



TOWN OF JACKSON

TOWN COUNCIL

AGENDA DOCUMENTATION

PREPARATION DATE: May 31, 2018

MEETING DATE: June 4, 2018

SUBMITTING DEPARTMENT: TC Engineering – Pathways

DEPARTMENT DIRECTOR: Sean O’Malley

PRESENTER: Brian Schilling – Pathways Coordinator

SUBJECT: Memorandum of Understanding for Blair Drive Kids Bike Loop with Mountain Bike the Tetons

STATEMENT/PURPOSE

Consider approval of the Memorandum of Understanding with Mountain Bike the Tetons for the construction and maintenance of the Blair Drive Kids Bike Loop.

BACKGROUND/ALTERNATIVES

The Town Council approved the concept plan for the Blair Drive Kids Bike Loop in April 2018. The concept is for a beginner-level dirt trail (designed with kids aged 3-12 in mind) along an existing pathway to provide safe, convenient access for younger riders to learn the basic skills of off-road riding in a centrally located area near housing and existing neighborhoods. (See the April 16, 2018 Town Council Workshop staff report for further description).

Mountain Bike the Tetons (MBT), a non-profit based in Driggs, ID that advocates for the funding, construction, and use of natural surface (dirt) trails for mountain biking in the greater Jackson Hole region, has committed to lead the construction and long-term maintenance of the bike loop. Friends of Pathways, the Jackson-based non-profit, is also contributing grant writing, staff time, trail building, and other resources to the effort.

It is proposed that the Town of Jackson and MBT enter into a memorandum of understanding that establishes the general operating framework for MBT to manage the construction, stewardship, and maintenance of the natural surface trail along Blair Drive, defining the roles and responsibilities of MBT and the Town of Jackson, including that:

- MBT will design and construct the facility and will provide MBT employees and volunteers to perform these tasks.
- The Town of Jackson will legally own the facility (as it would any other pathway or park facility on Town land).
- The Town of Jackson will provide MBT with information and assistance as necessary in order to construct and maintain the facility.
- MBT will work with Town/County staff, typically the Pathways Coordinator and the Parks and Recreation Superintendent, to manage ongoing maintenance and stewardship of the facility.
- MBT’s construction and maintenance activities shall be consistent with the general scope as approved by the Town Council—the finished product will be in line with what was discussed by the Council during the approval process (i.e. “no surprises”).
- In the event that the bike loop needs to be removed at some point in the future, MBT will be responsible for returning the property to its original state.

The project team has completed the design of the skills loop, flagged and mapped the proposed trail alignment, developed a construction plan and budget (see attachments), solicited feedback from the Town Public Works department on the construction plan, and submitted a pre-application request for a grading permit. Staff expects

that there will be some field adjustments to the flagged trail alignment, but that it will generally follow the route shown in the attached project area plan view.

Additional steps and timeline (proposed):

- Approve the Memorandum of Understanding between the Town and Mountain Bike the Tetons for capital construction and long-term capital maintenance.
- Review construction plan, project costs, and funding.
- Obtain a Grading and Erosion Control Permit from the Town of Jackson
- Complete final design (June) – proceeding concurrently with GEC review and approval.
- Secure final funding (June)
- Begin construction as permitted by trail crew availability and TOJ permitting (est. June/July)

ALIGNMENT WITH COUNCIL'S STRATEGIC INTENT

The bike loop will provide recreational benefits for kids and families similar to other Town of Jackson/Teton County parks (Quality Community Service). The bike loop will be located in a central area with convenient access to existing neighborhoods (Town as Heart) which will help kids and families access recreation via non-polluting modes (Transportation and Climate Sustainability). It also partners with local non-governmental agencies to provide added benefit to residents with minimal cost to the public.

ATTACHMENTS

1. Memorandum of Understanding (7 pages)
2. Construction Plan (1 page)
3. Project Budget (1 page)
4. Project Area Map (1 page)
5. Skills Loop Layout (1 page)

FISCAL IMPACT

There is expected to be no direct fiscal impact to the Town for the project other than staff time. (See the attached budget for project cost details). Projected expenses include design, equipment rental and fuel, imported dirt and gravel, machine time and labor, landscaping/reseeding, miscellaneous small construction items, disposal/dump fees, and contingency for pathway repair if needed. Mountain Bike the Tetons has pledged to cover trail design, machine time, and labor costs. Friends of Pathways is planning to organize volunteer days and utilize their youth trail crew to assist with construction. FOP has already secured a \$3500 Rec District grant and has two additional grant applications awaiting review. MBT has successfully located a source for donated materials which will reduce project costs. Staff and the project team expect that the full cost of the project will be covered through independent fundraising.

STAFF IMPACT

Mountain Bike the Tetons and Friends of Pathways are handling planning/design, construction, fundraising, and the majority of the capital maintenance of the trail. This will minimize impact to staff but there would still likely be some staff time required during each phase (to coordinate with MBT and FOP on logistics, monitor and inspect the construction process, handle public outreach, etc.).

It is also expected that some maintenance responsibility could fall to the Town and/or Parks and Recreation department. Current maintenance of the parcel by Parks and Rec includes seasonal mowing and trash collection. Mowing in the area could be slightly more labor-intensive with the installation of small berms and the gravel trail. Mowing is currently limited to a couple times each year, so this is not expected to have a major impact to staff.

While not part of the initial plan, if a trash can were to be installed, Parks and Rec might be asked to add this to their routine patrols near the school campus pathways and fields. The location of the project means that the Parks and Rec would not have to go out of their way, but it might add a stop to their regular route.

Legal staff time has been required to review the agreement with MBT.

Pathways staff expects moderate impacts during planning and construction, and minor ongoing impacts associated with maintenance coordination and stewardship.

LEGAL REVIEW

The MOU has been reviewed and approved by the Town Attorney's office.

RECOMMENDATION

Staff recommends approval of the Memorandum of Understanding, and directing staff to continue the project implementation.

SUGGESTED MOTION

I move to approve the Memorandum of Understanding with Mountain Bike the Tetons for the construction, stewardship, and maintenance of the Blair Drive Kids Bike Loop Project and direct staff to proceed with project implementation as presented.

**MEMORANDUM OF UNDERSTANDING
FOR CONSTRUCTION, STEWARDSHIP, AND MAINTENANCE OF
THE BLAIR DRIVE BIKE LOOP**

This Memorandum of Understanding (hereinafter "MOU") is made and entered into this _____ day of _____, 2018 between the Town of Jackson (hereinafter "TOJ"), a Wyoming Municipal Corporation with its principal address as P.O. Box 1687 Jackson, Wyoming 83001, and Mountain Bike the Tetons (hereinafter "MBT"), an Idaho non-profit corporation with its principal address as P.O. Box 433 Driggs, ID 83422, for the purpose of establishing the general framework under which MBT will work in partnership with the Town of Jackson/Teton County Jackson Hole Community Pathways Program (hereinafter "JHCP") and the Teton County/Jackson Parks and Recreation Department to provide construction, stewardship, and maintenance of a natural surface bike trail along Blair Drive in the Town of Jackson.

WHEREAS, MBT is a private, non-profit 501(c)(3) organization incorporated in the State of Idaho that advocates the funding, construction, and use of natural surface (dirt) trails for mountain biking in Teton Valley, Idaho, Teton County, Wyoming and Jackson Hole, Wyoming. MBT strives to enhance recreational and economic opportunities for the Teton region through development of mountain biking resources.

WHEREAS, JHCP is a department jointly funded by the Town of Jackson and Teton County, Wyoming responsible for the construction and management of the Town of Jackson/Teton County Pathways System (hereinafter "TOJ/TC Pathways System"). General, routine, and operational maintenance of the TOJ/TC Pathways System is handled by the Teton County/Jackson Parks and Recreation Department, and major maintenance is handled by JHCP pursuant to the First Amendment to Memorandum of Understanding regarding the Pathways Program (January 2004).

WHEREAS, MBT and TOJ mutually desire that MBT construct, steward, and maintain a natural surface (dirt) bike trail along Blair Drive, hereinafter referred to as the "Blair Drive Bike Loop." MBT will provide funding, staff, volunteers, and/or in-kind services to properly construct and maintain the Blair Drive Bike Loop in a safe condition for kids' mountain biking.

WHEREAS, MBT and TOJ agree to work together in good faith to expedite any decisions, documents, or other items required to accomplish the goals of this MOU and to resolve any differences raised by either party at the level of the Key Officials listed in this MOU prior to elevating the matters within either organization.

WHEREAS the Town will maintain ownership of any and all land involved in the Blair Drive Bike Loop and maintain ownership over any and all improvements that make up the Blair Drive Bike Loop, notwithstanding that the improvements will consist only of dirt, natural materials, signage, and other small amenities for the purpose of safe usage of the Blair Drive Bike Loop.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I – RESPONSIBILITIES AND UNDERSTANDINGS

A. TOJ hereby agrees to:

1. Provide MBT with all necessary information concerning construction, stewardship, and maintenance policies and procedures for TOJ public parks and the Blair Drive Bike Loop to which MBT must adhere.
2. Provide MBT with a donor recognition plan outlining how and where donors may be recognized along the Blair Drive Bike Loop.
3. Enter into third-party agreements as deemed necessary by TOJ and fulfill its obligations under such agreements necessary for the projects provided for in this MOU.
4. Provide MBT with assistance as necessary and mutually agreed upon to conduct activities directly related to the purposes of this MOU.

B. MBT hereby agrees to:

1. Be fully qualified under state and federal law to engage in fundraising and to receive philanthropic contributions for the purposes identified herein.
2. Conduct general fundraising activities in support of the Blair Drive Bike Loop construction, stewardship and maintenance as outlined in this MOU.
3. Design and manage the initial construction of the Blair Drive Bike Loop and provide MBT employee(s) and/or volunteers to perform these tasks.
4. Manage the Blair Drive Bike Loop Stewardship and Maintenance Program and provide MBT employee(s) and/or volunteer(s) to serve and be known as “Trail Maintenance Director” (there shall be one (1) such Director) and “Trail Ambassadors.” The Trail Maintenance Director will direct and manage the Trail Ambassadors. Trail Ambassadors will provide routine maintenance, education, information and basic assistance to visitors using the Blair Drive Bike Loop. Trail Ambassadors may perform such duties as providing general information about the Blair Drive Bike Loop, user etiquette and safety, general and interpretive information, and document and assist with minor maintenance such as trail maintenance with hand tools, litter pickup, brush and debris removal, etc.
5. Use all funds, goods, and services raised pursuant to this MOU consistent with the activities authorized or contemplated under this Agreement.

6. Assume any and all liability in the event of negligence by its employees or volunteers engaged in activities associated with the purpose of this MOU.
7. Provide appropriate supervision for employees and volunteers and ensure accountability for their performance of the activities agreed to under this MOU.
8. Establish job descriptions consistent with paragraph 4 of this Article and prioritized work plans, including authorized tasks and equipment, for the Trail Maintenance Director and Trail Ambassador positions.
9. Establish codes of conduct for all employees and volunteers participating in construction, stewardship, or maintenance of the Blair Drive Bike Loop, and provide any necessary disciplinary action for these employees and volunteers.

C. Employees and Volunteers

1. Any employees hired by MBT shall solely be employees of MBT and shall have no employment relationship with TOJ. All discipline and hiring/firing decisions shall be the exclusive decisions of MBT.
2. Any volunteers of MBT shall solely be volunteers of MBT and shall have no employment or volunteer relationship with TOJ.

D. Scope of Work

1. All construction, stewardship, or maintenance of the Blair Drive Bike Loop carried out by MBT shall be consistent with the Jackson Town Council approval of the creation and upkeep of the Blair Drive Bike Loop issued on _____.
2. MBT's employees and volunteers may submit suggestions for both education about and maintenance of the Blair Drive Bike Loop to the Key Officials. TOJ Key Officials shall make the final decision as to whether the work shall be done and in what manner.
3. MBT's employees and volunteers shall not operate motorized equipment on the Town pathways, except:
 - a. During initial construction in the summer of 2018;
 - b. If ever and when the need arises, during restoration work to return the Town property to its pre-existing state; **and**
 - c. If ever and when the need arises for maintenance or safety purposes during operational years of the Blair Drive Bike Loop.
4. Employees and volunteers of MBT may operate MBT-owned minor maintenance equipment, such motorized wheelbarrows, vegetation trimming equipment, or other similar landscaping tools on the Town pathways with the permission of the TOJ Key Officials. Non-motorized equipment may be borrowed from the Parks and Recreation Department and JHCP with the permission of TOJ Key Officials.

ARTICLE II– TERM OF AGREEMENT

Unless terminated earlier pursuant to Article III of this MOU or extended by mutual agreement of the Parties in writing, this MOU shall be effective on the date set forth on Page 1 and will remain in effect until three (3) years from said date.

ARTICLE III – TERMINATION AND EXPIRATION

A. Termination

Either Party may terminate this MOU for any reason and at any time upon written notice. Neither party shall be liable to the other for any damages, costs, or claims in the event of termination. MBT shall provide a letter of credit or bond to cover the cost of returning the property to its original state in the event that the bike loop needs to be removed.

B. Disposition of Assets in the Event of Termination or Expiration of the Agreement

1. Upon termination or expiration of this MOU, or cessation of MBT's operations for any reason(s), all funds and TOJ-owned equipment held by MBT, shall be transferred to the TOJ or to a third-party deemed acceptable by the TOJ for use consistent with the purposes of this MOU. Nothing herein shall prevent MBT from satisfying allowable outstanding obligations reasonably incurred in association with this MOU prior to its termination or expiration.
2. Nothing herein is intended to conflict with applicable state law governing non-profit dissolution and asset disposition.

ARTICLE IV – KEY OFFICIALS

Key Officials are essential to ensure effective coordination and communication between the Parties and the work being performed under this MOU. They are:

1. For the Town of Jackson:

Jackson Hole Community Pathways Coordinator, AND

Teton County/Jackson Parks and Recreation Superintendent

2. For Mountain Bike the Tetons:

Executive Director

ARTICLE V – LIABILITY AND INSURANCE

A. Liability and Insurance Coverage

Prior to undertaking any authorized activities on TOJ property, MBT shall procure workers compensation insurance from the State of Wyoming, and comprehensive general liability

insurance and other appropriate insurance coverage from a responsible company or companies in coverage amounts and upon terms acceptable to the TOJ, and shall provide proof of liability and insurance coverage to the TOJ. The MBT shall be solely responsible for the actions, negligence, bad acts, safety and injuries to their employees and to their volunteers. TOJ owes no duty nor are they in any way responsible for the employees and volunteers of MBT.

B. Payment of Damages

MBT will pay TOJ the full value of any damages to the lands, pathways, equipment and/or other property of TOJ directly caused by it, its employees, agents, representatives or contractors.

ARTICLE VI – FINANCIAL MANAGEMENT

- A.** MBT will maintain accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles.
- B.** MBT will permit TOJ or its designee to verify and audit any financial records from the books, correspondence, memoranda and/or other records of MBT specifically related to this MOU during the period of this MOU and for such time thereafter as may be necessary to verify that the funds obligated under this MOU have been appropriately expended.
- C.** MBT will ensure that if any funds raised under this MOU are commingled with other funds held or managed by MBT, an accounting system will be utilized which independently tracks and distinguishes funds raised under this MOU from such other funds.
- D.** Upon MBT request, TOJ will provide MBT a report setting forth the use of funds and in-kind donations obtained, used and/or available to TOJ as a result of this MOU.

ARTICLE VII – MISCELLANEOUS CLAUSES

- A. Non-Discrimination:** All activities pursuant to or in association with this MOU shall be conducted in compliance with the requirements of all local, federal and Wyoming state laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, sex or any other protected category.
- B. Compliance with Applicable Laws:** This MOU and performance hereunder is subject to Wyoming laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this MOU shall be construed to in any way impair the general powers of the TOJ for supervision, regulation, and control of its property under such applicable laws, regulations and management policies.
- C. Extension, Renewal, Modification:** This MOU may only be extended, renewed or amended by written, mutual consent of the Parties.

D. Waiver: Failure to enforce any clause of this MOU by either Party shall not constitute waiver of that clause. Waivers must be expressed and evidenced in writing.

E. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

F. Non-Exclusive Agreement: This MOU in no way restricts either TOJ or MBT from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations or individuals.

G. Partial Invalidity: If any provision of this MOU or the application thereof to either Party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this MOU or the application of such provision to the Parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this MOU shall be valid and be enforced to the fullest extent permitted by law.

H. Force Majeure: Neither Party shall be liable for failure to perform its obligations under this MOU due to events beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law or regulations.

I. Sovereign Immunity: TOJ does not waive its sovereign immunity by entering this MOU, and fully retains all immunities and defenses provided by law with respect to any action based on or arising out of this MOU.

J. No Agency: The Parties understand and agree that each is an independent entity engaged in the operation of its own respective business, that neither Party shall be considered the agent, master or servant of the other Party for any reason or purpose, and that neither has any general authority to enter into any contract, assume obligations or make any warranties or representations on behalf of the other.

K. Assignment: MBT shall not assign its rights under the terms of this MOU without the express written approval of TOJ.

L. Third Party Beneficiary: The Parties do not intend to create in any other individual or entity the status of third-party contract beneficiary, and this MOU shall not be construed to create such status.

M. Entirety of Agreement: This MOU represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral. Where any portion of this MOU conflicts with Wyoming state statute, state statute shall govern.

N. Jurisdiction and Venue: The laws of the State of Wyoming shall govern the construction, interpretation and enforcement of this MOU. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU, and over the Parties, and the venue shall be the Ninth Judicial District, Teton County, Wyoming.

O. Indemnification. Each Party shall assume the risk of any liability arising from its own actions or omissions or the actions or omissions of its employees, volunteers, and agents at all times. Neither Party agrees to insure, defend, or indemnify the other, subject to negligence or willful misconduct.

P. Notices. All notices arising out of, or from, the provisions of this MOU shall be in writing and given to the Parties at the address provided under this MOU, either by regular mail or delivery in person.

TOWN OF JACKSON
Larry Pardee, Town Manager
P.O. Box 1687
Jackson, WY 83001

MOUNTAIN BIKE THE TETONS
Tony Ferlisi, Executive Director
P.O. Box 433
Driggs, ID 83422

ARTICLE VIII – SIGNATURES

IN WITNESS HEREOF, the Parties have executed this MOU on the date set forth on Page 1.

TOWN OF JACKSON

MOUNTAIN BIKE THE TETONS

Pete Muldoon, Mayor

Tony Ferlisi, President

Attest:

Sandy P. Birdyshaw, Town Clerk

, Secretary

Blair Drive Kids Bike Loop - Construction Plan

Task	Total Work Hours	Notes
Cordon off construction zone with tape and stakes	4	
Excavate grass and roots from the single track path and pump track location using a mini-excavator and skid steer	30	Remove the top 2-3" material to expose bare soil underneath. See construction notes for equipment usage details.
Remove all debris from the area. This will be a combination of hand labor and machine work.	20	Excavated materials will be stockpiled on site and hauled to transfer station or other location for disposal.
Prep trail bed for soil	12	Compact loose soil, remove remaining organics
Obtain soil for trail bed	0	Approximately 6 truck loads of gravel will be delivered to site. See construction notes for material stockpiling.
Use skid steer to distribute soils to length of the trail bed and spread soil evenly by hand	48	See construction note for equipment usage details
Pack trail with plate compactor and complete any detail finish work	20	
Obtain soil for pump track	0	Approximately 6 truck loads of gravel will be delivered to site. See construction notes for material stockpiling.
Lay out pump track	8	
Track build time with machine	8	
Track shaping and packing w/ plate compactor	72	
Reseeding of non riding surfaces, general site clean up and finishing	8	Includes scheduling pathway repair if necessary
TOTAL	230	

Construction notes:

Equipment Operation - Steps will be taken to minimize impact to the existing pathway. Equipment will need to cross the path in at least one location. The mini-ex will cross the pathway but will not run lengthwise along the pathway. The skid steer may use the pathway to shuttle loads of gravel/soil, but care will be taken to minimize turning movements on the asphalt. Plywood and/or gravel will be placed on the pathway edges to minimize the chance of edge damage.

Material Stockpiling - material will be stockpiled at 1-3 locations between Blair Dr. and the existing pathway. Stockpiles will be at least 5' away from the edge of the road. The road will be swept each day.

Blair Drive Kids Bike Loop - Budget

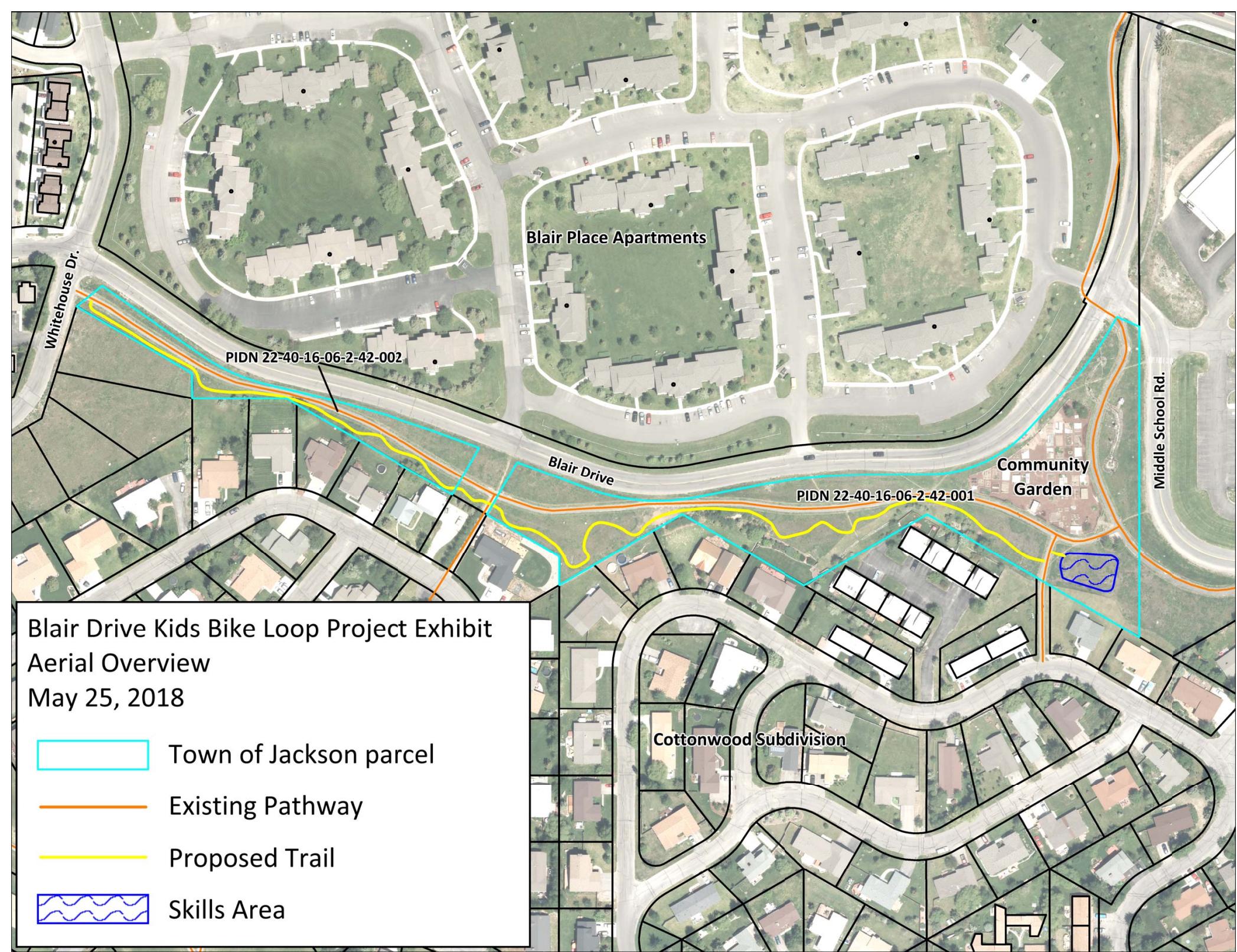
5/31/2018

Item	Costs	Notes
Force Account	\$ 1,500	
Labor - approx 250 man hours @ \$17/hr	\$ 4,250	In-kind from MBT and FOP
Machine Rental (skid steer and mini-ex, 4 days)	\$ 1,600	
Fuel	\$ 400	
Design (Ron/MBTT)	\$ 800	In-kind from MBT
Misc Construction Items (stakes, path armor, flagging, etc.)	\$ 500	
Skills Loop soil cost (61 cu. yds.)	\$ 2,500	donated materials coordinated by MBT
Skills Loop soil delivery cost	\$ 1,050	
Single Track soil cost (57 cu. yds.)	\$ 2,300	donated materials coordinated by MBT
Single Track soil delivery cost	\$ 1,000	
Signage	\$ 1,200	
Reclamation and watering	\$ 1,000	
Pathway repair contingency	\$ 3,500	
Disposal/Dump Fees	\$ 400	

Total Expenses \$ 22,000

Total "Hard" Costs (excludes donated or in-kind expenses) \$ 12,150

Revenue	
Rec District Grant from FOP (approved)	\$ 3,500
MBT Donated In-Kind Services	\$ 5,050
Donated materials	\$ 4,800
Additional grants (pending approval) and fundraising from FOP/MBT	\$ 10,000
Total Revenue	\$ 23,350



Blair Drive Kids Bike Loop Skills Loop Schematic

- Skills area – a separate loop with small features including rollers and bermed corners
- Rollers 18" height at 10' spacing
- Berms 3.5' high with 10-15' radii
- Slightly wider (3') tread

