷ Character Defining Features are described in writing under the Subarea’s pertinent subsection and illustrated as map symbols on the “Vicinity Map.”³⁸ Neighborhood Forms describe the general form of development that has occurred in a Character District. Each Subarea can have one or more Neighborhood Forms.³⁹ The Neighborhood Forms include acre size, building height, uses, and special considerations.⁴⁰ The Plan also lists “Policy Objectives,” drawn from policies in the first eight chapters, that are helpful for achieving a given Character District’s desired future character.

When a project is proposed in Teton County, the Comprehensive Plan considers three things. First, the project should respond to the targets and indicators set out by each Chapter Goal and the “Achieving Our Vision” chapters (i.e., Chapters 9 and 10).⁴¹ Second, the project should be sited in a Character District where it has been explicitly identified as a possible project.⁴² If that project type is not listed, the best location should be identified by using the Character District framework that optimally incorporates each of the eight Chapter Goals.⁴³ Third, the project should

34. *Id.* at IV-2.

35. *Id.*

36. *Id.* at CV-2-4, IV-2, IV-6.

37. *Id.* at IV-2.

38. *Id.* at IV-8.

39. *Id.* at IV-10.

40. *Id.*

41. *Id.* at ES-3.

42. *Id.*

43. *Id.*

implement the Comprehensive Plan's eight Chapter Goals.⁴⁴ If a project is specifically identified in the Comprehensive Plan as a strategy to achieve the goals of the plan, it is automatically considered to have optimized the Chapter Goals. If a project is not specified in the Comprehensive Plan, more analysis must be performed, and the plan must address each target identified in the Chapter Goals. By examining and adhering to these three key considerations, the Comprehensive Plan relies on "predictable," "locally relevant," and "regionally responsible" decision-making to achieve optimal results.⁴⁵

A. Components of the Jackson/Teton County Comprehensive Plan Supporting and Challenging Small-Scale Agricultural Production

Agriculture fits within the Comprehensive Plan's Principles, Policies, and Strategies to achieve the Vision and Common Values through its role in conserving open space. Agriculture's role is primarily discussed in Chapter 1 (Stewardship of Wildlife, Natural Resources[,] and Scenery).⁴⁶ Chapter 1 highlights four Principles that inform each of the Policies proposed by that chapter. Principle 1.4 creates a foundation for these Policies to ensure that development occurs in a way that protects open space, recognizing that agriculture can protect open spaces from development and maintain the heritage of the region.⁴⁷ Policy 1.4.b recognizes the important role of agriculture in conserving open space:

The conservation of agriculture and agricultural lands also conserves open space. Historically, the agricultural community has provided much of the stewardship of the natural and scenic resources valued by the community. Conservation of open space via agriculture protects the historic western character of the community and can support wildlife movement corridors, natural resources, and scenery. Regulations that are generally applicable to development may functionally or procedurally impede the continuation of agricultural operations. The County will evaluate the impacts of its regulations on active agricultural operations that conserve significant open space and continue to provide exemptions to requirements that preclude continued agricultural stewardship of large tracts of open space. The County will also explore other incentives to support and encourage continued agricultural conservation of open space.⁴⁸

44. *Id.*

45. *Id.*

46. *Id.* at CV-1-2.

47. *Id.* at CV-1-10.

48. *Id.*

Building from Principle 1.4, Policy 1.4.c suggests an incentive program that should protect and steward agricultural lands and the open space and habitat those lands provide.⁴⁹ The Comprehensive Plan specifies Strategies for the county to meet the Principles and Policies of each chapter, including 1.4.S.2, which requires entities to review and update exemptions and incentives that encourage agriculture as a means of conserving open space.⁵⁰

Chapter 3 of the Comprehensive Plan (Responsible Growth Management) also discusses agriculture.⁵¹ Principle 3.1 emphasizes the preference of conserving rural areas and directing any growth into urban areas or existing neighborhoods.⁵² The County’s policy to encourage growth outside of open areas differs depending on whether the development is inside a Complete Neighborhood or Rural Area:

Outside Complete Neighborhoods, it is the community’s goal to maintain our historic western, rural character, wildlife habitat[,] and scenic vistas. In the Rural Areas, rural character is defined by limited development, actively stewarded agricultural land, and a high ratio of natural to built environment. To maintain this character, the County will first promote non-development conservation, including active agricultural stewardship; second incentivize development that occurs in Complete Neighborhoods and preserves wildlife habitat, scenery[,] and open space; third incentivize development that is clustered away from sensitive areas in exchange for preservation of wildlife habitat, scenery[,] and open space; and finally, allow for development of base property rights. To further maintain rural character, the County will limit building size consistent with historic agricultural compounds and require a dominance of landscape over the built environment.⁵³

Additionally, agriculture is a Character Defining Feature and a Neighborhood Form assignable to a Character District’s Subarea, depicted by a symbol on the County maps that show the Character Districts and Subareas.⁵⁴ The agriculture map symbol signifies that “[a]gricultural use

49. *Id.*

50. *Id.* at CV-1-13. As of the 2020 update to the Comprehensive Plan, this strategy had not yet been completed.

51. *Id.* at CV-2-2.

52. *Id.* at CV-2-6. Principle 3.1 is titled “Direct growth out of habitat, scenery, and open space.”

Id.

53. *Id.* at CV-2-7.

54. *Id.*

should be characteristic of the subarea.”⁵⁵ As previously mentioned, Neighborhood Forms determine “the general pattern and intensity of development that meets the desired character,” including the acres, building height, uses, and special considerations.⁵⁶

Subareas with the “Agriculture Neighborhood Form” have the acreage characteristic of 70 or more acres and residential and conservation characteristic uses.⁵⁷ A maximum height for buildings is not applicable for this Neighborhood Form.⁵⁸ The special considerations for this Neighborhood Form are the applicable “agricultural exemptions [and] incentives” and the “scale of historic agricultural compounds.”⁵⁹

Character Districts 9, 10, 14, and 15 have Subareas with agriculture as either a Character Defining Feature or Neighborhood Form.⁶⁰ Therefore, these Character Districts have common directions for their desired future characteristics for land use and development intensity. These common directions include describing agriculture as a continuous land use tool that can prevent development and preserve open spaces, which serve as wildlife habitat and migration corridors.⁶¹ Any agricultural development in these Districts should be consistent with the historical agricultural compounds of the community.⁶² Other common directions include clustering new development near existing development or directing it into Complete Neighborhoods that border these Subareas.⁶³

Character Districts 9, 10, 14, and 15 also list the following policies as Policy Objectives: Policy 1.4.b, Policy 1.4.c, and Policy 3.1.c.⁶⁴ This Article’s preceding paragraphs discuss these policies, which present agriculture as a land use tool that can preserve significant tracts of open space by encouraging its use through incentives and regulatory exemptions and promoting its use in Rural Area Character Districts. Each Subarea’s common desired future characteristics support these policies.

55. *Id.* at IV-8.

56. *Id.* at IV-2.

57. *Id.* at IV-10.

58. *Id.*

59. *Id.*

60. *Id.* at IV-59, IV-65, IV-71, IV-95, and IV-10. The Subareas with this Character Defining Feature on the vicinity map are 8.2 (Large River Bottom Parcels); 9.2 (Agricultural Foreground); 10.2 (Central South Park); 14.1 (Alta Farmland); 15.1 (Large Outlying Parcels); and 15.3 (Buffalo Valley). The Subareas with the Agriculture Neighborhood Form are 9.2 (Agricultural Foreground); 10.2 (Central South Park); 14.1 (Alta Farmland); 15.1 (Large Outlying Parcels); and 15.3 (Buffalo Valley).

61. *Id.* at CV-1-10.

62. *See, e.g., id.* at IV-103 (describing the Character Defining Features of the Large Outlying Parcels Subarea in Character District 15).

63. *Id.* at IV-67.

64. *Id.* at CV-1-10, CV-2-7. Policy 1.4.b is titled “Conserve agricultural lands and agriculture”; Policy 1.4.c is titled “Encourage rural development to include quality open space”; and Policy 3.1.c is titled “Maintain rural character outside of Complete Neighborhoods.”

Due to Teton County's setting amid large areas of public land and key wildlife habitat, wildlife is a major focus in the Comprehensive Plan. Keeping the characteristics of Rural Area Character Districts and directing development into Complete Neighborhood Character Districts conserves and protects large tracts of land, which provide wildlife habitat in Teton County.⁶⁵ Subareas with agriculture as a Character Defining Feature or Neighborhood Form are located in areas of Teton County with large tracts of natural landscape and minimal development.⁶⁶ Agriculture is one tool for protecting large areas of open space from residential and commercial development. However, the language of the Comprehensive Plan limits agriculture as a supported land use.

The Comprehensive Plan policies discuss agriculture only as a tool to conserve large tracts or other significant open space.⁶⁷ For example, agricultural buildings should be limited to a size consistent with "historic agricultural compounds" so as to "further maintain rural character."⁶⁸ The Agriculture Neighborhood Form is assigned to Subareas with sites of at least 70 acres.⁶⁹ Directions for developing incentives and regulatory exemptions are discussed only in the context of conserving historical or large (70+ acre) tracts of agricultural land, which primarily support large-scale agriculture ventures.⁷⁰ These large tracts could also support small-scale agricultural production, of course. However, small-scale agricultural production is possible in a variety of settings and is therefore not limited to large tracts of open space.

Recognizing and supporting agriculture only in this context limits the vast opportunities for local food production on a smaller scale on rural and non-rural land. Additionally, the Comprehensive Plan does not mention sustainable food production as an alternative to conventional practices. Further, exemptions and incentives that appear in policies and strategies only support the role agriculture plays in conserving large tracts of open space rather than small tracts. Agencies guided by the Comprehensive Plan are not obligated to implement regulatory frameworks that support the wide spectrum of potential small-scale agricultural production practices, particularly if the Comprehensive Plan does not explicitly recognize this production strategy.

A producer could assess whether and where a small-scale agricultural development could occur in Teton County. However, the kind of agriculture

65. *Id.* at CV-1-10.

66. *Id.* at IV-4 to -5.

67. *Id.* at CV-1-10.

68. *Id.* at CV-2-7.

69. *Id.* at IV-10.

70. *Id.* at IV-67, IV-74, IV-97.

cited in the Chapter Goals is more likely large-acreage agriculture that conserves significant open space from development. The Comprehensive Plan does not explicitly identify methods and practices of small-scale agriculture found in suburban and urban settings as possible projects in any of the Character Districts. Further, only nine of the 15 Character Districts identify large-scale agriculture as possible projects.⁷¹ A small-scale agricultural producer or other stakeholder would have to identify whether the project optimized all eight Chapter Goals, which may be burdensome for both the stakeholder and regulatory decisionmakers and potentially prohibit desirable small-scale agricultural production. Unambiguous Comprehensive Plan Principles, Policies, Strategies, and recommendations for potential projects supporting the broad scope of sustainable small-scale agricultural production would better encourage those ventures.

B. Other Community Comprehensive Plans Supporting Small-Scale Agricultural Production

One important step for supporting small-scale agriculture is identifying where agricultural goals, policies, and actions appear in a community's comprehensive plan. Many comprehensive plans incorporate agriculture into multiple chapters, which typically cover topics like land use, transportation, environmental sustainability, housing, economic development, and public health. These elements are often similar to the Comprehensive Plan's use of Chapter Goals. Alternatively, communities may organize a comprehensive plan by including a section for agriculture under a specific plan element. Some plans take the additional step to organize agriculture in two settings: (1) in typical rural settings that aim to conserve open spaces via agriculture; and (2) agriculture in developed environments. For example, the City of San José, California's plan separates agriculture into rural and urban categories within a single chapter.⁷²

In that chapter, urban agriculture falls within the "Urban Land Use" subsection and rural agriculture falls within the "Non-Urban Land Use" subsection.⁷³ San José's policies dictate that rural agriculture is designed to work in concert with the "Greenline/Urban Growth Boundary."⁷⁴ This Greenline/Urban Growth Boundary distinguishes between lands "where urban services can efficiently be provided" and lands "that are intended to remain permanently rural in character."⁷⁵ The urban agriculture goals,

71. *Id.* at IV-34, IV-48, IV-54, IV-58, IV-64, IV-70, IV-80, IV-94, IV-100.

72. SAN JOSÉ, CAL., ENVISION SAN JOSÉ 2040 GENERAL PLAN ch. 6, 18, 32 (2023) [hereinafter SAN JOSÉ PLAN].

73. *Id.* ch. 6 at 4, 18, 32.

74. *Id.* ch. 1 at 24.

75. *Id.*

policies, and implementation actions are intended to maintain agricultural land, improve and promote access to and production of locally grown foods, and support producers' ability to sell their food locally.⁷⁶ The San José Plan does not define rural agriculture or urban agriculture, but the Greenline/Urban Growth Boundary suggests where each subsection's policies and implementation actions should focus.⁷⁷ Separating agriculture into these types of categories recognizes the specific needs of each setting and acknowledges the multiple environments and scales in which agricultural activities may occur.

In addition to overall comprehensive plan organization, the specific language of goals, policies, and actions can support small-scale agricultural production. The language of the goal, policy, or action tends to reflect the element it is found under. As exemplified by the San José General Plan, land use elements may discuss small-scale agriculture.⁷⁸ Under its land use element, the San José General Plan includes several policies for urban agriculture, including:

- Policy LU-12.2 — “Support urban agriculture opportunities such as back-yard, roof-top, indoor, and other gardens that produce ecologically sound food for personal consumption. Encourage developers to incorporate gardens that produce ecologically sound food for residents and workers.”⁷⁹
- Policy LU-12.7 — “Encourage incorporation of edible landscaping in appropriate locations on new and existing residential, commercial, and public development projects.”⁸⁰
- Policy LU-12.8 — “Support the efforts of non-profit organizations and the County to integrate and/or maintain sustainable small-scale agriculture within existing and planned parks and open spaces including the planned Martial Cottle County Park, Guadalupe Gardens, and other publicly or privately owned properties where appropriate.”⁸¹
- Action LU-12.11 — “Revise the Zoning Ordinance to allow both community gardens and incidental gardening as permitted uses in appropriate zoning districts.”⁸²

76. *Id.* ch. 6 at 18.

77. *Id.* ch. 6 at 28–29.

78. *Id.* ch. 6 at 19, 34.

79. *Id.* ch. 6 at 18.

80. *Id.* ch. 6 at 19.

81. *Id.*

82. *Id.*

King County, Washington is another community that supports small-scale agricultural production in the County's comprehensive plan's land use section.⁸³ Much of this subsection discusses agriculture in a rural context. However, these policies are also transferrable to small-scale agricultural production elsewhere and include:

- Policy R-659 — “King County should work with other jurisdictions, farm advocacy groups and others to support Farmlink, farmer training[,] and other programs that help new farmers get started, gain access to farmland[,] and develop successful marketing methods.”⁸⁴
- Policy R-661a — “To help make more farmland accessible to beginning and low-income farmers, King County should expand its leasing of agricultural land to farmers where appropriate and should encourage private farmland owners to lease unused land to farmers.”⁸⁵
- Policy R-674 — “King County should work with farmers and ranchers to better understand the constraints to increased food production in the county and develop programs that reduce barriers and create incentives to growing food crops and raising food-producing livestock.”⁸⁶
- Policy R-677 — “King County should promote local food production and processing to reduce the distance that food must travel from farm to table.”⁸⁷

Additionally, the King County Comprehensive Plan has policies in its agriculture section specifically targeting small-scale agricultural production:

- Policy R-517 — “King County should explore ways of creating and supporting community gardens, Farmers Markets, produce stands[,] and other similar community-based food growing projects to provide and improve access to healthy, affordable food for all rural residents.”⁸⁸
- Policy R-657 — “King County shall work with and provide support to Washington State University Extension for its research and education programs that assist small-scale commercial farmers.”⁸⁹
- Policy U-132a — Although it is not located in the agriculture section, another important policy under the “Urban Communities” chapter states

83. KING CNTY., WASH., 2016 KING COUNTY COMPREHENSIVE PLAN 3-1 (2020) [hereinafter KING COUNTY PLAN]. Chapter 3 of the Plan is titled “Rural Areas and Natural Resource Lands.” *Id.*

84. *Id.* at 3-63.

85. *Id.*

86. *Id.* at 3-68.

87. *Id.* at 3-69.

88. *Id.* at 3-37.

89. *Id.* at 3-68.

that “King County shall allow and support the development of innovative community gardens and urban agriculture throughout the public realm of residential and commercial areas.”⁹⁰

Environmental sustainability is another typical comprehensive plan element that often discusses small-scale agricultural production. The City of Madison, Wisconsin’s 2018 Comprehensive Plan includes a “Green and Resilient” element with strategies and actions supportive of small-scale agriculture.⁹¹ Madison’s commitment to sustainability is evident in its definition of “sustainable agriculture”:

An integrated system of plant and animal production practices having a site-specific application that will, over the long term: satisfy human food and fiber needs; enhance environmental quality and the natural resource base upon which the agricultural economy depends; make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls; sustain the economic viability of farm operations; and enhance the quality of life for farmers and society as a whole.⁹²

To achieve sustainable agriculture, the Madison Comprehensive Plan strategizes that the City should support farming and gardening in a way that sustainably protects the ecosystem and public health.⁹³ The actions appearing under this strategy—working with partners to continue to support community gardens and associated infrastructure, identifying opportunities to support local food production within the City, and establishing guidelines for sustainable agricultural best practices—all support small-scale agriculture.⁹⁴

The Madison Comprehensive Plan provides opportunities for implementing Action “b” under Strategy 9, which seeks to “[i]dentify opportunities to support local food production within the city,” including as part of properties owned by the City, currently undeveloped properties, properties in commercial and industrial areas, and “agrihoods.”⁹⁵ The Madison Comprehensive Plan defines an agrihood as a “neighborhood with a working farm integrated into its urban or suburban surroundings that provides or sells its crops and other agricultural products to neighborhood residents and the surrounding community through farm stands, CSA shares,

90. *Id.* at 2-16.

91. MADISON, WIS., CITY OF MADISON COMPREHENSIVE PLAN 86 (2018) [hereinafter MADISON PLAN].

92. *Id.* at 179.

93. *Id.* at 98, 119 (*see* row “Strategy 9”).

94. *Id.* at 98.

95. *Id.* at 176, 179.

local retailers, and farmers' markets."⁹⁶ Action "b" suggests that the City should make a map of existing agricultural operations and prioritize areas where the City could encourage future agricultural development.⁹⁷ A paragraph expanding on Action "c" encourages the City to establish guidelines to promote best practices for urban agriculture to support environmental and public health.⁹⁸ Under Strategy 9, the Madison Comprehensive Plan defines urban agriculture to include "market farms, community gardens, school gardens, full-year vegetable production in greenhouses, orchards, rooftop gardens, and the raising of chickens, fish[,] and bees."⁹⁹

The Madison Comprehensive Plan's Green and Resilient element also includes Strategy 5, which aims to "[i]mprove and preserve urban biodiversity through an interconnected greenway and habitat system."¹⁰⁰ One action under Strategy 5 is to "[i]ntegrate vegetation into the built environment, such as terrace plantings, living walls, and green roofs."¹⁰¹ To create and preserve the greenway and habitat system, the Madison Comprehensive Plan outlines several recommendations:

The City should seek opportunities for greenspace in intensively developed areas. . . . Madison should support integration of vegetation into the built environment. Methods such as living walls, vines, green roofs, and urban agriculture should be integrated wherever possible to support biodiversity and increase equitable access to the myriad positive health benefits associated with contact with nature.¹⁰²

The definitions of "terrace," "living walls," and "green roofs" can be interpreted to include agricultural production, and "vegetation" is a broad term that can encourage the integration of edible vegetation.¹⁰³ Regardless, Strategy 5 uses the term "urban agriculture," recognizing that agricultural production can occur in many different settings, including neighborhoods and intensively developed spaces.

Economic development and housing are other comprehensive plan elements that may feature provisions for small-scale agricultural production.

96. *Id.* at 176. Agrihoods can be "developed at a variety of scales but may be most appropriate on the edge of the city where they serve as a transition to existing rural uses." *Id.* at 98.

97. *Id.* at 98.

98. *Id.*

99. *Id.*

100. *Id.* at 93.

101. *Id.*

102. *Id.* Urban agriculture is defined as "the production of food for personal consumption, market sale, donation, or educational purposes within cities and suburbs" *Id.* at 180.

103. *Id.* at 177-79.

For example, the King County Comprehensive Plan encourages the County to “explore opportunities to support agricultural tourism and value-added programs related to agriculture,” including awareness of product availability, the importance of buying local, unification of regional tourism, and development of new markets.¹⁰⁴ Additionally, the Madison Comprehensive Plan’s “Neighborhoods and Housing” element aims to offer quality affordable housing across the City.¹⁰⁵ One strategy under this element is aimed at ensuring that nutritious food is affordable and specific to cultures.¹⁰⁶ One action under this strategy suggests “[i]dentify[ing] public and private spaces suitable for community gardens and explor[ing] expansion of existing gardens to meet demand.”¹⁰⁷

The King County, Madison, and San José comprehensive plans all exemplify how the organization and language of such plans can support sustainable small-scale agricultural production by incorporating food policy within existing elements, but a comprehensive plan could also develop a new element dedicated solely to food policy. For example, the Puget Sound Regional Council developed strategies for the City of Seattle to include food policy in its Comprehensive Plan.¹⁰⁸ The Puget Sound Regional Council acknowledged that City staff expressed a preference for incorporating updates into existing elements rather than adding new elements;¹⁰⁹ consequently, the Puget Sound Regional Council’s recommendations were largely aimed at amending existing elements in Seattle’s Comprehensive Plan.¹¹⁰ Under this approach, the Council recommended developing a “brief summary detailing which sections include food-related policies.”¹¹¹ However, the Council explained the City could incorporate food systems planning either by integrating such concepts throughout the plan or by adding a new, dedicated food-policy element.¹¹²

C. Recommendations to Better Support Small-Scale Agriculture Through the Jackson/Teton County Comprehensive Plan

This Section discusses how the Comprehensive Plan can better support small-scale agriculture. These recommendations synthesize analysis from Sections I(A) and I(B) of this Article. Section I(A) discussed Teton County’s

104. KING COUNTY PLAN, *supra* note 83, at 10–17.

105. MADISON PLAN, *supra* note 91, at 45.

106. *Id.* at 46.

107. *Id.* at 58.

108. PUGET SOUND REG’L COUNCIL, INTEGRATING FOOD POLICY IN COMPREHENSIVE PLANNING: STRATEGIES AND RESOURCES FOR THE CITY OF SEATTLE 1 (2012).

109. *Id.* at 3.

110. *Id.*

111. *Id.*

112. *Id.*

current framework and components of the Comprehensive Plan that support small-scale agriculture. Section I(B) discussed how other communities use their comprehensive plans to support small-scale agricultural production. First, this Section provides organizational recommendations. These recommendations reflect the two approaches identified by the Puget Sound Regional Council and the categories of agriculture used by the San José General Plan.¹¹³ Second, this Section provides language recommendations for policies and strategies.

1. Create a Community Food System Chapter in the Jackson/Teton County Comprehensive Plan

Neither agriculture nor food has its own chapter in the Comprehensive Plan. Instead, the Plan discusses agriculture throughout its policies. The Plan also integrates agriculture across multiple sections. Adding a ninth chapter specifically committed to supporting and expanding Teton County's food system would address the inherent complexities involved with community food systems. This chapter would include a chapter goal, principles, policies, strategies, and chapter indicators, similar to the current structure of the Comprehensive Plan. Section I(B) of this Article discussed policies and actions other communities have taken to support sustainable small-scale agricultural production. Teton County should incorporate policies and actions that support every component of a community food system, including processing, distribution, and consumption. Policies and strategies in the San José General Plan, the King County Comprehensive Plan, and the Madison Comprehensive Plan recognize other components of a community food system, but these plans largely do not address such components.¹¹⁴ Adding a ninth chapter to the Comprehensive Plan would facilitate a more nuanced understanding of these four components and would provide Teton County with the opportunity to plan around each component.

2. Distinguish Agriculture into Categories

A new chapter in the Comprehensive Plan that distinguishes between rural agriculture and non-rural agriculture would provide a pathway for future agriculture in non-rural areas. If a new chapter is not the right approach for Teton County, policies and strategies identifying agricultural settings supportive of small-scale agricultural production can be integrated throughout existing chapters. One common approach for incorporating

113. *Id.*; SAN JOSÉ PLAN, *supra* note 72.

114. SAN JOSÉ PLAN, *supra* note 72; KING COUNTY PLAN, *supra* note 83; MADISON PLAN, *supra* note 91.

agriculture into an existing plan distinguishes between rural agriculture, a tool for conserving large tracts of open space, and agriculture in developed areas. The San José General Plan and the Madison Comprehensive Plan use terms like “rural agriculture” and “urban agriculture” to provide a similar bifurcation of agriculture.¹¹⁵

For its part, the Madison Comprehensive Plan defines the term “urban agriculture” but does not define traditional or non-urban agriculture.¹¹⁶ The San José General Plan distinguishes between the meaning of “rural” and “urban” agriculture through the Greenline/Urban Growth Boundary.¹¹⁷ Rural agricultural goals, policies, and implementation actions in the San José General Plan work in concert with the Greenline/Urban Growth Boundary. The Greenline/Urban Growth Boundary separates lands “where urban services can efficiently be provided” from lands “that are intended to remain permanently rural in character.”¹¹⁸ This distinction is very similar to the Comprehensive Plan’s vision of continuously concentrating amenities and development into Complete Neighborhood Character Districts while keeping Rural Area Character Districts available for open spaces, wildlife habitat, and wildlife movement.¹¹⁹

However, the Comprehensive Plan uses only the more general term “agriculture” and does not distinguish between rural and urban forms of agriculture. No definition is provided for this term, and it is used only in the context of conserving significant open spaces. To support small-scale agriculture, current and new Policies, Strategies, and Character Defining Features of the Comprehensive Plan should recognize the different environments in which small-scale agriculture can occur and delineate their exact locations. The Comprehensive Plan could use the terms *Rural Agriculture* and *Urban Agriculture*, like other comprehensive plans. Alternatively, the plan could use its two categories of Character Districts—Rural Areas and Complete Neighborhoods—to categorize agriculture.

In addition to continuing to recognize agriculture in its traditional Comprehensive Plan sense as a tool for conserving open spaces, *Rural Area Agriculture* could recognize and encourage small-scale agricultural activities. *Complete Neighborhood Agriculture* could explicitly recognize potentially successful small-scale agricultural activities in developed settings. Regardless of the route, the Comprehensive Plan should replace language broadly referencing agriculture with some version of *Rural Agriculture* and *Urban Agriculture*. This will better guide those obligated to

115. SAN JOSÉ PLAN, *supra* note 72, ch. 5 at 18; MADISON PLAN, *supra* note 91, at 180.

116. MADISON PLAN, *supra* note 91, at 180.

117. SAN JOSÉ PLAN, *supra* note 72, ch. 1 at 24, ch. 6 at 29.

118. *Id.* ch. 6 at 29.

119. COMPREHENSIVE PLAN, *supra* note 18, at CV-2-5.

fulfill the policies and strategies of the Comprehensive Plan on how to support small-scale agriculture.

Moreover, each category of the Comprehensive Plan should develop definitions and standards for small-scale agricultural practices to meet the community's needs. For example, the City of Madison developed a strategy under which an implementing action recommends "[e]stablish[ing] guidelines for sustainable agricultural best practices" and defines the term "sustainable agriculture" within the context of the City.¹²⁰ Further examples of small-scale agricultural practices in other community comprehensive plans include farmer's markets, community gardens, school gardens, backyard gardens, greenhouses, orchards, rooftop gardens, animal husbandry, beekeeping, living walls, vertical gardens, edible landscaping, and backyard gardens.¹²¹ The Comprehensive Plan is a policy document containing general visions, goals, objectives, and methods. Therefore, Teton County and the Town of Jackson should request that another entity develop definitions and standards for small-scale agriculture. Moreover, the County and Town should also request that an entity with regulatory authority develop a framework for empowering small-scale agriculture.

3. Include Agricultural Categories in Character Districts

The Comprehensive Plan should update Character Districts to better reflect small-scale agriculture as a category in Character Districts. This includes the Character Defining Feature of Agriculture assignable to a Character District's Subarea. In the maps of the County and Town included in the Comprehensive Plan, Agriculture as a Character Defining Feature is depicted by a map symbol.¹²² As explained in Section I(A), the Subareas with this Character Defining Feature are typically located in the rural areas of Teton County that could conserve open space. Further, the Agriculture Neighborhood Form is limited—parcels with this Neighborhood Form must be 70 or more acres.¹²³ The current structure of Agriculture as a Character Defining Feature and Neighborhood Form supports agriculture's role of conserving open space but does not acknowledge the spectrum of small-scale agricultural production activities.

For Agriculture as a Character Defining Feature, the Comprehensive Plan could retain a single map symbol for Agriculture. The Comprehensive Plan could then differentiate between Agriculture for a Rural Area Character District and Agriculture for a Complete Neighborhood Character District

120. MADISON PLAN, *supra* note 91, at 98, 179.

121. *Id.*; SAN JOSÉ PLAN, *supra* note 72, ch. 6 at 18; KING COUNTY PLAN, *supra* note 83, at 3-37.

122. COMPREHENSIVE PLAN, *supra* note 18, at IV-8.

123. *Id.* at IV-10.

where the Comprehensive Plan first introduces map symbols. The Plan could also maintain the Agriculture Neighborhood Form and its features as is. Doing so would provide consistency with the existing Comprehensive Plan. Then, to better support small-scale agriculture, Neighborhood Forms could list small-scale agriculture as a special consideration, which would reflect the spectrum of environments where small-scale agriculture could exist.

4. Integrate Amended and New Food System Policies and Strategies Under Existing Chapters

Integrating food system policies and strategies under existing chapters in the Comprehensive Plan provides an alternative to a new chapter focused on promoting a community food system. A brief summary detailing where the Comprehensive Plan incorporates food systems-related policies would support this multi-chapter approach. Other community comprehensive plans support small-scale agriculture through this approach in some manner, usually with the bulk of their policies and strategies located in one main element and a few others located elsewhere. As shown in Section I(C)(1)(4), these elements typically relate to land use, environmental sustainability, transportation, economic development, and housing.¹²⁴ The Comprehensive Plan does not currently include an in-depth discussion of agriculture found in other comprehensive plans; however, it does minimally integrate agriculture into existing chapters.¹²⁵ This multi-chapter approach could better support small-scale agricultural production. Additionally, the Comprehensive Plan could amend chapters that do not currently mention agriculture to better support small-scale agricultural production.

a. Amend Existing Policies and Strategies Under Chapter 1

Chapter 1 of the Comprehensive Plan (Stewardship of Wildlife, Natural Resources[,], and Scenery) currently references agriculture,¹²⁶ but it could better support small-scale agriculture. As discussed in Section I(A) of this Article, Chapter 1 of the Comprehensive Plan supports agriculture through Policy 1.4.b, Policy 1.4.c, and Strategy 1.4.S.2.¹²⁷ The Policies and Strategy in Chapter 1 of the Comprehensive Plan incentivize agriculture as a tool for conserving open space. For example, Policy 1.4.b calls for regulations that

124. See discussion *infra* Subsection I(C)(4)(b) (noting that other comprehensive plans implement policies that support small-scale agriculture in elements related to sustainability, transportation, land use, housing, and economic development).

125. See COMPREHENSIVE PLAN, *supra* note 18, at CV-1-10 (explaining that Principle 1.4 aims to use agriculture “to protect open space from development while providing active stewardship of the land”).

126. *Id.* at CV-1-2.

127. *Id.* at CV-1-10, CV-1-13.

encourage agriculture, stewardship of agricultural lands, and incentives to support agriculture as a means of conserving open space.¹²⁸ This policy supports activities that use large tracts of open space, like ranching, but does not explicitly support small-scale agriculture, which could occur on these sites. Chapter 1 should adjust these policies and its strategy to support both large-acreage operations and small-scale agricultural production.

In Section I(B), this Article highlights Policies R-659, R-661a, R-674, and R-657 of the King County Comprehensive Plan. These policies give guidance for developing programs to: reduce barriers and incentivize operations to contribute to local food production; understand constraints and resource availability for these operations; support stakeholders with programs assisting small-scale commercial farmers; and train farmers and giving them access to farmland. The following addition to Policy 1.4.b, which uses sample language found in the King County Comprehensive Plan and the Policy's existing language,¹²⁹ could better support small-scale agriculture:

The County will evaluate the impacts of its regulations on small-scale agriculture in Rural Area Character Districts that conserve open space and continue to provide exemptions to requirements, including exemptions for small-scale agricultural operations. The County will also explore other incentives to support and encourage Rural Area agriculture that include small-scale agriculture. The County should work with farmers and ranchers to better understand the constraints facing small-scale agriculture in Rural Area Character Districts. The County will develop programs and support the work of other stakeholders to equitably assist small-scale agriculture commercial farmers in these open space areas, including but not limited to research, education, and training programs that assist commercial farmers in getting started, gaining access to farmland, and developing successful marketing methods.

The following strategy could achieve Principle 1.4, discussed in detail in Section I(A) of this Article: *Develop and support programs with equitable access that assist small-scale commercial farmers.* Another strategy for Principle 1.4 could require an inventory of potential small-scale agricultural sites. For example, the City of Madison Comprehensive Plan, highlighted in Section I(B) of this Article, identifies opportunities for local food production.

128. *Id.* at CV-1-10.

129. KING COUNTY PLAN, *supra* note 83, at 3-63, 3-68.

Madison’s policy encourages the creation of a map to identify current agricultural properties and determine areas with future potential for food production.¹³⁰ Principle 1.4 could incorporate a similar strategy for Rural Area Character Districts within Jackson and Teton County.

As Section I(C)(2) of this Article discussed, the Comprehensive Plan should develop definitions and standards for small-scale agricultural practices.¹³¹ An additional strategy for Principle 1.4 should state: *Evaluate and update the Teton County and Town of Jackson Land Development Regulations to promote and allow sustainable small-scale agricultural practices and activities in Rural Area Character Districts, including but not limited to defining each agricultural activity, developing standards for each activity, and establishing guidelines for alternative agriculture best practices.* The Comprehensive Plan should adopt the City of Madison’s definition of sustainable agriculture.¹³² Lastly, Policy 1.4.c and Strategy 1.4.S.2 should include terms distinguishing categories of agricultural activities.

b. Amend Existing Policies and Strategies and Develop New Food System Policies and Strategies for Chapter 3

Chapter 3 of the Comprehensive Plan could also better incorporate policies and strategies for small-scale agricultural production. To preserve habitat and open space, Chapter 3 highlights a goal of encouraging at least 60% of future growth in Complete Neighborhoods instead of Rural Areas.¹³³ However, terms that encourage agriculture are used only to refer to Rural Area Character Districts. Meanwhile, terms like “nonresidential development not associated with agriculture” are used for Complete Neighborhood Character Districts.¹³⁴ This approach treats small-scale agricultural production activities as a land use incompatible with Complete Neighborhoods. Policies and strategies can incorporate language that more directly supports small-scale agricultural production in Complete Neighborhood Character Districts.

For example, Principle 3.2 of the Comprehensive Plan includes Policy 3.2.b, which encourages nonresidential development in Complete Neighborhoods.¹³⁵ This Policy states: “Complete Neighborhoods should

130. MADISON PLAN, *supra* note 91, at 98.

131. *See* discussion *supra* Subsection I(C)(2) (recommending that the Comprehensive Plan define agricultural terms).

132. *See* MADISON PLAN, *supra* note 91, at 179 (defining sustainable agriculture).

133. COMPREHENSIVE PLAN, *supra* note 18, at CV-2-2.

134. *Id.* at CV-2-7.

135. *Id.* at CV-2-7 to -8.

contain locally oriented nonresidential uses such as restaurants, convenience retail, childcare, schools, and other services oriented toward neighborhood residents. . . .”¹³⁶ Small-scale agricultural production activities could fall within a catch-all provision of the Policy.¹³⁷ However, the Policy could include the term *small-scale agriculture* within the list of locally oriented nonresidential uses to better support the term’s use in the section of the plan governing Complete Neighborhood Character Districts.

Policy 3.2.e recognizes the importance of public spaces for the Town of Jackson and Teton County.¹³⁸ This policy could be amended to support the integration of small-scale agriculture in public spaces. This approach is similar to the City of Madison’s view of agriculture as a form of visually engaging greenspace that can promote biodiversity and public health.¹³⁹ Similar to Madison, an amended policy for the Comprehensive Plan could state: *Integrating agriculture activities like living walls, vines, green roofs, and other small-scale agriculture in the design of projects will be encouraged to create unique and visually engaging public spaces.*

In addition to these amendments, a policy focused solely on small-scale agricultural production would better support its use. Following San José General Plan Policy LU-12.8 and King County Comprehensive Plan Policies R-517 and U-123a, this policy could acknowledge a full range of opportunities for small-scale agriculture. The Town of Jackson and Teton County should better acknowledge the range of opportunities for small-scale agriculture by adding the following policy:

Teton County shall support the efforts to integrate and/or maintain sustainable small-scale agricultural production within Complete Neighborhoods as infill and redevelopment projects aimed at enhancing the desired character of Complete Neighborhoods. Teton County shall equitably allow and support small-scale agriculture projects throughout publicly and privately owned property, including in residential and commercial areas.

136. *Id.* at CV-2-8.

137. The catch-all provision encourages “other services oriented toward neighborhood residents.” *Id.*

138. *Id.* at CV-2-9. Policy 3.2.e is titled “Promote quality public spaces in Complete Neighborhoods.” *Id.*

139. See MADISON PLAN, *supra* note 91, at 93 (“Madison should support integration of vegetation into the built environment. . . . [Such methods] support biodiversity and increase equitable access to the myriad positive health benefits associated with contact with nature.”). EPA describes the “built environment” as “the man-made or modified structures that provide people with living, working, and recreational spaces.” *Basic Information About the Built Environment*, EPA, <https://www.epa.gov/smm/basic-information-about-built-environment> (last updated Feb. 27, 2023).

This update to Principle 3.2 would achieve the goals of encouraging more small-scale agriculture in the County.

In Section I(C)(4)(a), which suggests updates to Principle 1.4, this Article recommends that the strategy *evaluate and update the Teton County and Town of Jackson Land Development Regulations to promote and allow sustainable small-scale agricultural practices and activities in Rural Area Character Districts, including but not limited to defining each agricultural activity, developing standards for each activity, and establishing guidelines for alternative agriculture best practices*. Principle 3.2 could adopt this recommendation: *Evaluate and update the Teton County and Town of Jackson Land Development Regulations to promote and allow small-scale agricultural practices and activities in Complete Neighborhood Character Districts, including but not limited to defining each agricultural activity, developing standards for each activity, and establishing guidelines for alternative agriculture best practices*.

Additionally, the recommended amendment to Policy 1.4.b could be another strategy for Principle 3.2.¹⁴⁰ Based on the recommendations, a new strategy for Principle 3.2 could state:

The County will identify the barriers and constraints facing small-scale agriculture in Complete Neighborhoods. The County will develop programs and support the work of other stakeholders to assist small-scale agriculture in Complete Neighborhoods by implementing infill and redevelopment projects, including but not limited to research, education, and training programs that are equitably accessible.

The proposed amendment directs the County to coordinate with farmers to identify the barriers and constraints facing small-scale agriculture in Complete Neighborhood Districts, develop programs and support the work of other stakeholders that assist small-scale agriculture commercial farmers, and develop an inventory and map of properties where food production could be encouraged as a land use.¹⁴¹

Additionally, exemptions and incentives in Chapter 1 could support small-scale agriculture in Complete Neighborhoods. The existing language of Policies 1.4.b and 1.4.c and Strategy 1.4.S.2 encourages exemptions and

140. See discussion *supra* Subsection I(C)(4)(a) (recommending that Principle 1.4 define sustainable agriculture, develop programs that support small-scale farmers, and identify opportunities for local food production).

141. See discussion *supra* Subsection I(C)(4)(a) (recommending that Principle 1.4.b be amended “to support both large acreage operations and small-scale agricultural production”).

incentives for “agricultural conservation of open space.”¹⁴² The above recommendations for Chapter 1 suggest that these exemptions and incentives additionally consider small-scale agricultural production in Rural Areas. An additional similar strategy for Principle 3.2 should state: *Evaluate and update agricultural exemptions and incentives to encourage small-scale agricultural production in Complete Neighborhoods.*

c. Integrate New Food Policies and Strategies in Chapter 5

Chapter 5 (Local Workforce Housing) could better incorporate policies for small-scale agriculture. Due to the high cost of living in Teton County, especially the Town of Jackson, many workers commute from outside the County, where housing is more affordable.¹⁴³ In response, Teton County has dedicated an entire chapter of the Comprehensive Plan to this issue.¹⁴⁴ The Chapter’s goal is to “ensure a variety of workforce housing opportunities exist so that at least 65% of those employed locally also live locally.”¹⁴⁵ Teton County wants to preserve the interactions of diverse residents with similar values, and local residents are likely to invest in the community to maintain those values.¹⁴⁶

The San José General Plan recognizes new development as an opportunity for urban agriculture through Policies LU-12.2 and LU-12.7.¹⁴⁷ By adopting language similar to San José’s Plan, a strategy for Chapter 5 of the Comprehensive Plan could state: *Encourage developers to incorporate alternative and small-scale agricultural activities like agrihoods, residential gardens, living walls, or edible landscaping on new and existing workforce housing that produce ecologically sound food for residents.* Incorporating small-scale agriculture into affordable housing would provide seasonal workforce and year-round residents a source of healthy and local food while encouraging community development and interaction.

* * *

This Article offers recommendations developed by examining the Comprehensive Plan and other communities’ comprehensive plans. The Article first recommended adding a new chapter dedicated to Teton County’s community food system, with a chapter goal, principles, policies, strategies,

142. COMPREHENSIVE PLAN, *supra* note 18, at CV-1-10, CV-1-13.

143. *Id.* at CV-3-3.

144. *Id.* at CV-3-2.

145. *Id.*

146. *Id.* The “Implement the Workforce Housing Action Plan” can be found under Policy 5.4.a. *Id.* at CV-3-8.

147. SAN JOSÉ PLAN, *supra* note 72, ch. 6 at 18–19.

and indicators. Alternatively, it recommended integrating policy supporting small-scale agriculture into existing chapters by amending existing sections and adding new sections.

For either approach, this Section of the Article recommends developing specific categories of agriculture to recognize the different contexts in which small-scale agriculture can occur. Mirroring the two categories of Character Districts in the Comprehensive Plan,¹⁴⁸ these recommended categories include *Rural Area Agriculture* and *Complete Neighborhood Agriculture*.

Any discussion of agriculture should recognize these categories, whether they are incorporated into principles, policies, strategies, Character Defining Features, Neighborhood Forms, or possible projects. These recommendations, though not comprehensive, are likely to have the greatest impact on supporting small-scale agriculture through the Comprehensive Plan. Teton County stakeholders should review the entire Comprehensive Plan for further opportunities to explicitly support small-scale agricultural production.

The County could implement these recommendations by updating the plan update and taking corrective actions. The Comprehensive Plan requires a plan update once the growth rate of the County reaches 7%.¹⁴⁹ Due to recent growth trends, the Comprehensive Plan estimates the County will meet the 7% threshold shortly.¹⁵⁰ If the evaluation reveals that growth is not occurring in suitable locations or that growth is not providing workforce housing, then the Comprehensive Plan must be updated.¹⁵¹ Further, if growth is not meeting the requirements of the plan, the County must consider corrective actions, like amending the community's goals, amending policies or tools, and creating new partnerships.¹⁵² The County could include policies and strategies for small-scale agricultural production through such an update to the Comprehensive Plan.

II. TETON COUNTY AND TOWN OF JACKSON LAND DEVELOPMENT REGULATIONS (LDRS)

Two sets of LDRs exist for Teton County—the Teton County LDRs¹⁵³ and the Town of Jackson LDRs.¹⁵⁴ The Teton County LDRs govern the

148. See COMPREHENSIVE PLAN, *supra* note 18, at ES-6 (dividing Character Districts into two categories—Rural Areas and Complete Neighborhoods).

149. *Id.* at Plan AV-4.

150. *Id.*

151. *Id.* at AV-5.

152. *Id.* at AV-6.

153. TETON CNTY., WYO., TETON COUNTY LAND DEVELOPMENT REGULATIONS art. 1, div. 1.3 (2023) [hereinafter TETON COUNTY LDRs].

154. JACKSON, WYO., LAND DEVELOPMENT REGULATIONS art. 1, div 1.3 (2023) [hereinafter JACKSON LDRs].

unincorporated lands of Teton County, while the Town of Jackson LDRs govern the incorporated Town of Jackson.¹⁵⁵ Planners organized the LDRs around three focus areas: (1) “Current Planning” or “day-to-day processing of planning permits, resort planning, physical development review[,] and general public assistance”; (2) code enforcement; and (3) “Long-Range Planning,” which “focuses on the broader picture items like updates to the Comprehensive Plan, Teton County [LDRs], and amendments to the zoning map.”¹⁵⁶

Although separate regulatory documents, both sets of LDRs are organized under nine articles with the same titles.¹⁵⁷ The LDRs provide standards for how a landowner can develop their site and explain the processes for compliance. The LDRs provide a tool for implementing the Comprehensive Plan. The Town Council of the Town of Jackson (Town Council) and the Board of County Commissioners of Teton County (BCC) have legislative discretion to amend the LDRs.¹⁵⁸ Decisionmakers must consider the Comprehensive Plan when amending LDRs.¹⁵⁹ Amendments to LDRs must improve the implementation of the Comprehensive Plan, should develop predictable regulations, and should build coordination between Teton County and the Town of Jackson.¹⁶⁰

Although the County’s legislative discretion is not controlled by one factor,¹⁶¹ the Comprehensive Plan influences the LDRs. If the Comprehensive Plan is updated to better support small-scale agricultural production, the LDRs are obligated to consider these new provisions.

155. TETON COUNTY LDRS, *supra* note 153, art. 1, div. 1.5.2.A; JACKSON LDRS, *supra* note 154, art. 1, div. 1.5.2.A.

156. *Planning Division*, TETON CNTY., WYO., <https://www.tetoncountywy.gov/559/Planning-Division> (last visited Dec. 29, 2023).

157. These articles are titled as follows: “Article 1. General Provisions,” “Article 2. Complete Neighborhood Zones,” “Article 3. Rural Area Zones,” “Article 4. Special Purpose Zones,” “Article 4. Special Purpose Zones,” “Article 5. Physical Development Standards Applicable in All Zones,” “Article 6. Use Standards Applicable in All Zones,” “Article 7. Development Option and Subdivision Standards Applicable in All Zones,” “Article 8. Administrative Procedures,” and “Article 9. Definitions.” TETON COUNTY LDRS art. 1, div. 1.4; JACKSON LDRS art. 1, div. 1.4.

158. TETON COUNTY LDRS, *supra* note 153, art. 1, div. 1.2; JACKSON LDRS, *supra* note 154, art. 1, div. 1.2.

159. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.7.1.A; JACKSON LDRS, *supra* note 154, art. 8, div. 8.7.2.A.

160. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.7.1.C; JACKSON LDRS, *supra* note 154, art. 8, div. 8.7.2.C.

161. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.7.1.C; JACKSON LDRS, *supra* note 154, art. 8, div. 8.7.2.C.

A. Components of Teton County and Town of Jackson LDRs Supporting and Challenging Small-Scale Agricultural Production

Twenty-five zoning districts exist under the Teton County LDRs, and 28 zoning districts exist under the Town of Jackson LDRs.¹⁶² The County provides maps identifying the boundaries of these zones.¹⁶³ Through the County maps, a landowner can identify which zoning district(s) their land falls within.¹⁶⁴ To reflect the Comprehensive Plan, the LDRs create “Complete Neighborhood Zones”¹⁶⁵ and “Rural Area Zones,”¹⁶⁶ which are both further divided into “Character Zones”¹⁶⁷ and “Legacy Zones.”¹⁶⁸ Every zone has a “Use Schedule” that specifies the principal, accessory, and temporary uses allowed within the zone.¹⁶⁹ Land uses are broken down into five categories: principal, incidental, accessory, primary, and temporary.¹⁷⁰

A “principal use” is a “use that may exist as the sole use of the property,” but a property can have more than one principal use.¹⁷¹ There are eight categories of principal uses in Teton County and the Town of Jackson.¹⁷² One of those categories is “Open Space Uses,” defined as “the enjoyment or maintenance of land that occurs predominantly outside of any structure.”¹⁷³ Agriculture falls within this category. Both LDRs define agriculture as “the

162. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

163. *Teton County, WY: Town of Jackson Zoning*, TETON CNTY., WYO., <https://gis.tetoncountywy.gov/portal/apps/instant/sidebar/index.html?appid=be131ab314a84391b8e14c3ba84320c7> (last visited Dec. 29, 2023); *Teton County, WY: County Zoning*, TETON CNTY., WYO., <https://gis.tetoncountywy.gov/portal/apps/instant/sidebar/index.html?appid=38556c6be8d8403a9e8a7d34b16ef79f> (last visited Dec. 29, 2023).

164. *Teton County, WY: County Zoning*, *supra* note 163.

165. TETON COUNTY LDRS, *supra* note 153, art. 2, div. 2.1; JACKSON LDRS, *supra* note 154, art. 2, div. 2.1.

166. TETON COUNTY LDRS, *supra* note 153, art. 3, div. 3.1; JACKSON LDRS, *supra* note 154, art. 3, div. 3.1.

167. *See* TETON COUNTY LDRS, *supra* note 153, art. 2, div. 2.1 (explaining Complete Neighborhood Character Zones in Teton County); *see also* JACKSON LDRS, *supra* note 154, art. 2, div. 2.1.1 (showing Complete Neighborhood Character Zones in the Town of Jackson); *See* TETON COUNTY LDRS, *supra* note 153, art. 2, div. 2.2; JACKSON LDRS, *supra* note 154, art. 2, div. 2.1.1 (exemplifying Rural Area Character Zones).

168. *See* TETON COUNTY LDRS, *supra* note 153, art. 2, div. 2.3 (showing Complete Neighborhood Character Zones in Teton County); *see also* JACKSON LDRS, *supra* note 154, art. 2, div. 2.1.2 (showing Complete Neighborhood Legacy Zones in the Town of Jackson).

169. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.

170. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.A; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.A.

171. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.B.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.B.1.

172. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.B.1(a)-(h); JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.B.1(a)-(h).

173. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.3.A.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.3.A.1.

farming or ranching of land,” which includes cultivation of the soil; production of forage, crops, or timber; growing of ornamental or landscaping plants; greenhouses; and rearing, feeding, and management of livestock.¹⁷⁴ Ten out of 14 Teton County zoning districts and seven out of 19 Town of Jackson zoning districts allow agriculture as principal use.¹⁷⁵

Principal uses also include “incidental uses.” An incidental use is “commonly integrated into the operation of a principal use, even if the incidental use would be classified as a different use if it were separated.”¹⁷⁶ An incidental use can only exist for a given property if there is an established and recognized principal use.¹⁷⁷

An “accessory use,” on the other hand, “constitutes a minority of the use or character of the property and is secondary and subordinate to another use of the same property, but which is not an incidental use.”¹⁷⁸ An accessory use may “only be permitted in association with an active, [principal] primary use designated for the accessory use.”¹⁷⁹ The LDRs do not explicitly allow agricultural production as an accessory use.¹⁸⁰

174. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.3.B; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.3.B.

175. TETON COUNTY LDRS, *supra* note 153, art. 2, div. 2.3.1.C; div. 2.3.2.C; div. 2.3.5.C; art. 3, div. 3.2.2.C; div. 3.2.3.C; div. 3.2.4.C; div. 3.3.1.C; div. 3.3.3.C; div. 3.3.4.C; div. 3.3.5.C; JACKSON LDRS, *supra* note 154, art. 2, div. 2.2.2.C; div. 2.2.3.C; div. 2.2.4.C; div. 2.2.5.C; div. 2.2.5.C; div. 2.3.1.C.

176. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.B.2; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.B.2.

177. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.B.2; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.B.2.

178. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.B.3; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.B.3.

179. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11.A; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11.A. “Primary Uses” are Principal Uses associated with an accessory use. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11.A.2.a; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11.A.2.a.

180. *See* TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11; *see also* JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11. One accessory use that could support small-scale agriculture is the Home Occupation accessory use, defined as “an accessory nonresidential use conducted entirely within a residential unit or on-site structure accessory to the residential unit. The intent of a home occupation is to give small, local businesses a place to start. Home occupations are intended to be at a residential scale; once they grow beyond a certain size they can no longer be characterized as home occupations.” TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11.D; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11.D. Another potential for an accessory use to allow for small-scale agriculture is the Home Business accessory use, defined as “an accessory nonresidential use conducted in conjunction with a residential use, on the site of the residential use, in which employees are employed on-site. The intent of a home business is to give small, local businesses a place to start. Home businesses are intended to be at a residential scale; once they grow beyond a certain size they can no longer be characterized as home businesses.” TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11.E.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11.E.1. However, none of the listed activities in each accessory use include food production. Further, the activity must be undertaken by a person residing within the dwelling which could eliminate alternative and small-scale agricultural production activities like land-sharing programs.

The third type of use is a “temporary use,” which “is a use established for a fixed period of time.”¹⁸¹ As with accessory uses, there are no temporary uses that directly support small-scale agricultural production activities.¹⁸²

The LDRs contain a catch-all provision, “Use Not Listed,” which prohibits any use not explicitly listed in the Use Schedule unless there is a “similar use determination.”¹⁸³ Similar use determination means the “Planning Director determines the proposed use is sufficiently similar to one of the uses defined in [Division 6.1 Allowed Uses]. . . . If a use is determined to be similar, it shall be an allowed use with the same permissions and restrictions as the use to which it was determined to be similar.”¹⁸⁴ A similar use determination could be applied to a proposed small-scale agricultural production practice not explicitly found within the Agriculture Principal Use definition under Section 6.1.3.B.1.¹⁸⁵ Alternatively, the small-scale agricultural production practice could be assessed as similar to one of the listed accessory uses, specifically the Home Occupation or Home Business accessory use.¹⁸⁶ However, this determination is not guaranteed or available if these uses are not already listed on the zoning district’s Use Schedule.¹⁸⁷

The Teton County and Town of Jackson LDRs also present implications for small-scale agriculture in Article 4. Only two special purpose zoning districts in both LDRs have Use Schedules, each allowing agriculture as a principal use.¹⁸⁸ The remaining special purpose zoning districts have master plans.¹⁸⁹ These districts include Planned Resort Zones with a Planned Resort’s Master Plan and Planned Unit Development (PUD) Zones with a PUD Master Plan.¹⁹⁰ The possibility of small-scale agricultural production in these Planned Resort Zones or PUD Zones would depend on the specific language within each master plan.

181. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.12.A.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.12.A.1.

182. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.12; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.12.

183. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.D; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.D.

184. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.E.

185. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.3.B.1; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.3.B.1.

186. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11.D, 6.1.11.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11.D., 6.1.11.E.

187. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

188. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

189. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

190. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.3.1.A.3, div. 4.4.1.D; JACKSON LDRS, *supra* note 154, art. 4, div. 4.3.1.D.1, art. 8, div. 8.7.4.B.

Many uses—whether principal, accessory, or temporary—require use permits. A use permit is not required for an agriculture principal use in Teton County zoning districts.¹⁹¹ However, the Town of Jackson zoning districts allowing agriculture as a principal use do require a “Basic Use Permit.”¹⁹² A Basic Use Permit “permits uses that are allowed by right, but require administrative review to ensure compliance with the standards of these LDRs.”¹⁹³ A site can have multiple permitted uses, including an agricultural use, and “the entire site may be used to meet minimum site area requirements for each use.”¹⁹⁴

Regardless of permit requirements, all uses must comply with physical development standards.¹⁹⁵ Each zone provides standards for structure locations, floor area, structure height, fencing, and exterior materials.¹⁹⁶ The LDRs define a “structure” as “any building, bridge, fence, pole, tower, deck, liquid storage tank, gazebo, pier, dam, culvert, satellite dish, personal wireless telecommunication facilities, or other construction or erection greater than [four] feet in height.”¹⁹⁷ Since small-scale agricultural production activities can utilize a variety of buildings and structures, like greenhouses or vertical gardens, to support production, it is important for agricultural producers to consider these standards.

Additionally, a zoning district’s Use Schedule regulates structures.¹⁹⁸ The structure’s use must fall within one of the principal, accessory, or temporary uses allowed in the zoning district.¹⁹⁹ If the small-scale agricultural production does not fit within one of the listed uses, the structure must be a common use that could qualify it as an incidental use to an allowed principal use.²⁰⁰ Further, though the definition of incidental use would allow certain types of small-scale agriculture, such as home gardening for personal consumption, it could be inadequate for other types, especially agricultural

191. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E.

192. JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.B, div. 6.1.1.F.

193. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.4.1.A; JACKSON LDRS, *supra* note 154, art. 8, div. 8.4.1.A.

194. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.4.4.D; JACKSON LDRS, *supra* note 154, art. 9, div. 9.4.4.D.

195. Some exemptions are provided for agricultural uses. TETON COUNTY LDRS, *supra* note 153, art. 3, div. 3.2.1.B.3; art. 5, div. 5.1.1.D; art. 6, div. 6.1.3.B.ii.; art. 7, div. 7.7.4.D.2; JACKSON LDRS, *supra* note 154, art. 5, div. 5.7.1.D.

196. TETON COUNTY LDRS, *supra* note 153, art. 5, div. 5.3.2.G.1; JACKSON LDRS, *supra* note 154, art. 1, div. 1.4.

197. TETON COUNTY LDRS, *supra* note 153, art. 9.5; JACKSON LDRS, *supra* note 154, art. 9.5.

198. Telephone Interview with K. Malone, Senior Long-Range Planner, Teton Cnty., Wyo. (Nov. 3, 2021).

199. *Id.*

200. *Id.*

practices that, though suitable for the unique spaces they occupy, might not be considered “commonly integrated into the operation of a principal use.”²⁰¹

Another physical development standard to consider is the ratio of developed land versus vegetated or landscaped areas. Some zones accomplish the ratio through the “site development amount,” i.e., the maximum square footage allowed in a site.²⁰² Both LDRs define “Site Development” as “the area of the site that is physically developed . . . includ[ing] the area of the site that is covered by buildings, structures, impervious surfaces, porches, . . . and regularly disturbed areas such as corrals, outdoor storage, and stockpiles.”²⁰³ Notably, site development does not include the cultivation of soil for agricultural use.²⁰⁴

Other zones satisfy the development standard through a landscape surface ratio.²⁰⁵ Both LDRs define “landscape surface area” as “the area of a site that is covered by natural vegetation, trees, or landscaped areas such as turf grass, planted trees and shrubs, mulch, or xeriscape. Any area of a site meeting the definition of site development is not landscape surface area.”²⁰⁶ This language means landscaped surface areas include the soil cultivated for agriculture use. However, the LDRs require that “[a]ll landscaped areas proposed for vegetation shall be planted with lawn, pasture, or native groundcover unless such vegetation is already fully established.”²⁰⁷ Pasture or native ground cover categories support agricultural uses like livestock grazing, but other agricultural products would not fit these limited vegetation types.²⁰⁸ Currently, these three categories do not support small-scale agricultural production as edible landscaping.

201. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.2.B.2; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.2.B.2.

202. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.4.4.A; JACKSON LDRS, *supra* note 154, art. 9, div. 9.4.4.A.

203. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.5; JACKSON LDRS, *supra* note 154, art. 9, div. 9.5.

204. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.5; JACKSON LDRS, *supra* note 154, art. 9, div. 9.5.

205. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.4.6.D; JACKSON LDRS, *supra* note 154, art. 9, div. 9.4.4.B.

206. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.5; JACKSON LDRS, *supra* note 154, art. 9, div. 9.5.

207. TETON COUNTY LDRS, *supra* note 153, art. 5, div. 5.5.4.A; JACKSON LDRS, *supra* note 154, art. 5.5.4.A.

208. TETON COUNTY LDRS, *supra* note 153, art. 5, div. 5.5.4.A; JACKSON LDRS, *supra* note 154, art. 5.5.4.A.

B. Other Community LDRs Supporting Small-Scale Agricultural Production

Many communities across the country support small-scale agriculture through their LDRs, also known as municipal zoning and land use codes. These communities often provide such support to small-scale agriculture by incorporating agricultural zoning districts where agricultural activities and associated structures are the only allowed use. Alternatively, communities will include agricultural activities as allowed uses in many different zoning districts.²⁰⁹ The Teton County and Town of Jackson LDRs list agricultural activities as allowed uses.²¹⁰ The following analysis examines other communities that also permit agricultural activities as allowed uses.

Small-scale agricultural production activities include hydroponics, aquaculture, aquaponics, animal husbandry, and crop agriculture.²¹¹ Crop agriculture includes categories of front yard gardening, community gardens, market gardens, urban farms, and season extenders.²¹² Communities define these terms; list them as allowed uses in zoning districts; and mandate compliance with specific conditions, permits or licenses, and restrictions.²¹³

Alternatively, communities may define small-scale agricultural production activity. Communities often use consistent terminology to define small-scale agricultural activities.²¹⁴ For example, communities will consistently use the term “aquaponics” or “beekeeping” without any interchangeable term.²¹⁵ However, communities may use differing terminology to describe similar activities. Communities may use unique terms to encompass activities involving small-scale cultivation of crops or animal products by an individual, organization, or business with the primary purpose of growing food for sale.²¹⁶ Examples include “urban farms,” “market farms,” or “small-scale entrepreneurial agriculture.”²¹⁷

Some communities distinguish activities through size limits. For example, the City of Detroit distinguishes “urban garden” and “urban farm”

209. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

210. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

211. *See infra* Table 2 (providing examples of small-scale agriculture).

212. *See infra* Table 2 (defining various methods of urban agriculture).

213. TETON COUNTY LDRS, *supra* note 153, art. 1, div. 1.4; JACKSON LDRS, *supra* note 154, art. 1, div. 1.4.

214. TETON COUNTY LDRS, *supra* note 153, art. 9, div. 9.5; JACKSON LDRS, *supra* note 154, art. 9, div. 9.5.

215. *See infra* Table 2 (providing some examples of strictly defined agricultural terms); *see also* Christopher Kelly et al., *Bees in Urban and Suburban Districts*, SUSTAINABLE DEV. CODE, <https://sustainablecitycode.org/brief/pees-in-urban-and-suburban-districts/> (last visited Dec. 29, 2023) (discussing the various ways municipal codes govern beekeeping in developed areas).

216. *See infra* Table 2 (identifying the different ways communities define small-scale agriculture).

217. *Id.*

through acreage size, but both encompass cultivating food for commercial sale.²¹⁸ Some communities distinguish between non-commercial and commercial activities. For example, in Long Beach, California, the definition of “community garden” is “a plot of land where flowers, fruits, herbs, or vegetables are cultivated by individuals of a neighborhood (noncommercial activity).”²¹⁹ Sometimes communities do not provide definitions at all. Regardless of the specific approach, definitions are commonly provided for a given permitted small-scale agriculture practice. Table 2 provides examples of other communities’ small-scale agriculture terms and definitions.²²⁰

Table 2 *Definitions of Small-Scale Agricultural Production Activities*²²¹

<u>Term</u>	<u>Definition</u>	<u>Source</u>
Aquaculture	The cultivation of aquatic animals in a recirculating environment to produce whole fish that are distributed to retailers, restaurants and consumers.	Boston Zoning Code (2021)
Aquaponics	The symbiotic propagation of plants and fish in an indoor or outdoor recirculating environment that may result in the harvest of said plants and fish.	Zoning Ordinance of the City of Evanston (2021)
Aquaponics	The cultivation of fish and plants together in a constructed, recirculating system utilizing natural bacterial cycles to convert fish waste to plant nutrients, for distribution to retailers, restaurants and consumers.	Boston Zoning Code (2021)
Community Garden	An area of land managed and maintained by a group of individuals to	Zoning and Development

218. DETROIT, MICH., CODE § 50-16-421 (2019).

219. LONG BEACH, CAL., MUNICIPAL CODE § 21.15.605 (1995).

220. Most of the definitions provided in Table 2 are related primarily to plant-based agricultural production. However, these recommendations need not only focus on plant-based production methods. Definitions and standards (and all recommendations given in section C of this Article chapter) should apply to all relevant aspects of small-scale agricultural production, including animal husbandry, as relevant to Teton County stakeholders.

221. BOS., MASS., CODE § 89-2, (2021); EVANSTON, ILL., CODE OF ORDINANCES § 6-18-3 (2021); KANSAS CITY, MO., CODE § 88-312-02 (2021); PHILA., PA., CODE § 14-601(11) (2020); CLEVELAND, OHIO, CODE OF ORDINANCES § 336.02 (2021); SACRAMENTO, CAL. CODE, § 17.108.170 (2017).

	grow and harvest food and/or horticultural products for personal or group consumption or for sale or donation. A community garden area may be divided into separate garden plots for cultivation by one or more individuals or may be farmed collectively by members of the group. A community garden may include common areas (e.g., hand tool storage sheds) maintained and used by the group.	Code of the City of Kansas City, Missouri (2021)
Community Garden	An area managed and maintained by a group of individuals to grow and harvest food crops or non-food crops (e.g., flowers) for personal or group consumption, for donation, or for sale that is incidental in nature. A community garden area may be divided into separate garden plots or orchard areas for cultivation by one or more individuals or may be farmed collectively by members of the group. A community garden may include common areas (e.g., hand tool storage sheds) maintained and used by the group. Community gardens may be principal or accessory uses and may be located on a roof or within a building.	Philadelphia Code (2020)
Home Garden	A garden maintained by one or more individuals who reside in a dwelling unit located on the subject property. Food and/or horticultural products grown in the home garden may be used for personal consumption, and only whole, uncut, fresh food and/or horticultural products grown in a home garden may be donated or sold on-site. Row crops are not permitted in the	Zoning and Development Code of the City of Kansas City, Missouri (2021)

front yard of a residentially zoned and occupied property, except property zoned R-80, if whole, uncut fresh food and/or horticultural products grown in the home garden are donated or sold onsite. "Row crops" shall be defined as grain, fruit or vegetable plants, grown in rows, which are 24 inches or more in height. "Row crops" shall not mean cultivated or attended trees or shrubbery and shall not include grain, fruit or vegetable plants that are part of the front yard's borders, that extend no more than 8 feet from the side property lines or from the front of the principal building.

Hydroponics	The propagation of plants using a mechanical system designed to circulate a solution of minerals in water, for distribution to retailers, restaurants and consumers.	Boston Zoning Code (2021)
Market Garden	An area managed and maintained by an individual or group of individuals to grow and harvest food crops or non-food crops (e.g., flowers) for sale or distribution that is not incidental in nature. Market farms may be principal or accessory uses and may be located on a roof or within a building.	Philadelphia Code (2020)
Market Garden	Market garden means an area of land managed and maintained by an individual or group of individuals to grow and harvest food crops and/or non- food, ornamental crops, such as flowers, to be sold for profit.	City of Cleveland, Ohio Land Use Code (2021)
Neighborhood Garden	A principal use that provides space for people to grow plants for non-commercial purposes, such as	Zoning Ordinance of the City of

	beautification, education, recreation, or harvest, and is managed by a specific person or group responsible for maintenance and operations.	Evanston (2021)
Private Garden	A private food-producing garden that is accessory to the primary use of the site and which is located in the front yard, side yard, rear yard, rooftop, courtyard, balcony, fence, wall, windowsill or basement.	Sacramento City Code (2017)
Raised Bed	A method of cultivation in which soil is placed over a geotextile barrier, and raised and formed into three (3) to four (4) foot wide mounds. The soil may be enclosed by a frame generally made of untreated wood. Raised beds are not considered a Structure.	Boston Zoning Code (2021)
Vertical Agriculture	An exterior building wall or other vertical structure designed to support the growing of agricultural or horticultural crops.	Boston Zoning Code (2021)

In addition to definitions, a community's LDRs will list activities as an allowed use in all or some zoning districts. The activity can be a principal, accessory, or temporary use. A zone can allow the activity "by-right" or without special conditions or can limit the activity and require permits like a conditional use permit or special use permit.²²² For example, in Warrensburg, Missouri's Zoning Code, community gardens are permitted as principal uses by right in all residential districts and as a conditional use in the Central Business District.²²³ Like Teton County and the Town of Jackson, other communities have physical development standards (e.g., maximum height for buildings and setback requirements) that apply unless exempted.²²⁴

Many communities set specific standards for small-scale agricultural production. For example, urban agriculture is a permitted use under every

222. ANDREA VAAGE & GARY TAYLOR, IOWA STATE UNIV., MUNICIPAL ZONING FOR LOCAL FOODS IN IOWA: A GUIDEBOOK FOR REDUCING LOCAL REGULATORY BARRIERS TO LOCAL FOODS 4 (2020).

223. WARRENSBURG, MO., CODE OF ORDINANCES art. IV, § 27-200 (2022).

224. VAAGE & TAYLOR, *supra* note 222, at 61, 71.

zoning district in the City of Fort Collins Land Use Code, but it is only permitted if it is part of an approved site-specific development plan or meets the urban agriculture supplementary regulations.²²⁵ These supplementary regulations require an urban agriculture license from the City and set standards for urban agriculture.²²⁶ These regulations set standards for mechanized equipment, chemicals and fertilizers, trash and compost, maintenance, water conservation and conveyance, hoop houses, and impact mitigation.²²⁷

Additionally, if the activity exceeds half an acre in size or if the Director of Planning and Zoning determines there could be significant impact from the urban agriculture use, the Director can schedule a neighborhood meeting with notice.²²⁸ The City of Fort Collins Land Use Code governs the process for scheduling and providing notice for a neighborhood meeting.²²⁹ The purpose of these standards is “to allow for a range of urban agricultural activities at a level and intensity that is compatible with the City’s neighborhoods.”²³⁰

Setting agriculture-related standards for PUDs provides some communities with another tool to support agriculture more generally. Typically, PUDs have not adequately protected agricultural lands and other greenspaces.²³¹ However, some communities have developed PUD standards through their zoning and land use codes to better support natural resources.²³² One common mechanism requires a PUD to retain a certain amount of agricultural land or greenspace. This retention of greenspace incentivizes higher development densities and disincentivizes developing in open spaces. For example, the Town of Hinesburg, Vermont’s Zoning Regulations require PUDs to preserve a certain percentage of the site for greenspace, which includes agricultural land.²³³ Another approach is including urban agriculture as a desirable amenity within the PUD project.²³⁴ As an alternative to complying with applicable zoning regulations in a given district, Minneapolis allows noncompliant PUDs to provide certain site amenities.²³⁵ Site amenities include green roofs, on-site growing areas, and living walls.²³⁶

225. FORT COLLINS, COLO., LAND USE CODE art. 4, div. 4.28(B)(1)(a)(5) (2023).

226. *Id.* art. 3, div. 3.8.31(C)(1), (2).

227. *Id.* art. 3, div. 3.8.31(C)(2)(a)–(f), (j), (k).

228. *Id.* art. 3, div. 3.8.31(C)(3).

229. *Id.*; *see also id.* art. 2, div. 2.2.2(E); *see id.* art. 2, div. 2.2.6(A)–(C).

230. *Id.* art. 3, div. 3.8.31(B).

231. KEVIN NELSON ET AL., EPA, ESSENTIAL SMART GROWTH FIXES FOR RURAL PLANNING, ZONING, AND DEVELOPMENT CODES 13 (2012).

232. *See id.* at 15 (suggesting that strategically placed PUDs can protect natural features).

233. HINESBURG, VT., ZONING REGULATION CODE § 4.5.7(1)(a) (2023).

234. *See generally* NELSON ET AL., *supra* note 231, at 15, 41 (discussing PUDs and protecting agriculture).

235. MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 527, art. 1, § 527.120 (2023).

236. *Id.* tbl.527-1.

Another way some communities support small-scale agricultural production is through edible landscaping. Most regulatory frameworks that provide for edible landscaping, such as front-yard gardens and verges, target residential areas.²³⁷ For example, for one-family and two-family residential front-yard landscaping requirements in Orlando, Florida, “[a]t least 40% of the pervious area of the front and street sideyards shall be landscaped with shrubs and groundcovers, or a combination thereof. The remainder may be planted with turfgrass, annuals[,] and vegetable gardens, up to a maximum of 60%.”²³⁸ The City also provides standards for plant selection and edge treatments.²³⁹ The Los Angeles Municipal Code offers another example of language encouraging edible landscaping:

No permit is required by the owner of property fronting the parkway portion of the street in an area zoned for residential use in order for the owner to remove existing shrubs and plants, but not trees, and replace the shrubs and plants with landscaping, including edible plant materials, provided the owner complies with the Residential Parkway Landscaping Guidelines adopted by the Board.²⁴⁰

Orlando provides an example of commingling landscaping design typically required by municipality codes, while Los Angeles allows fully edible landscaping. Each zoning code has some limitation in standards and location.

These are examples of how other communities support small-scale agricultural production through their municipal zoning and land use codes. Many communities identify and define specific small-scale agricultural production practices they want to support.²⁴¹ Providing clear terms and definitions ensures consistent regulatory implementation and oversight. Communities decide where each activity can occur, and some even provide specific standards for the practice. In addition to listed and defined allowed uses, communities have supported small-scale agricultural production by setting standards for PUDs and promoting edible landscaping. The above examples show some possibilities for the Teton County and Town of Jackson LDRs.

237. Jesse P. Hsu, *Public Pedagogies of Edible Verge Gardens: Cultivating Streetscapes of Care*, 17 POL’Y FUTURES EDUC. 821, 823 (2019). A verge garden is a garden grown along sidewalks or footpaths, in an attempt to effectively utilize space. *Id.*

238. ORLANDO, FLA., CODE § 60.223(a)(2) (2023).

239. *Id.* § 60.223(a)(3).

240. L.A., CAL., MUNICIPAL CODE § 62.169(b) (2023).

241. *See supra* Table 2 (providing examples of different communities incorporating small-scale agricultural practices).

C. Recommendations to Better Support Small-Scale Agriculture Through the Teton County and Town of Jackson LDRs

This Section provides recommendations for how the Teton County and Town of Jackson LDRs can better support small-scale agriculture. These recommendations synthesize analysis from Section II(A), discussing the current framework and components of the Teton County and Town of Jackson LDRs supporting and challenging small-scale agriculture; and Section II(B), discussing how other communities use their LDRs to support small-scale agricultural production. These recommendations focus on three things: (1) the LDRs' definition of agriculture as an allowed use, use types, and permit types; (2) PUDs; and (3) edible landscaping.

1. Distinguish Agriculture as an Allowed Use into Categories Based on Recommendations for the Jackson/Teton County Comprehensive Plan

a. New Definitions and Standards for Agriculture as an Allowed Use

Two recommendations in the previous section for the Comprehensive Plan explicitly relate to the Teton County and Town of Jackson LDRs. First, Part I of this Article includes a strategy recommendation for Chapter 1 (Stewardship of Wildlife, Natural Resources[,], and Scenery): to *[e]valuate and update the Teton County and Town of Jackson Land Development Regulations to promote and allow small-scale agricultural practices and activities in Rural Area Character Districts, including but not limited to defining each agricultural activity, developing standards for each activity, and establishing guidelines for alternative agriculture best practices.*²⁴² Second, this Article recommended the same strategy for Chapter 3 of the Comprehensive Plan (Responsible Growth Management) for Complete Neighborhood Character Districts.²⁴³

As previously explained, the Teton County and Town of Jackson LDRs organize a majority of their zoning districts through Article 2 (Complete Neighborhood Zones) and Article 3 (Rural Area Zones).²⁴⁴ Except for one zone (Mobile Park Home Zone), all Teton County and Town of Jackson Rural Area Zones allow agriculture as a principal use.²⁴⁵ However, two Teton

242. See discussion *supra* Subsection I(C)(4).

243. *Id.*

244. See discussion *supra* Subsection I(C)(4) and note 164.

245. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

County Complete Neighborhood Zones and 12 Town of Jackson Complete Neighborhood Zones do not allow for agriculture as a principal use.²⁴⁶

Permitting agriculture only as a principal use potentially limits small-scale agricultural production. Further, the definition of agriculture as a principal use is limiting. The current definition for agriculture as an allowed use in the Teton County and Town of Jackson LDRs is “the farming or ranching of land,” which includes: cultivation of the soil; production of forage, crops, or timber; growing of ornamental or landscaping plants; greenhouses; and rearing, feeding, and management of livestock.²⁴⁷ Though this definition is broad, agriculture may be narrowly viewed as a tool for conserving large areas of open space, reflecting its role as discussed in the Comprehensive Plan.

Part I of this Article recommends that the Comprehensive Plan acknowledge the different settings where agriculture can take place, thereby recognizing a broader spectrum of small-scale agricultural production practices. Amending the definition found in § 6.1.3.B of both LDRs provides a first step for this recognition. Under § 6.1.3.B, all agricultural practices that Teton County and the Town of Jackson intend to support should be clearly defined with specific standards.²⁴⁸ Table 2 in Section II(B) provides examples of definitions other communities use.²⁴⁹ Further, many communities, like the City of Fort Collins, provide example standards for small-scale agricultural production, especially in more developed areas, that Teton County and the Town of Jackson can consider and develop in their LDRs.²⁵⁰

b. Identifying Which Agricultural Uses Are Allowed in Each Zone

Many communities list specific activities as allowed uses rather than using the general term “agriculture.” However, given the structure of the Teton County and Town of Jackson LDRs, “agriculture” could remain the designated term in a zoning district’s Use Schedule. A zoning district’s Use Schedule is important because it impacts similar-use determinations and allowed structures. “Agriculture” should be an allowed use under more

246. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

247. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.3.B; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.3.B.

248. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.3.B; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.3.B.

249. *See supra* Table 2 (illustrating the variety of ways in which agricultural practices are defined by several communities in the U.S.).

250. FORT COLLINS, COLO., LAND USE CODE art. 3, div. 3.8.31(C) (2023). Standards should be developed based on a definition of “sustainable agriculture” as mentioned in the Introduction of this Article.

zoning districts. One approach the County could take is to allow “agriculture” as a principal use under every zone.

Because agriculture can cause nuisance or other issues with public health and safety,²⁵¹ regulatory oversight is necessary to address potential concerns. Specific-use permits are a regulatory tool that could address potential concerns related to agriculture.²⁵² Currently, zoning districts allowing agriculture as a principal use require either no use permit or a basic use permit.²⁵³ If an agricultural production practice or activity might cause nuisance or public health or safety concerns in a Rural Area zoning district or Complete Neighborhood zoning district, Teton County or the Town of Jackson could require a permit with greater regulatory oversight and agency review.

Another way to encourage small-scale agriculture in the LDRs would be to include, under each Use Schedule, an asterisk under the “Permit” column for “Agriculture.” A footnote could direct the reader to § 6.1.3.B. In § 6.1.3.B, a table under each agricultural practice could identify each zoning district and the permits that would be necessary for a given practice.

The Teton County and Town of Jackson LDRs offer a Conditional Use Permit as an alternative use permit. A Conditional Use Permit permits a use “that is generally compatible with the character of a zone but requires site-specific conditions to limit and mitigate” potential adverse impacts.²⁵⁴ Under the LDRs, Conditional Use Permits contain a list of requirements, titled “Findings for Approval,” that must be met for the permit to be granted.²⁵⁵ The County could require agricultural activities that need more regulatory oversight in a specific zoning district to satisfy these elements. Alternatively, the LDRs could develop and include a conditional use permit specifically formatted for the activities found under § 6.1.3.B. This specific conditional use permit could be similar to the aforementioned permit process under the City of Fort Collins Land Use Code.²⁵⁶ A well-planned and tailored permit process could help support more small-scale agricultural production practices

251. See Bradley K. Rein, *Health Hazards in Agriculture – An Emerging Issue*, USDA (June 1992), <https://nasdonline.org/1246/d001050/health-hazards-in-agriculture-an-emerging-issue.html> (summarizing some agriculture-based health hazards).

252. See Steve Butler, *A New Approach for Dealing with Conditional Uses in Your Zoning Code*, MUN. RSCH. & SERVS. CTR. OF WASH. (Aug. 3, 2022), <https://mrsc.org/stay-informed/mrsc-insight/august-2022/a-new-approach-for-conditional-uses> (highlighting some drawbacks of conditional use permits and the potential advantages of attaching specific conditions).

253. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.1.E; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.1.F.

254. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.4.2.A; JACKSON LDRS, *supra* note 154, art. 8, div. 8.4.3.A.

255. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.4.2.C; JACKSON LDRS, *supra* note 154, art. 8, div. 8.4.3.C.

256. FORT COLLINS, COLO., LAND USE CODE art. 3, div. 3.8.31(C)(2) (2023).

by addressing health and safety concerns, especially in Complete Neighborhood zoning districts, where issues will more likely arise.

c. Agriculture as an Accessory Use

Because the LDRs recognize agriculture only as a principal use, recommendations have thus far focused on principal-use concerns. However, agriculture might not be possible on a given site as a principal use. In those situations, agriculture could become an accessory use. As discussed in Section II(A) of this Article, whether existing accessory-use categories would allow small-scale agricultural production activities is ambiguous. Therefore, planners should include agriculture as a new accessory use. This Article's recommendations given for agriculture as a principal use could apply to agriculture as an accessory use, to be included in § 6.1.11 of the LDRs, where definitions and standards for current accessory uses exist. Because an accessory use is only allowed when one of its assigned primary uses is active on the site, all primary uses should be assigned to the agriculture accessory use for maximum flexibility.²⁵⁷ Permit requirements for the accessory use could mirror the language for agriculture as a principal use.

2. Develop Standards in PUD and Planned Resort Master Plans Supportive of Small-Scale Agricultural Production

LDRs could also better support small-scale agricultural production by amending requirements for PUD master plans²⁵⁸ and Planned Resort master plans.²⁵⁹ For the Teton County and Town of Jackson LDRs, development of new PUD Zones is no longer available, so support for small-scale agriculture must come from existing master plans.²⁶⁰ The Teton County and Town of Jackson LDRs require master plans to contain certain components.²⁶¹ To better support small-scale agricultural production, the LDRs could require that a certain amount of space within the zone be designated for this purpose, similar to the Hinesburg Zoning Regulations.²⁶² Additionally, the LDRs could recognize small-scale agriculture activities as amenities that must be

257. TETON COUNTY LDRS, *supra* note 153, art. 6, div. 6.1.11.A.2; JACKSON LDRS, *supra* note 154, art. 6, div. 6.1.11.A.2.

258. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.4.1.C.2; JACKSON LDRS, *supra* note 154, art. 4, div. 4.4.1.C.2.

259. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.3.1; JACKSON LDRS, *supra* note 154, art. 4, div. 4.3.1.

260. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.4.1; JACKSON LDRS, *supra* note 154, art. 4, div. 4.4.1.

261. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.4.1.C; JACKSON LDRS, *supra* note 154, art. 4, div. 4.4.1.C.

262. HINESBURG, VT., ZONING REGULATION CODE § 4.5.7 (2023).

incorporated into the existing design of the zone, much like the City of Minneapolis Code of Ordinances.²⁶³

For Planned Resort Zones, all elements of the Findings for Approval must be met.²⁶⁴ Element seven, the “Land Use Element,” states that “[t]he Planned Resort Master Plan promotes land uses that support and maintain the character of the resort as specified.”²⁶⁵ This land use element also provides “Permitted Uses,” none of which currently support agricultural production.²⁶⁶ The above recommendations for PUD Zones also apply to Planned Resort master plans. The LDRs could amend the Land Use Element by requiring Planned Resort master plans to preserve a certain amount of space within the zone for alternative and small-scale agriculture and to recognize these activities as amenities that must be incorporated into the existing design of the zone.

3. Support Small-Scale Agriculture Through Edible Landscaping

As discussed in Section II(A) of this Article, the LDRs’ landscaping design provisions are limited in their ability to support edible landscaping. Vegetation categories are limited to “lawn, pasture, or native groundcover.”²⁶⁷ Some communities, like Orlando and Los Angeles, go beyond these categories, allowing landscaping design to include edible vegetation in residential areas on various scales.²⁶⁸ The Teton County and Town of Jackson LDRs should expand vegetation categories to include edible landscaping. Adding the term *edible vegetation* to the list of vegetation categories would better support small-scale agriculture. Just like Orlando and Los Angeles,²⁶⁹ Teton County could create planting standards that maintain visual appeal but allow for food production. Additionally, though Orlando and Los Angeles limit their edible landscaping to residential areas,²⁷⁰ Teton County could allow edible landscaping in all zones where landscaping is present.

263. See generally MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 527, art. 1, § 527.120 (2023) (permitting the City planning commission to approve alternatives to zoning ordinance standards where the PUD includes certain site amenities by creating a “points” system for potential developers).

264. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.3.1.D; JACKSON LDRS, *supra* note 154, art. 4, div. 4.3.1.D.

265. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.3.1.D.7; JACKSON LDRS, *supra* note 154, art. 4, div. 4.3.1.D.7.

266. TETON COUNTY LDRS, *supra* note 153, art. 4, div. 4.3.1.F; JACKSON LDRS, *supra* note 154, art. 4, div. 4.3.1.F.

267. TETON COUNTY LDRS, *supra* note 153, art. 5, div. 5.5.4.A; JACKSON LDRS, *supra* note 154, art. 5, div. 5.5.4.A.

268. ORLANDO, FLA., CODE § 60.223 (2023); L.A., CAL., MUNICIPAL CODE § 62.169(b) (2023).

269. ORLANDO, FLA., CODE § 60.223(a)(2) (2023); L.A., CAL., MUNICIPAL CODE § 62.169(b) (2023).

270. ORLANDO, FLA., CODE § 60.223 (2023); L.A., CAL., MUNICIPAL CODE § 62.169(b) (2023).

* * *

Above, this Article offers recommendations developed by examining the Teton County and Town of Jackson LDRs along with other municipal zoning and land use codes. Recommendations build on suggested policies and strategies for the Comprehensive Plan in the previous Section and suggest updating the LDRs to better support small-scale agricultural production. The LDRs could do this by incorporating a more expansive definition of agriculture that recognizes the spectrum of production activities that can be supported in Teton County and the settings in which they can occur. The LDRs could list agriculture as an allowed use in more zoning districts and address any concerns with additional regulatory procedures and standards. Further, the LDRs could require PUD and Planned Resort Zones to better support small-scale agriculture in their master plans. Lastly, the LDRs could better support edible landscaping. These are targeted recommendations, however, and Teton County stakeholders should review the LDRs in their entirety to determine other opportunities for supporting small-scale agriculture.

As previously mentioned, “[t]he advisability of amending the text of these LDRs is a matter committed to the legislative discretion” of the Town Council and the BCC.²⁷¹ This discretion should be considered when undertaking any efforts to amend the LDRs based on these recommendations. However, any member of the public can propose an LDR text amendment through an application and review process.²⁷² The BCC and Town Council must consider, *inter alia*, whether and to what extent the proposed amendment “[i]mproves implementation of the Comprehensive Plan.”²⁷³ This could include considering new or amended policies and strategies in the Comprehensive Plan that support small-scale agricultural production.

CONCLUSION

This Article recommends specific strategies for amending or developing new components of the Comprehensive Plan, the Teton County LDRs, and the Town of Jackson LDRs to support aspects of a community food system through small-scale agricultural production. Many of the lessons learned in Teton County and proposed regulatory changes could apply to

271. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.7.1.C; JACKSON LDRS, *supra* note 154, art. 8, div. 8.7.2.C.

272. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.7.1.D tbl.; JACKSON LDRS, *supra* note 154, art. 8, div. 8.7.1.D.

273. TETON COUNTY LDRS, *supra* note 153, art. 8, div. 8.7.1.C.5; JACKSON LDRS, *supra* note 154, art. 8, div. 8.7.2.C.5.

geographically and socially similar counties in the West, especially those in the Greater Yellowstone Ecosystem.²⁷⁴ Each Part first summarizes the organization of each respective framework and identifies the provisions that support or challenge small-scale agricultural production in Teton County. Then, each Part highlights the provisions of other community comprehensive plans and LDRs supporting small-scale agricultural production. Finally, each Part synthesizes these topics, making recommendations for adapting each Teton County planning and regulatory framework to better support small-scale agricultural production.

For the Comprehensive Plan, these recommendations include developing a new chapter dedicated to Teton County's community food system with a chapter goal, principles, policies, strategies, and indicators. Alternatively, existing chapters could be amended to support small-scale agriculture. In either approach, policies should recognize the different environments in which small-scale agricultural production can occur to better support specific agricultural practices. Any discussion of agriculture should recognize these categories, whether in principles, policies, strategies, Character Defining Features, Neighborhood Forms, or explicitly identified possible projects.

One recommendation for the Teton County and Town of Jackson LDRs includes incorporating a more expansive definition of agriculture. A more expansive definition of agriculture would recognize the spectrum of production activities that can be supported in Teton County. The LDRs could list agriculture as an allowed use in more zoning districts and address any concerns with additional regulatory procedures and standards. Further, the LDRs could require PUD and Planned Resort Zones to better support small-scale agriculture in their master plans. Lastly, the LDRs could better support edible landscaping.

The analysis and recommendations provided in this Article can support government officials, agencies, and other stakeholders as they advance small-scale agricultural production in Teton County. Other counties may also find the analysis and recommendations useful. Entities involved in developing, approving, and enforcing these frameworks in Teton County may adopt or pursue these recommendations to support small-scale agriculture. As other scholars have noted, “[t]he key to promoting urban agriculture within a community is to eliminate unnecessary barriers while ensuring safe practices and adequate protection for gardeners, farmers[,] and neighboring landowners.”²⁷⁵ Through their planning authority, government officials and entities can help alleviate some barriers to small-scale agriculture and encourage the growth of the community food system.

274. See *supra* notes 6–11 and accompanying text (describing the benefits granted to Teton County and the Town of Jackson by LDRs that could apply to similarly situated counties and municipalities).

275. WOOTEN & ACKERMAN, *supra* note 16, at 20.

Many communities have created formal or semi-formal government bodies, such as the City of Madison's Food Policy Council, to help encourage and support small-scale agriculture.²⁷⁶ A food policy council can increase community engagement; conduct research; and propose and facilitate support services, education programs, and regulatory and policy framework changes, including but not limited to those recommended in this Article. Background research and consultation with key Teton County stakeholders initially informed this analysis of the Comprehensive Plan, Teton County LDRs, and Town of Jackson LDRs. A Teton County food policy council could be comprised of these and similar stakeholders.

Although synthesized with analysis of Teton County's regulatory frameworks, the recommendations in this Article emerge from other communities' examples. Therefore, Teton County should consider and adapt these recommendations for its specific needs and context. Since the authors are not members of the Town of Jackson or Teton County communities, this Article likely contains gaps in understanding of nuances that are difficult for an outsider to assess. A food policy council could better address those gaps through more inclusive stakeholder expertise and involvement, which this Article largely lacked. A food policy council could consistently help advise the Town Council and the BCC when considering proposed amendments to the Comprehensive Plan and the LDRs aimed at supporting small-scale agricultural production.

Further, this research can contribute to broader scholarship and practice surrounding land use planning and regulatory frameworks to support the development of community food systems in other communities. This analysis, which first examined planning and regulatory frameworks in the community at hand and then investigated best practices in other communities, is an easily replicable approach. Other communities interested in small-scale agriculture can similarly look inwards, at their own community food system planning and regulatory frameworks, and then outwards, to find best practices suitable to their needs. Specifically, counties in the Greater Yellowstone Ecosystem may benefit from this Article because those communities are facing geographic, economic, and social challenges that are similar to those faced by Jackson and Teton County.²⁷⁷

This Article includes several limitations that point to the need for future research. Again, the recommendations in this paper narrowly focus on the production component of a community food system in Teton County.

276. *Madison Food Policy Council*, MADISON, WIS., <https://www.cityofmadison.com/mayor/programs/food-policy-and-programming/madison-food-policy-council> (last visited Dec. 29, 2023).

277. *See supra* notes 6–11 and accompanying text (describing the challenges particular to the Greater Yellowstone communities).

Revisions to these and other regulatory frameworks, however, ultimately should be comprehensive and supportive of all components of a food system, which includes processing, distributing, consuming, and disposal. Another consideration for planners is equity and justice surrounding community food systems in Teton County. The Comprehensive Plan does address equity through its Workforce Housing Plan, but equity and justice merit greater consideration in all aspects of Teton County's policies and planning, including its food systems.²⁷⁸ Some of the recommendations provided in Part I of this Article speak to food production equity by including language like *equitably allow and support* and *equitable access*. However, these recommendations do not address all aspects of food equity, and Teton County stakeholders should analyze how the Comprehensive Plan can more thoroughly support equity and connect with frameworks that have the force of law to implement it.

Background research additionally revealed many other regulatory and non-regulatory practices that warrant further investigation but were beyond the scope of this Article. For example, building codes and the impact they have on structures like high tunnels emerged as a barrier to the season extension necessary for small-scale agriculture in Teton County.²⁷⁹ First, then, future research could explore what other communities have done to accommodate high tunnels and other agriculture-related structures. Second, future research could explore how land trusts around the country use conservation easement deeds, tax-benefit implications, and types of land ownership to support small-scale agriculture. Third, background research revealed one barrier for entering farmers in Teton County (and elsewhere) is land cost.²⁸⁰ Future research could explore legal and regulatory aspects of land-sharing programs. These are only a few examples of future research into policy and regulatory frameworks in Teton County that could support alternative and small-scale agricultural production and broader community food systems.

Further, this Article does not analyze whether incorporating food policy into comprehensive plans and amending land development regulations is effective for supporting small-scale agriculture. Alternatively, there could be other planning and regulatory frameworks that might be more effective than comprehensive plans and land development regulations. Future research should explore which planning and regulatory frameworks would prove most

278. JACKSON LDRS, *supra* note 154, art. 1, div. 1.3.2.C.1.

279. Billy Nunn & Kathy Clay, *Board of County Commissioners - Staff Report*, TETON CNTY., WYO. 62 (Jan. 17, 2022), <https://www.tetoncountywy.gov/DocumentCenter/View/21083/020116-Building-Code-Amendments.pdf>.

280. *Conservation Comes Full Circle*, TETON REG'L LAND TR., <https://tetonlandtrust.org/conservation-comes-full-circle/> (last visited Dec. 29, 2023).

effective at supporting community food systems both in Teton County and in other communities.

Given the environmental, economic, and socially unsustainable attributes of the conventional food system and Teton County's broader sustainability and conservation goals, Teton County could benefit from efforts that support a community food system. Given that Ecosystem Stewardship is a Common Value of the Comprehensive Plan, the Teton County community already recognizes the supportive and conscientious role community members play in caring for wildlife and ecological systems.²⁸¹ These resources are significantly impacted by the ways in which community members produce, process, distribute, consume, and dispose of food. This Article encourages Teton County community members and stakeholders to develop and enhance planning and regulatory frameworks for a community food system in support of these common stewardship values and provides an example for other communities' planning and policy efforts.

281. COMPREHENSIVE PLAN, *supra* note 18, at CV-1-1.