From: Herb Heimerl
Sent: Tuesday, May 28, 2013 11:43 AM
To: Angie Rutherford
Cc: Randy Blough; Jay Mazalewski; Kathy Spitzer
Subject: RE: Canyon Creek Follow Up

Hi Angie – please see the answers to your questions below as well as the attached redline and clean versions of the most recent DA and CCR.

Herbert Heimerl | Heimerl Law Firm, PC

From: Angie Rutherford
Sent: Wednesday, May 15, 2013 2:45 PM
To: Herb Heimerl
Cc: Randy Blough; Jay Mazalewski
Subject: Canyon Creek Follow Up

Hi Herb,
Without having the minutes from last night's meeting, here are the issues I heard that need to be resolved. Please address.

1. Information from the USFS (Jay Pence) about the Crane Road and the administrative access at the bottom of Lot 2.
2. A updated letter from USFS with comments to the redesign of the project. I spoke with Jay today and he will do his best to get info regarding the road and an updated letter out today, but he been pretty busy.
3. A statement in the CC&Rs that say that certain parts cannot be amended without County approval (fences, natural resource area). See attached redlines. You raised a good point re certain changes to the easement areas. While the draws are not going to move the Leks could. I spoke to Jeff Klausmann at IMA about resurveying the Leks as they can move so I put some language in the CCR that I discussed with him and will have the same put on the master plan re those areas.
4. An updated letter from the Fire Marshal.
5. The Pony Creek Road dedicated to the County with the recordation of the Master Plan.

Regarding the Pony Creek ROW, we will give it upon recording the phase I final plat as that it when the nexus occurs to the request. I did some research and find Tigard v. Dolan to be a dead ringer for the prospect of "forcing" a ROW prior to the plat recordation. Tigard wanted to pull a building permit to expand their operation and were told by the Tigard P&Z that in order to get the building permit they would be conditioned with the requirement for them to dedicate a pedestrian and bicycle pathway in order to relieve traffic congestion. The decision was appealed to the Oregon State Lane Use Board of Appeals (LUBA), alleging that the land dedication requirements were not related to the proposed development, and thus constituted an uncompensated taking of her property. LUBA found a reasonable relationship between the development and both conditions of the variance, as the larger building and paved lot would increase runoff into the creek. The US Supreme Court overturned the LUBA and the Oregon appellate courts. The Court held that under the doctrine of unconstitutional conditions, a government agency may not require a person to surrender constitutional rights in

exchange for discretionary benefits, where the property sought has little or no relationship to the benefit conferred. A two-prong test was applied: Whether or not there is an "essential nexus" between the permit conditions and legitimate state interest, and whether or not the degree of the exactions required by the permit conditions bears the required relationship to the projected impact of the proposed development. The Court held that the first condition had been satisfied. However, the Court ruled that the City failed to make an individualized determination that the required dedications are related, in both nature and extent, to the proposed impact. This is the landmark case that has not been overturned

6. Please address all comments from the County engineer.

Also:

1. Please provide a clean version of all documents with the changes thus far: Development Agreement, CC&Rs, and Plans/Drawings
2. Provide clear explanations addressing issues from the Public Hearing (horse restrictions, building envelopes, school bus turn-around etc.)
   - this is likely to be a ranch and horses will not be restricted unless done so by the HOA
   - we see no need for building envelopes unless required by the HOA
   - a school bus turn around would be cost prohibitive
3. Provide a copy of the proposed easement for Pony Creek Road (and Crane) – What the county wants is not an easement but a Right of Way. I suspect the County Attorney has a form you use and when the final plat gets recorded we will use that.
1. We also await a comment letter from Fish and Game.

Angie Rutherford
Planning Administrator

TETON COUNTY
PLANNING & ZONING
MAY 16 2013
RECEIVED

IDAHO DEPARTMENT OF FISH AND GAME
UPPER SNAKE REGION
4279 Commerce Circle
Idaho Falls, Idaho 83401

C.L. "Butch" Otter / Governor
Virgil Moore / Director

May 14, 2013

Angie Rutherford
Teton County Planning and Building Department
89 North Main Street Suite 4
Driggs, ID 83422

RE: **Proposed Canyon Creek Ranch Re-Plat Subdivision Application**

Dear Angie:

Idaho Department of Fish and Game (Department) staff has received your request for comments on the proposed Plat Changes for the Canyon Creek Ranch PUD. Resident species of fish and wildlife are property of all Idaho citizens. The Department of Fish and Game and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate, and manage all fish and wildlife in Idaho (Idaho Code 36-103 (a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following comments and recommendations. The purpose of these comments is to assist the County by providing technical information addressing potential effects on wildlife, wildlife habitat, and how any adverse effect might be mitigated. It is not the intention of Idaho Department of Fish and Game to support or oppose this proposal.

Please refer to our *January 5, 2012 Canyon Creek Ranch Re-Plat* comment letter and our *May 22, 2012 Canyon Creek Ranch Subdivision Extension* comment letter on the last Re-plat. These new plat changes incorporated many of the Department's recommendations for large set aside blocks of dedicated open space and protections codified by the access and natural resource management easements. Conserving wildlife corridors will enable big game migration to Canyon Creek as long as all landowners abide by the easements. The Department also suggests that livestock grazing be prohibited in the access and natural resource management easement. This is consistent with the current plat notes which prohibit disturbing native vegetation and maintaining the existing vegetation line.

Aspen stands provide important habitat for large numbers of wildlife in that area. Mule deer use aspen stands for fawning and fawn rearing if vegetation is undisturbed. Neo-tropical birds utilize dense vegetation for nesting and foraging as do many other species that rely on dense vegetation. Grazing the aspen stringers will have negative effects on a majority of the wildlife species occupying these important areas. Grazing also impacts aspen stand health if young aspen shoots are constantly grazed. Without new aspen shoots for replacement, the stand will eventually die out.

The Department recommends that there be clear guidelines on who will conduct enforcement of easement restrictions and if there will be a dedicated fund to address this. The Department recommends building envelopes specifying where building will take place on the lots. Building locations can determine the extent that local wildlife will be affected. Negative effects caused by any development include pets at large, vehicle, ATV, foot, and equestrian traffic. The overall human influence on wildlife can be reduced by careful placement of building envelopes. Department personnel are available to assist in determining the best building locations.

Thank you for providing us an opportunity to comment on this proposed amendment.

Sincerely,

Steve Schmidt
Regional Supervisor

SLS:PJF:jms

cc: Brent McFadden, Madison County Planning and Zoning Department

ec: Terry Thomas, IDFG
Rob Cavallaro, IDFG
Doug Petersen, IDFG
Andrew Sorensen, IDFG
Paul Faulkner, IDFG

TETON COUNTY FIRE PROTECTION DISTRICT
P.O. Box 474
911 North Hwy. 33
Driggs, ID 83422

Earle Giles, Fire Marshal
Phone: 208-354-2760
Fax: 208-354-2764

28 May 2013

To: Teton County Planning and Zoning
RE: Canyon Creek Ranch Subdivision

After reviewing the revisions to the project at Canyon Creek Ranch and the reduction of lots from 350 to 22 with an average size of 78 acres the following requirements shall apply.

1. *Planning Requirements: The Developer is required by resolution to meet with the Fire District to plan for the protection of life, property and the assurance of the public health, safety and general welfare.*

2. *Premises Identification: Streets shall be clearly identified and address numbers shall be plainly legible and visible from the street or road. Numbers shall be a minimum of 4 inches high and stroke width not less than 0.5 inches.*

3. *Fire Fighting Access Roads: All access roads within the subdivision shall be constructed in accordance with the Teton County Resolution 2013-0411 B*

4. *Fire Fighting Water Supply: Fire Protection Water Supplies shall be constructed in accordance with the Teton County Fire Protection District Resolution for Subdivisions. Requirements for Central Main Systems are specified in Section 2.3.6.1. Fire Protection plans are required.*

5. *Timing of Installation: Firefighting access roads and water supply shall be installed and made serviceable prior to and during the time of construction in accordance with Section 501.4 of the International Fire Code.*

Additionally, with the change in scope for this project, it is important to note that the travel time to reach Canyon Creek Ranch is lengthy during the summer months, and will be even longer during inclement weather. While there are no provisions for requiring residential sprinkler systems in Teton County, such provisions for homes in this area would be recommended

Sincerely,
Earle Giles,
Fire Marshal .

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
IDAHO FALLS REGULATORY OFFICE
900 NORTH SKYLINE DRIVE, SUITE A
IDAHO FALLS, IDAHO 83402-1700

REPLY TO
ATTENTION OF

29 May 2013

Regulatory Division

SUBJECT: NWW-2013-212

Mr. Herb Heimerl
Heimerl Law Firm, PC
217 South Main Street
PO Box 499
Victor, Idaho 83455

Dear Mr. Heimerl:

We have reviewed Teton County's request for comments regarding your proposed Canyon Creek Ranch replat-subdivision application, dated 15 April 2013 and have determined that the subject property/project area contains waters of the United States (U.S.), including wetlands. However, your proposed project would avoid impacts to waters of the U.S. through implementation of "Access and Natural Resource Management Easements" as noted on the Canyon Creek Ranch Master Plan Amendment, dated 29 January 2013. Therefore, a Department of Army (DA) authorization is not required. An authorization may be required if you alter the method, scope, or location of proposed development. Please contact us if you make changes to your project.

The project would be located within Section(s) 21, 28, 33, and 34 of Township 5 North, Range 43 East, near latitude 43.8148° N and longitude -111.38881° W, in Teton County, Idaho. Your request has been assigned File Number NWW-2013-212.

AUTHORITY

The DA exerts regulatory jurisdiction over waters of the United States (U.S.), including wetlands, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Section 404 of the Clean Water Act requires a DA permit be obtained prior to discharging dredged or fill material into Waters of the U.S., which includes most perennial and intermittent rivers and streams, natural and man-made lakes and ponds, irrigation and drainage canals and ditches that are tributaries to other waters, and wetlands.

We appreciate your cooperation with the Corps of Engineers' Regulatory Program. If you have any questions about this determination, please contact me by telephone at (208) 522-1676, by mail at the address in the above letterhead, or via email at james.m.joyner@usace.army.mil. For informational purposes, a copy of this letter is being sent to: Ms. Angie Rutherford (Teton County)

Sincerely,

James M. Joyner

James M. Joyner
Sr. Project Manager, Regulatory Division

Enclosures:
Preliminary Jurisdictional Determination Form
Notification of Administrative Appeal Options and Request for Appeal Form

CLEAN

AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR CANYON CREEK RANCH

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of May, 2013 by and between Pony Creek Ranch, LLC (Developer) and Teton County, Idaho (County).

WHEREAS, a Master Plan and Preliminary Plat for the Canyon Creek Ranch Planned Unit Development (the "CCR") was approved by the Board of County Commissioners of Teton County on the 12th day of February, 2009 pursuant to; and

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement to provide for the terms and conditions of the CCR as it has been re-plated as a subdivision pursuant to the applicable ordinances of Teton County, and said re-plat, as approved by the Board of County Commissioners of Teton County on the _____ day of May, 2013, is to be recorded in the Teton County real estate records.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

ARTICLE I
Subdivision

Section 1. Subdivision Description. This Agreement pertains to and includes that property, located within the jurisdiction of Teton County, Idaho, which is designated and identified as the "Canyon Creek Ranch Plat" submitted to Teton County and approved by the Board of County Commissioners on May ____, 2013 (hereinafter the "Subdivision").

Section 2. Improvements and Time for Completion. Developer shall, in conjunction with each Phase, construct at its sole cost and expense the road construction and road signs (herein "public improvements") in accordance with the Master Plan for the Subdivision. Such improvements shall be constructed in such a way that each Phase shall "stand alone" as the term is used in the applicable ordinances.

Section 3. Schedule for Completion of the Development. Set forth below is a schedule for completion of the Subdivision. Development is planned to be completed in 5 phases. Each phase shall satisfy the requirements of the applicable ordinances in that "each phase is free standing, that is fully capable of functioning with all required improvements in place in the event that future phases are not completed or are completed at a much later time", as required by such ordinance.

Phase I - completion date: December 31, 2019
Phase II - completion date: December 31, 2020
Phase III - completion date: December 31, 2021
Phase IV - completion date: December 31, 2022

Received on: 5/28/13 By: ACR
Draft # 3 Supersedes previous? Y N
Submitted to BoCC or PZC Hearing
Hearing Date: 6/11/2013

Phase V - completion date: December 31, 2023

The Developer shall be allowed extensions of time beyond the completion dates for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Developer or any agent or contractor hired by, or on behalf of, the Developer. Market conditions relating to the sale of lots will not be considered a factor for purposes of this section.

Section 4. Final Plat Approval and Recordation. The Developer shall be prohibited from selling or offering for sale any Lots until Teton County approves and records the Final Plat for any given phase. In addition, the Developer shall be prohibited from engaging in any Lot sales prior to obtaining an engineer's cost estimate for the construction of the infrastructure necessary to accommodate such Lots as well as fulfilling the financial surety requirements in Article VII below.

ARTICLE II
Developer's Obligation Phase I

Section 1. Phase 1 Description. Phase 1 pertains to and includes that property which is designated and identified as Phase 1 of the Master Plan of CCR, the Subdivision, within the jurisdiction of Teton County, Idaho.

Section 2. Improvements and Time of Completion. Developer shall, at its sole cost and expense, complete the road construction and road signage. The estimated cost to complete the public improvements pertaining to Phase I is $_____.00.

ARTICLE III
Developer's Obligation Future Phases

Section 1. Future Phases. The Developer acknowledges that Phase 2 and all subsequent phases of CCR (collectively "future phases"), will require approval by the Teton County Board of County Commissioners.

Section 2. Improvements and Time of Completion. As to each future phase, Developer shall, at its sole cost and expense complete the road construction signage and shall provide an estimate of costs prepared by a licensed engineer, or a bid reviewed and approved by a licensed engineer, to complete the improvements. As each future phase is prepared for Final Plat approval, an estimate of costs shall be incorporated into this Development Agreement by a written amendment.

Section 3. Schedule for Completion of Improvements. As to each amendment of the Development Agreement pertaining to future phases, the Developer shall provide a completion date for the road improvements for such future phase.

ARTICLE IV
Infrastructure Issues

Section 1. Building Permits and Certificates of Occupancy. No Building Permits or Certificates of Occupancy shall be issued in a specific phase prior to the completion of public improvement in such phase.

Section 2. Dust. The Developer shall make best efforts and comply with industry standards as to dust mitigation while installing infrastructure.

Section 3. Roads. The Developer shall provide a stamped letter from their engineer stating that the roads have been built in accordance with the submitted and approved road plans and are up to Teton County standards. The Developer acknowledges that Pony Creek is a public road, owned by the county. The Developer shall not inhibit travel or parking on this road in any manner. In addition, Pony Creek Road shall be maintained by the Developer within the Subdivision.

Section 4. Signage. The Subdivision entrance sign and street signs shall be non-reflective and built in accordance with Teton County Regulations and in a size and shape appropriate to meet ASHTO standards. These signs shall be installed prior to final inspection and shall comply with all applicable county rules and regulations.

ARTICLE V
Access and Natural Resource Management Area

Pursuant to the Master Plan and the Subdivision's Covenants, Conditions, and Restriction, CCR shall provide for and manage the Access and Natural Resource Management Area. The Access and Natural Resource Management Area will be maintained in such a way as to protect the agricultural and wildlife heritage of the property as effectively as plausible considering the nature of the Subdivision. Further the Master Plan being recorded provides that no structures or fences may be built in this area and that the existing vegetation (which is all native) is to be maintained.

ARTICLE VI
Inspection

Section 1. Inspection. Prior to construction of public improvements, a pre-construction meeting is required with the a Teton County zoning official, the Teton County Fire Marshal, the Subdivision's engineer and contractor. The Developer's engineer shall make regular inspections and maintain control of the development while it is under construction. Representatives of the County shall have the right to enter upon the property at reasonable times and intervals, upon reasonable notice, to inspect and to determine if the Developer is in compliance with this Agreement. The Developer shall

permit the County and its representatives to enter upon and inspect the property at any reasonable time, upon reasonable notice. Reasonable notice pursuant to this Section may be made by telephone to Developer at such telephone number(s) provided by Developer and to Developer's Engineer.

Section 2. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that any improvements have been fully and properly completed and shall request final inspection by the County. The County shall provide prompt interim and final inspection of any improvements that will be covered by soil or otherwise when notified by Developer of interim completion. Upon timely inspection the County shall give prompt written notice of acceptance of the improvements or a written checklist of material deficiencies. Any noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by Developer.

ARTICLE VII
Financial Matters

Section 1. Financial Security Guaranty. In lieu of the actual installation of required public improvements the Developer shall, prior commencement of construction of each phase of the Master Plan of the Subdivision, provide the County with a letter of credit, bond, or cash deposit, in the amount to be identified and attached to each amendment hereto for each phase which is 125% of the estimated bid cost of the improvements.

Section 2. Cash Deposit. In the event that the Developer makes a cash deposit to satisfy the obligation set forth herein, the cash shall be deposited in an interest bearing account with a financial institution mutually acceptable to the parties hereto, with interest accruing to the Developer. Developer may draw funds form the account to pay for the improvements. The parties shall establish a method for inspection (including a regular schedule therefor) and Developer shall pay, from the cash deposit, the cost of improvements on a percentage of completion basis. Notwithstanding foregoing, the County will not release any part of a cash deposit (or any surety) for any part of infrastructure improvements until the entire line-item for such component is complete and the County will not release the contingency until the entire phase is complete and the County has approved the same and the warrantee period is finished.

Section 3. Reduction and Release of Guarantee. After the inspecting engineer certifies that the improvements to any phase are complete, the county shall release the Developer from the Financial Security as outlined above.

Section 4. Default. If the Developer defaults in or fails to perform any of its obligations in accordance with this Agreement the County shall, by Certified Mail, Return Receipt Requested, provide notice to Developer specifying the default. Within sixty (60) days of the Developer's receipt of said notice, the Developer shall cure such default or, in the event that the default cannot be reasonably cured within said period, Developer shall commence to take corrective action within said period and shall pursue

such corrective action diligently to completion. In the event that the Developer fails to cure the default as specified above, the Developer herby grants to the County, in addition to all other rights afforded to the County in this Agreement and by law the right, at the County's option, to notify Developer by Certified Mail, Return Receipt Requested, that the County intends to vacate the subdivision or complete the construction of the improvements. If at its sole discretion the County chooses to complete the construction of the improvements the County shall provide a bid to the Developer of the estimated costs to so complete or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. Thereafter, the County shall have the right to draw from the financial security guarantee of this Agreement an amount of money sufficient to pay the entire cost of the work as completed by the County, including legal fees and administrative expenses. All work performed by the County shall meet the construction standards specified in this
Agreement.

Section 5. Liability and Indemnity of County.

A. No Liability for county Approval. The Developer acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the improvements or use of any portion of the improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees or any third party, against damage or injury of any kind at any time.

B. Indemnification. Except as provided below, the Developer agrees to, and does hereby, indemnify the County, and all of its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs and liability of every kind and nature that my be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the improvements, (2) the issuance of any approval or acceptance of improvements, (3) the development, construction, maintenance or use of any portion of the improvements and (4) the performance by the Developer of its obligations under this Agreement and all related agreements. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the improvements provided by this Agreement only as to improvements that are not in conformance with the approved Master Plan of the Planned unit Development or in compliance with each phase, except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

This indemnification does not extend to claims, costs, and liability asserted by the Developer in the event the County fails in its duties and obligations to Developer set forth herein or by law or in the event that damages are asserted based upon the

intentional misconduct or negligence of the County, its officials, employees, agents, representatives or engineers.

Section 6. One-Year Guaranty of the Improvements. The Developer herby guarantees the prompt and satisfactory correction of all defects and deficiencies in the improvements that occur or becomes evident within one year after construction. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within sixty (60) days after written demand from the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot reasonably be corrected within sixty (60) days after written demand from the County, then Developer shall commence correction of the deficiency within the sixty (60) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The guaranty provided by this Section 6 shall be extended for a full year from the date of repair or replacement of any improvement repaired or replaced pursuant to such demand.

ARTICLE VIII
Miscellaneous

Section 1. No Waiver of county Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuity waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

Section 2. Governing Law. This Agreement shall be construed according to the laws of the State of Idaho.

Section 3. Changes of Law. Any reference to laws, ordinances, rules, or regulation shall include such laws, ordinances, rules or regulations as they have been, or they may hereafter, be amended, provided however, that this Section shall not apply to the vested rights of Developer accruing under laws or ordinances in effect at the time of zoning or subdivision approval.

Section 4. Time of Essence. Time is of the essence in the performance of all terms and provisions of the Agreement, except as otherwise stated in this Agreement.

Section 5. Successors. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

Section 6. Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the County shall be addressed to, and delivered at, the following address:

Teton County Commissioners
Attn: Planning Adminstrator
Teton County Courthouse
150 Courthouse Drive, room 107
Driggs, Idaho 83422

Notices to the Developer shall be addressed to and delivered at, the following address:

Idaho Ranch Subdivision, LLC
PO Box 499
Victor, Idaho 83455

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

Section 7. Enforcement. The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents representatives, engineers or attorneys thereof; solely on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. Provided however, that the preceding limitation shall not apply in circumstances involving the intentional misconduct or negligence of the County in the performance of its obligations hereunder.

Section 8. Amendments. All amendments to this Agreement shall be in writing and shall be approved by the Developer and the County.

Section 9. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall

be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 10. Authority to Execute. The County and the Developer hereby acknowledge and agree that all required notices, meetings and hearings have been properly given an d held by the County with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the County Commissioners. The Developer hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Developer or the subdivision is subject.

Section 11. Filing. The Developer shall have this Agreement recorded in the office of the Teton county Clerk and Recorder at the same time the final plat is recorded.

Section 12 Right to Farm Provision. CCR acknowledges the Right to Farm Act stated below:

Right to Farm Act Idaho Code Chapter 45, Sections 22-4501 through 22-4504
"...It is the intent of the legislature to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the State of Idaho.

"Agricultural Operation" includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the producing for commercial purposes of livestock or agricultural commodities. No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any change conditions in or about he surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at he time the operation began; provided that the provisions of this

section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it."

Section 13 Fire Protection Plan. CCR will provide a fire suppression pond. Other fire protection considerations defined in cooperation with the Fire Marshall's office include (1) Conformance to the Unified Fire Code, and (2) Adequate access for emergency vehicles throughout CCR.

Section 14 Improvements Provision. The developer or its successors shall be responsible for all required subdivision improvements and shall not transfer construction obligations and the responsibility for completion of any improvements to the lot owners.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

Board of County Commissioners
Teton County, Idaho

By:_____
Kelly Parks
Chair Board of County Commissioners

Approved: Clerk and Recorder

_____
Teton County Clerk

Idaho Ranch Subdivision, LLC

_____
Herbert Heimerl, Managing Member

WITH TRACKED CHANGES

AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR CANYON CREEK RANCH

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of May, 2013 by and between Pony Creek~~Idaho~~ Ranch ~~Subdivision~~, LLC (Developer) and Teton County, Idaho (County).

WHEREAS, a Master Plan and Preliminary Plat for the Canyon Creek Ranch Planned Unit Development (the "CCR") was approved by the Board of County Commissioners of Teton County on the 12th day of February, 2009 pursuant to; and

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement to provide for the terms and conditions of the CCR as it has been re-plated as a subdivision pursuant to the applicable ordinances of Teton County, and said re-plat, as approved by the Board of County Commissioners of Teton County on the _____ day of May, 2013, is to be recorded in the Teton County real estate records.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

ARTICLE I
Subdivision

Section 1. Subdivision Description. This Agreement pertains to and includes that property, located within the jurisdiction of Teton County, Idaho, which is designated and identified as the "Canyon Creek Ranch Plat" submitted to Teton County and approved by the Board of County Commissioners on May ____, 2013 (hereinafter the "Subdivision").

Section 2. Improvements and Time for Completion. Developer shall, in conjunction with each Phase, construct at its sole cost and expense the road construction and road signs (herein "public improvements") in accordance with the Master Plan for the Subdivision. Such improvements shall be constructed in such a way that each Phase shall "stand alone" as the term is used in the applicable ordinances.

Section 3. Schedule for Completion of the Development. Set forth below is a schedule~~n estimate~~ for completion of the Subdivision. Development is planned to be completed in 5 phases. Each phase shall satisfy the requirements of the applicable ordinances in that "each phase is free standing, that is fully capable of functioning with all required improvements in place in the event that future phases are not completed or are completed at a much later time", as required by such ordinance.

Phase I - ~~estimated~~ completion date: December 31, 2019
Phase II - ~~estimated~~ completion date: December 31, 2020
Phase III - ~~estimated~~ completion date: December 31, 2021

Received on: 5/28/13 By: KER

Draft # 3 Supersedes previous? (Y) N

Submitted to BoCC or PZC Hearing

Hearing Date: 6/11/2013

Phase IV - ~~estimated~~ completion date: December 31, 2022
Phase V - ~~estimated~~ completion date: December 31, 2023

The Developer shall be allowed extensions of time beyond the completion dates for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Developer or any agent or contractor hired by, or on behalf of, the Developer. Market conditions relating to the sale of lots will not be considered a factor for purposes of this section.

Section 4. Final Plat Approval and Recordation. The Developer shall be prohibited from selling or offering for sale any Lots until Teton County approves and records the Final Plat for any given phase. In addition, the Developer shall be prohibited from engaging in any Lot sales prior to obtaining an engineer's cost estimate for the construction of the infrastructure necessary to accommodate such Lots as well as fulfilling the financial surety requirements in Article VII below.

ARTICLE II
Developer's Obligation Phase I

Section 1. Phase 1 Description. Phase 1 pertains to and includes that property which is designated and identified as Phase 1 of the Master Plan of CCR, the Subdivision, within the jurisdiction of Teton County, Idaho.

Section 2. Improvements and Time of Completion. Developer shall, at its sole cost and expense, complete the road construction and road signage. The estimated cost to complete the public improvements pertaining to Phase I is $_____.00.

ARTICLE III
Developer's Obligation Future Phases

Section 1. Future Phases. The Developer acknowledges that Phase 2 and all subsequent phases of CCR (collectively "future phases"), will require approval by the Teton County Board of County Commissioners~~Planning Administrator~~.

Section 2. Improvements and Time of Completion. As to each future phase, Developer shall, at its sole cost and expense complete the road construction signage and shall provide an estimate of costs prepared by a licensed engineer, or a bid reviewed and approved by a licensed engineer, to complete the improvements. As each future phase is prepared for Final Plat approval, an estimate of costs shall be incorporated into this Development Agreement by a written amendment.

Section 3. Schedule for Completion of Improvements. As to each amendment of the Development Agreement pertaining to future phases, the Developer shall ~~estimate~~ provide a completion date for the road improvements for such future phase.

ARTICLE IV
Infrastructure Issues

Section 1. Building Permits and Certificates of Occupancy. No Building Permits or Certificates of Occupancy shall be issued in a specific phase prior to the completion of public improvement in such phase.

Section 2. Dust. The Developer shall make best efforts and comply with industry standards as to dust mitigation while installing infrastructure.

Section 3. Roads. The Developer shall provide a stamped letter from their engineer stating that the roads have been built in accordance with the submitted and approved road plans and are up to Teton County standards. The Developer acknowledges that Pony Creek is a public road, owned by the county. The Developer shall not inhibit travel or parking on this road in any manner. In addition, Pony Creek Road shall be maintained by the Developer within the Subdivision.

Section 4. Signage. The Subdivision entrance sign and street signs shall be non-reflective and built in accordance with Teton County Regulations and in a size and shape appropriate to meet ASHTO standards. These signs shall be installed prior to final inspection and shall comply with all applicable county rules and regulations.

ARTICLE V
Access and Natural Resource Management Area~~Open Space~~

Pursuant to the Master Plan and the Subdivision's Covenants, Conditions, and Restriction, CCR shall provide for and manage the Access and Natural Resource Management Area~~Open Space~~. The Access and Natural Resource Management Area ~~is Open Space~~ will be maintained in such a way as to protect the agricultural and wildlife heritage of the property as effectively as plausible considering the nature of the Subdivision. Further the Master Plan being recorded provides that no structures or fences may be built in this area and that the existing vegetation (which is all native) is to be maintained.

ARTICLE VI
Inspection

Section 1. Inspection. Prior to construction of public improvements, a pre-construction meeting is required with the a Teton County zoning official, the Teton County Fire Marshal, the Subdivision's engineer and contractor. The Developer's engineer shall make regular inspections and maintain control of the development while it

is under construction. Representatives of the County shall have the right ~~and obligation~~ to enter upon the property at reasonable times and intervals, upon reasonable notice, to inspect and to determine if the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the property at any reasonable time, upon reasonable notice. Reasonable notice pursuant to this Section may be made by telephone to Developer at such telephone number(s) provided by Developer and to Developer's Engineer.

Section 2. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that any improvements have been fully and properly completed and shall request final inspection by the County. The County shall provide prompt interim and final inspection of any improvements that will be covered by soil or otherwise when notified by Developer of interim completion. ~~Any inspection not completed within seven (7) days of receipt by the County of written request for inspection from the Developer shall be deemed conclusive evidence of acceptance by the County.~~ Upon timely inspection the County shall give prompt~~immediate~~ written notice of acceptance of the improvements or a written checklist of material deficiencies. Any noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by Developer.

ARTICLE VII
Financial Matters

Section 1. Financial Security Guaranty. In lieu of the actual installation of required public improvements the Developer shall, prior commencement of construction of each phase of the Master Plan of the Subdivision, provide the County with a letter of credit, bond, or cash deposit, in the amount to be identified and attached to each amendment hereto for each phase which is 125% of the estimated bid cost of the improvements.

Section 2. Cash Deposit. In the event that the Developer makes a cash deposit to satisfy the obligation set forth herein, the cash shall be deposited in an interest bearing account with a financial institution mutually acceptable to the parties hereto, with interest accruing to the Developer. Developer may draw funds form the account to pay for the improvements. The parties shall establish a method for inspection (including a regular schedule therefor) and Developer shall pay, from the cash deposit, the cost of improvements on a percentage of completion basis. Notwithstanding foregoing, the County will not release any part of a cash deposit (or any surety) for any part of infrastructure improvements until the entire line-item for such component is complete and the County will not release the contingency until the entire phase is complete and the County has approved the same and the warrantee period is finished.

Section 3. Reduction and Release of Guarantee. After the inspecting engineer certifies that the improvements to any phase are complete, the county shall release the

Developer from the Financial Security as outlined above. ~~Partial releases shall be given any time a phase or section of the Subdivision is completed.~~

Section 4. Default. If the Developer defaults in or fails to perform any of its obligations in accordance with this Agreement the County shall, by Certified Mail, Return Receipt Requested, provide notice to Developer specifying the default. Within sixty (60) days of the Developer's receipt of said notice, the Developer shall cure such default or, in the event that the default cannot be reasonably cured within said period, Developer shall commence to take corrective action within said period and shall pursue such corrective action diligently to completion. In the event that the Developer fails to cure the default as specified above, the Developer herby grants to the County, in addition to all other rights afforded to the County in this Agreement and by law the right, at the County's option, to notify Developer by Certified Mail, Return Receipt Requested, that the County intends to vacate the subdivision or complete the construction of the improvements. If at its sole discretion the County chooses to complete the construction of the improvements t~~T~~he County shall provide a bid to the Developer of the estimated costs to so complete or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. Thereafter, the County shall have the right to draw from the financial security guarantee of this Agreement an amount of money sufficient to pay the entire cost of the work as completed by the County, including legal fees and administrative expenses. All work performed by the County shall meet the construction standards specified in this
Agreement.

Section 5. Liability and Indemnity of County.

A. No Liability for county Approval. The Developer acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the improvements or use of any portion of the improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees or any third party, against damage or injury of any kind at any time.

B. Indemnification. Except as provided below, the Developer agrees to, and does hereby, indemnify the County, and all of its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs and liability of every kind and nature that my be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the improvements, (2) the issuance of any approval or acceptance of improvements, (3) the development, construction, maintenance or use of any portion of the improvements and (4) the performance by the Developer of its obligations under this Agreement and all related agreements. The Developer further agrees to aid and defend the County in the event that the County is

named as a defendant in an action concerning the improvements provided by this Agreement only as to improvements that are not in conformance with the approved Master Plan of the Planned unit Development or in compliance with each phase, except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

This indemnification does not extend to claims, costs, and liability asserted by the Developer in the event the County fails in its duties and obligations to Developer set forth herein or by law or in the event that damages are asserted based upon the intentional misconduct or negligence of the County, its officials, employees, agents, representatives or engineers.

Section 6. One-Year Guaranty of the Improvements. The Developer herby guarantees the prompt and satisfactory correction of all defects and deficiencies in the improvements that occur or becomes evident within one year after construction. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within sixty (60) days after written demand from the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot reasonably be corrected within sixty (60) days after written demand from the County, then Developer shall commence correction of the deficiency within the sixty (60) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The guaranty provided by this Section 6 shall be extended for a full year from the date of repair or replacement of any improvement repaired or replaced pursuant to such demand.

ARTICLE VIII
Miscellaneous

~~Section 1. Timing of Future Phases. The parties acknowledge that the timing of development is dependent upon many factors, some of which are beyond the control of the Developer. These factors include, but are not limited to, residential demand, availability of financing on commercially reasonable terms, energy and transportation costs, local and national employment and unemployment), warfare, perception of terrorist threat, weather, availability of contractors, and acts of God. In response to the County's request that the Developer forecast the timing of future events, the Developer has provided the schedule set forth above in this Agreement. Such estimate shall be subject to change based upon factors beyond Developer's control.~~

Section 12. No Waiver of county Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuity waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise

any obligation under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

Section 23. Governing Law. This Agreement shall be construed according to the laws of the State of Idaho.

Section 34. Changes of Law. Any reference to laws, ordinances, rules, or regulation shall include such laws, ordinances, rules or regulations as they have been, or they may hereafter, be amended, provided however, that this Section shall not apply to the vested rights of Developer accruing under laws or ordinances in effect at the time of zoning or subdivision approval.

Section 45. Time of Essence. Time is of the essence in the performance of all terms and provisions of the Agreement, except as otherwise stated in this Agreement.

Section 56. Successors. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

Section 67. Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the County shall be addressed to, and delivered at, the following address:

Teton County Commissioners
Attn: Planning Adminstrator
Teton County Courthouse
150 Courthouse Drive, room 107
Driggs, Idaho 83422

Notices to the Developer shall be addressed to and delivered at, the following address:

Idaho Ranch Subdivision, LLC
PO Box 499
Victor, Idaho 83455

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

Section ~~8~~7. Enforcement. The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents representatives, engineers or attorneys thereof; solely on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. Provided however, that the preceding limitation shall not apply in circumstances involving the intentional misconduct or negligence of the County in the performance of its obligations hereunder.

Section ~~9~~8. Amendments. All amendments to this Agreement shall be in writing and shall be approved by the Developer and the County.

Section ~~91~~0. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 10~~1~~. Authority to Execute. The County and the Developer hereby acknowledge and agree that all required notices, meetings and hearings have been properly given an d held by the County with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the County Commissioners. The Developer hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Developer or the subdivision is subject.

Section 11~~2~~. Filing. The Developer shall have this Agreement recorded in the office of the Teton county Clerk and Recorder at the same time the final plat is recorded.

Section 12 Right to Farm Provision. CCR acknowledges the Right to Farm Act stated below:

Right to Farm Act Idaho Code Chapter 45, Sections 22-4501 through 22-4504 "...It is the intent of the legislature to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the State of Idaho.

"Agricultural Operation" includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the producing for commercial purposes of livestock or agricultural commodities. No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any change conditions in or about he surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at he time the operation began; provided that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it."

Section 13 Fire Protection Plan. CCR will provide a fire suppression pond. Other fire protection considerations defined in cooperation with the Fire Marshall's office include (1) Conformance to the Unified Fire Code, and (2) Adequate access for emergency vehicles throughout CCR.

Section 14 Improvements Provision. The developer or its successors shall be responsible for all required subdivision improvements and shall not transfer construction obligations and the responsibility for completion of any improvements to the lot owners.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

Board of County Commissioners
Teton County, Idaho

~~**Kathy Rinaldi**~~

By:_____
Kelly Parks
Chair Board of County Commissioners

~~Sid Kunz~~

Approved: Clerk and Recorder

Teton County Clerk

Idaho Ranch Subdivision, LLC

Herbert Heimerl, Managing Member

Received on: 5/28/13 By: ACR

Draft # 2 Supersedes previous? Y N

Submitted to BoCC or PZC Hearing

Hearing Date: 6/11/2013

CLEAN

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CREEK RANCH

This Amended Declaration of Covenants, Conditions and Restrictions ("Declaration") is made to be effective the _____ day of May, 2013, by Idaho Ranch Subdivision, LLC ("Declarant") and it amends that certain Declaration of Covenants, Conditions and Restrictions as recorded on _____, 2009 under instrument number _____.

WHEREAS, Declarant is the owner of certain real property in Teton County, Idaho, known as Canyon Creek Ranch, more particularly described as all that real property shown and described on subdivision plat number _____ filed and recorded in the Teton County Clerk's office on _____ _____, 2013 (hereinafter referred to as the "Subject Property"); and

WHEREAS, Declarant desires to provide for the preservation of the desirability and attractiveness of the Subject Property, and any real property which may be annexed thereto pursuant to this Declaration, through the covenants, conditions, restrictions and provisions as hereinafter set forth; and

WHEREAS, Declarant desires to subject the Subject Property to Negative Covenants (as defined in Article I herein) to preserve scenic and recreational values on Subject Property.

NOW, THEREFORE, The Declarant hereby declares that the Subject Property, and any real property which may be annexed thereto pursuant to the provisions of the Declaration, shall be held, conveyed, divided, encumbered, hypothecated, bonded, rented, used, occupied and improved in accordance with and subject to the following provisions, covenants, conditions and restrictions (hereinafter sometimes collectively referred to as "Covenants"), all of which are for the purpose of enhancing and protecting the character, values, desirability and attractiveness of said real property. The covenants shall run with said real property and shall be binding on all parties having or acquiring any right, title or interest in said real property, or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Declarant, and each Owner (as hereinafter defined) or person or entity deriving rights from an Owner. Any conveyance, transfer, sale, assignment, lease of sublease of said real property will be and hereby is deemed to incorporate by reference the provisions of this Declaration and the covenants herein contained.

I.

LAND CLASSIFICATION

1. LOTS. As used herein, a lot shall be any of Lots 1-22 as shown on the recorded plat.

2. PROPERTY. As used herein, property shall mean any and all property which is now or any hereafter subject to this Declaration, including the Lots, and including public or private streets and roads and any private or public easements or ways and including any and all improvements on any of the foregoing, hereinafter "Canyon Creek Ranch"

II.

ASSOCIATION MEMBERSHIP. VOTING RIGHTS and MEETINGS

1. ASSOCIATION MEMBERSHIP. Every owner of a Lot as depicted on Canyon Creek Ranch Plat shall be a member of Canyon Creek Ranch HOA (the "HOA"). Association Membership shall be appurtenant to and may not be separated from ownership of all Lots.

2. VOTING RIGHTS. The HOA shall have one class of voting membership. Each member shall be entitled to one vote for each lot owned. If any owner or owners cast a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same lot. In the event more than one (1) vote is cast with respect to a particular lot, none of the said votes shall be counted and said votes shall be deemed void.

3. MEETINGS. The HOA and the Architectural Control Board (hereafter established), shall give at lease fifteen (15) days written notice of the time, place, and purpose of any meeting of the association, unless such notice is waived in writing by all its members.

III.

MEMBERSHIP ASSESSMENTS

1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each owner of any Lot, by acceptance of a deed or contract of purchase therefor, whether or not it shall be so expressed in any such deed or contract, is deemed to covenant and agree to pay to the HOA: (1) regular annual or other regular periodic assessments or charges, and (2) special assessments for capital improvements, as the HOA may determine. The regular and special assessments, together with such interest thereon, and cost of collection thereof, as hereinafter provided, shall be a charge of the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time such assessment was levied.

2. PURPOSE OF ASSESSMENTS. The assessments levied by the association shall not be used for any purpose other than promoting the recreation, health, safety, and welfare of the residents of Canyon Creek Ranch. The HOA shall determine the use of assessment proceeds for each and all of the foregoing uses as well as any other use desired by the HOA.

3. ANNUAL ASSESSMENTS. The regular annual assessment shall first be established by the HOA when it deems such assessment necessary and such assessment necessary and such assessment shall remain in full force and effect until otherwise changed by the HOA.

4. EFFECT OF NONPAYMENT OF ASSESSMENTS. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum until paid, and it shall be the duty of the HOA to effectuate such collection. No owner may waive or otherwise escape liability from the assessments provided herein by non-use of the Common Areas or abandonment of his dwelling unit, or building site.

IV.

ARCHITECTURAL CONTROL

1. There is established hereby an Architectural Control Board (the "ACB") which will have the power specified herein, plus those powers necessary to enforce the covenants conditions, and restrictions established by the Declaration. The initial board shall be composed of Herb Heimerl and Eric Spitzer and shall serve for a term of five (5) years.

2. Building sites shall be as designated on the Master Plan for Canyon Creek Ranch. Any deviation must be approved by the ACB.

3. All plans to construct any improvements at Canyon Creek Ranch shall be submitted to the ACB for approval. It shall be the duty of the ACB to consider and act upon such proposals for plans submitted to it from time to time and to adopt architectural control rules. The ACB's approval or disapproval, as required in these covenants, shall be in writing. In the event the ACB fails to approve or disapprove within forty five (45) days after plans and specifications are submitted to it approval shall not be required and the related covenants shall be deemed to have been fully complied with.

4. All future fencing erected upon Canyon Creek Ranch shall be done in compliance with the ACB approvals as well as commonly accepted wildlife friendly fencing standards. Fencing existing as of the date of this Declaration and all improvements and repairs thereto shall be exempt from this requirement.

V.

GENERAL RULES AND RESTRICTIONS

All real property within Canyon Creek Ranch, shall be held, used, and enjoyed, subject to the following limitations and restrictions:

1. RESIDENTIAL USE. No residence shall be used for any purpose other than single family homes. No gainful occupation, profession trade or other non-residential use shall be conducted on any such residential area, provided, however, that nothing in this Declaration shall prevent the rental of property within a residential area by the owner thereof for residential purposes, so long as the minimum rental period is three months.

2. DESIGN CHARACTER. Informal residences are encouraged in order to relate to terrain and physical features of the properties. No building shall be placed in such a manner as to restrict the views from any other lot owner.

(a) All improvements shall be of new construction. Prebuilt, component, or modular construction shall only be permitted upon specific approval of the Architectural Control Board.

(b) Exterior materials shall be of rough sawn natural wood, peeled log, stone, or any other material specifically approved by the ACB. Roof materials shall be cedar shake or shingle, heavy weight asphalt shingle, or ribbed metal with flat non-reflective colored finish.

(c) Exterior finishes shall be semi-transparent or heavy bodied stains, or pigmented or clear non-glossy preservatives. All exposed metals shall have a dull colored finish, or shall be flat color anodized or painted.

(d) Exterior colors shall be subdued and in the earth tone range. Color samples, on pieces of all exterior materials and roofing materials to be used, shall be submitted to the Architectural Control Board for approval.

(e) All spoils from excavating must be replanted within six months. No dirt may be piled on a lot longer than the time required to backfill the dwelling's foundation.

3. EASEMENTS. The following easements are hereby created.

(a) An easement is granted to all Lots over that portion of the Property as depicted on the Master Plan as the Access and Natural Resource Management Area (the "ANRMA"). The ANRMA area may be used by the Association Membership for recreational purposes only. No improvements or changes may be made to the ANMRA area. No changes may be made to the ANRMA without the prior consent of the Teton County Board of County Commissioners.

(b) A restrictive easement is granted over the Natural Resource Management Area (the "NMRA") as depicted on the Master Plan. No buildings, fences, improvements, or any changes may be made to or constructed upon the land covered by this restrictive easement. Notwithstanding, the ACB may elect, by unanimous vote only, to have improvements made within the NMRA or the ANRMA so long as they are consistent and harmonious with the natural state of these areas. By example only, bird nesting poles, wildlife habitat enhancements, and trails. No changes may be made to the NMRA restrictive easement unless the Declarant or the HOA, if it has been created, causes the survey of the Sharp Tail Grouse lek(s), which surveyed leks are the basis for the NMRA boundaries, to be updated and the results of such updated lek surveys demonstrate that the leks have moved.

4. NO DUMPING GROUND. No lot shall be used or maintained as a dumping ground for rubbish or trash of any kind. Such rubbish, trash, garbage, and other waste shall be kept only in sanitary container, provided by the owners of each lot. No such rubbish, trash, or waste shall be burned upon said property and each lot owner shall at his own cost and expense, transport or cause to be transported, such trash, rubbish, garbage and waste to a public or private dump away from the property hereinabove described.

5. NUISANCES. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other property in the vicinity thereof, or to its occupants.

6. REPAIR OF BUILDINGS. No improvement upon any property Canyon Creek Ranch shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair, and adequately painted, or otherwise finished by the owner.

7. NO MINING OR DRILLING. No property shall be used for the purpose of mining, quarrying drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except that owner may by appropriate permit, grant license or easement, allow the drilling of wells for the extraction of water.

8. NO REMOVAL OF LIVING TREES. No living trees shall be removed unnecessarily except those in actual building envelopes.

9. NO FURTHER SUBDIVISION. There shall be no further subdivision of any of the lots.

10. NO ANNOYING LIGHTS, SOUNDS, OR ODORS. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; this includes without limitation, lights that direct light toward other residences, and ranch-type lights such as Halogen or iodine gas. In addition, the Design Committee shall approve the lighting schematics of all improvements prior to being constructed. All exterior lighting shall be in compliance with Teton County ordinance 9-4-12. No sound shall be emitted on any Residential Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Residential Lot which is noxious or offensive to others.

11. WEED CONTROL. All Lots, Common Areas, and Open Space shall be in compliance with Teton County Weed control standards.

VI.

ENFORCEMENT AND VALIDATION

1. ENFORCEMENT. Enforcement shall be a proceeding at law, or in equity, against any person or persons violating or attempting to violate any covenant, either to restrain violation, or to recover damages.

2. Right to Make Rules and Regulations. The HOA shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of any and all facilities and property of the Association to assure fullest enjoyment and use by the persons entitled to enjoy and use the same, provided that such rules and regulations shall not be in conflict with this Declaration or any Supplemental Declaration. The HOA may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from property and facilities of the HOA or otherwise. Each Lot owner, members of his family and his tenants, guests and invitees shall be obligated to comply with and abide by any such rules and regulations.

3. VALIDATION. Invalidation of any one of these covenants by judgment or court order, shall in no way affect any of the other provisions, which shall remain in full force and effect.

VII.

RIGHT TO FARM ACT

Canyon Creek Ranch acknowledges the Right to Farm Act as stated below:

Right to Farm Act Idaho Code Chapter 45, Sections 22-4501 through 22-4504

"...It is the intent of the legislature to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the State of Idaho".

"Agricultural Operation includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the producing for commercial purposes of livestock or agricultural commodities. No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any change conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began; provided that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it."

VIII.

AMENDMENT OF COVENANTS

None of the foregoing restrictive covenants shall be altered, amended, waived, or rescinded without the written consent of at least 80% of the Association Membership.

IX.

COVENANTS RUN WITH THE LAND

These covenants shall run with the property above-described, and shall be binding on all parties, their heirs and assigns, and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

IN WITNESS THEREOF, the owner of the above described real property has hereunto set its hand this ____ day of _____, 2013.

Idaho Ranch Subdivision, LLC

By:_____
Name: Herb Heimerl
Title: Managing Member

STATE OF IDAHO)
) ss.
COUNTY OF TETON)

On this _____ day of _____, 2013 before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared_____, known and identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
SEAL Notary Public for Idaho

Residing at:_____

Commission Expires: _____

Received on: 5/28/13 By: ACR

Draft # _____ Supersedes previous? Y N

Submitted to BoCC or PZC Hearing

Hearing Date: 6/11/13

WITH TRACKED CHANGED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CREEK RANCH

This Amended Declaration of Covenants, Conditions and Restrictions ("Declaration") is made to be effective the _____ day of May, 2013, by Idaho Ranch Subdivision, LLC ("Declarant") and it amends that certain Declaration of Covenants, Conditions and Restrictions as recorded on _____, 2009 under instrument number _____.

WHEREAS, Declarant is the owner of certain real property in Teton County, Idaho, known as Canyon Creek Ranch, more particularly described as all that real property shown and described on subdivision plat number _____ filed and recorded in the Teton County Clerk's office on _____ _____, 2013 (hereinafter referred to as the "Subject Property"); and

WHEREAS, Declarant desires to provide for the preservation of the desirability and attractiveness of the Subject Property, and any real property which may be annexed thereto pursuant to this Declaration, through the covenants, conditions, restrictions and provisions as hereinafter set forth; and

WHEREAS, Declarant desires to subject the Subject Property to Negative Covenants (as defined in Article I herein) to preserve scenic and recreational values on Subject Property.

NOW, THEREFORE, The Declarant hereby declares that the Subject Property, and any real property which may be annexed thereto pursuant to the provisions of the Declaration, shall be held, conveyed, divided, encumbered, hypothecated, bonded, rented, used, occupied and improved in accordance with and subject to the following provisions, covenants, conditions and restrictions (hereinafter sometimes collectively referred to as "Covenants"), all of which are for the purpose of enhancing and protecting the character, values, desirability and attractiveness of said real property. The covenants shall run with said real property and shall be binding on all parties having or acquiring any right, title or interest in said real property, or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Declarant, and each Owner (as hereinafter defined) or person or entity deriving rights from an Owner. Any conveyance, transfer, sale, assignment, lease of sublease of said real property will be and hereby is deemed to incorporate by reference the provisions of this Declaration and the covenants herein contained.

I.

LAND CLASSIFICATION

1. LOTS. As used herein, a lot shall be any of Lots 1-22 as shown on the recorded plat.

2. PROPERTY. As used herein, property shall mean any and all property which is now or any hereafter subject to this Declaration, including the Lots, and including public or private streets and roads and any private or public easements or ways and including any and all improvements on any of the foregoing, hereinafter "Canyon Creek Ranch"

II.

ASSOCIATION MEMBERSHIP. VOTING RIGHTS and MEETINGS

1. ASSOCIATION MEMBERSHIP. Every owner of a Lot as depicted on Canyon Creek Ranch Plat shall be a member of Canyon Creek Ranch HOA (the "HOA"). Association Membership shall be appurtenant to and may not be separated from ownership of all Lots.

2. VOTING RIGHTS. The HOA shall have one class of voting membership. Each member shall be entitled to one vote for each lot owned. If any owner or owners cast a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same lot. In the event more than one (1) vote is cast with respect to a particular lot, none of the said votes shall be counted and said votes shall be deemed void.

3. MEETINGS. The HOA and the Architectural Control Board (hereafter established), shall give at lease fifteen (15) days written notice of the time, place, and purpose of any meeting of the association, unless such notice is waived in writing by all its members.

III.

MEMBERSHIP ASSESSMENTS

1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each owner of any Lot, by acceptance of a deed or contract of purchase therefor, whether or not it shall be so expressed in any such deed or contract, is deemed to covenant and agree to pay to the HOA: (1) regular annual or other regular periodic assessments or charges, and (2) special assessments for capital improvements, as the HOA may determine. The regular and special assessments, together with such interest thereon, and cost of collection thereof, as hereinafter provided, shall be a charge of the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time such assessment was levied.

2. PURPOSE OF ASSESSMENTS. The assessments levied by the association shall not be used for any purpose other than promoting the recreation, health, safety, and welfare of the residents of Canyon Creek Ranch. The HOA shall determine the use of assessment proceeds for each and all of the foregoing uses as well as any other use desired by the HOA.

3. ANNUAL ASSESSMENTS. The regular annual assessment shall first be established by the HOA when it deems such assessment necessary and such assessment necessary and such assessment shall remain in full force and effect until otherwise changed by the HOA.

4. EFFECT OF NONPAYMENT OF ASSESSMENTS. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum until paid, and it shall be the duty of the HOA to effectuate such collection. No owner may waive or otherwise escape liability from the assessments provided herein by non-use of the Common Areas or abandonment of his dwelling unit, or building site.

IV.

ARCHITECTURAL CONTROL

1. There is established hereby an Architectural Control Board (the "ACB") which will have the power specified herein, plus those powers necessary to enforce the covenants conditions, and restrictions established by the Declaration. The initial board shall be composed of Herb Heimerl and Eric Spitzer and shall serve for a term of five (5) years.

2. Building sites shall be as designated on the Master Plan for Canyon Creek Ranch. Any deviation must be approved by the ACB.

3. All plans to construct any improvements at Canyon Creek Ranch shall be submitted to the ACB for approval. It shall be the duty of the ACB to consider and act upon such proposals for plans submitted to it from time to time and to adopt architectural control rules. The ACB's approval or disapproval, as required in these covenants, shall be in writing. In the event the ACB fails to approve or disapprove within forty five (45) days after plans and specifications are submitted to it approval shall not be required and the related covenants shall be deemed to have been fully complied with.

4. All future fencing erected upon Canyon Creek Ranch shall be done in compliance with the ACB approvals as well as commonly accepted wildlife friendly fencing standards. Fencing existing as of the date of this Declaration and all improvements and repairs thereto shall be exempt from this requirement.

V.

GENERAL RULES AND RESTRICTIONS

All real property within Canyon Creek Ranch, shall be held, used, and enjoyed, subject to the following limitations and restrictions:

1. RESIDENTIAL USE. No residence shall be used for any purpose other than single family homes. No gainful occupation, profession trade or other non-residential use shall be conducted on any such residential area, provided, however, that nothing in this Declaration shall prevent the rental of property within a residential area by the owner thereof for residential purposes, so long as the minimum rental period is three months.

2. DESIGN CHARACTER. Informal residences are encouraged in order to relate to terrain and physical features of the properties. No building shall be placed in such a manner as to restrict the views from any other lot owner.

(a) All improvements shall be of new construction. Prebuilt, component, or modular construction shall only be permitted upon specific approval of the Architectural Control Board.

(b) Exterior materials shall be of rough sawn natural wood, peeled log, stone, or any other material specifically approved by the ACB. Roof materials shall be cedar shake or shingle, heavy weight asphalt shingle, or ribbed metal with flat non-reflective colored finish.

(c) Exterior finishes shall be semi-transparent or heavy bodied stains, or pigmented or clear non-glossy preservatives. All exposed metals shall have a dull colored finish, or shall be flat color anodized or painted.

(d) Exterior colors shall be subdued and in the earth tone range. Color samples, on pieces of all exterior materials and roofing materials to be used, shall be submitted to the Architectural Control Board for approval.

(e) All spoils from excavating must be replanted within six months. No dirt may be piled on a lot longer than the time required to backfill the dwelling's foundation.

3. EASEMENTS. The following easements are hereby created.

(a) An easement is granted to all Lots over that portion of the Property as depicted on the Master Plan as the Access and Natural Resource Management Area (the "ANRMA"). The ANRMA area may be used by the Association Membership for recreational purposes only. No improvements or changes may be made to the ANMRA area. No changes may be made to the ANRMA without the prior consent of the Teton County Board of County Commissioners.

(b) A restrictive easement is granted over the Natural Resource Management Area (the "NMRA") as depicted on the Master Plan. No buildings, fences, improvements, or any changes may be made to or constructed upon the land covered by this restrictive easement. Notwithstanding, the ACB may elect, by unanimous vote only, to have improvements made within the NMRA or the ANRMA so long as they are consistent and harmonious with the natural state of these areas. By example only, bird nesting poles, wildlife habitat enhancements, and trails. No changes may be made to the NMRA restrictive easement unless the Declarant or the HOA, if it has been created, causes the survey of the Sharp Tail Grouse lek(s), which surveyed leks are the basis for the NMRA boundaries, to be updated and the results of such updated lek surveys demonstrate that the leks have moved.

4. NO DUMPING GROUND. No lot shall be used or maintained as a dumping ground for rubbish or trash of any kind. Such rubbish, trash, garbage, and other waste shall be kept only in sanitary container, provided by the owners of each lot. No such rubbish, trash, or waste shall be burned upon said property and each lot owner shall at his own cost and expense, transport or cause to be transported, such trash, rubbish, garbage and waste to a public or private dump away from the property hereinabove described.

5. NUISANCES. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other property in the vicinity thereof, or to its occupants.

6. REPAIR OF BUILDINGS. No improvement upon any property Canyon Creek Ranch shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair, and adequately painted, or otherwise finished by the owner.

7. NO MINING OR DRILLING. No property shall be used for the purpose of mining, quarrying drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except that owner may by appropriate permit, grant license or easement, allow the drilling of wells for the extraction of water.

8. NO REMOVAL OF LIVING TREES. No living trees shall be removed unnecessarily except those in actual building envelopes.

9. NO FURTHER SUBDIVISION. There shall be no further subdivision of any of the lots.

10. NO ANNOYING LIGHTS, SOUNDS, OR ODORS. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; this includes without limitation, lights that direct light toward other residences, and ranch-type lights such as Halogen or iodine gas. In addition, the Design Committee shall approve the lighting schematics of all improvements prior to being constructed. All exterior lighting shall be in compliance with Teton County ordinance 9-4-12. No sound shall be emitted on any Residential Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Residential Lot which is noxious or offensive to others.

11. WEED CONTROL. All Lots, Common Areas, and Open Space shall be in compliance with Teton County Weed control standards.

VI.

ENFORCEMENT AND VALIDATION

1. ENFORCEMENT. Enforcement shall be a proceeding at law, or in equity, against any person or persons violating or attempting to violate any covenant, either to restrain violation, or to recover damages.

2. Right to Make Rules and Regulations. The HOA shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of any and all facilities and property of the Association to assure fullest enjoyment and use by the persons entitled to enjoy and use the same, provided that such rules and regulations shall not be in conflict with this Declaration or any Supplemental Declaration. The HOA may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from property and facilities of the HOA or otherwise. Each Lot owner, members of his family and his tenants, guests and invitees shall be obligated to comply with and abide by any such rules and regulations.

3. VALIDATION. Invalidation of any one of these covenants by judgment or court order, shall in no way affect any of the other provisions, which shall remain in full force and effect.

VII.

RIGHT TO FARM ACT

Canyon Creek Ranch acknowledges the Right to Farm Act as stated below:

Right to Farm Act Idaho Code Chapter 45, Sections 22-4501 through 22-4504

"...It is the intent of the legislature to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the State of Idaho".

"Agricultural Operation includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the producing for commercial purposes of livestock or agricultural commodities. No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any change conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began; provided that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it."

VIII.

AMENDMENT OF COVENANTS

None of the foregoing restrictive covenants shall be altered, amended, waived, or rescinded without the written consent of at least 80% of the Association Membership.

IX.

COVENANTS RUN WITH THE LAND

These covenants shall run with the property above-described, and shall be binding on all parties, their heirs and assigns, and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

IN WITNESS THEREOF, the owner of the above described real property has hereunto set its hand this ____ day of _____, 2013.

Idaho Ranch Subdivision, LLC

By:_____
Name: Herb Heimerl
Title: Managing Member

STATE OF IDAHO)
) ss.
COUNTY OF TETON)

On this _____ day of _____, 2013 before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared_____, known and identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

SEAL

_____
Notary Public for Idaho

Residing at:_____

Commission Expires: _____

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

I. BACKGROUND INFORMATION

A. Report completion date for Preliminary Jurisdictional Determination (PJD): 29 May 2013

B. Name/address of person requesting preliminary JD:
Herb Heimerl
PO Box 499
Victor, Idaho 83455

C. District Office: Walla Walla District
File Name: Canyon Creek Ranch – Pony Creek and Hugh Davis Canyon Creek
File Number: NWW-2013-00212

D. Project Location(s) and Background Information:
State: Idaho County/Parish/Borough: Teton City: N/A
Center Coordinates of Site (lat/long in degree decimal format): Lat.: 43.8148 North
Long.: -111.38881West

Name of nearest waterbody(s): Pony Creek, Hugh Davis Canyon Creek, Unnamed Stream
Identify (estimate) amount of waters in the review area:
Non-wetland waters: 7300, 11300, 2600 Linear feet 0.0 Width (ft) and/or acres
Cowardin Class: Riverine
Stream Flow: Intermittent
Wetlands: 0.00 acres
Cowardin Class: N/A
Name of any water bodies on the site identified as Section 10 waters:
Tidal: N/A
Non-Tidal: N/A

E. **Review performed for site evaluation** (Check all that Apply):
☒ Office (Desk) Determination Date: 29 May 2013
☐ Field Determination Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site. The permit applicant or other affected person/party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for the site, as described above. Nevertheless, the permit applicant or other affected person/party who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "Pre-Construction Notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following:

   (a) The permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters;

(b) That the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions;

(c) That the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization;

(d) That the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary;

(e) That undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable;

(f) Accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and

(g) Whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable.

3. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein) or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

II. SUPPORTING DATA. Data reviewed for Preliminary JD

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Check all boxes below that apply. The checked information should be included in the administrative file. Provide detailed reference sources for each checked box.

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
  (1) Canyon Creek Ranch Master Plan Amendment, dated 29 January 2013
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant
  - ☐ Office concurs with data sheets/delineation report
  - ☐ Office does not concur with data sheets/delineation report
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data
  - ☐ USGS 8 and 12 digit HUC maps

☒ U.S. Geological Survey map(s): Cite scale & Quad Name: 1:24,000 Packsaddle Lake
☒ USDA Natural Resources Conservation Service Soil Survey, Citation: NRCS (Web Soil Survey)
☒ National wetlands inventory map(s): Cite name: USFWS (Wetlands Mapper)
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): ORM Database and Google Earth Aerials OR ☐ Other (Name & Date):
☐ Previous determination(s): File no. and Date of Response Letter:
☐ Other information (please specify):

This constitutes a preliminary jurisdictional determination (JD) and is useful for the planning of your project. An approved JD is not necessary in order for the Corps to process a 404 permit application.

Admin File No. NWW-2013-212

Important Note: ***The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.***

James M. Joyner

Signature of Regulatory Project Manager
REQUIRED
May 29, 2013

Date

Signature of person requesting Preliminary JD
REQUIRED (unless obtaining signature is impracticable)

Date

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Herb Heimerl	File Number: NWW-2013-00212	Date: 29 May 2013
Attached is:		See Section Below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit,

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMT

REASONS FOR APPEAL OR OBJECTIONS:

Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: District Engineer ATTN: David B. Barrows Regulatory Division Walla Walla District 201 North 3rd Avenue Walla Walla, Washington 99362-1876 Telephone (509) 527-7150	If you only have questions regarding the appeal process you may also contact: U.S. Army Corps of Engineers Northwestern Division Attn: Mary Hoffman, Appeal Review Officer P.O. Box 2870 Portland, Oregon 97208-2870 Telephone (503) 808-3825

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent:	*Date:*	*Telephone:*