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Via electronic mail (dhasegawa@cityofboise.org)

September 15, 2021

The Board of the Harris Ranch Community Infrastructure District No. 1 (“HRCID”)
c/o David Hasegawa, District Manager
150 N. Capitol Blvd.
Boise, Idaho 83702

**Re: Response to August 30, 2021 Harris Ranch CID Taxpayers’ Association (“HRCIDTA”) Letter
Re: Certain Interest Payments**

Dear Members of the Board:

This letter responds to the August 30, 2021 letter from the HRCIDTA objecting to reimbursement of certain interest payments. As before, the HRCIDTA through Mr. Doyle has filled this letter with misstatements of the law, distortions of the facts, and inflammatory rhetoric that attacks not only the developer, but also HRCID board members and staff. These attacks are undeserved.

Background

The HRCID was formed in 2010 after passage of the Idaho Community Infrastructure District Act (Idaho Code Section 50-3101, *et seq.*) (the “CID Act”). The CID Act is one of the few tools created by the Idaho legislature to permit growth to pay for itself by financing a limited class of community infrastructure, including roads, public safety facilities, utility infrastructure, as well as parks or open space.

This is exactly what has happened at Harris Ranch. The HRCID has helped finance a number of improvements that fit within the narrow categories of reimbursable improvements identified by the Legislature. These improvements include a sediment retention basin, which helps protect the homes from the HRCID from the possibility of run-off from the foothills. It also includes the deflection berm that was installed to prevent flood damage from the Boise River. Additional reimbursements helped facilitate construction of a fire station, acquisition of the Alta Harris Park property, as well as storm water retention ponds south of Warm Springs Ave.

Each reimbursement request is submitted in accordance with the District Development Agreement No. 1 for the Harris Ranch Community Infrastructure District No. 1, recorded as Instrument No. 110112805 (the “Development Agreement”). Reimbursements are only permitted for the narrow category of development costs that are allowed to be refunded per the CID Act and each request must be proven up. Once constructed, those costs—per the Development Agreement—accrue interest from the time of completion or dedication until the reimbursement to the developer occurs.¹

Before any reimbursement, there is a review by HRCID Staff, including the District Engineer and District Manager. Each of these reimbursement requests are public upon submittal to HRCID Staff. Each reimbursement is only finalized and repaid after review is complete and the HRCID Board authorizes a bond to repay the approved reimbursements. This process has been ongoing in a very public manner since the HRCID was created more than ten years ago. **The HRCID Staff has worked diligently and in good faith to protect the public while upholding the obligations of the Development Agreement.**

It is important to note that there are more parties involved here than the HRCID, the developer, and the homeowners who have purchased property in the HRCID. There are other interests at stake, including the financial institutions who acquire HRCID bonds in reliance on both the CID Act and the Development Agreement. Like every other decision of a taxing district, there must be finality after an opportunity for the public and interested parties to review the actions of the HRCID. The CID Act provides this finality in the form of Idaho Code Section 50-3119, which states that any decisions of the HRCID Board, including the decision to issue a bond, is reviewable for a period of sixty (60) days, after which time:

...no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever and, thereafter, said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed. With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

I.C. § 50-3119. It is worth noting that this sixty-day period is **twice** as long as the review period provided for other administrative actions of local governments, including, for example, zoning decisions. There is and always has been an opportunity for public comment and appeal. But once that appeal period expires, the matter must be considered settled.

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¹ Note that the developer has agreed to only submit for interest reimbursement from the time of dedication until reimbursement of the project itself. Although authorized under the Development Agreement, no interest payments are requested for any time after project reimbursement occurs. This has allowed the HRCID to focus on reimbursing projects to stop the interest clock from running, ultimately benefitting the HRCID.

Response to August 30, 2021 HRCIDTA Letter

The August 30, 2021 letter by HRCIDTA includes a number of false assumptions and misstatements of the facts. Because the appeal periods related to each of these reimbursements have passed, we do not believe it is worth re-hashing each and every one of these complaints. The following comments do not suggest or imply that any applicable appeal periods are re-opened or renewed. However, simply to support HRCID Staff and its prior efforts, we would like to provide the Board and the public with a more correct factual and legal picture than that painted by the HRCIDTA.

The CID Allows Growth to Pay for Itself by Reimbursing Community Infrastructure, Including When “Required” for a Subdivision

The August 30 letter continues the argument that certain improvements are required for the development and are, therefore, automatically ineligible for CID reimbursement. This is incorrect.

While it makes for good rhetoric, only a moment’s thought is required to see through this claim. The simple fact is **a CID is not a regular subdivision and the CID Act allows for reimbursement of qualified community infrastructure regardless of whether it was a “condition” of the development.** All of the community infrastructure identified in the CID Act is generally required or included within a typical residential subdivision. If Mr. Doyle’s argument were correct, there would be no purpose for the CID Act because none of the limited community infrastructure it identifies would be reimbursable. That obviously is not the case.

The Development Agreement Permits Reimbursement of Projects Constructed or Dedicated Prior to Formation of the HRCID

Next, the August 30 letter suggests that projects that took place prior to the formation of HRCID are not reimbursable. This is also incorrect.

There is nothing in the CID Act that restricts such reimbursements; meanwhile, the Development Agreement expressly contemplates them. For example, Section 2.4 of the Development Agreement states that “[t]he prior conveyance or dedication of easements, rights-of-way or community infrastructure shall not affect or proscribe Owner’s right to construct community infrastructure improvements or purposes thereto or to be paid or reimbursed for such construction upon acquisition by the District.” In addition, Section 3.1(d) states that a “prior dedication” does not preclude subsequent acquisition by the District, which acquisition occurs as a result of reimbursement.

In short, there is nothing in the CID Act or the Development Agreement to indicate that these projects cannot be reimbursed. In fact, the Development Agreement specifically authorizes such reimbursements.

As Required by the CID Act, All Reimbursed Infrastructure is Owned or Located in Easements in Favor of Public Entities

Despite assertions to the contrary, all of the reimbursed community infrastructure in the HRCID is either owned or is located in an easement in favor of a public entity, whether it be the CID, the City of Boise, or the Ada County Highway District.

The CID Act states that “[o]nly community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter.” (I.C. § 50-3101(2)). The CID Act then clarifies that “[c]ommunity infrastructure other than personalty, may be located only in or on lands, easements or rights-of-way publicly owned by this state or a political subdivision thereof.” (I.C. § 50-3105(2)). In other words, community infrastructure must be located either on property owned outright by a local government, or in an easement in favor of a local government.

This has been the case at Harris Ranch. For example, the sediment retention basin is located in an easement in favor of the City of Boise. Despite the HRCIDTA’s misinformed suggestions to the contrary, this is not a “favor” to Harris Ranch; instead, as is typically the case with these types of public safety improvements, the City of Boise *required* not only maintenance in accordance with a pre-approved Operations and Maintenance Manual, but also the right to access and, if necessary, maintain the sediment retention basin if there is a failure on the part of the association to do so. This arrangement is the same in other public facilities easements throughout the City. ACHD’s master storm drain easement includes precisely the same structure.

Property Including Community Infrastructure Could, In Most Instances, Be Used for Other Purposes

Finally, the suggestion that community infrastructure could not have been used for any other purpose and therefore should not be reimbursed is simply incorrect.

The storm ponds are an excellent example. When Harris Ranch was developed, the Harris family once again chose to go above and beyond by preserving *hundreds of feet* near the Boise River in addition to what was required under the Boise flood plain and river systems ordinance at the time, more than doubling the required 200-foot buffer. If that had not occurred and the minimum requirements of Boise City Code had simply been followed, storm drain facilities could easily have been placed much further south and closer to the river (with appropriate wetland treatment or banking), preserving the areas immediately adjacent to Warm Springs Ave. for residential or commercial development.

In addition, storm ponds are not the only engineering option. For example, ACHD regularly approves permeable pavers as an alternative to use of storm drain ponds, which would have increased roadway reimbursements *significantly*. Harris Ranch could also have mandated on-site stormwater detention through use of silva cells or other alternatives. This would have removed the requirement of storm drain ponds in these areas, again leaving them open to development but increasing community infrastructure costs and long-term maintenance, in particular with the permeable pavers.

In short, it is not at all a foregone conclusion that the storm drain ponds would be used only for that purpose. Simple review of the development history and the construction alternatives available shows that this property could have been used for residential or commercial development and should be valued as such.

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Conclusion

Perhaps the most disturbing element of the HRCIDTA's August 30 letter is the repeated assertion that the HRCID has failed its duties and the HRCID Staff has been in "cahoots" with the developer to arrive at decisions that are "fundamentally abusive, and also unlawful." Nothing could be further from the truth. For the past decade, HRCID Staff has carefully considered each and every reimbursement request. Time and again, HRCID Staff has asked for updates and more information to ensure the CID Act and Development Agreement are followed.

Just because HRCIDTA has penned another letter making far-ranging claims of abuse does not make those claims true. As noted above, each of these projects were considered in a timely manner, reviewed for consistency with the CID Act and the Development Agreement in a public process, and then reimbursed pursuant to bond issuances that are long since final and well outside of any appeal period.

Very truly yours,



T. Hethe Clark
HC/bdb

c: CID Board Members
CID Staff (Jim Pardy (CID Engineer), Rob Lockward (CID Counsel))
Client