

FODOR LAW OFFICE, PC



March 7, 2025

Teton County Planning Commission
Planningcom@tetoncountywy.gov

Dear Commissioners:

I am writing on behalf of the Lockhart family and their entities which own land comprising NSP Area 2 in Northern South Park as well as other lands outside NSP Area 2. Having reviewed the Staff Report for the JHHR Holdings I, LLC Master Site Plan for NSP Area 1, Application MSC 2024-0037, I wanted to share with you the Lockhart family's position on the roadway described as the East-West Connector and the location of the School Exaction parcel. I will preface my comments by stating that the Lockharts have not filed for a Master Plan in NSP Area 2.

Roadway – East-West Connector

1. Location. The East-West Connector contemplated in this application and discussed in the staff report presumes the vast majority of the linear footage for such a roadway would be located in NSP Area 2. Further, some speakers, including planning commissioners, have presumed this East-West Connector would travel to South Highway 89 crossing other lands owned by the Lockhart family (the "Bull Pasture") which is not part of NSP Area 2 and not subject to LDR Division 4.5. Even if the Lockhart family submits a Master Site Plan application for NSP Area 2, it would be an overreach for the County to require the Lockhart family to dedicate, *to the public*, an additional +/- 2.5 acres of property *outside of* Area 2 for the East-West connector's connection to South Highway 89 through the Bull Pasture. A government demand for property from a land use permit applicant must satisfy the requirements of *Nollan* and *Dolan*---that is, the permit conditions must have an essential nexus to the government's land use interest **and** be roughly proportional to the development's impact on the land use interest. *Sheetz v. County of El Dorado, California*, 601 U.S. 267, 275-276 (2024); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). "A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Dolan*, 512 U.S. at 396 *quoting Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922).

The Staff Report states that the East-West Connector preliminarily shown in NSP Area 1 would line up with existing easements in NSP Area 2. To be clear, there are no public easements in NSP Area 2. There are limited private easements granted to the Teton County School District – not the general public. As noted in *Dolan*, a landowner's right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Dolan*, 512 U.S. at 393 *quoting Kaiser v. Aetna*, 444 U.S. 164, 176 (1979). The Lockharts would lose this essential "stick" in their bundle of property rights if they are required to provide an easement over the Bull Pasture to the public.

The County Engineer, in her review comments states that the East-West Connector should connect to High School Road/Gregory Lane south of the High School campus (likely preferable) or to South Highway 89. Previously, the Regional Transportation Planning Administrator, Dr. Frei, stated during the March 5, 2024 Board of County Commissioners meeting that that an East-West connector was not necessarily required since from an engineering perspective, with some improvements, High School Road could handle the entire build out of NSP Area 1 and 2. This statement was further clarified by Dr. Frei where she stated the engineering analysis provided that High School Road could handle 1800 units with a 5% vacancy rate so a total of 1710 units, where only 1319 units have been approved for both NSP Areas 1 and 2 at full build out. During that same County Commissioners' meeting, the Commissioners justified reducing the total build out of NSP from 1800 to 1319, relying in part on Deputy County Attorney Abigail Moore's statement that any connection to South Highway 89 had to go through the Bull Pasture which is not part of NSP.

What is troubling to the Lockhart Family is the language in LDR, Section 4.5.2.K.6.c Street Connectivity – East-West Connector Road states that a minimum of a 90' right of way shall be provided for an East-West Connector roadway between **South Park Loop road and South Highway 89**. While the LDR text lacks some clarity, it seems to imply that the East-West Connector Road will travel over Lockhart lands outside of NSP Area 2 through the Bull Pasture. The County's position on the terminus of an East-West Connector is unclear; traffic experts state High School Road can handle full build out, but regulations overreach and require a connector over the Bull Pasture. The Lockharts want to reiterate that they have not made a decision whether to submit to the NSP overlay and do not feel it appropriate to have the County or another applicant dictate use of land outside the NSP overlay – specifically the Bull Pasture east of Flat Creek. Even if the Lockharts pursue an application to the NSP overlay, they would be under no requirement to dedicate additional land outside of NSP Area 2 to address adjacent and further remote traffic impacts from an eventual Tribal Trails connector or from South Park Loop Road.

Lastly, if the Lockharts opt in and file for a Master Plan for NSP Area 2 with an East-West Connector and the County seeks to mandate a connection between South Park Loop Road and South Highway 89, such a requirement would, as mentioned above, not only encumber land outside of NSP Area 2, but also completely isolate an additional 25 acres of active agricultural land. While some may see this as a necessary cost of progress or infrastructure management, the Lockharts are reluctant to entertain any further steps to isolate portions of their ranch and impede its future viability as an agricultural operation especially when viable alternatives exist which don't seem to have been fully explored and vetted by the County.

2. Cost. The application and Staff Report are conspicuously absent of discussion on costs of construction for the proposed East-West Connector, irrespective of where it ends up. While some parts of the staff report and Condition #1 seem to indicate that the applicant will be financially responsible for some portion of offsite improvements, this subject has not been sufficiently explored. It is unclear whether the current applicant is amenable to offsite exactions, though the March 4, 2025 letter from Jorgensen to staff seems to indicate a willingness to undertake certain offsite improvements.


Regarding the East-West Connector specifically, some form of cost sharing must be discussed and approved now, such that if the East-West Connector is eventually built, the Lockhart family will not be forced to pay a disproportionate share of the overall construction costs. According to a recent News and Guide article, about 7,000 cars a day use High School Road at its intersection of South Highway 89 today and the applicant's traffic plan estimates 18,000 cars would pass through that same area once NSP Area 1 is fully developed and the final mile of Tribal Trails is completed connecting west Jackson neighborhoods to Highway 22. That same article states the study prepared by Fasching Consulting, estimates the NSP Area 1 development would generate 2,070 trips. Assuming NSP Area 2 at full build out would generate something similar, then approximately 78% of the traffic on High School Road would be generated by development outside of Northern South Park. A modest nod to equity dictates that if any East-West Connector is built, its use by development outside of Northern South Park will far outweigh the traffic generation inside of Northern South Park and some form of cost sharing must be developed where such a roadway would be a substantial community benefit.

School

The proposal for NSP Area 1 located the school exaction parcel in the northeast corner of NSP Area 1 and included about 5 acres. It is our understanding that the School District feels that dedication is inadequate in size for development of a school. The staff report makes the presumption that should the Lockharts move forward with a Master Site Plan for NSP Area 2, something they have not elected to do, this could allow for connectivity to an additional adjacent school exaction parcel. The Lockharts are under no obligation to dedicate adjacent land for its school exaction parcel so it would be unwise to presume additional school land will be dedicated adjacent to what is proposed.

The Lockharts hope this deliberative body will consider the items contained in this letter when discussion resumes.

Regards,


Fodor Law Office, PC
Stefan J. Fodor



WYLIE | BAKER^{LLP}

March 7, 2025

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RE: Northern South Park Area 1 Master Site Plan (MSC2024-0037)

Dear Chandler,

On behalf of our client, JHHR Holdings I, LLC, we respectfully request a conclusion to the Planning Commission review and action taken on MSC2024-0037 at the next Planning Commission meeting on March 10, 2025. Please see Teton County LDR Section 8.2.14.D.4.d below for your reference:

In the event the applicant demands in writing that action be taken on a continued application, the body that continued the matter shall complete the public hearing and take action at the next regular meeting, for which the noticing requirements of this Section can be met, following receipt of the written demand.

Thank you for consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Susan'.

Susan Johnson
SJ Planning Solutions

A handwritten signature in blue ink, appearing to read 'ABaker'.

Amberley Baker
Wylie Baker, LLP

Cc: Chris Neubecker, Director of Planning and Building Services
Keith Gingery, Chief Deputy County Attorney