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Teton County Board of County Commissioners

Sent via email only:

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Re: BLM Parcels 9/10 upholding compliance with the Federal ROD for open space preservation, public access, multiple use, conservation of habitat, plus powerline burial and permanent Path22 location on Walton Ranch

Dear Commissioners:

In preparation for your engagement with a public lands expert regarding the transfer of BLM lands, I write to you on behalf of 4W, LLC, as owner of the Walton Ranch, so that you have clear understanding of the Walton Ranch proposal regarding BLM parcels 9/10.

In compliance with the Federal Record of Decision ("ROD"), this proposal keeps the entire 320 acres of Parcels 9/10 in public hands, in perpetuity, with public access, preventing development by protecting every acre with a permanent conservation easement to keep this important wildlife habitat intact as a sanctuary for moose, elk, bears, and other endangered species as well as for nature trails, light recreation and agricultural uses. In addition, this proposal also complies with the 2008 Snake River Corridor Management Ownership Transfer Plan ("Transfer Plan"). This type of compliance will be the standard to which any legislative transfer will be held.

In addition, the Walton Ranch, as a community benefit, will convey to Teton County land for Path 22 and burial of the powerlines along Highway 22 to enhance this iconic scenic corridor.

As you will recall, on August 15, 2017, the Board of County Commissioners passed a resolution supporting its ongoing effort to implement the Transfer Plan. That resolution identified five parcels ineligible for transfer through the Recreation and Public Purposes Act ("R&PP Act"), **which requires the County develop any transferred land with permanent recreational infrastructure** (asphalt, concrete vertical structures, buildings, boat ramps, kiosks, parking and other physical amenities). Such a County-driven development master plan would be counter to the parcel-by-parcel outcomes identified in the Transfer Plan and the ROD which prioritizes open space values, such as preserving wildlife habitat or leaving the public lands undeveloped and protected by permanent conservation easements.

Further, as early as July 22, 2016, the BLM Pinedale Field Office, through its Field Manager, Caleb Hiner, informed the County that all parcels which could be disposed of through the R&PP Act had been processed. Part of the support for this position, as stated in Mr. Hiner's letter, is that the R&PP Act is

not intended to be used to preserve open space. Mr. Hiner's letter concludes that the requirements of the R&PP Act conflict with the direction for parcel disposal in the ROD, stating in that 2016 letter that R&PP or other non-legislative transfer methods, "are in contradiction with the management objective of the Snake River RMP/ROD." I am attaching Mr. Hiner's letter as it will be important for your consultant to be able to refer to the BLM's position since County staff has repeatedly pressed R&PP transfer for Parcels 9/10, in conflict with the ROD and what we believe to be community desires for protection of wildlife habitat and natural, low impact recreation.

The five parcels named in your August 2017 resolution are 9, 10, 21, 23A and B and 24. In that resolution, the County agreed to pursue federal legislation for the permanent transfer of these parcels to Teton County as they all had the common characteristic of agriculture grazing, significant wildlife habitat, open space preservation, and, for two parcels (23/24), a land exchange, making all five ineligible for transfer under the R&PP Act.

Given the fact you are seeking to adopt an extension to the 2008 MOU and have budgeted to hire an expert to assist the County in its efforts to transfer key BLM parcels to the County, the Walton Ranch felt it appropriate to provide you with an update to its proposal. We also want to renew our request for a meeting/workshop with the County as the future real property interest holder and the Jackson Hole Land Trust ("JHLT") as the holder of the conservation easement protecting these lands as public open space. The Walton Ranch fully supports your hiring of a public lands transfer expert to assist the County with the transfer of these federal lands. This is a complex process which justifiably will receive national scrutiny and will require someone with a specific skill set in these types of transfers. As evidenced by the struggles to get the 2008 MOU amended, the County will benefit greatly from someone with expertise in federal land transfers and working with multiple federal agencies.

#### **Walton Ranch Proposal**

Since the ROD does not allow for transfer of Parcels 9/10 under the R&PP Act, the conveyance of Parcels 9/10 to Teton County would occur through the legislative process. The conveyance would be made contemporaneously with a dedication of a conservation easement held in perpetuity by the JHLT on the entirety of Parcels 9/10 to provide these public lands with the permanent open space protection called for in the Transfer Plan. The conservation easement would have habitat science and wildlife biology as a baseline conducted by professionals with the JHLT and Wyoming Game and Fish. Undertaking this joint inventory will help the public ensure that adequate consideration is being given to protecting the important natural and wildlife habitat resources and that the lines drawn on the map reflect due consideration for those resources. All of Parcels 9/10 would remain in public hands in perpetuity, with Teton County holding title to the property, subject to JHLT's conservation easement.

#### **Ag Lease**

The Walton Ranch currently holds an agricultural lease on the entirety of Parcels 9/10. Consistent with multiple use values and the RMP/ROD, and the Transfer Plan, the conservation easement would provide for the continuation of historic grazing and agricultural uses, however we propose to significantly reduce the current grazing area. Under our proposal, the grazing and agricultural uses would occur as a lease on approximately 70 acres adjacent to the Walton Ranch and in the area surrounding the new Levee Maintenance Facility currently being built by Teton County. The current grazing and agricultural uses allowed on all 320 acres would be reduced by 78 percent to 70 acres leased to the Walton Ranch. It is recognized that well-managed grazing is compatible with wildlife, helps fight noxious weeds and preserves resource values such as the current wildlife habitat in place on the grazed portions of Parcels

9/10. The Walton Ranch's rights under the lease would be contingent on the Walton Ranch continued use of the Walton Ranch property for agricultural purposes. The lease would be a year-round lease for grazing and agricultural uses, such as fence maintenance, water resource maintenance, winter supplemental feeding and calving. As with any public land lease, there will be public access, as is the case today. In the same fashion as exists today under BLM ownership, if the public wants to jump over a fence, this remains public land and they could do so. Like other areas of Parcel 9/10, notably the Levee Maintenance Area and areas identified as particularly sensitive habitat, the public would not be invited with active trails into the area covered by the agricultural lease, but would be free to utilize public land. The County would indemnify the Walton Ranch for any damage or loss of life resulting from public access over the lease area which also encompasses the new levee maintenance facility – another area where the public should not be actively encouraged to recreate. The lease would need to meet state grazing lease standards; an objective criteria. Allowances would be made for up to 3 consecutive years of non-use should environmental conditions (drought), economic conditions (downturn in the cattle market) or predator conflict (bear or wolf predation) dictate non-use to be most appropriate.

### **Levee Maintenance Facility**

The County's new Levee Maintenance Facility would be within the agricultural lease area. It makes sense from a public safety perspective to safeguard the public from the industrial use at the Levee Maintenance Facility and this facility can operate adjacent to the grazing lease without the need for additional fencing. Such coexistence occurred for years when Seaton Earth Movers occupied the same approximate site for their operations without any stock – gravel processing/earth moving equipment conflicts.

### **Bike Path**

Moreover, as part of our proposal, the Walton Ranch would convey, at no cost to the public, a portion of the Walton Ranch to Teton County, in fee simple, sufficient to accommodate a bike path adjacent to HWY 22 ("Path 22"), which will need to be relocated prior to WYDOT's expansion of HWY 22. The conveyance would be for construction of a multi modal bike path. This would accommodate a far safer and superior pathway alignment for the public from a wide range of perspectives, especially at the Pratt Road intersection, and for the overall experience locating the pathway at a greater distance from the highway for peaceful pathway enjoyment, walking or cycling. Even if, practically speaking, another bike path encroachment agreement is obtained by Teton County from WYDOT, and even if the bike path could be relocated within the 100' WYDOT easement and 5 lanes of traffic, neither of which are certainties at this juncture, such a result would be far from ideal and I suspect you will hear as much from the Path 22 users and supporters. Additionally, the S HWY 89 bike path south of High School Road shows some of the challenges of locating a bike path directly adjacent to a major highway as countless times during the winter WYDOT plows the highway and snow is deposited onto the bike path. Parks and Rec then comes and plows the bike path putting some of the snow back on the highway shoulder where WYDOT plows it off again.

Further, in February, 2017, the Jackson/Teton County Pathways Coordinator sought permission from the Walton Ranch to blow snow onto the Walton Ranch from the area between the highway and bike path and the bike path and the ranch as there was too much snow on and around the bike path to manage. The Walton Ranch granted this accommodation. This past winter, Parks and Rec abandoned snow plowing on Path 22 in late February once it could no longer keep the path open with regular plow trucks. It defies logic to believe that with an additional 3 lanes of traffic that Path 22 will remain useable year-round within the current right of way. It is more than reasonable to assume the expansion from 3 lanes

to 5 within the same 100' right of way will only serve to exacerbate the snow removal problems the County currently faces each winter on this section of bike path.

Moreover, even assuming the perfect-world scenario where a bike path could be accommodated within the right of way from an engineering perspective; is the public willing to assume a potential multi-year interruption in service for Path 22 similar to what has recently occurred near Game Creek with the S HWY 89 expansion? Also, when the bike path was being designed in Grand Teton National Park, a significant portion of the biking community argued for a separation distance from the highway to the bike path, for human safety as well as user experience. We believe the community will strongly support separating Path 22 from HWY 22 with the best design achievable. We are strong supporters of Path22 and want to be part of a positive and permanent solution for an optimal alignment so the public can safely travel by bike or walking, in perpetuity, on a deeded pathway.

### **Power Line Burial**

The Walton Ranch conveyance for the bike path would also provide for the burial of the powerlines along HWY 22. This topic has garnered substantial support since it was first suggested by the Walton Ranch and since the powerlines on HWY 390 were buried. This would be a community wide benefit and significant view shed enhancement.

Both the bike path and power line burial would be subject to approval by the JHLT, the holder of the easement on the entirety of the Walton Ranch. Currently that conservation easement prohibits a bike path and power line burial, and the Walton Ranch would support an amendment to the easement for these two important public benefits.

### **Conservation Easement Amendment**

In order for the JHLT to amend any conservation easement to allow for uses not originally contemplated by a conservation easement, in this instance the bike path relocation and power line burial, JHLT would need an increase in conservation values and such increase would appear to be met by a permanent conservation easement on the entirety of Parcels 9/10. This would be especially true with an easement that recognizes the wildlife sanctuary for moose and elk calving, along with many other species that connect Parcels 9/10 to the migration paths on the river and to the National Elk Refuge.

### **Habitat preservation**

As discussed above, a habitat and wildlife inventory, prepared jointly by the JHLT<sup>1</sup> and Game and Fish, will be necessary to accurately plan wildlife habitat and ensure sensitive resources are being protected in perpetuity and that the year-round wildlife patterns are fully factored into the easement provisions.

### **Recreational use**

Under our proposal, the majority of Parcels 9/10 will be dedicated to low impact public use such as walking, hiking undeveloped nature trails, skiing and cycling and fishing. Again, the location of these uses should be dictated by the wildlife and habitat inventory to ensure we are not disturbing these resources as required by the County's Comprehensive Plan and within the guidelines of the NRO/SRO and the Transfer Plan.

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<sup>1</sup> A habitat inventory is a condition precedent to JHLT accepting a conservation easement.

### **Limited improvements as set forth in public comments**

Given the direction in the Transfer Plan and public comment, appropriate improvements would be permitted by the conservation easement such as unpaved bicycle and walking paths for nature trails concentrated towards the levee which do not disturb wildlife, benches along the levee, trash cans and low impact improvements of that nature.

### **Camping**

While a few public comments have advocated for camping on Parcels 9/10 (as well as skate parks and other inappropriate uses for an NRO & SRO protected property), camping was not a contemplated use or allowance in the Transfer Plan for Parcels 9/10. The Conceptual River Camp Program in Appendix B of the Transfer Plan specifically designated a restricted number of potential camping sites along the Snake River on parcels 3, 6 and 7 only, and set forth that those camp sites would only be accessible from the River. Accordingly, it would be inappropriate to allow camping on Parcels 9/10 along with the inherent management and oversight problems of such use where the Transfer Plan did not call for such allowances.

The Walton Ranch believes this 2019 proposal meets the three management and public use options presented in the Transfer Plan for Parcels 9/10, complies with the ROD, aligns with the County's priorities in the Comprehensive Plan and complies with the County's own proposed regulations for lands in the NRO as well as meeting with the public input process. With respect to the Transfer Plan:

#### **1. Agricultural Use**

The Transfer Plans calls for agricultural uses of the upland portions of the parcel in a reduced footprint, and we propose a reduction of the area of the grazing lease by 78 percent. The Comprehensive Plan and the Transfer Plan both call out agriculture as an important use for not only character but also for wildlife habitat compatibility.

#### **2. Habitat Conservation**

The Transfer Plan prioritizes wildlife and habitat conservation. This area is significant for moose and elk especially as a refuge amongst dense development and intense recreational use across the river. Other species – bears, wolves, deer, and birds – are dependent on this wooded sanctuary along the river. The Transfer Plan recommends working with the grazing lessee to change, reduce or eliminate grazing in some areas, based on habitat restoration and conservation objectives.

#### **3. Public Park**

The Transfer Plan calls for a portion of the parcels to be managed to provide enhanced recreation opportunities, including additional loop nature trails through the upland cottonwood forest, and associated facilities such as benches, kiosks and restrooms. It further directs to accommodate agricultural uses and habitat conservation to the extent they are compatible with public use emphasis.

The Transfer Plan's recommendation and management emphasis for Parcels 9/10 is to "**Manage the parcel in a comprehensive manner that emphasizes public use opportunities while accommodating compatible agricultural use along with habitat conservation and restoration.**"

It is the Walton Ranch's hope that you would view the above proposal as a balanced, equitable and efficient management plan for Parcels 9/10 in the Snake River Corridor as called out in the MOU and the Transfer Plan, all in accordance with the ROD. This proposal meets the recommendations of the already

agreed to MOU and Transfer Plan, with the addition of a safe pathway alignment for the public and the opportunity to bury the industrial power lines for true view shed enhancements.

**Process Going Forward**

The Walton Ranch looks forward to gaining clarity regarding the Commission's process going forward. We hope the process will be more transparent than it has been to date, and that we can have a global approach to the issues and opportunities presented, i.e., a discussion on the bike path and power line burial as part of the transfer process.

We would like to renew our request to meet with the Commissioners and discuss this proposal, perhaps in a workshop format.

The Walton Ranch sees a tremendous opportunity here for Teton County, the public, the signatories to the Transfer Plan and the Walton Ranch to come to a win-win agreement on a number of issues relating to the eventual transfer of Parcels 9/10 and we hope you, our Commissioners, will lead this process forward with an open, transparent plan in line with your August 2017 resolution so that we can continue to make progress towards a workable transfer of Parcels 9/10 to Teton County through the legislative process.

Should you have any questions or require any additional information from me, please do not hesitate to contact me. On behalf of the Walton Ranch, I look forward to continuing to work with you towards a favorable outcome for the transfer of Parcels 9/10.

Regards,



Fodor Law Office, PC  
Stefan J. Fodor

Enclosure

July 22, 2016 Caleb Hiner letter



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

High Desert District  
Pinedale Field Office  
1625 West Pine, P.O. Box 768  
Pinedale, Wyoming 82941  
[www.blm.gov/wy](http://www.blm.gov/wy)



In Reply Refer To:  
2800 (WYD01)

JUL 22 2016

Steve Ashworth, Director  
Teton County/Jackson Parks and Recreation Department  
PO Box 811  
Jackson, Wyoming 83001

Dear Mr. Ashworth:

Thank you for contacting the Bureau of Land Management (BLM) Pinedale Field Office concerning the disposition of the Snake River BLM land parcels. The Snake River Resource Management Plan (RMP) is one of two RMPs providing management direction for the BLM Pinedale Field Office and covers the land parcels in question. The intent of the Snake River RMP is to dispose of remnant parcels of land managed by the Pinedale Field Office, but still provide for open space. Efforts to dispose of the parcels via the Recreation and Public Purposes (R&PP) Act and/or a Federal Land Policy and Management Act (FLPMA) land sale have been pursued where appropriate. BLM understands that Teton County, Wyoming is the one remaining entity interested in all remaining parcels identified for disposal in the Snake River RMP/Record of Decision (ROD).

The R&PP Act authorizes the sale or lease of public lands for recreational or public purposes. Only the amount of land required for efficient operation of the project (e.g. schools, landfills, parks, municipal facilities, etc.) should be described in an applicant's development plan and also applied for. Lands applied for must be needed for a specific project that serves a specific need. The R&PP Act is not intended to be used to preserve open space. This conflicts with the management direction for parcel disposal in the Snake River RMP/ROD.

FLPMA Section 203 requires that the sale of public lands shall be made at a price not less than fair market value. A FLPMA sale is a no conditions attached transaction; therefore, we cannot require a conservation easement be placed on a parcel of land before or after the patent. This also conflicts with the management direction for parcel disposal in the Snake River RMP/ROD.

So although patent through the R&PP Act or disposal through a FLPMA sale are both available to transfer ownership of the Snake River parcels to Teton County, they are in contradiction with the management objective of the Snake River RMP/ROD. The R&PP Act is not entirely applicable because it is not intended to be used to preserve open space and a FLPMA sale has

limited applicability because the fair market value of the public parcels is likely too high for the one remaining interested entity.

Since the ROD for the Snake River RMP was signed, the following actions have been completed:

- One land parcel was patented to Teton County under the R&PP Act, for expansion of the Teton County landfill in June 2008.
- Two unintentional occupancy trespasses were resolved via FLPMA sales in April 2014. The two parcels consist of 0.82 acres and 0.13 acres.
- One un-manageable parcel has been sold via FLPMA sale to the adjacent land owner in February 2014.

As all land parcels that can be disposed of via the R&PP Act and FLPMA sales have been processed, the Pinedale Field Office has exhausted available options for additional parcel disposal.

If you have any additional questions, please feel free to contact me at 307-367-5302.

Sincerely,



Caleb M. Hiner  
Field Manager