

Boise River Flood Control District No. 10

RESOLUTION 03-2005

**FOR THE PURPOSE OF RESPONDING TO JEVIN INVESTMENTS, INC.'S
PROGRESS REPORT ON THE RIVER RANCH DEVELOPMENT PROJECT**

WHEREAS, Jevin Investments, Inc. ("Jevin"), requested a special meeting before the Boise River Flood Control District No. 10 ("District") to discuss the three conditions of approval placed upon the River Ranch Development Project ("Project") by the Canyon County Board of Commissioners on June 13, 2005, CU2004-459;

WHEREAS, Jevin made the following representations at said special meeting:

1. As to Condition 27, Jevin represented that less than a three inch rise will result due to any filling within the existing flood plain on the Project site and that no filling is contemplated within the regulatory floodway, and further, no filling is contemplated within the existing slough lying on the project;
2. As to Condition 28, Jevin represented that a continuous 30 foot wide maintenance access easement will be provided to the District by virtue of a separate easement agreement, the terms of which Jevin and the District will agree upon in writing and which shall be recorded in the official records of the Canyon County Recorder's Office upon Jevin's acquisition of the Project property;
3. As to Condition 29, Jevin represented to the District that a Flood Management Plan is unnecessary because Jevin will not excavate a pond below the lowest point of the adjacent portion of the Boise River. However, Jevin further represented that the District will be afforded the opportunity to review and approve the design of any pond that may lie within the project and adjacent to the banks of the Boise River;

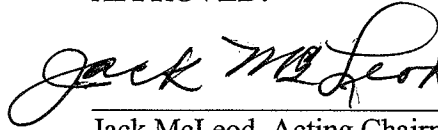
WHEREAS, Jevin has requested that the District indicate whether the above referenced representations are sufficient to satisfy Conditions 27, 28, and 29 of the June 13, 2005, Canyon County Board of Commissioners' Findings of Fact and Conclusions of Law, CU2004-459;

WHEREAS, the District believes the proper response to Jevin's request is set forth in the letter attached hereto as Exhibit A ("Position Statement"); and

NOW, THEREFORE, BE IT RESOLVED, that in furtherance of its responsibilities, the District hereby adopts the Position Statement and authorizes the execution of the same for delivery to Jevin.

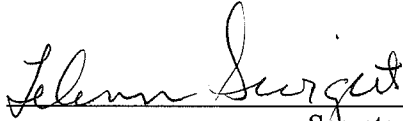
DATED this 5th day of August, 2005.

APPROVED:



Jack McLeod, Acting Chairman
Boise River Flood Control District No. 10

ATTEST:



Glenn Sargent, Secretary/Treasurer
Boise River Flood Control District No. 10

BOISE RIVER FLOOD CONTROL DISTRICT #10

PO Box 46
Star, Idaho 83669

August 5, 2005

Mr. David Resnick
Jevin Investments, Inc.
5532 Mill Creek Rd
San Diego, CA 92130

Re: Proposed River Ranch Development, Jevin Investments
Canyon Co. Case No.: CU 2004-162

Dear Mr. Resnick:

On Monday, July 25, 2005, you and your consultants appeared before a properly noticed special meeting of the Boise River Flood Control District No. 10 ("District") at the Star Fire Hall, Star, Idaho. This was not a public hearing, but rather a special meeting called at your request. The purpose of the meeting included discussing three conditions of approval placed upon your proposed River Ranch Development Project ("Project") by the Canyon County Board of Commissioners. Through this correspondence and on behalf of the District, your verbal request for the District's interpretation of the three conditions of approval (Conditions 27, 28 & 29) is addressed.

The District's review and response is based upon the following submittals provided to the District:

1. Undated project graphic presented by your consultant, Mr. David Powell, PE, to the District Board at their meeting on January 18, 2005.
2. Updated Canyon County Staff Report, May 5, 2005, File No. CU2004-459.
3. Canyon County Board of Commissioners' Findings of Fact, Conclusions of Law and Order, June 13, 2005.
4. Email by Mr. Paul Kunz, PE, dated July 12, 2005, re: River Ranch Floodplain Data.
5. Email by Mr. Paul Kunz, PE, dated July 13, 2005, re: River Ranch Additional Floodplain Data.
6. A four sheet plan set, sealed July 20, 2005, by Ms. Wendy Haustveit, PE, provided to the District by RiveRidge Engineering.
7. A revised sheet 1 of the above mentioned four-sheet plan set, unsealed, provided to the District at the July 25 special meeting.

The District's response is also based upon the District's Resolution 01-2003, passed August 25, 2003. Finally, the District's response also relies upon verbal representations made by either you or your representatives during the July 25 special meeting.

Mr. David Resnick
August 5, 2005
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In the order discussed July 25 before the District, the District's response to the presentation concerning the county conditions is as follows:

Condition 28, Granting of Easements

To comply with Condition 28, an easement will need to be executed by the District in a form similar to the one attached hereto as Exhibit A. The easement will continuously extend from the public right-of-way at the north end of the River Ranch project to the south side of the project, generally running parallel to the east project boundary. A continuous maintenance and access easement will also be granted along the entire southerly project boundary adjacent to the Boise River.

Condition 29, Gravel Extraction Ponds/Flood Management Plan

In order to avoid the Flood Management Plan condition, you represented that the Project will be developed without excavating any ponds below the bottom of the portion of the Boise River adjacent to the Project property, generally about 6-feet in depth according to the four-sheet plan set. Further during the special meeting, representations were made that the design of any pond adjacent to the Boise River will be submitted to the District for review and approval. The District views these representations as being in compliance with Condition 29.

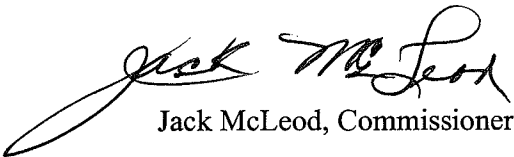
Condition 27, Base Flood Elevations/Adverse Effects to Lands within the District

In addition to Mr. Kunz's emails, verbal assurances have been provided that less than a three inch (3") rise will result due to any filling within the existing floodplain on the Project site and that no filling is contemplated within the regulatory floodway, and further, no filling is contemplated within the existing slough lying on the project. The District views these representations as being in compliance with Condition 27.

Thank you for your attention to the needs and responsibilities of the District. Please submit any questions and or comments on the preceding in writing to the District's Star address at your earliest convenience.

Sincerely,

Boise River Flood Control District No. 10


Jack McLeod, Commissioner

Encl. Exhibit A (Easement)

WHEN RECORDED, RETURN TO:
BOISE RIVER FLOOD CONTROL DISTRICT NO. 10
C/O RYAN P. ARMBRUSTER
ELAM & BURKE
P.O. BOX 1539
BOISE, ID 83701

EASEMENT AGREEMENT

This EASEMENT AGREEMENT, hereinafter ("AGREEMENT"), made and entered into this ___ day of _____, 2005, by and between, Jevin Investments, a _____, hereinafter ("JEVIN") and Boise River Flood Control District No. 10, hereinafter ("DISTRICT"), a political subdivision of the State of Idaho.

RECITALS

- A. JEVIN is the developer of a proposed project known as the River Ranch subdivision (the "Project").
- B. The Project is being developed on a parcel of land commonly known as _____ and more specifically described on attached Exhibit "A" (the "Property").
- C. The Property is owned by _____. JEVIN has entered into an agreement with _____ whereby _____ has agreed to sell the Property to JEVIN upon the occurrence of certain events.
- D. On June 13, 2005, the Canyon County Board of Commissioners signed Findings of Fact and Conclusions of Law granting JEVIN a conditional use permit to proceed with the development of the Project (CU2004-459).
- E. Prior to and during the public hearing process regarding the conditional use permit for the Project, JEVIN communicated with the DISTRICT and agreed to certain requests by the DISTRICT. One of those requests was for the DISTRICT to be granted access to the Boise River through the Property.
- F. Pursuant to the stipulation by JEVIN, the Board of Canyon County Commissioners established condition number twenty eight (28) to their approval of the Project, which states: "Granting of easements, to the satisfaction of the Boise River Flood Control District No. 10, that provide access routes to and along any portion of the Boise River affected by the project, that allow the Boise River Flood Control District No. 10 access to the Boise river for the purpose of furthering the statutory duties and rights [of] the [D]istrict, including access for any emergency and/or clean-up related activities, shall be provided."

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the covenants, undertakings and agreements herein contained, and the recitals above, which are incorporated herein, the parties agree as follows:

1. Easement. Simultaneously with JEVIN becoming the owner of record of the Property, JEVIN shall record this AGREEMENT which declares, creates, and grants for the non-exclusive use of the DISTRICT, subject to all existing easements, and encumbrances of record, its successors, or a perpetual, non-exclusive easement upon, over, and across the Property (the "Easement"), which Easement is more particularly described on attached Exhibit "B" and illustrated on attached Exhibit "C."
2. Use. Use of the Easement is not exclusively granted but shall be in common with the use thereof by any of those individuals or entities granted the authority and ability by JEVIN, or JEVIN's successors or assigns, to utilize and access the Easement which may include, but is not limited to, the agents and assigns of JEVIN, the property owners in the Project, the members of the River Ranch Subdivision Homeowners' Association (hereinafter "Association"), members of the public and their invitees or guests. Use of the Easement by DISTRICT is for access. Use of the Easement described herein by DISTRICT shall not unreasonably interfere with the access to and use of the Easement by members of the public or others entitled or granted access to or utilization of the Easement.
3. Maintenance of the Easement. Ordinary maintenance and upkeep of the Easement shall be the responsibility of JEVIN, its successors or assigns. DISTRICT shall be responsible to repair damage caused by the DISTRICT during its use of the Easement.
4. Indemnification: To the extent permitted by law, DISTRICT agrees to indemnify, hold harmless and defend JEVIN and its successors and assigns, including but not limited to the Association, from any and all claims, injuries, suits, causes of action, damages, awards, fees or costs caused by the DISTRICT's sole use of the Easement.
5. Mediation: In the event a disagreement arises between the parties hereto or their successors, any party may demand non-binding mediation of the dispute. Each party shall mutually agree on the mediator to be used and shall each pay half of the fees and expenses of said mediator. If the parties cannot agree on a mediator or either party is dissatisfied with the decision of the mediator, then any party may avail themselves of any legal or equitable remedy available to such party under Idaho Law.
6. Attorney's Fees: In any action brought to enforce or interpret any of the terms or conditions of this AGREEMENT, the successful or prevailing party in such action

shall be entitled to receive its costs and expenses incurred including reasonable attorney, accountant, and expert fees, whether such action be prosecuted to judgment or not.

7. Access: Within the easement, JEVIN shall construct and maintain a twenty (20) foot wide non-paved surface adequate for heavy equipment along the continuous easterly boundary of the Property ("the Access Road") in a manner consistent with that portion of the illustration on attached Exhibit C marked "Access Road." A fence, wall, or similar structure shall be constructed by JEVIN along the westerly boundary of the Access Road. JEVIN, its successors, and assigns shall not use the Access Road for storage of vehicles, equipment, or any other item that may interfere with the DISTRICT'S use of the easement. JEVIN shall cause bollards to be placed on the locations marked "Bollard Placement" on the attached Exhibit C to limit vehicular traffic over portions of the easement. The DISTRICT will be provided with keys to remove the bollards as necessary for easement access. JEVIN shall cause the easement area to be adequately signed to indicate that public parking is not allowed within the easement. Access for equipment turnaround will be provided over the entire common area parcel east of the pond labeled "Phase 4" on attached Exhibit "C." Regardless of any future movement of the river bank adjacent to the southerly boundary of the Property, the DISTRICT shall at all times have a thirty (30) foot access and maintenance easement along the southerly boundary of the Property.
8. Access during Construction: The DISTRICT'S access to the river and use of the easement will be provided at all times before, during, and after Project development and will not be subject to Project phasing.
9. Running of Benefits: All provisions of this Agreement, including the benefits and burdens hereof, run with the land and are binding upon and inure to the benefit of JEVIN and its respective assigns and successors, including but not limited to, the Association.
10. Severability: If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions hereof shall not be effected thereby, but each such remaining term and provision shall be valid and enforceable to the fullest extent permitted by law.
11. Enforcement: In the event a breach of any term, covenant, restriction or condition of this AGREEMENT by a party, the other party or parties shall have, in addition to the right to collect damages, the right to enjoin such breach or threatened breach in a court of competent jurisdiction.
12. Captions: The captions in this AGREEMENT have been inserted solely for convenience of reference and are not part of this AGREEMENT and shall have no effect upon the AGREEMENT'S construction or interpretation. This AGREEMENT shall be given a reasonable construction so the intent of the parties hereto shall be carried out.

13. Applicable Law: This AGREEMENT shall be governed by the laws of the State of Idaho.
14. Notices: All notices, demands, requests and other communications under this AGREEMENT shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, three days after deposit in the U.S. mail, postage prepaid, by registered mail, return receipt requested, addressed as follows:

JEVIN: _____

DISTRICT _____

The parties shall notify the other in writing as specified herein of the name and address of any heirs, assigns or successors in interest.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first written above.

JEVIN INVESTMENTS,

an _____

By: _____
David Resnick
Title: _____

STATE OF IDAHO)
):ss
County of _____)

On this ___ day of _____, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared David Resnick, proved to be, by sufficient evidence he signed the foregoing document.

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

Notary Public for Idaho
Residing at: _____
My commission expires: _____

Boise River Flood Control District No. 10

Attest: