



Board of County Commissioners - Staff Report

Meeting Date: February 7, 2023

Presenter: Heather Overholser

Submitting Dept: Public Works

Subject: Consideration of Temporary Construction Easement for Wilson to Stilson Pathway

Statement / Purpose: To consider a Temporary Construction Easement for the Wilson to Stilson Pathway.

Background / Description (Pros & Cons): Teton County, Wyoming is the direct recipient of the federal BUILD (Better Utilizing Investments to Leverage Development) transportation grant from the U.S. Department of Transportation (USDOT) for the upcoming Teton Mobility Corridor Improvements (TMCI) project. The TMCI project is composed of 13 project components located in the Greater Yellowstone Region of Idaho and Wyoming, spanning over 30 miles from Driggs, ID to Jackson, WY through the Teton Mountain range.

Component 6 (Wilson to Stilson Pathway) entails the construction of a pathway and underpass below WY-22, which will link Wilson to the planned Stilson Transit Center. To construct this project component, it is necessary for Teton County to acquire certain property rights from landowners that will be impacted by the project; including Temporary Construction Easements, a Permanent Pathway Easement, and/or Permanent Wildlife Fence Easements. The easement under consideration at the February 7, 2023 BCC meeting is a temporary construction easement from the Teton Raptor Center.

Due to federal funding awarded to support the project, Teton County is required to implement the regulations within the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (Uniform Act). The Uniform Act requires compensation for property and/or property rights based on fair market value as determined by a certified appraisal.

Stakeholder Analysis & Involvement: The landowner, Teton Raptor Center, was engaged by the BUILD project team, regarding the temporary construction easement for the Wilson to Stilson Pathway.

Fiscal Impact: Teton County is required to pay the impacted property owner (Teton Raptor Center) just compensation for the property and/or property rights for the purposes of constructing the Wilson to Stilson Pathway. Just compensation as determined by the certified general appraiser is in the amount of \$3,565.00.

Staff Impact: None

Legal Review: Moore

Staff Input / Recommendation: Staff recommends approval of the temporary construction easement with the Teton Raptor Center for the construction of the Wilson to Stilson Pathway, including the payment of just compensation to the landowner in the amount of \$3,565.00.

Attachments: Temporary Construction Easement Agreement including Exhibit A (Legal Description) & Exhibit B (Easement Sketch)

Suggested Motion: I move to approve the temporary construction easement with the Teton Raptor Center for the construction of the Wilson to Stilson Pathway, including the payment of just compensation to the landowner in the amount of \$3,565.00.

TEMPORARY CONSTRUCTION EASEMENT

This TEMPORARY CONSTRUCTION EASEMENT (hereinafter referred to as "Easement" or "Agreement") is made and entered into by and between Teton Raptor Center, a Wyoming nonprofit corporation, the address of which is P.O. Box 1805, Wilson, Wyoming 83014, its successors and assigns (hereafter referred to as "Grantor") and Teton County, a duly organized county of the State of Wyoming, the address of which is P.O. Box 1727, Jackson, Wyoming 83001 (hereinafter referred to as "Grantee").

RECITALS

WHEREAS, Grantor owns and desires to declare and establish in, under, over and across that certain real property in Teton County, Wyoming that is more particularly described on Exhibit "A", and shown on the Easement Sketch, Exhibit "B" attached hereto and incorporated herein (the "Burdened Properties"), an express, non-exclusive temporary construction easement in gross to and for the benefit of Grantee, according to the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, in hand paid, receipt and sufficiency of which is hereby acknowledged and confessed, Grantor and Grantee do hereby agree as follows:

1. **Grant of Non-Exclusive Easement.** Grantor hereby declares and establishes for the benefit of Grantee and Grantee's employees, agents, contractors and licensees, a non-exclusive construction easement in gross in, under, over and across the Burdened Properties (the "Easement") for the purposes of grading, constructing, replacing, installing, inspecting, repairing, altering, substituting or other related construction activities related to the installation of the Wilson to Stilson Pathway on the Burdened Properties.
2. **Improvement and Maintenance.** The construction of the Wilson to Stilson Pathway shall be completed by Grantee at Grantee's sole cost and expense. Grantee shall be responsible for fencing the area of construction to prevent access to the construction area. The Grantee shall replace, in kind, all landscaping, grasses and other items required to be removed to facilitate construction activities. The Grantor shall review and accept all repairs and/or replacements of any items removed, damaged or destroyed due to construction activities.
3. **Special Conditions.** Agreement is acceptable upon construction plan(s) revisions in accordance with the AASHTO Guide for Development of Bike Facilities:
 - a. In accordance with federal, state and local agency policies, access is to be provided to the Teton Raptor Center's property throughout the construction of the project. Coordination efforts by the County Representative/Project Engineer is to be maintained to provide the Grantor a schedule of impacts ;and;
 - b. Station 3+00 to 3+50 Rt. - Construction activities shall not commence prior to July 1, 2023, and shall be completed within three (3) months of

- commencement, barring delays due to weather or unforeseen circumstances that may arise ;and;
- c. Station 3+25 Rt. - The Grantor shall review and accept the reconstructed portion of property entrance ;and;
- d. Plan note will be included in the construction plans to “Do Not Disturb” (DND) said items outlined below; if impacted due to grade adjustments and repaving, items shall be reinstalled appropriately with the project. The Grantor shall review and accept said items:
- Station 3+00-50’Rt – “Do Not Disturb Entry Gate”
 - Station 3+00-50’Rt; – “Do Not Disturb Two (2) Electrical Pull Boxes”
 - Station3+06’Rt – “Do Not Disturb Entry Sign” ;and;
- e. The Grantor shall review and accept any regrading construction activities within or adjacent to the easement.

4. **Reservation.** Grantor reserves unto itself, its guests, invitees, legal representatives, heirs, successors and assigns, the right to use the surface and subsurface of the Easement, provided such use does not unreasonably impair, interfere with or obstruct the use of the Easement by Grantee. Grantor further reserves unto itself, its heirs, successors and assigns, the right to grant additional easements in, under, over and across the Burdened Properties for any purpose as Grantor deems necessary in Grantor’s sole discretion that does not unreasonably impair, interfere with or obstruct the use of the Easement by Grantee.

5. **No Merger.** This Agreement and the Easement and rights declared and established herein are intended to remain separate from the Grantor’s fee simple interest in the Burdened Properties and shall not merge therewith.

6. **Construction.** Any recitals in this Agreement are represented by the parties to be accurate and constitute a part of the substantive agreement. This Agreement shall be construed in accordance with the laws of the State of Wyoming. Venue is in Teton County, Wyoming.

7. **Enforcement.** If any party hereto fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, all court costs and all reasonable attorneys’ fees (including the costs of in-house counsel) regardless of whether litigation is commenced.

8. **Term.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective for one (1) year commencing on the date the pathway construction contemplated herein commences upon the Burdened Property and upon final completion and acceptance of the pathway improvements by the Grantee a written notice of such with an express release of this Easement shall be recorded in the land records of the Office of the Clerk of Teton County, Wyoming by the Grantee.

9. **No Assumption of Liability.** Grantor, by granting, declaring and establishing the Easement, does not assume any responsibilities or liabilities with respect thereto, nor shall Grantor at any time incur any liability for failure to comply with any law, ordinance, regulation or order with respect to this Agreement and the Easement.

10. **Easement In Gross.** The Easement granted herein is an easement “in gross” and is personal to Grantee and Grantee’s employees, agents, contractors and licensees, for their sole and exclusive use, and shall not be construed in any manner to create or grant any rights to the public generally, to any other person or entity, or to the owner of any property to use or enter upon the Burdened Properties. Grantee shall not have the right to lease or otherwise permit the use of the Burdened Properties by any other person or entity other than to Grantee’s employees, agents, contractors and licensees, nor shall Grantee assign any of the rights, privileges, duties or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.

11. **Warranties.** Grantor makes no representations or warranties, express or implied, in connection with the Easement, whether of title, fitness of use, condition, purpose, or of any other nature. Notwithstanding the foregoing, Grantor represents and warrants that Grantor has the authority to grant the Easement contained herein.

12. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. **Entire Agreement; Modification.** This Agreement embodies and constitutes the entire agreement with respect to the subject matters hereof and all prior or contemporaneous agreements, understandings, representations, statements are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated in whole or in part, unless agreed to in writing by the parties; provided, however, that such amendment or termination shall be properly recorded in the Office of the Clerk of Teton County, Wyoming as a condition to its effectiveness.

14. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

15. **Binding Effect.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.

16. **Indemnification of Grantor.** Grantee shall save, defend, indemnify and hold harmless the Grantor and all of its directors, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, or any other person or party claiming under it against any losses damages, suits, claims, costs, judgments, and expenses, including attorneys’ fees which any of them may directly or indirectly suffer, sustain, liable for, or subject to, arising out of or connected with the exercises of this Easement, unless caused by the willful or malicious failure of Grantor to warn or guard against a known dangerous conditions, uses, structure or activity.

DATED this 19th day of OCTOBER, 2022.

GRANTEE:

TETON COUNTY, WYOMING
BOARD OF COUNTY COMMISSIONERS OF TETON COUNTY, WYOMING

By: _____

Luther Propst, Chair

(Seal)

ATTEST:

By: _____
Maureen E. Murphy, Teton County Clerk

STATE OF WYOMING)
) ss

COUNTY OF TETON)

The foregoing Temporary Construction Easement was acknowledged before me by
Luther Propst, Chair of Board of County Commissioners of Teton County, Wyoming, this
____ day of _____, 2023.

WITNESS my hand and official seal.

Notary Public

(Seal)

My commission expires:

RB

EXHIBIT A
LEGAL DESCRIPTION
OF
TEMPORARY CONSTRUCTION EASEMENT
TETON RAPTOR CENTER PROPERTY

A PARCEL OF LAND, located within the Teton Raptor Center property as described in that warranty deed recorded as document number 0925397 in the office of the Clerk of Teton County, Wyoming, located within the SW ¼ SE ¼ of Section 22, Township 41 North, Range 117 West, 6th PM., Teton County, Wyoming, said strip and parcel being more particularly described as follows:

BEGINNING at the northeast property corner of said Teton Raptor Center Property;

thence southerly, 10.00 feet, along the east line of said Teton Raptor Center Property, to a point;

thence N 89°56'48" W, 194.58 feet, parallel to the north line of said Teton Raptor Center Property, to a point;

thence N 89°56'43" W, 436.63 feet, parallel to the north line of said Teton Raptor Center Property, to a point;

thence S 82°56'24" W, 77.95 feet to a point;

thence S 19°50'31" W, 31.38 feet to a point;

thence N 88°40'19" W, 63.27 feet to a point;

thence N 19°50'31" E, 31.82 feet to a point;

thence N 76°55'39" W, 47.54 feet to a point;

thence N 87°16'25" W, 104.89 feet to a point;

thence N 86°38'26" W, 119.43 feet, parallel to the north line of said Teton Raptor Center Property, to a point;

thence north, 10.01 feet, along said west line of the Teton Raptor Center Property, to the northwest corner of said Teton Raptor Center Property;

thence easterly, 1,042.3 feet, more or less, along the north line of said Teton Raptor Center Property, to the point of beginning.

Said **Parcel** contains 0.31 acres, more or less.

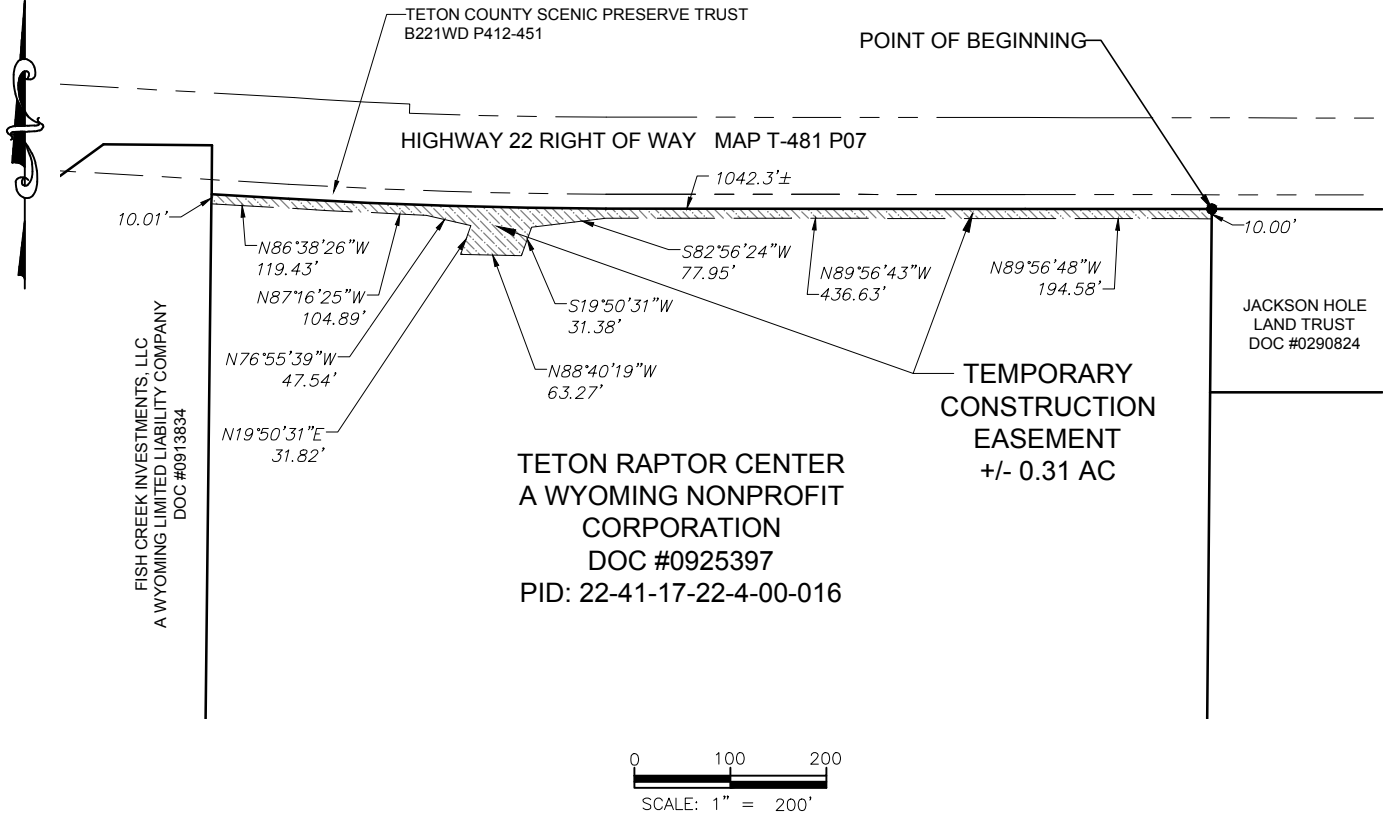
As shown on Exhibit B attached hereto and by this reference made a part hereof;

JORGENSEN ASSOCIATES, INC.

Prepared July 7, 2022

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EXHIBIT B
EASEMENT SKETCH OF TEMPORARY CONSTRUCTION EASEMENT
OVER TETON RAPTOR CENTER PROPERTY



LEGEND

- CALCULATED POSITION, NO MONUMENT FOUND OR SET
- PROPERTY BOUNDARY
- - - - BOUNDARY, HIGHWAY ROW
- - - - BOUNDARY, TEMPORARY CONSTRUCTION EASEMENT
- ////// AREA, TEMPORARY CONSTRUCTION EASEMENT

LOCATED WITHIN
 SW1/4SE1/4, SEC.22 T41N., R.117W., 6th P.M.
 Teton County, Wyoming