

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODSELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
FREDERICK J. HAHN, III
PATRICK N. GEORGE
SCOTT J. SMITH
DAVID E. ALEXANDER
JOSHUA D. JOHNSON
STEPHEN J. MUHONEN
CANDICE M. MCHUGH
CAROL TIPPI VOLYN
JONATHAN S. BYINGTON
JONATHAN M. VOLYN
BRENT L. WHITING
DAVE BAGLEY
THOMAS J. BUDGE
JASON E. FLAIG
FERRELL S. RYAN, III
AARON A. CRARY
JOHN J. BULGER
BRETT R. CAHOON
JEFFREY A. WARR

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: dan@racinelaw.net

BOISE OFFICE
101 SOUTH CAPITOL
BOULEVARD, SUITE 300
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE
477 SHOUP AVENUE
SUITE 107
POST OFFICE BOX 50698
IDAHO FALLS, ID 83405
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

November 10, 2011

Board of County Commissioners, Teton County, Idaho
c/o Angie Rutherford, Planner; Kathy Spitzer, County Attorney
150 Courthouse Drive, Room 208
Driggs, ID 83422

Re: *Staff Report dated November 2, 2011*

Dear Board and Staff:

Big Sky Western Bank (the "Bank") has reviewed the Staff Report dated November 2, 2011 and the Recommended Conditions of Approval (the "Recommendations") of the Amendment to Recorded Development Agreement ("Amended Development Agreement"). This letter will respond to the Recommendations.

As a general observation, on August 10, 2011, the County Commissioners, County Attorney and Staff and the Bank participated in mediation to resolve the issues concerning the future development of River Rim. At the conclusion of the mediation an agreement was reached on the contested issues and were subsequently memorialized in the Amended Development Agreement. Issues not specifically discussed or agreed to at the mediation were to remain subject to the terms of the 2006 Development Agreement and the applicable County law in effect at the time the 2006 Development Agreement was approved.

We have all worked hard to finalize the Amended Development Agreement according to the terms agreed at mediation. Upon review of the Recommendations, however, we were discouraged because some of them have not been discussed nor were they agreed to at mediation, or included in any of the previous drafts of the Amended Development Agreement.

Specifically, issues not previously addressed include (1) the vacation of the master plan in the event Phases 1A-II are not timely completed, (2) the requirement that the "Incidental Use" provision be modified from 2% of the developed acreage within the PUD to 2% of the developed acreage in phases 1A-II; and (3) the increase of the contingency on the letter of credit from 110% to 125%.

In response to the Staff's statements regarding density, one of the primary goals of the PUD ordinance in 2006 was to cluster or concentrate density in certain areas while reducing density in more environmentally sensitive areas and allowing for more open space. This was successfully accomplished with the Division II Master Plan. While the PUD ordinance required only 50% open space, 60% open space was achieved. While the PUD ordinance at the time would have allowed up to 50 units per acre, or 2,450 total units, the Division II River Rim Ranch Master Plan includes a maximum of only 578 units. The Bank believes it is only fair and reasonable to view density and open space in that balanced perspective.

The 2006 PUD, Master Plan and the 2006 Development Agreement all address Incidental Uses. Since changes to these provisions were not discussed at mediation, it is the Bank's position that those documents control this issue.

Likewise, the law in effect in 2006, as well as the terms of the 2006 Development Agreement, require a financial surety of 110%, which is now estimated to be in excess of \$4,000,000.00. Again, since no discussion or agreement was made with respect to an increase in the letter of credit, the Bank has conformed to the 110% amount. The Bank believes that the existing contingency of 10% is significant and is more than adequate to complete the key infrastructure items that may be associated with the project.

The Bank agrees to the recommended changes to page 4, E; page 4, 5 and page 5, 9.

These comments are intended to be constructive and we will continue to work with the County Staff in an effort to resolve the remaining issues identified above prior to the November 17, 2011 hearing with the Board.

Sincerely,



DANIEL C. GREEN

From: [Angie Rutherford](#)
To: [Wendy Danielson](#);
Subject: FW: River Rim
Date: Tuesday, November 15, 2011 3:16:08 PM

Please post.
Thanks,

Angie Rutherford
Planner, Teton County, Idaho
208 354-2593

From: Kathy Spitzer
Sent: Tuesday, November 15, 2011 2:27 PM
To: Angie Rutherford; Dawn Felchle
Cc: Kelly Park; Kathy Rinaldi; Bob Benedict
Subject: FW: River Rim

Below are changes to two of the paragraphs addressed in the staff report. River Rim's attorney, Dan Green, and I have agreed that these changes are acceptable.

Page 2, Sec. 2. Division II, Phase I Phasing. Section 1, Subdivision Description is amended to provide for revised phases for Division II, as illustrated on Exhibit 1 (consisting of ten pages, including Infrastructure Phasing Table and maps) (the "Exhibits"), attached hereto. Division II Phases I.A, I.B and I.C shall be completed on or before December 31, 2014. Division II Phases I.D, I.E, I.F, I. G, I.H and I.I shall be completed on or before December 31, 2016. Eligibility for final platting of Phases II –VI is contingent upon the completion of Phase 1A-1I in accordance with the terms of this Agreement. If the Bank is in breach of this Agreement, the Amended Master Plan (Instrument Number 198983) may be vacated for all unplatted phases of the project (Phases II – VI) and all applicable subdivision and zoning regulations in effect at the time shall govern the future use of the land. Prior to expiration of the time limitations above, and without causing a breach of this

Agreement, the Developer may apply to vacate all or a portion of any platted phase or amend the design of the platted lots in accordance with applicable subdivision and zoning regulations.

Page 4, 4 Division II, Phases II-VI Platting and Improvements. Section 3, *Forecasted Schedule for Completion of the Improvements* is amended to provide that Division II Phases II-VI improvements shall be completed on or before December 31, 2026. Division II Phases II-VI are eligible for final platting so long as this Agreement has not been breached. Failure to plat and complete any phase in accordance with the timelines in this agreement shall result in a breach of this Agreement and may result in the vacation or partial vacation of the Amended Master Plan (Instrument Number 198983) and all applicable subdivision and zoning regulations in effect at the time shall govern the future use of the land. The Developer may apply to amend the current Master Plan (Instrument Number 198983) at any time prior its vacation. Section 3 is further amended to delete the language in the 2006 Development Agreement providing for any further extensions of time.

Kathy Spitzer
Teton County Prosecuting Attorney
89 N. Main St.
Driggs Idaho 83422
Ph: 208-354-2990
kspitzer@co.teton.id.us

This e-mail message from the Teton County Prosecutor's Office is intended only for named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately at 208.354-2990 if you have received this message in error, and delete the message.

_____ Information from ESET NOD32 Antivirus, version of virus
signature database 6633 (20111115) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

_____ Information from ESET NOD32 Antivirus, version of virus
signature database 6633 (20111115) _____

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>