UNITED STATES DICTRICT COURT
for the
District of Wyoming
Trial Division

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Plaintiff

CASE NO. 26-CV-1-ABJ

Mr. Chad Hudson, in his capacity as
Forest Supervisor, USDA Forest Service
Bridger-Teton National Forest
340 N. Cache
Jackson, WY 83001
Email: chad.hudson@usda.gov
Phone:

Defendant #1

Jackson Hole Community Housing Trust
110 E. Broadway Avenue, 2nd Floor
P. O. Box 4498
Jackson, WY 83001

Defendant #2

PLAINTIFF'S REPLY TO UNITED STATES OF AMERICA'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiff, Michael Clement, is a Wyoming resident with a home at 15 Nelson Drive, Jackson, Wyoming. Defendant, Chad Hudson, is Forest Supervisor, USDA and, Forest Service, Bridger-Teton National Forest ("Forest Service"). Jackson Hole Community Housing Trust is an entity with offices at 110 East Broadway Avenue, Jackson, Wyoming ("Housing Trust"). Plaintiff submits this Reply in response to United States' opposition to preliminary injunction.

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BACKGROUND

The interests which Plaintiff seeks to protect are within the zone of interests that Congress intended to protect when it enacted:

(i) the National Forest Management Act and Title 36 - Parks, Forests and Public Property, Chapter II - Forest Service, Department of Agriculture, Part 252 - Land Uses; 36 C.F.R. Part 251, Subpart B - Special Uses, promulgated pursuant to the National Forest Management Act;

(ii) the National Environmental Policy Act, 42 U.S.C.A. Sections 4332, et seq. (NEPA); and

(iii) the Administrative Procedure Act, 5 U.S.C. 701-706. **(Complaint ¶20)**

36 C.F.R. Part 251, Subpart B - Special Uses, provides in Section 251.53 in pertinent part:

> "Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of uses specified in this section as follows" ..." **(Complaint ¶21)**

Section 251.53(d) of 36 C.F.R. Part 251, Subpart B, as amended, specifically limits uses and term permits for periods not over 30 years:

> (1) for not over 80 acres for:
> (i) hotels, resorts, and other structures and facilities for recreation, public convenience, or safety;
> (ii) industrial or commercial purposes; and
> (iii) education or public activities; and
>
> (2) for not over 5 acres for summer homes and stores; ..." (Emphasis Supplied) **(Complaint ¶23)**

The genesis of potential construction of residential units at the Nelson Drive trailhead began in or about 2009 as part of the "Jackson Administrative Site Lands Conveyance and Development" process described in the Decision Notice In Finding Of No Significant Impact issued by Jacqueline A. Buchanan Forest Supervisor, Bridger-Teton National Forest dated May 4, 2012, ("FONSI"). Alternative 5 in the FONSI originally authorized: "Construction of multifamily buildings containing up to 10 single family housing units at Nelson Drive Residential Site ..." (SEE FONSI at p. 9). (Emphasis Supplied). **(Complaint ¶8)**

In the decision ultimately issued in the 2012 FONSI, Forest Service Supervisor Buchanan's Finding of No Significant Impact authorized:

> "Up to 13 housing units, with associated amenities, constructed as multifamily complexes (could be apartments, condos, duplexes, triplexes, etc., or a combination of;
>
> Construction within an area of existing development and/or adjacent along the eastern boundary of development situated around the Putt-Putt trailhead. (FONSI at p.3). (Emphasis Supplied). **(Complaint ¶9)**

In the FONSI, in regard to the Nelson Drive Residential Site Forest Service Supervisor Buchanan stated her reasoning:

> ".... I did select the portion of this alternative [3} which relates to housing at Nelson Drive Residential site. Alternative 5 only allows for construction up to 10 housing units (in multi "family" buildings)....My decision is to place up to 13 housing units (in multi-family buildings) at Nelson Drive Residential site which will be located mostly within the area of existing development." (FONSI p.8).

In the FONSI, Forest Service Supervisor Buchanan outlined the reason for her decision:

> "In the EA, proceeds of the sale (of administrative land at 340 N. Cache Street, Jackson, Wyoming) ... the proceeds from the sale would be used to remodel/expand several structures on that site, in addition to constructing new facilities at Nelson Drive Residential and Cottonwood Work Center Administrative Sites." **(Complaint ¶10)**

Supervisor Buchanan found "the public benefits include… providing for increased housing for Forest Service employees." (FONSI at p. 7). (Emphasis Supplied). **(Complaint ¶12)**

The Forest Service would like to suggest to this Court ambiguity where none exists. Supervisor Buchanan clarified that the units did not have to be single family residences (FONSI p. 9): The units would be built in multiplexes so as to result in fewer facilities.

Attached to Plaintiff's Complaint as Exhibit "B" and made part hereof is the "Review of Environmental Compliance Documents, Jackson Administrative Site Lands Conveyance and Development Environmental Assessment, U.S.F.S. – BTNF - Jackson RD, Selected Modified Alternative Review, signed digitally by Chad Hudson, Bridger-Teton National Forest, Forest Supervisor, dated September 24, 2025 ("Review"). **(Complaint ¶6)**

Attached to Plaintiff's Complaint as Exhibit "C" is the U.S. Department of Agriculture Forest Service Special Use Permit, approved by Chad E. Hudson, Forest Supervisor, Bridger-Teton National Forest U.S.D.A. Forest Service, dated November 21, 2025 ("Special Use Permit"). **(Complaint ¶7)**

More than thirteen years after the 2012 FONSI, on September 24, 2025, the current Forest Service Supervisor Chad Hudson issued a Review of the FONSI regarding residences to be constructed at the Nelson Drive Trailhead and wrote in his Review that: "the proposed change in the number of housing units from 13 to 14 within a smaller footprint does not change the original finding of no significance." (Emphasis Supplied). **(Complaint ¶15)**

The Review by Supervisor Chad Hudson on September 24, 2025 was issued without any notice to the public, public comment or current environmental analysis. **(Complaint ¶16)**

On November 21, 2025 Supervisor Chad Hudson signed and approved the Special Use Permit which states, in pertinent part:

> "A. AUTHORITY. This permit is issued pursuant to the Organic Administration Act, June 24, 1897 and 36 CFR Part 251, Subpart B, as amended and is subject to their provisions." **(Complaint ¶17)**

The Special Use Permit states that the permit holder, Jackson Hole Community Housing Trust ("Housing Trust"), has been issued the permit for the purpose of:

> "Construction, operation and maintenance of a residential development at the Nelson Trailhead on the Jackson Ranger District of the Bridger-Teton National Forest. Development includes up to 14 buildings comprising 24 one-bedroom apartments (in triplexes, and 12 two-bedroom apartments in duplexes), for a total of 36 units. Permit holder will offer U.S. Department of Agriculture Forest Service (Forest Service) permanent and seasonal employees the first option to lease 13 of the units ..." (Special Use Permit at p. 1). (Emphasis Supplied).

The Special Use Permit was issued, authorized and signed by Supervisor Chad Hudson without notice, public comment or Environmental Analysis. **(Complaint ¶18).** A complex of 36 housing units to be constructed, operated and maintained by a special interest entity for mostly non-Forest Service employees was never contemplated by the FONSI or its attendant Environmental Analysis.

MERITS OF PLAINTIFF'S CASE

"[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163 (1803).

Plaintiff has been injured substantively and procedurally.

Plaintiff is substantively injured by the Special Use Permit: It permits permanent destruction of wild National Forest Land for the unlawful use and occupancy of an apartment complex constructed, operated and controlled by a special interest entity. It deprives Plaintiff of

his right to access, enjoy and recreate on a substantial part of the National Forest land at the Nelson Trailhead on Plaintiff's street where he goes regularly. **(Complaint ¶39)**. The regulatory system developed by Congress grants to the Public including Plaintiff the right to access, hike and recreate on this National Forest Land limited only by other activities lawfully authorized pursuant to the governing Code of Federal Regulations 36 CFR Part 251, Subpart B Section 251.50 et seq.). Section 251.50(c) specifically grants to Plaintiff the right to hike and recreate on this land. The Special Use Permit authorizes a use not permitted under 36 CFR Part 251, Subpart B Section 251.53(d) pursuant to which it was issued; and, it authorizes a project substantially different from what the FONSI authorized and reviewed.

Even if the use is found to be lawful, the "Bate and Switch" procedure conducted by the Forest Service herein injures Plaintiff by depriving him of the ability to review, comment upon and potentially appeal the authorization of the current project, the size and impact of which is nearly three (3) times that of the one published, presented and studied 13 and ½ years ago under much different circumstances. **(Complaint ¶31)**. The resultant injury is the tripling of the adverse impact of human activity, as well as the adverse impact of impervious coverage and loss of green space required for the structures for 36 as opposed to 13 residential units and the parking for residents, their vehicles, boats, campers and guests. This adversely impacts the fields, woods, flora and fauna aesthetically and actively partaken of by, and adjacent to Plaintiff at the Nelson Trailhead **(Complaint ¶39)**. The injury is the impact of three times the traffic (including the inevitable parking) on Plaintiff's street, Nelson Drive which is narrow, winding and without sidewalks. **(Complaint ¶39)**.

DISCUSSION OF THE LAW

I. RIGHT OF REVIEW

Plaintiff brings this lawsuit pursuant to the authority set forth in the Administrative Procedure Act ("APA"), 5 U.S.C. 701 et seq. **(Complaint ¶4)**.

APA Section 702. Right Of Review states, in pertinent part:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, its entitled to review thereof...."

APA Section 706. Scope Of Review states, in pertinent part:

> "To the extent necessary to decision and when presented, the reviewing Court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing Court shall - ....
>
> 2) Hold unlawful and set aside agency action, findings, and conclusions found to be –
>
> (A) Arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;
>
> (B) Contrary to constitutional right, power, privilege, or immunity;
>
> (C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;
>
> (D) Without observance of procedure required by law;...."

This Court's Decision And Order in Upper Green River Alliance v. U.S. Bureau of Land Management, 598 F. Supp. 3d 1303(DWO 2022), predated the decision in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) and its fundamental change to the doctrine of statutory interpretation versus agency deference; it nevertheless offers a comprehensive analysis of this Court's authority to review the substantive and procedural integrity of the Forest Service's issuance of the Review and Special Use Permit pursuant to APA Section 706. Upper Green River Alliance, 598 F. Supp. 3d at 1319 (quoting Lujan v. National Wildlife Federation, 497 U.S. 871, 110 S.Ct. 3177, 111 L.Ed. 2d 695 (1990)).

A. PLAINTIFF'S ALLEGATONS RE: APA SECTIONS 706(2)(A) and (C)

The Forest Service issued Special Use Permit pursuant to 36 CFR Part 251 Subpart B as amended (SUP, P.1). Plaintiff alleges that the Forest Service actions are not in accordance with law and are in excess of statutory jurisdiction, authority or limitations, or short of statutory right (5 U.S.C.A. 706 (2)(A) and (C)). The Special Use Permit far exceeds the authority of Section 251.53 (d) of 36 C.F.R. Part 251, Subpart B as amended:

36 C.F.R. Part 251, Subpart B - Special Uses, provides in Section 251.53 in pertinent part:

> "Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, may issue special use authorizations for National Forest System land under the authorities cited and for the types of uses specified in this section as follows" ..." (Emphasis Supplied)

Section 251.53(d) of 36 C.F.R. Part 251, Subpart B, as amended, specifically limits uses and term permits for periods not over 30 years:

> "(1) for not over 80 acres for:
> (i) hotels, resorts, and other structures and facilities for recreation, public convenience, or safety;
> (ii) industrial or commercial purposes; and
> (iii) education or public activities; and
>
> (2) for not over 5 acres for summer homes and stores; ..." (Emphasis Supplied)

The Special Use Permit is not for: (1) "hotels, resorts or other structures and facilities for recreation, public convenience, or safety"; or (2) for "summer homes and stores". **(Complaint ¶'s 23, 24 and 28).**

In 2024, the United States Supreme Court overruled the "Chevron Doctrine" in Loper Bright Enterprises, 603 U.S. 369 (2024). In Loper Bright, the Supreme Court held that the Chevron framework contradicted Section 706 of the APA's requirement that courts "decide all relevant

questions of law" and "interpret … statutory provisions. (Id. at 603 U.S. 398–399). The majority opinion rejected Chevron's presumption that a statutory ambiguity indicates a delegation to agencies to choose one among the multiple possible reasonable interpretations of a statute. (Loper Bright Enterprises, at 603 U.S. 398–399). Statutes, the Court held, have a single best meaning fixed at the time of enactment, and the APA's command requires courts to determine the meaning of a statute using their "independent legal judgment." (Id. at 400–01). In the instant matter the plain text of 36 C.F.R. Part B – Special Uses, Section 251.53 is clear. There really is no ambiguity which would even give rise to the Forest Service claim that it has the right to issue a Special Use Permit to the Housing Trust to construct, operate, and maintain an apartment complex on public Forest Service land. *Expresio Unis Est Exclusio Alterius*. It is a bridge too far to convert authority to construct "hotels, resorts, and other structures and facilities for recreation, public convenience, or safety" into authority to construct, operate and maintain an apartment complex on public Forest land wherein the Forest Service receives only a right of first refusal to lease 13 out of 36 units and the Housing Trust determines who may occupy the remaining units, and pays no fee as required by 36 C.F.R. Sections 251.58(f) and (g).

B. PLAINTIFF'S ALLEGATIONS RE: APA SECTION 706(2)(A)

Plaintiff alleges that the Forest Service's actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law (APA Section 706(2)(A)). **(Complaint ¶'s 22-28, 37)**. In addition to exceeding the authority set forth in Section 251.53(d) of 36 C.F.R. Part 251, Subpart B as set forth hereinabove, Supervisor Hudson either obfuscated in his issuance of the Review and Special Use Permit "or acted arbitrarily, capriciously and without appropriate discretion." **(Complaint ¶'s 31-33, 37)**. In his Review of the thirteen and a half year old FONSI regarding the use and development of the Forest land in dispute, Supervisor Hudson

found that: "the proposed change in the number of housing units[1] from 13 to 14 within a smaller footprint does not change the original finding of no significance." **(Complaint Exh. "B" p.2)**. Yet, two (2) months later on November 21, 2025, in a spectacular slight of hand, Supervisor Hudson approved a Special Use Permit authorizing the construction of 36 housing units in 14 multi-family buildings. **(Complaint ¶33)**. The 2012 FONSI upon which Supervisor Hudson relies in his September 25, 2025, Review took into account and was entirely based upon a maximum of 13 housing units for Forest Service employees to be constructed as multi-family complexes as set forth by then Forest Service Supervisor Buchanan, based upon public comment environmental analysis and reviews performed by the National Forest Service pursuant to the National Environmental Policy Act, 42 U.S.C.A. Sections 4331, *et seq*. (NEPA). **(Complaint ¶ 9, 11 and 20)**.

C. PLAINTIFF'S ALLEGATIONS RE: APA SECTION 706(2)(D)

Plaintiff alleges that the Forest Service acted "without observance of procedure required by law". (5 U.S.C.A 706(2)(D)) Plaintiff's Complaint sets forth in Paragraphs 31 and 32 the following:

> 31. The Special Use Permit was issued without requisite comment from the public including Plaintiff who is directly affected by the Special Use Permit in that:
>
> (i) No notice to the public including Plaintiff to review and comment on a completely different project from that which was the subject of the FONSI and public comment in 2009-2012;

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[1] The term "unit(s)" is used extensively by the Forest Service and its Supervisors throughout the process which is the subject of this litigation: Merriam-Webster Dictionary defines "Unit" in pertinent part as follows:
1a: the first and least natural number: ONE
b: a single quantity regarded as a whole in calculation
3h: one of a number of apartment or residences in a building or complex. Merriam-Webster Online Dictionary, https://www.merriam-webster.com/Dictionary Unit (last accessed February 1, 2026).

(ii) No notice to the public or opportunity for the public including Plaintiff to comment on a housing project proposed for the Nelson Drive Trailhead for a period of over 13 1/2 years;

(iii) No Environmental Assessment has been conducted in connection with the Special Use Permit for an apartment complex of 36 dwelling units plus amenities;

(iv) Substantial changes have occurred since the last public comment and FONSI not only in and around the Nelson Drive trailhead, the PUTT-PUTT trail and their respective usage but also in the Plaintiff's adjacent neighborhood, which will be immediately and adversely affected by the project proposed in the Special Use Permit;

(v) Even major development proposals are limited to planning of no more than 10 years in duration pursuant to 36 C.F.R. Part 251 Subpart B, Section 251.54(f)(2); and, therefore Supervisor Hudson may not rely upon public comment conducted in 2009 – 2012, or in the 2012 FONSI, or the Environmental Assessment therein.

32. The Special Use Permit was issued without requisite Environmental Impact Analysis on the neighbors including Plaintiff since there has been no Environmental Assessment performed since 2012; and, that Environmental Assessment performed from 2009 to 2012 did not address or contemplate the impact of 36 housing units at the Nelson Drive trailhead: it initially considered 10 single family housing units and thereafter 13 housing units in multifamily buildings. (See FONSI at P. 9).

D. PLAINTIFF'S ALLEGATIONS RE: APA SECTIONS 706(2)(B)(D)

Plaintiff alleges that the actions of the Forest Service are contrary to Plaintiff's constitutional right, power, privilege …" and "without observance of procedure required by law" (5 U.S.C.A. Sections 7062(B) and (D)). Paragraph 30 of Plaintiff's Complaint alleges:

30. The Special Use Permit violates Plaintiff's rights to due process of law and equal protection of the laws granted by the Fourteenth (14th) Amendment To The Constitution Of the United States Of America in that:

(i) it discriminates against Plaintiff by precluding him from occupying a unit in an apartment complex on public forest;

(ii) it was issued without affording Plaintiff the ability to review the project set forth therein, make public comment and interact with other similarly affected neighbors in accordance with procedures governing the Forest Service; and

(iii) it adversely impacts Plaintiff without affording him the right to review and comment on the substantive validity and procedural integrity of the Forest Service's actions in accordance with law.

In order for the protections of the 14th Amendment to apply to Plaintiff, there must be "state action" in concert with the unlawful actions taken by the Forest Service. The Special Use Permit was issued to the Housing Trust which is a Wyoming entity. **(Complaint ¶3)**. The proposed project will take access off Nelson Drive owned and operated by the Town of Jackson and will use Town of Jackson services including water and sewer. **(Complaint ¶39(iv))**. Town of Jackson funds (taxpayer dollars) have been committed to enable the project set forth in the Special Use Permit **(Complaint ¶41)**. The Forest Service has requested and the Town of Jackson is in the process of annexing the Forest Service land upon which the Special Use Permit Project is to be constructed. (See Town of Jackson Clerk's official record of Forest Service Petition To Annex, and Town Council January 20, 2026, vote to proceed with annexation process attached hereto as Exhibit "A").[2]

In Vasco A. Smith, Jr. v. Holiday Inns of America, Inc., 336 F.2d 630 (6th Cir. 1964) the Court explained that the use of state finances in furtherance of an unlawful purpose under

[2] The Court is permitted to take Judicial Notice of Adjudicative Facts which can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. (Federal Rule of Evidence 201).

Federal law gives rise to the applicability of the guarantees set forth in the 14th Amendment. Plaintiff recognizes that the issues presented in the Instant Matter pale in comparison to the issue of racial prejudice in that case. However, the discussion of law regarding state action is nevertheless controlling. The Court stated:

> "We believe that the right not to have state finances, state agencies and state laws employed to such an [unlawful] purpose and such a result is a right encompassed in the equal protection clause of the 14th Amendment". Id. at 635.

Here "state" funds, "state" services including sewer, water, roads and resources, and "state" annexation of National Forest land are being employed in a project which is unlawful. It substantively and procedurally violates Plaintiff's right of due process and equal protection of the laws, and violates the protections Congress afforded the public including Plaintiff in the relevant Sections of the Code of Federal Regulation.

II. STANDING

This Court in Upper Green River Alliance v. United States Bureau of Land Management, Supra recognized the requirements for Standing as set forth in Lujan v. Defenders of Wildlife, Supra. Therein the Court set forth three elements necessary for Standing:

> "Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized[3], see [Allen v. Wright, 468 U.S. 732, 756 (1984]; Warth v. Seldin, 422 U. S. 490, 508 (1975); Sierra Club v. Morton, 405 U. S. 727, 740-741, n. 16 (1972); and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" Whitmore [v. Arkansas, 495 U.S.155 (1990)] , supra, at 155 (quoting Los Angeles v. Lyons, 461 U. S. 95,102 (1983)). Second, there must a causal connection between the injury and the conduct complained of the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... the] result [of] the independent action of some third party not before the court." Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41-42 (1976). Third, it must be "likely," as opposed to merely

[3] (By particularized, we mean that the injury must affect the plaintiff in a personal and individual way.)

"speculative," that the injury will be "redressed by a favorable decision." *Id.*, at 38, 43.

Lujan, 504 U.S. at 560-61.

Plaintiff in Paragraphs 39 and 40 of his Complaint sets forth in part his basis for his Standing:

> 39. As a result of the actions of Supervisor Hudson, Plaintiff has suffered and/or is imminently threatened with a direct adverse impact upon Plaintiff's aesthetic, recreational and/or economic interest as well as Plaintiff's right to due process interest including, without limitation, the following:
>
> (i) Plaintiff lives on Nelson Drive, 1 block (approximately 400 yards) from the Nelson Drive trailhead and frequently (on average once a week) walks from his residence up Nelson Drive to the Nelson Drive trailhead and hikes in National Forest land starting at that trailhead;
>
> (ii) Plaintiff's residence, garage and driveway face Nelson Drive;
>
> (iii) Supervisor Hudson's unlawful actions, including without limitation his issuance of a Special Use Permit as hereinabove described will permit the construction of a 36 unit apartment complex in the fields and woods where the Nelson Drive trailhead is located, to the detriment of Plaintiff's aesthetic and recreational experience on National Forest land at the Nelson Drive trailhead;
>
> (iv) Supervisor Hudson's unlawful issuance of a Special Use Permit to allow the construction of 36 additional dwelling units taking access to and from Nelson Drive will have an immediate and direct detrimental environmental impact upon Plaintiff including without limitation: Nelson Drive has no sidewalk and is narrow, winding and inadequate to safely handle vehicular traffic along with pedestrians and hikers;

(v) the construction of 36 dwelling units will have a substantial detrimental impact upon the neighborhood in which Plaintiff resides due to traffic, noise, congestion, parking and increased impervious coverage.

(vi) Supervisor Hudson's unlawful issuance of a Special Use Permit to allow the Jackson Hole Community Housing Trust to construct, operate and maintain a 36 unit apartment complex on public Forest land wherein Plaintiff will not be eligible to occupy deprives Plaintiff of his right to use and/or enjoy that public Forest land; and, discriminates against him violating his equal rights under the United States Constitution.

(vii) The Special Use Permit was issued unlawfully by Supervisor Hudson depriving Plaintiff his right to due process to receive notice and to review and comment upon the lack of legal basis for the Special Use Permit and its significant adverse impact affecting Plaintiff and his surrounding environmental, including the Nelson Drive Trailhead area.

40. Plaintiff has been aggrieved by the approval of the Special Use Permit issued by supervisor Chad Hudson and has no adequate remedy other than the instant litigation.

Plaintiff's factual allegations with respect to the three elements required for Standing as set forth in Lujan v. Defenders of Wildlife, are sufficient:

Plaintiff's "Injury in Fact" is (a) concrete and particularized and is actual or eminent, not conjectural or hypothetical. There is no question that Plaintiff's injury is caused by the Forest Service's unlawful actions. Finally, it is likely, not just speculative, that Plaintiff's injury will be redressed by a favorable decision.

Plaintiff's injury can be substantive or procedural. Lujan, supra, at 571-73. In Plaintiff's case it is both.

A. SUBSTANTIVE INJURY GIVING RISE TO STANDING

It is instructive to review the Court's analysis of proximity and connectivity as it relates to substantive injury sufficient for standing:

> "Thus, under our case law, one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even the though the dam will not be completed for many years...[that]... is quite different from ... persons who live (and propose to live) at the other end of the Country from this dam." Id. at P 572, n.7.

Although the Court in Lujan v. Defenders of Wildlife, supra, found a lack of standing it was because the Defenders Of Wildlife alleged such a tenuous connection to the injury claimed:

> "Respondents' claim to injury is the lack of consultation with respect to certain funded activities abroad "increase[es] the rate of extinction of endangered and threatened species." Id. at P 562.

However the Court explained the nature of a protected aesthetic interest which does give rise to standing in its discussion regarding Japan Whaling Ass'n. v. American Cetacean Soc'y., 478 U.S. 221 (1986):

> In the former case, we found that the environmental organizations had standing because the "whale watching and studying of their members w[ould] be adversely affected by continued whale harvesting," (see 478 U. S., at 230-231, n. 4; (Lujan v. Defenders of Wildlife, supra, 573).

Lujan, 504 U.S. at 573, n.8 (citing Japan Whaling Ass'n, 478 U.S. at 221).

The Court further explained what constitutes a sufficient allegation of aesthetic injury giving rise to standing:

> "Of course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purposes of standing. See, e.g., Lujan, 504 U.S. at 562-63 (citing Sierra Club v. Morton, 405 U.S. at 727, 734 (1972)).

Lujan, 504 U.S. at 562-63 (Sierra Club v. Morton, 405 U.S. 727, 734 (1972)), n.8 (citing Japan Whaling Ass'n, 478 U.S. 221).

> "But the "injury in fact" test requires more than injury to a cognizable interest. It requires that the party seeking review be himself among the injured" Sierra Club, 405 U.S. at 734-35."

In the instant matter as set forth above, Plaintiff has indeed alleged much more than the injury which gave rise to standing in Sierra Club v. Morton, supra: that he is personally injured by the Special Use Permit which permits permanent destruction of wild National Forest land for the unlawful use and occupancy of an apartment complex constructed, operated and controlled by a special interest entity; he lives in close proximity to the subject land; he regularly goes to hike and recreate, in the National Forest there; that he is now to be denied access, hiking and recreation on a substantial portion of National Forest land at the Nelson Trailhead on his street; and, construction of a 36 unit apartment complex on the fields and woods are detrimental to Plaintiff's recreational and aesthetic experience. Plaintiff also alleges he will suffer, the degradation of his surroundings including without limitation, his safe use of roads, traffic and congestion and overburdening of services. These are the type of "concrete" substantive injuries described in Lujan v. Defenders of Wildlife, supra.

B. Procedural Injury Giving Rise To Standing

Plaintiff has alleged violation of his procedural rights which are also particularly recognized in Lujan v. Defenders of Wildlife, supra. The Court emphatically stated:

> We do *not* hold that an individual cannot enforce procedural rights; he assuredly can, so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his Standing. Lujan, 504 U.S. at 573, n.8.

Plaintiff's Complaint alleges violations of the procedures set in place to protect concrete interests of Plaintiff and his neighbors.

Procedurally, Supervisor Hudson recognized the need for a "Review" thirteen and a half years after Supervisor Buchanan's FONSI. Yet he made a mockery of the "Review" procedure by the "Bait and Switch" he employed wherein he "reviewed" a project consisting of 14 housing units (increased from 13) but he authorized a Special Use Permit for 36 housing units, without any additional study. This doesn't even pass the "straight face" test for procedural due process. Using his form of logic, he could have authorized any number of units so long as they were in 14 buildings and 13 units are "available" for Forest Service Rental.

Procedurally, the Forest Service failed to conduct an environmental assessment after thirteen and a half years for any construction, let alone construction of nearly three times the number of housing units originally studied. As alleged by Plaintiff at Paragraph 31[sic] (v):

> (iv) Even major development proposals are limited to planning of no more than 10 years in duration pursuant to 36 C.F.R. Part 251 Subpart B, Section 251.54(f)(2); and, therefore Supervisor Hudson may not rely upon public comment conducted in 2009 – 2012, or in the 2012 FONSI, or the Environmental Assessment therein.
>
> "(iv) Substantial changes have occurred since the last public comment and FONSI not only in and around the Nelson Drive trailhead, the PUTT-PUTT trail and their respective usage but also in the Plaintiff's adjacent neighborhood, which will be immediately and adversely affected by the project proposed in the Special Use Permit;"

The Forest Service failed to publish notice or obtain public input on a very different project after thirteen and a half years thereby depriving Plaintiff of his due process right to review, comment and potentially appeal. As alleged by Plaintiff at Paragraph 31(iv) of his Complaint not only has the size and impact of the project tripled, but the current state of the neighborhood in which it is located is much different from what it was thirteen and a half year ago.

The Forest Service's opaque and materially inadequate process, on its face, does not satisfy the letter or the intent of the Code of Federal Regulations pertaining to the public's and Plaintiff's procedural rights.

III. COUNTER ARGUMENTS TO UNITED STATES OPPOSITION

1. Statute of Limitations. The 2012 Forest Service argument is Non Sequitur. The FONSI and supporting Environmental Analysis never reviewed, studied or analyzed the project authorized in the 2025 Special Use Permit.

   (a) The FONSI "Finding" is based on 13 not 36 units;

   (b) The FONSI "Finding" is based on the specific provision that the Forest Service will be "constructing new facilities at Nelson Residential… site [s]. FONSI (p. 3); it never authorized granting complete control of an apartment complex to a special interest entity to be occupied mostly by non-Forest Service employees;

   (c) The FONSI is based upon a 2009 Environmental Analysis supplemented 14 years ago in January, 2012 FONSI (p. 2) which is outdated, no longer relevant and violates NEPA requirements for timeliness. (36 C.F.R. Part 251 Subpart B, Section 251.54(f)(2)).

2. Exhaustion of Administrative Remedies. For all of the reasons set forth in the immediate preceding Section 1 hereinabove, it was impossible for Plaintiff to even recognize let alone exhaust his administrative remedies. In 2012 when the FONSI was issued, Plaintiff could not possibly have known or reviewed the completely different project which would be authorized in the 2025 Special Use Permit.

3. Final Action. Bennett v. Spear, 520 U.S. 154, 177-78 (1997) sets forth that agency action is final and reviewable under the APA when two (2) conditions are met. The action must "mark

the consummation of the Agency's decision making process", and it must also create rights, obligations and legal consequences. Here, the Forest Service failed not one but both requirements for "final action" as set forth in the Special Use Permit. The project set forth in the 2012 FONSI and its Environmental Analysis is a completely different animal from the project set forth in the 2012 Special Use Permit, as are the rights, obligations and legal consequences flowing from it.

4. Substantive Violations of C.F.R.'s, C.F.R.'s NEPA and APA.

(a) The Forest Service misconstrues the terms "public use" and "public activity" as set forth in 16 U.S.C. Section 497, 16 U.S.C 497d; 36 C.F.R. Section 251-53. It chooses to ignore the clear usage limitations set forth: ... "other structures and facilities for recreation, public convenience, or safety" (36 C.F.R. Part 251, Subpart B Sections 251.53 and 251.53(d)). This is exactly the type of agency "interpretation" which was rejected in Loper Bright Enterprises v. Raimondo, supra.

Even prior to Loper Bright, supra, the United States Supreme Court discussed the so-called "Auer Deference" to agency interpretation, Auer v. Robbins, 519 U.S. 452 (1997) and significantly limited its applicability in Kisor v. Wilkie, 588 U.S. 558 (2019) explaining that the "Auer Deference" should not be "reflexive" and clarified that courts are obligated "to perform their reviewing and restraining functions." Id. at 573-74. For the "Auer Deference" to apply a court first must determine that the regulation at issue is "genuinely ambiguous." Id. at 574-75. That is certainly not the case in the instant matter.

In Immigration and Naturalization Service v. Yueh-Shaio Yang, 519 U.S. 26 (1996), writing for the unanimous Court, Justice Scalia left no doubt that the interpretive view of an agency of the United States government will not be permitted "to overcome the unmistakable text

of the law." Id. at 31 (citing MCI Telecommunications Corp v. American Telephone and Telegraph Co., 512 U.S. 218, 229-30 (1994)). In MCI Telecommunications Corp. v. American Telephone and Telegraph Co., as in the instant matter the government agency (The Federal Communications Commission) interpreted its regulations in such a way that:

> "it effectively introduced a whole new regime of regulation (or of free-market competition), which may well be a better regime but it is not the one that Congress established." MCI Telecommunications Corp., 512 at 234.

In the instant matter, the Forest Service may try to convince this Court that its interpretation of 36 C.F.R. Part 251, subpart B is a better regulation: nevertheless, it is not the one that Congress established. It is also not the one which the Public, including Plaintiff has a right to rely upon.

(b) Units are not Buildings. Supervisor Buchanan could not have been more explicit: "up to 13 units (in multi-family buildings)"; and, she clarified that the residential units would not have to be "stand alone houses" in her 2012 FONSI. It is disingenuous for the Forest Service to not only ignore her finding but also to now argue that it is not bound by the dictionary definition of commonly used terms.

(c) Adjustment of 13 units to 14 units. Adjustment from 13 units to 14 units could be reasonable: increasing 13 units to 36 units is not even close. New Mexico ex rel Richardson v. Bureau of Land Management, 565 F.3d 683 (10th Cir. 2009) cited by the Forest Service is inapposite. Here, the "relevant impact" of the project authorized in the Special Use Permit has not "already been considered in the NEPA process …"

5. Constitutional Rights. As set forth hereinabove the Forest Service has discriminated against Plaintiff: he is one of the class of those citizen residents who are deprived of their right to access, use, recreate and enjoy a substantial area of National Forest land the use, occupancy and control of which has been given over to a special interest entity. The Housing Trust is not the "public". Congress has not mandated the National Forest land can be used to serve the interests of the Housing Trust, or to alleviate the lack of affordable housing resulting from myriad circumstances not the least of which are failures on the part of Teton County and the Town of Jackson to adequately address the issue for decades.

6. Judicial Balancing. The United States as well as Plaintiff request this Court to "balance" their respective interests regarding the requested preliminary injunction. Plaintiff respectfully submits that the question is clear: will the Forest Service be permitted to allow the destruction of a very significant portion of National Forest Land at the Nelson Trailhead to the detriment and exclusion of the public including Plaintiff and his neighbors from that area which is dear to them before a determination is made on the merits of Plaintiff's claim; or, will the Court consider the merits of Plaintiff's claim before that irreversible action is taken.

7. Bond. The United States will not lose money as a result of a preliminary injunction. There is no basis for a bond.

CONCLUSION

For all of the reasons set forth hereinabove, Plaintiff respectfully submits that he has stated a cause of action setting forth:

(i) Plaintiff's right to and the scope of review of USDA Forest Service final action pursuant to APA Sections 702 and 706;
(ii) The substantive and procedural illegalities of the Forest Service Review and Special Use Permit;
(iii) The "concrete" the substantive and procedural injuries to Plaintiff directly resulting from the actions of the Forest

Service and from the terms and conditions of the Special Use Permit which such injuries are not speculative and can be remedied by this Court's decision in Plaintiff's favor; and

(iv) The need for preliminary injunctive relief and thereafter final injunctive and declaratory relief.

The use permitted by, and the procedure pursuant to which the Special Use Permit was issued are illegal. The project authorized by the Special Use Permit is completely different from the project authorized by the FONSI and reviewed by its Environmental Assessment. Allowing it to stand would set a terrible precedent permitting and facilitating the destruction and usurpation of wild National Forest land by permanent development closed to the Public in derogation of the clear limitations set forth by Congress in the Code of Federal Regulation, without due process or equal protection.

Respectfully Submitted,

Michael J. Clement

Exhibit "A"

Michael J. Clement

From: Lea Colasuonno <lcolasuonno@jacksonwy.gov>
Sent: Thursday, January 22, 2026 4:25 PM
To: Michael J. Clement
Subject: Annexation Petition
Attachments: 87ddcb06-f140-406a-a7d2-6f5c801467ea.pdf

Best,
Lea

Lea Colasuonnno
Town Attorney
O 307 734 3497
C 307 690 7256
lcolasuonno@jacksonwy.gov

Town of Jackson
150 E. Pearl Ave, Jackson WY 83001
www.jacksonwy.gov

Regular Town Council Meeting

January 20, 2026
6:00 PM
Town Council Chambers
Chair: Arne Jorgensen

NOTICE: THE VIDEO AND AUDIO FOR THIS MEETING ARE STREAMED TO THE PUBLIC VIA THE INTERNET AND MOBILE DEVICES WITH VIEWS THAT ENCOMPASS ALL AREAS, PARTICIPANTS AND AUDIENCE MEMBERS. PLEASE SILENCE ALL ELECTRONIC DEVICES DURING THE MEETING.

I. ZOOM LINK FOR PUBLIC PARTICIPATION

The Town reserves the right to close Public Comment via Zoom at any time. In-person comment will continue to be taken and written comments can always be submitted to Town Council by emailing electedofficials@jacksonwy.gov.

To join, click link or copy it to your browser: https://us02web.zoom.us/j/81455861911?pwd=P0AplUGP7kDa73tuPcSKJNjpSXRoAl.1

Or join at zoom.com with Webinar ID: **814 5586 1911** and Password: **83001** or by phone: **+1 719 359 4580**

II. OPENING

A. Call to Order and Roll Call

B. Pledge of Allegiance

C. Land Acknowledgement

D. Announcements/Proclamations

1. Martin Luther King Jr. & Equality Day
2. Introduction of David Garcia, Deputy Town Manager

III. PUBLIC COMMENT

This section is reserved for public comment about items not included in this agenda. Public comment is limited to 3 minutes. As a general practice, Council does not discuss, debate, or act on issues raised under public comment. Council may or may not discuss an issue raised under Public Comment later in the meeting during Matters from Mayor and Council at their discretion. If you would like to communicate with Council during the meeting about an item on the agenda, please wait until public comment has been called for that item. Public comment may also be submitted to Council at any time by emailing *electedofficials@jacksonwy.gov*.

IV. CONSENT CALENDAR

All matters listed in this section are considered to be of routine nature by the governing body and will be enacted in one motion, unless it is removed from the consent calendar and considered separately by Council. Public comment may be given on any item.

A. Meeting Minutes

1. January 5, 2026 Regular Town Council Meeting

B. Disbursements

C. Contracts

1. Access and Utility Easement with Snow King Mountain Resort, LLC

D. Award Vine Street Improvement Project (Bid #26-10) (Brian Lenz)

E. Budget Amendment for the Procurement of a New Electric Truck (Johnny Ziem)

V. PUBLIC HEARINGS, DISCUSSION AND/OR POSSIBLE ACTION ITEMS

A. Administration

1. 90 Virginian Lane - Town Funding Approach (Tyler Sinclair)
2. Request for Proposals for Sustainability Plan Tracking (Tanya Anderson)
3. Applications to the Wyoming Office of State Lands and Investments' Unmet Housing Grant Program for 90 Virginian Lane and S4 Flats located at 910 Smith Lane and 915 Simon Lane (Kristi Malone)

B. Internal Services

1. U.S.F.S. Nelson Drive Annexation Public Hearing (Riley Hovorka)

C. Planning & Building

1. Development Plan and Conditional Use Permit for a new +/-78,000 sf Justice Center at 180 S. King St. (P25-179 & 180) (Tyler Valentine)

VI. RESOLUTIONS

A. Resolution 26-01: Applications to the Wyoming Office of State Lands and Investments' Unmet Housing Grant Program for 90 Virginian Lane and S4 Flats located at 910 Smith Lane and 915 Simon Lane (Kristi Malone)

VII. ORDINANCES

A. Ordinance A: An Ordinance Amending the Zoning Map at 252 & 254 E. Simpson Ave. (P25-156) (Tyler Valentine, First Reading)

VIII. MATTERS FROM MAYOR AND COUNCIL

A. Board and Commission Reports

B. Mayor Pro Tempore Appointment

IX. MATTERS FROM THE TOWN MANAGER

A. Town Manager's Report

X. ADJOURN

Annexation Petition

For the Town of Jackson Clerk:

The United States Forest Service, as the sole owner of the real property located adjacent to the Teton County, Wyoming, which real property is legally described on **Exhibit A** and shown on the map attached hereto as **Exhibit B** (the "***Property***"), both Exhibits attached hereto an incorporated herein by reference, hereby petitions the Town of Jackson and respectfully requests that the Property be annexed into the Town of Jackson. The undersigned is the sole owner of the Property.

United States Forest Service

By: _____

Name: Nathan Haynes

Its: Director of Lands & Minerals, USDA Forest Service, Intermountain Region

Date signed: October 30, 2025

EXHIBIT A
LEGAL DESCRIPTION

A Parcel of Land located in the W 1/2 NW 1/4 of Section 35, Township 41 North, Range 116 West, 6th P.M, Teton County, Wyoming and more particularly described as follows:

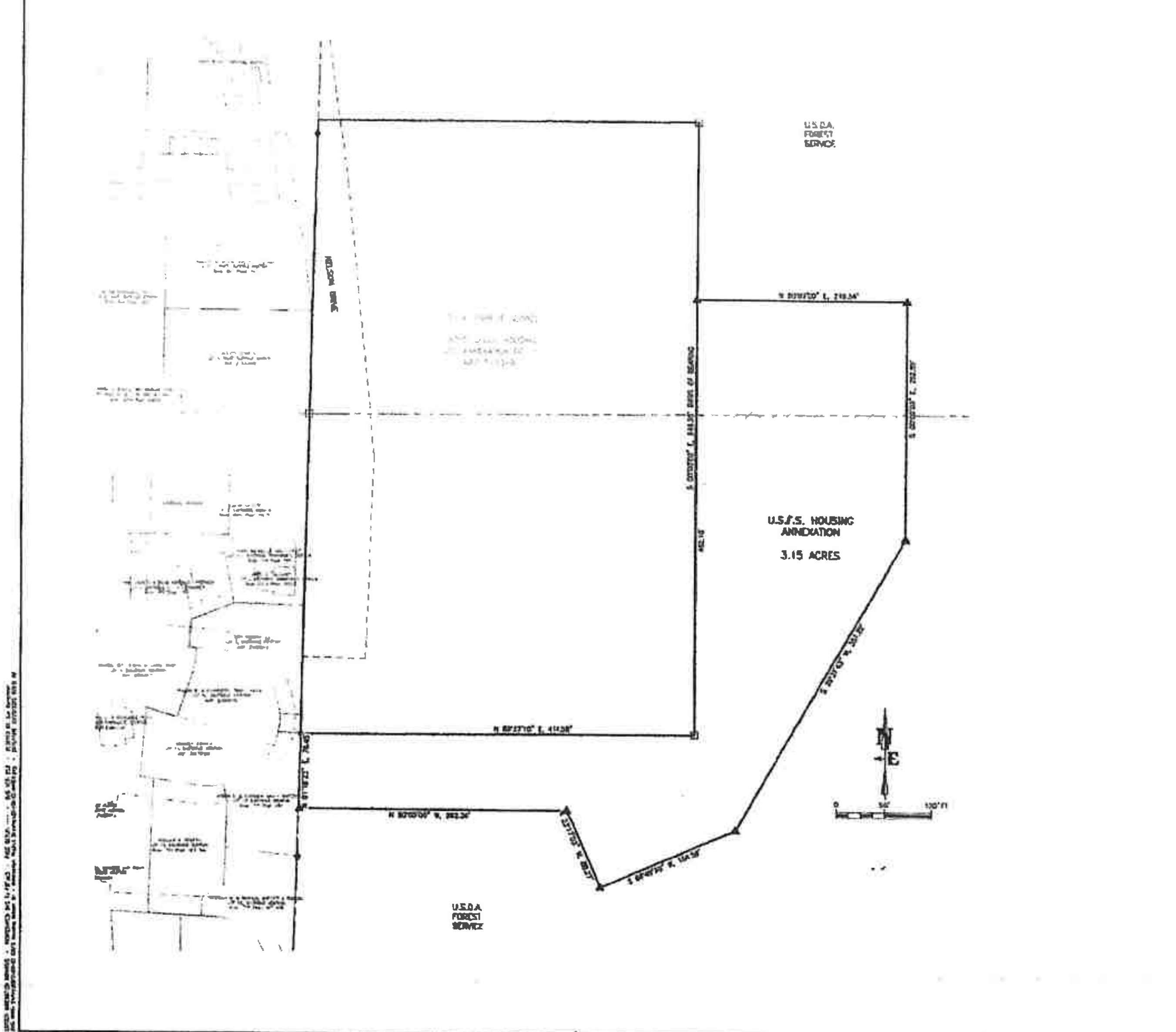
Beginning at the southwest corner of Cache Creek Housing Site Annexation No. 2, as shown on Map T-83B, records of the Clerk of Teton County;
Thence N89°37'10" E along the southerly line of said Cache Creek Housing Site Annexation No. 2, a distance of 414.58 feet to its southeast corner;
Thence N00°00'00" W, along the east line of said Cache Creek Housing Site Annexation No. 2, a distance of 462.10 feet;
Thence N90°00'00" E, leaving said line, a distance of 219.54 feet;
Thence S00°00'00" E, a distance of 252.85 feet;
Thence S29°37'43" W, a distance of 357.22 feet;
Thence S66°45'30" W, a distance of 154.59 feet;
Thence N23°17'03" W, a distance of 88.27 feet;
Thence N90°00'00" W, a distance of 282.36 feet to a point on the line common to Sections 34 and 35 of said T41N, R116W, said point also being on the easterly boundary line of Eastridge Addition to the Town of Jackson, Plat No. 730, records of Said Clerk;
Thence N01°18'23" E, along said line, a distance of 78.45 feet to the Point of Beginning.

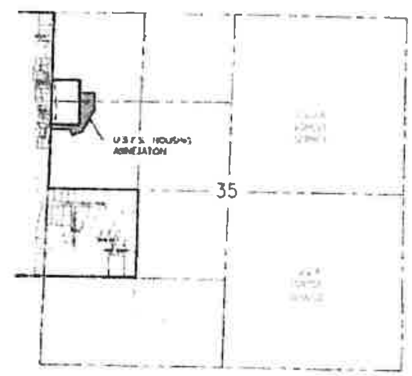
Said Parcel contains 3.15 acres more or less and is subject to easements, rights-of-way, reservations, and restrictions, of sight and/or of record.

Basis of bearing is N00°00'00" W along the east line of said Cache Creek Housing Site Annexation No. 2.

Lucas D. Rudolph
Wyoming PLS 15442
Nelson Engineering
Project 25-100-03
October 28, 2025

EXHIBIT B





VICINITY MAP
SECTION 35
T41N, R116W, 6th P.M.
Teton County, WY
scale 1" = 500'

LEGEND

- ANNEXATION PARCEL AND BOUNDARY
- EXISTING TOWN OF JACKSON BOUNDARY
- SECTION LINE
- MISCELLANEOUS PROPERTY/BOUNDARY LINE
- ▲ INDICATES A 5/8" DIA. REBAR WITH ALUMINUM CAP INSCRIBED "NELSON ENGR. PLS 15422" SET THIS SURVEY
- ◆ FOUND REBAR WITH ALUMINUM CAP
- □ INDICATES A FOUND BRASS CAP

CERTIFICATE OF SURVEYOR

State of Wyoming)
County of Teton)ss.
Town of Jackson)

I, Lucas D. Rudolph, a Professional Land Surveyor in the State of Wyoming hereby certify, that this plat was made from the notes of surveys made by me, or under my direction, and from records in the Office of the Teton County Clerk; and correctly represents the shown herein.

Lucas D. Rudolph, Wyoming Professional Land Surveyor 15418

MAP TO ACCOMPANY ANNEXATION
to the
TOWN OF JACKSON
ORDINANCE NO. ______

Located In
W1/2 NW 1/4
Section 35
Township 41 North,
Range 116 West, 6th P.M.
Teton County, Wyoming

DATE	10/18/2005
SURVEYED	RE
ENGINEERED	RA
DRAWN	RE
CHECKED	LR
APPROVED	LR

NELSON ENGINEERING
P.O. BOX 1599, JACKSON WYOMING (307) 733-2087

DRAWING TITLE
MAP TO ACCOMPANY ANNEXATION ORDINANCE

JOB TITLE
TOWN OF JACKSON
ANNEXATION PARCEL
USA-USFS BRIDGER TETON NATIONAL FOREST

DRAWING NO. 1

JOB NO. 05-100-03

UNITED STATES DISTRICT COURT
for the
District of Wyoming
Trial Division

Michael J. Clement, Esquire: *PRO SE*
15 Nelson Drive (NO MAIL DELIVERY)
P. O. Box 1067
Jackson, WY 83001-1067
Email: mclement@wispearl.com
Phone: 267-664-5403
Fax: 610-828-4887

Plaintiff

CASE NO. 26-CV-1-ABJ

Mr. Chad Hudson, in his capacity as
Forest Supervisor, USDA Forest Service
Bridger-Teton National Forest
340 N. Cache
Jackson, WY 83001
Email: chad.hudson@usda.gov
Phone:

Defendant #1

Jackson Hole Community Housing Trust
110 E. Broadway Avenue, 2nd Floor
P. O. Box 4498
Jackson, WY 83001

Defendant #2

CERTIFICATE OF SERVICE

The undersigned certifies that on February 3, 2026, the foregoing Plaintiff's Reply to United States of America's Opposition to Plaintiff's Motion for Preliminary Injunction was filed with the Court by mail. Pursuant to F.R.C.P. 5(d), counsel of record will be served by electronic mail on this same date as follows:

Tyler J. Garrett, Esq.
Brent R. Rhodes, Esq.
HATHAWAY & KUNZ, LLP
2515 Warren Ave., Suite 50
PO Box 1208
Cheyenne, WY 71003
tgarrett@hkwyolaw.com
brhodes@hkwyolaw.com

Jeremy A. Gross, Assistant U.S. Attorney
U.S. Attorney's Office, District of Wyoming
PO Box 668
Cheyenne, WY 82003
Jeremy.Gross@usdoj.gov

Date: February 3, 2026 2026

By: 

Michael J. Clement
Pro Se Plaintiff