

November 2, 2012

Board of County Commissioners  
150 Courthouse Drive  
Driggs, ID 83422

Dear County Commissioners:

Attached please find the response from Teton Springs Golf & Casting as it relates to the conditions you present in order for us to gain an amendment of the Development Agreement allowing us to continue with Heli Skiing at Teton Springs Resort. We certainly appreciate the opportunity to offer what we feel are suitable and rational solutions that will hopefully mitigate any obstacles that would prohibit this approval process.

We also certainly appreciate your efforts and your willingness to work with us to find appropriate solutions so we can move forward with this heli skiing from the existing heli pad at Teton Springs which is such an economic benefit to both Teton Springs and Teton Valley.

We have reviewed the approved minutes from the September 13, 2012 BOCC meeting and have the following responses to the 14 conditions and 6 "additional changes" referenced on page(s) 13-14.

A key condition to the approval was finding out where the homeowners of Teton Springs stood with respect to the approval of a commercial heli-skiing operation from the existing heli-pad. In reviewing the notes from this last meeting, you all indicated that the survey to the homeowners, a critical element of this approval process, was flawed. We respectfully disagree; we knew this survey was paramount to this process and thus, we made every effort to insure it was a solid & unbiased survey in its presentation.

The survey was approved by the Teton Springs HOA, County Planning Office (Curt Moore and Angie Rutherford). The approved surveys were sent out and received by a third party, Grand Teton Property Management, to homeowners of Teton Springs. The completed surveys were then sealed and hand delivered to the County Planning Office. We respected that the timing of the survey, as requested by the BOCC last winter, was critical as they wanted this information sooner than later. Therefore, our priority was to get the surveys back in time to share this important information with the homeowners and HOA board at their Annual Meeting in July. In the survey, we informed each lot owner that the applicant and a representative from High Mountain Heli, would attend the meeting and answer any questions that the homeowners might have regarding the heli-skiing operation. We attended the meeting and answered all questions from homeowners. As discussed previously, the majority of homeowners who completed this survey clearly show that said homeowners were/are not opposed to the heli ski operation.

With respect to the next steps we would request that the BOCC approve the use of Hel-skiing on lot 8C with the conditions outlined in their minutes from the September 13, 2012 BOCC meeting.

We have reviewed the approved minutes from the September 13, 2012 BOCC meeting and have the following responses to the 14 conditions and 6 "additional changes" referenced on page(s) 13-14.

SUGGESTED CONDITIONS OF APPROVAL:

1. The operation of the Teton Springs Golf & Casting Club helipad for a winter time heli-skiing operation, dates of operation to be December 25 through April 1 and operated by High Mountain Heli-Skiing as described in the application materials submitted to the Planning Office as noted above.

***Applicant:*** *Okay with this condition.*

2. This project is approved as shown in the Application materials dated August 5 and September 16, 2011 and as supplemented with the flight path aerial pictures and description, and as conditioned or modified below. This Development Agreement amendment authorizes Teton Springs Golf & Casting Club to allow High Mountain Heli-Skiing to utilize Lot 8C, and Lot 8C only, during the ski season which is hereby delineated as December 25<sup>th</sup> to no later than April 1<sup>st</sup>. No other expansion of uses are authorized or permitted by this permit. Specifically, no scenic flights are authorized; only High Mountain Heli-Skiing flights are authorized for the purpose of delivering skiers to and from the USFS special use permit area. Skiers may be transported from Wyoming to Teton Springs on the day of their paid heli-ski activity. Flights for refueling, mechanical problems, or medical emergencies are also counted as part of the High Mountain Heli-Skiing commercial helicopter flights coming to or departing from the Teton Springs helipad.

***Applicant:*** *Mechanical problems and medical emergencies potentially could require additional flights and for safety reasons should take precedence over all other stated conditions. This restriction is also in conflict with condition #7 which states....."with emergency flights as needed." Condition #2 should read, "For safety reasons, flights for mechanical problems or medical emergencies shall take precedence over all other stated conditions."*

3. As a condition of approval, the Owner or an agent of Owner acceptable to the County Shall defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding, against the County or its agents, officers, and employees; including all costs, attorneys; fees, expenses, and liabilities incurred in the defense of such claim, action, or proceeding to attack, set aside, void or annul an approval by the County, the Planning and Building Department, or other County advisory agency, appeal board, or legislative body concerning the PUD amendment. County shall promptly notify owner of any such claim, action, or proceeding and shall cooperate fully in the defense of said claim, action or proceeding.

***Applicant:*** *High Mountain Heli has completed an indemnification with Teton Springs HOA.*

4. Owner(s), Owner's agent(s) or Applicant shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including the requirements of Title 8 of the Teton County Zoning Ordinance, as amended August 11, 2011 and subsequent amendments.

**Applicant:** *Okay with this condition.*

5. A fuel spill containment plan shall be maintained. Any liability and cost for cleanup of spills with be incurred by the applicant.

**Applicant:** *High Mountain heli has previously submitted a fuel spill containment plan and this document will be maintained onsite. In the unlikely event of a spill, it has been determined that the drain nearest the fuel truck does not connect to the sewer or flow out of the property. It is connected to gravel sumps under the native areas around the golf range. As an additional precautionary measure, a cover will be placed over the drain.*

6. In order to minimize adverse noise impacts to valley citizens, the commercial flight path of the departing and incoming helicopter flights shall be from the National Forest lands directly south of Teton Springs (as depicted in Staff Report Section4: flight Patters). Commercial flights north of Teton Springs PUD are not authorized and flights north of Teton Springs may be made only for emergency reasons. Flights from Teton Springs to pick up skiers to the north of Teton Springs and/or the Driggs Airport are prohibited.

**Applicant:** *Okay with this condition.*

7. No more than 14 one-way flights are allowed in a single day with a maximum of 40 days of flying per season (December 25 – April 1). Hours of operation shall be restricted to between 9:00 AM and 4:30 PM with emergency flights as needed.

**Applicant:** *We respectfully request that hours of operation be extended minimally, as it sometimes has proven difficult to complete the ski day under certain weather conditions. To accommodate late starts due to potential delays (mostly weather related) we request that hours of operation be 9:00 AM to 5:00 PM.*

8. The vendor shall ensure that a flight log is kept and turned into the Planning and Building Department on a monthly basis (due the 10<sup>th</sup> day of the following month), and that reasons for deviation from the time restrictions be noted in the logs.

**Applicant:** *Okay with this condition.*

9. Loading and unloading of gear and clients onto the helicopter shall occur only on the helipad on lot 8C.

**Applicant:** *It was suggested in the Sept 13 meeting that there could be significant further mitigation of noise if the helicopter were allowed to pick up passengers on the east side of the hotel. This does not eliminate the need or use of the lot 8c heliport. FAA approval is not necessary for this temporary use, just as FAA approval was not necessary for use of lot 8c. The FAA doesn't have the time or interest in*

*governing every temporary location a helicopter might land. Given an opportunity to further mitigate noise, it seems to make sense to at least give this alternate loading area a try, if only on a temporary basis to observe if the desired effect is achieved.*

10. Allowed Equipment: The Bell 407, or its equivalent or less noisy helicopter, shall be used.

***Applicant:*** *Okay with this condition.*

11. Provided the 2012-2013 ski season has no significant and substantiated violations to the conditions 5 through 10 above, and provided the ski season has typical conditions and no extenuating circumstances (as opposed to the unusual 2011-2012 low snow season) the Teton Springs Development Agreement may be amended to allow High Mountain Heli-skiing to utilize Lot 8C until April, 2016.

***Applicant:*** *Okay with this condition and with noted changes referenced on Page 14. .*

12. In order to continue operations in December, 2016 the heli-skiing operation shall be noticed as an agenda item for a public hearing in front of the Planning & Zoning Commission and then the Board of County Commissions who may a) approve the heli-operations for more time, or b) further modify or apply mitigation measures to offset impacts from the operation, of c) deny the request to continue operations and effectively end heli-skiing from the Teton Springs location.

***Applicant:*** *Okay with this condition and with noted changes referenced on Page 14. .*

13. Teton County may issue a cease-and-desist order if any of the above conditions are not met and the flights will be grounded until such time as an appropriate remedy has been made. Multiple offenses to the above conditions will allow the County to permanently stop the winter heli-skiing operation.

***Applicant:*** *Okay with this condition and with noted changes referenced on Page 14.*

14. Prior to the 2013-2014 ski season operations are allowed to commence, Teton Springs Golf and Casting shall amend the Teton Springs Development Agreement to include a complete table or list of all the existing and probable future uses within the Teton Springs PUD. In addition to including a provision for the heli-ski operations, and providing a list of all existing and desired future land uses, the amended Development Agreement shall define a process for reviewing and approving any new uses being proposed in the future. *Staff would prefer that the applicant would bring to the County a complete list of all proposed commercial uses within the PUD.*

***Applicant:*** *The applicant respectfully requests that this not be a condition of the approval of the heli-pad; however, Teton Springs Golf and Casting has a strong willingness to sit-down with the Planning Office and review all existing and futures uses. A list will be prepared and meetings scheduled to work through this process. We believe this to be in the best interest of all parties.*

Given the letter from IDF&G, staff recommends their request and language be added to the conditions as #15:

15. The landing pad and flight path shall not be closer than one half mile from any active eagle nesting location throughout the months of March through June. Teton Springs Lodge shall be responsible for determining the location of active eagle nests within one half mile of proposed landing pads and flight paths starting in February with the use of a qualified biologist approved by the Planning Department of the US Fish and Wildlife Service. Additionally, Teton Springs Lodge shall coordinate directly with the US Fish and Wildlife Service on issues related to the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.

**Applicant:** *The applicant will hire a qualified biologist, approved by Planning Department, to determine if any nest within the ½ mile radius of the flight path and heli-pad, are found to be active. Applicant will communicate findings with US Fish and Wildlife Service.*

Additional Changes to Conditions 1-14 above.

The Board is in agreement to continue the hearing based upon the acceptance of staff recommended conditions #1 - 14, with the following addition and changes:

- A written determination from the HOA Attorney and HOA President or signing authority, representing all lot owners (be it four individual HOA's or one master HOA) that the proposed operation with conditions as proposed are compatible with all applicable HOA CC&Rs within the Teton Springs PUD.

**Applicant:** *A letter from the HOA Attorney was submitted to the BOCC on October 31, 2012. Specifically, Mr. Heimerl's letter acknowledges that the helipad (Tract 8C) is identified as "commercial" on the amended plat, though there is some confusion as to the process that took place to record the third amended subdivision plat. Though Mr. Heimerl raises some questions about the process the Developer went through to amend the plats prior to submitting the documents to Teton County, he acknowledges that the process the Developer went through for all recorded plat amendments, including the prior amendments, is indeterminable. Regardless, Mr. Heimerl points out that even lots with the "miscellaneous" designation frequently have approved commercial uses and that "the Plats anticipate the operation of a helipad and therefore I do not believe that any of [the CC&R] prohibitions can be used to stop such an operation in a general sense." The Applicant agrees with Mr. Heimerl when he concludes, "[t]he applicant has made application to the [Board of County Commissioners] for an amendment to the [Development Agreement] as it is unclear what the current language means. The [Development Agreement] is between the applicant and the BOCC and therefore you need to make a determination as to whether or not you want to allow for such an amendment."*

- Specific GPS coordinates from Idaho Fish & Game of the eagle's nests (within the buffer zone) to insure the recommended one half mile clearance (horizontal and vertical) of the flight path. Additionally a statement from the operator that they will suspend operations or provide a Plan B in the event there are eagles present during operations.

**Applicant:** *See response on condition #15 above. High Mountain heli agrees that if an active eagle nest is located within the half mile radius of an active nest as determined by a qualified biologist, the heli-skiing operation will be suspended.*

- #8 shall read: A flight log with GPS track to power line is kept and turned into the Planning and Building Department on a monthly basis (due the 10<sup>th</sup> day of the following month), and that reasons for deviation from the time restrictions be noted in the logs.

***Applicant:** GPS tracking on helicopters is extremely expensive and has also proven to be a time consuming monitoring nightmare for all involved parties, both for the helicopter operator as well as the monitoring agency. The US Forest Service tried GPS tracking on several Alaskan heli-ski operations, and ended up realizing that it's very hard and usually ineffective, to maintain. Chugach Powder Guides (CPG) continues to maintain GPS to avoid goat habitat. Both parties found it impossible to maintain on a daily basis. For example, this monitoring became more-or-less a full-time job for 1 CPG staffer and 1 USFS staffer. Now, the USFS is allowed to ask for the data for spot checks (the operator must retain the data and control access to it as a result of privacy concerns) and CPG should self report if there is an infraction and state specific reasons. Weather, wind, emergencies or technical malfunctions all can cause infractions or "false-positives".*

*The FAA flight following web site is only available to government agencies and HMH does not have access to this site. Our own internal flight following is on a web site called the Blue Sky Network which has some limitations. The helicopter only transmits a signal every two minutes which can cause misleading information when lines are drawn between the points leading to false infractions of a no fly zone when actually no infraction occurred. Example: The transponder may give out a signal from the lot 8c heliport and the next signal might be 2 or 3 miles away, causing the line between them to fall right over the eagle nest when in fact the flight went well around the half mile buffer. When the eagle nest exists in full view from government agencies, the public and the helicopter operator, it seems unnecessary to add conditions that are expensive, burdensome and potentially inaccurate. If necessary, we will make existing flight following available to Teton County staff and we will self report if an infraction occurs but daily maintenance is not practical.*

- # 11 shall read: “*Provided the 2012-2013 ski season has no substantiated violations to the conditions 5 through 10 above, the Teton Springs Development Agreement may be amended (according to condition #14) to allow High Mountain Heli-skiing to utilize Lot 8C until April, 2016.*”

***Applicant:** See condition #11.*

- #14 shall read “*By June 2013 Teton Springs Golf and Casting shall amend with County approval the Teton Springs Development Agreement to include a complete table or list of all uses within the Teton Springs PUD. In addition to including a provision for the heli-ski operations, and providing a list of all land uses, the amended Development Agreement shall define a process for reviewing and approving any alternate uses being proposed in the future.*” **Per the Prosecutor the uses should be specific and not probably future uses. The uses should be pre-defined as labeled on the plat.**

***Applicant:** See condition #14.*

- **Add** condition #15 per ID Fish & Game: *“The landing pad and flight path shall not be closer than one half mile from any active eagle nesting location (as determined by GPS coordinates) throughout the months of March through June. Teton Springs Lodge shall be responsible for determining the location of active eagle nests within one half mile of proposed landing pads and flight paths starting in February with the use of a qualified biologist approved by the Planning Department or the US Fish and Wildlife Service. Additionally, Teton Springs Lodge shall coordinate directly with the US Fish and Wildlife Service on issues related to the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act.”*

**Applicant:** *See condition #15.*

Again, we appreciate your time in reviewing our application to amend the original development agreement to allow a heli-skiing out of Teton Springs. Please do not hesitate to contact me should you have any questions or require additional information.

Respectfully,

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