

Ident. No. 63-32366

Should questions arise during the processing of this application please contact:
Steve Hannula - ERO Resources Corp. (208) 373-7983

Amended on 10-4-11 by JKH

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

RECEIVED

MAR 27 2006

WATER RESOURCES
WESTERN REGION

1. Name of Applicant B.W. Eagle Inc. Phone (208) 375-6666
Mailing address 250 S. Beechwood, Suite 120, Boise, ID 83709
2. Source of water supply Ground Water, which is a tributary of N/A
3. Location of point of diversion is Township 4N Range 1E Sec. 21, in the _____ 1/4,
(2) SW 1/4, NE 1/4, Govt. Lot _____ B.M., ADA County; additional points of diversion if any: (1) SENW, (2) SWNW, (2) NESW, NWSW, SWSW, SESW all in section 21.
4. Water will be used for the following purposes:
Amount 533 af for Aesthetic Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) _____ cfs and/or (b) 533 acre feet per annum
6. Proposed diverting works:
 - a. Describe type and size of devices used to divert water from the source 22.2 acres of excavations that will intercept shallow ground water.
 - b. Height of storage dam 0 feet; active reservoir capacity _____ acre-feet; total reservoir capacity 533 acre-feet
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
 - d. Is ground water with a temperature of greater than 85° F being sought? No
 - e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
 - a. Hydropower; show total feet of head and proposed capacity if kW. _____
 - b. Stockwatering; list number and kind of livestock. _____
 - c. Municipal; show name of municipality. _____
 - d. Domestic; show number of households. _____
 - e. Other; describe fully. 22.2 acres of pond used for aesthetic purposes

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	1E	21			J				J	J	J	J	J	J					

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. None

11. a. Who owns the property at the point of diversion? Applicant
- b. Who owns the land to be irrigated or place of use? Applicant
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: This application is to appropriate shallow ground water for a series of ponds in a proposed development (Lakemoor). The consumptive losses will be mitigated by transferring the irrigation rights to storage and diversion to storage as described in two accompanying Applications for Transfer; one from Warm Springs Ditch Co. and the other from Thurman Mill Ditch Co. Water from Warm Springs and Thurman Mill will be delivered to the ponds for replacement of evaporative losses. The total pond area is 22.2 acres and are proposed to be an average depth of 24 feet. The water bearing zone will be 0 to 28 feet (depth to water is assumed to be 4 feet) bgs.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

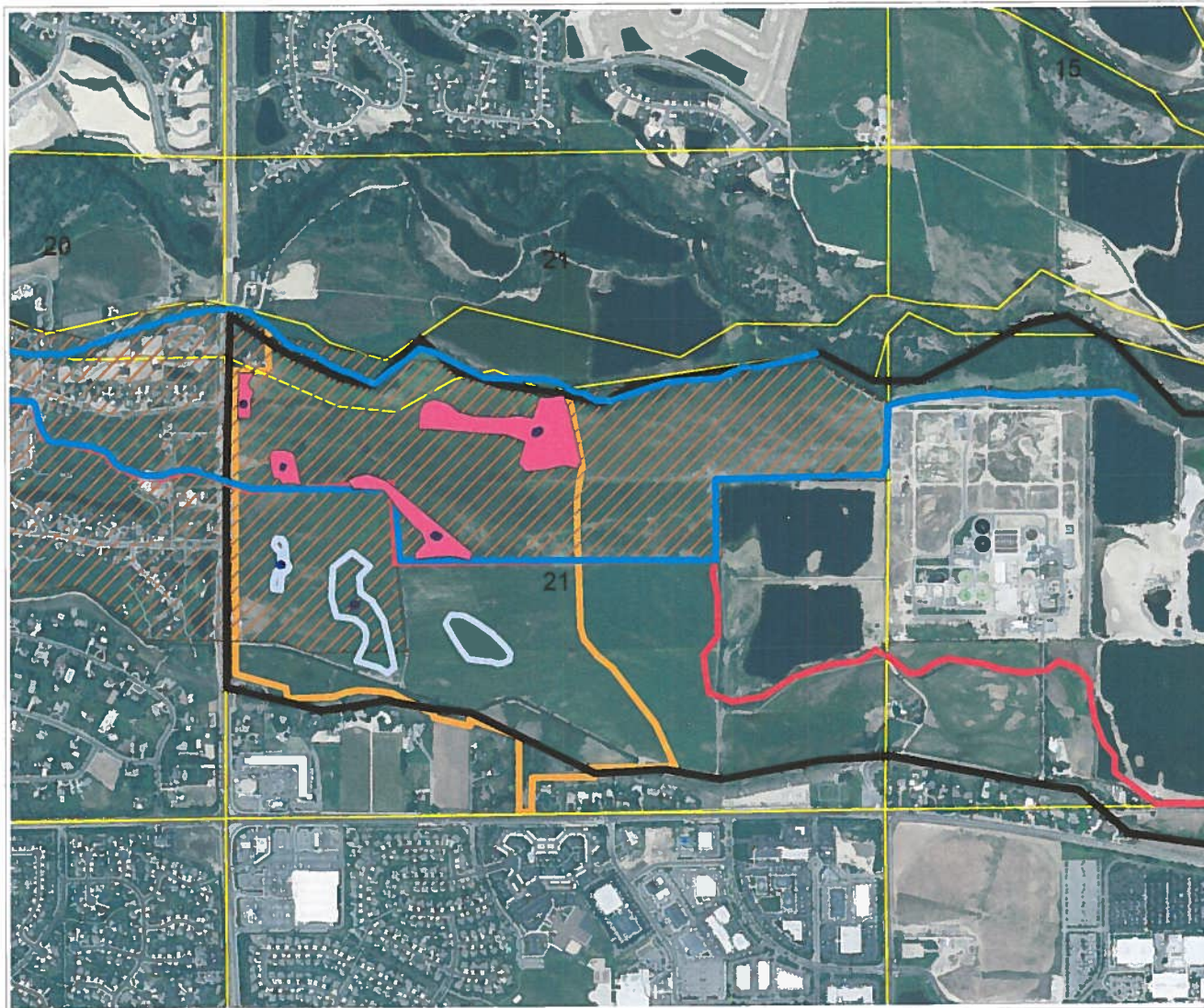
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.


Signature of Applicant (and title, if applicable)

Received by LG Date 3-27-06 Time 4:57 Preliminary check by Vicki Mungie
 Fee \$ 450 Received by LG # W033987 Date 3-27-06
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

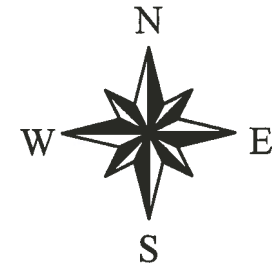
No. C 87519		Due no later than September 30, 2005		2. Registered Agent and Office NO PO BOX	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080		Annual Report Form 1 Mailing Address - Correct in this box, if applicable BW EAGLE, INC. DENNIS M. BAKER 250 S BEECHWOOD STE 120 BOISE, ID 83709		DENNIS M. BAKER 250 S BEECHWOOD STE 120 BOISE, ID 83709	
NO FILING FEE IF RECEIVED BY DUE DATE				3 New Registered Agent Signature	
4. Corporations: Enter Names and Business Addresses of President, Secretary and Directors.					
<u>Office held</u>	<u>Name</u>	<u>Street or P.O. Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Pres.	Dennis M. Baker	250 S Beechwood Hl	Boise	ID	83709
5. Organized Under the Laws of: IDAHO C 87519					
6. Signature: <i>[Signature]</i>		Date: 7-14-05			
Name: Dennis M. Baker		Ti			
Issued 07/05/2005		Do Not Tape or Staple			

Lakemoor Development Ponds (T4N, R1E, sec 21)



- Proposed*
- Ponds serviced by Thurman Mill
 - Ponds serviced by Warm Springs
 - Warm springs ditch
 - Thurman mill canal
 - Thurman Mill PPU
 - Warm Springs PPU
 - Sections
 - QQ
 - Development boundary

• = center of Pond = POD
JRH 10-4-11



0.5 0 0.5 1 Miles

63-32366

Borgeman, Sherry

From: Borgeman, Sherry
Sent: Tuesday, October 25, 2011 9:45 AM
To: 'rick.ward@idfg.idaho.gov'
Subject: Comment letter for applications #63-32366, 67-15058, 67-15059, 65-23458 & 65-23459
Attachments: Comment Letter to F & G.doc; 63-32366 Ap.pdf; 67-15058 Ap.pdf; 67-15059 Ap.pdf; 65-23458 Ap.pdf; 65-23459 Ap.pdf

Attached is a cover letter & copies of application(s) for your review and/or comment. If you have any questions regarding this information please feel free to contact this office.

Thank you,

Sherry Borgeman
Idaho Department of Water Resources, Western Region
208-334-2190 (ph)
208-334-2348 (fax)

October 24, 2011

STATE OF IDAHO
DEPT OF FISH & GAME
ATTN: RICK WARD
3101 S POWERLINE RD
NAMPA, ID 83686

RE: Applications for Permit: 63-32366, 65-23458, 65-23459, 67-15059, & 67-15058

Dear Mr. Ward:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference. Please review the application, complete the enclosed recommendation form, and submit it to this office within 21 days.

The Department can publish notice of the application as soon as the initial review is completed. Therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sherry Borgeman
Administrative Assistant

Enclosure(s)

Borgeman, Sherry

From: Borgeman, Sherry
Sent: Tuesday, October 25, 2011 8:13 AM
To: 'LEGALS@IDAHOSTATESMAN.COM'
Subject: Legal Notice
Attachments: Ada County - Cover Letter.Doc; Ada County - Legal Notice.doc

Attached is (1) legal notice being submitted for publication. If you have any questions regarding the attached information, or if you can not publish the ad on the dates indicated please contact me immediately.

Sherry Borgeman
Idaho Department of Water Resources, Western Region
208-334-2190 (ph)
208-334-2348 (fax)

October 25, 2011

LEGAL NOTICE DEPARTMENT

IDAHO STATESMAN

PO BOX 40

BOISE, ID 83707

RE: Application For Permit No.(s): 63-32366, 63-33578

RE: Transfer No. 73900
Water Right No(s): 63-250

RE: Transfer No. 73930
Water Right No(s): 63-0192, 63-216C , 63-19425

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 11/21/2011. Your cooperation is appreciated.

Sincerely,

Sherry Borgeman
Administrative Assistant

Enclosure(s)

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-32366

B W EAGLE INC
250 S BEECHWOOD STE 120
BOISE, ID 83709

Point of Diversion NWSW S21 T04N R01E ADA County Source GROUND WATER Tributary
Point of Diversion L6(SENW) S21 T04N R01E ADA County Source GROUND WATER Tributary
Point of Diversion L5(SWNW) S21 T04N R01E ADA County Source GROUND WATER Tributary
Point of Diversion NESW S21 T04N R01E ADA County Source GROUND WATER Tributary
Point of Diversion NESW S21 T04N R01E ADA County Source GROUND WATER Tributary
Point of Diversion NWSW S21 T04N R01E ADA County Source GROUND WATER Tributary
Point of Diversion L5(SWNW) S21 T04N R01E ADA County Source GROUND WATER Tributary
Use: AESTHETIC STORAGE 01/01 to 12/31 533 AF

Total Diversion: 533 AF

Date Filed: 3/27/2006

Place Of Use: AESTHETIC STORAGE

T04N R01E S21 L7(SWNE) L5(SWNW) L6(SENW) NESW NWSW SWSW SESW

Water bearing zone to be appropriated is from 0 to 28 feet.

Mitigation is proposed for consumptive use.

63-33578

DONALD W PADDOCK
LINDA S PADDOCK
4982 N CURLEW LN
EAGLE, ID 83616

Point of Diversion NESW S30 T05N R01E ADA County Source GROUND WATER Tributary

Use: IRRIGATION 03/01 to 11/15 0.2 CFS

Total Diversion: 0.2 CFS

Date Filed: 9/23/2011

Place Of Use: IRRIGATION

T05N R01E S30 NESW NWSW

Total Acres: 10

Water bearing zone to be appropriated is from 250 to 350 feet.

PROPOSED CHANGE OF WATER RIGHT

Thurman Mill Ditch Co Ltd of 10611 W Treeline Ct, Boise, ID 83713 filed Application No. 73900 to transfer one water right with an 1895 priority date from the Boise River totaling 0.66 cfs. The purpose of the transfer is to change the nature of use for 8.2 acres, 0.16 cfs and 23.9 afa to aesthetic storage and diversion to storage. The proposed change will mitigate for evaporative losses from the ponds in the Lakemoor subdivision. An application for permit 63-32366 was filed for the Lakemoor pond system. Water will be used in the Thurman Mill Ditch Co service area in the Lakemoor subdivision located northeast of the intersection of Chinden Blvd and Eagle Rd in Boise, ID.

PROPOSED CHANGE OF WATER RIGHTS

Warm Springs Ditch Co, c/o Hoff Companies, Inc., of 1840 N Lakes Ave., Meridian, ID 83642 filed Application No. 73930 to transfer three water rights with 1876 to 1889 priority dates from the Boise River totaling 7.76 cfs. The purpose of the transfer is to change the nature of use for 14 acres, 0.24 cfs and 40.7 afa to aesthetic storage and diversion to storage. The proposed change will mitigate for evaporative losses from the ponds in the Lakemoor subdivision. An application for permit 63-32366 was filed for the Lakemoor pond system. Water will be used in the Warm Springs Ditch Co service area in the Lakemoor subdivision located northeast of the intersection of Chinden Blvd and Eagle Rd.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp for a full description of the rights &/or proposed transfer. Protests may be submitted based on the criteria of Idaho Code § 42-222 and 42-203A. Any protest against the approval of this application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 together with a protest fee of \$25.00 for each application on or before November 21, 2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director
Published on 11/3/2011 and 11/10/2011

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

Music, Vicky

From: Music, Vicky
Sent: Tuesday, October 04, 2011 12:39 PM
To: 'Steve Hannula'
Subject: RE: BW Eagle application for permit 63-32366

Sounds great. See you then.

From: Steve Hannula [<mailto:shannula@eroresources.com>]
Sent: Tuesday, October 04, 2011 12:37 PM
To: Music, Vicky
Subject: RE: BW Eagle application for permit 63-32366

Hi Vicky,

Your suggestions make sense to me. I can come by this afternoon to make those changes if you are available. How does 3:30 or 4:00 sound?

Steven Hannula
Hydrogeologist

ERO Resources Corporation
208.373.7983 O | 208.484.9961 C | shannula@eroresources.com | www.eroresources.com

From: Music, Vicky [<mailto:Vicky.Music@idwr.idaho.gov>]
Sent: Tuesday, October 04, 2011 11:15 AM
To: Steve Hannula
Subject: BW Eagle application for permit 63-32366

Hi Steve –

I am working on this pond package and have questions about the PODs and POU listed on the application for permit. The application lists 7 QQs for the PODs. It appears these are the 7 QQs in which the ponds are located. However, the POU legal description only lists 4 QQs and not the 7.

I think the application should be corrected to list 7 PODs, the pond centers:

SENW, ✓

2 ponds in the SWNW SO 2 PODs in this QQ, ::

2 ponds in the NESW SO 2 PODs in this QQ, ::

2 ponds in the NWSW SO 2 PODs in this QQ. ::

The POU should list all 7 QQs.

If you agree, let me know when you would like to come in and make these changes. Thank you.

Vicky Music
Sr. Water Resource Agent
IDWR Western Region



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SEP 29 2011

WATER RESOURCES
WESTERN REGION

September 27, 2011

Ms. Vicky Music
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RE: Application for Permit 63-32366 (B.W. Eagle Inc.)

Dear Ms. Music:

In a letter dated September 6, 2011, you requested some additional information regarding the subject application for permit. Please accept this letter on behalf of B.W. Eagle Inc. as the response. Your letter identified three items, which are repeated here for convenience.

1) *Please submit a map showing the shallow ground water uses [diverting from 1-200 feet bgl] within ½ mile radius of the Lakemoor development.*

As shown in Figure 1, multiple ponds (gravel pits) in neighboring subdivisions expose shallow ground water. Also, 28 points of diversion associated with 50 water rights (shown in Figure 1) are within ½ mile of the development boundary. These points of diversion are ground water wells, most of which are less than 200 feet deep and are for domestic purposes (as found in the Idaho Department of Water Resources (IDWR) water rights database and well construction database). The IDWR shapefile "wrpod.shp" with a date of September 20, 2011 is the source of the points of diversion.

2) *Explain why the application will not impact these uses, or if there is an impact, how the impact will be mitigated.*

Mitigation

Impacts to nearby shallow ground water users will be fully mitigated by preserving the delivery of water from the Warm Springs Ditch Company and Thurman Mill Ditch Company into the pond system. The Lakemoor ponds are interconnected by means of an underground pipeline. Water delivered by the ditch companies enters the pond system to maintain levels. Evaporation from each pond is replenished by allowing water to refill ponds via the interconnected pipes. The ponds will maintain a steady water level in the shallow ground water. This arrangement fully mitigates impacts to the ground water and thereby has no impacts to nearby shallow ground water users.

The basis for the applications for transfer from Warm Springs Ditch Company and Thurman Mill Ditch Company can be summarized as follows. The subject

Denver
1842 Clarkson St.
Denver, CO 80218
303.830.1188

Boise
3314 Grace St.
Boise, ID 83703
208.373.7983

Durango
1065 Main Avenue
Durango, CO 81301
970.422.2136

Western Slope
P.O. Box 932
161 South 2nd St.
Hotchkiss, CO 81419
970.872.3020

application for permit seeks to expose approximately 22.2 acres of shallow ground water to evaporation. These ponds are on ground previously irrigated for pasture. These irrigated acres are converted in part to an open water surface. Irrigated grass pasture (low maintenance) in the Boise area has a mean annual consumptive use (ET_{act}) rate of 3.19 feet/yr. Open water shallow systems have an ET_{act} of 3.13 feet/yr (Allen and Robison 2009).

The change in consumptive use converting grass pasture to ponds is almost negligible; essentially a one-for-one exchange. The corresponding applications for transfer from the Thurman Mill Ditch Company and Warm Springs Ditch Company identify a total of 22.2 acres of land to be converted from irrigation to storage and diversion to storage. The Lakemoor subdivision would continue to pay assessments for and receive the water from each ditch company to ensure full irrigation and mitigation is maintained within the development.

Direction of Ground Water Flow

The direction of shallow (less than 200 feet deep) ground water flow in this area of the Treasure Valley is generally accepted as being toward the Boise River. The Boise River is the hydraulic boundary to the shallow ground water system.

The Lakemoor ponds are downgradient of the majority of the wells within the 1/2 mile radius; the potential for impact to the upgradient wells is greatly reduced.

Stability of Ground Water

Water level data found in IDWR's hydro.online web application demonstrate the stable nature of the shallow ground water near the river in the valley floor below the bluff north of Chinden. The hydrographs show water levels fluctuate annually according to levels in the Boise River and changes in demand. The fluctuations are measured in a feet, with no long term declines. The data were unable to be retrieved from the website for inclusion in this report.

Water levels in the Lakemoor ponds are anticipated to remain nearly constant due to the flow-through design. The minimal water level fluctuations would not propagate far from the ponds. Similarly, the Boise River acts as a hydraulic boundary in the shallow ground water system. Wells north of the river would be isolated from activity south of the river and, therefore, would experience no impact due to the Lakemoor ponds.

3) Please describe any local government approvals needed for the pond system and the status of obtaining those approvals.

Both the Warm Springs Ditch Company and the Thurman Mill Ditch Company deliver water to, and convey water through, the Lakemoor subdivision. Both entities have been contacted regarding this project. Each entity has been requested to modify their respective water rights to allow for the storage and diversion to storage uses to accommodate the Lakemoor ponds. Both entities agreed and signed an application

for transfer, which has been submitted in coordination with the subject application for transfer.

The City of Eagle has entered into a Development Agreement with DMB Investments (a sister company to the applicant), which includes the ponds as an integral part of the conceptual plan. The largest pond is discussed as an emergency collection of flood water. The Development Agreement is attached with this letter.

If you have any other questions, please call me at 208-373-7983.

Sincerely,



Steven R. Hannula

Attachments: approved Development Agreement; Figure 1

cc: Dan Torfin, Dennis Baker and Associates

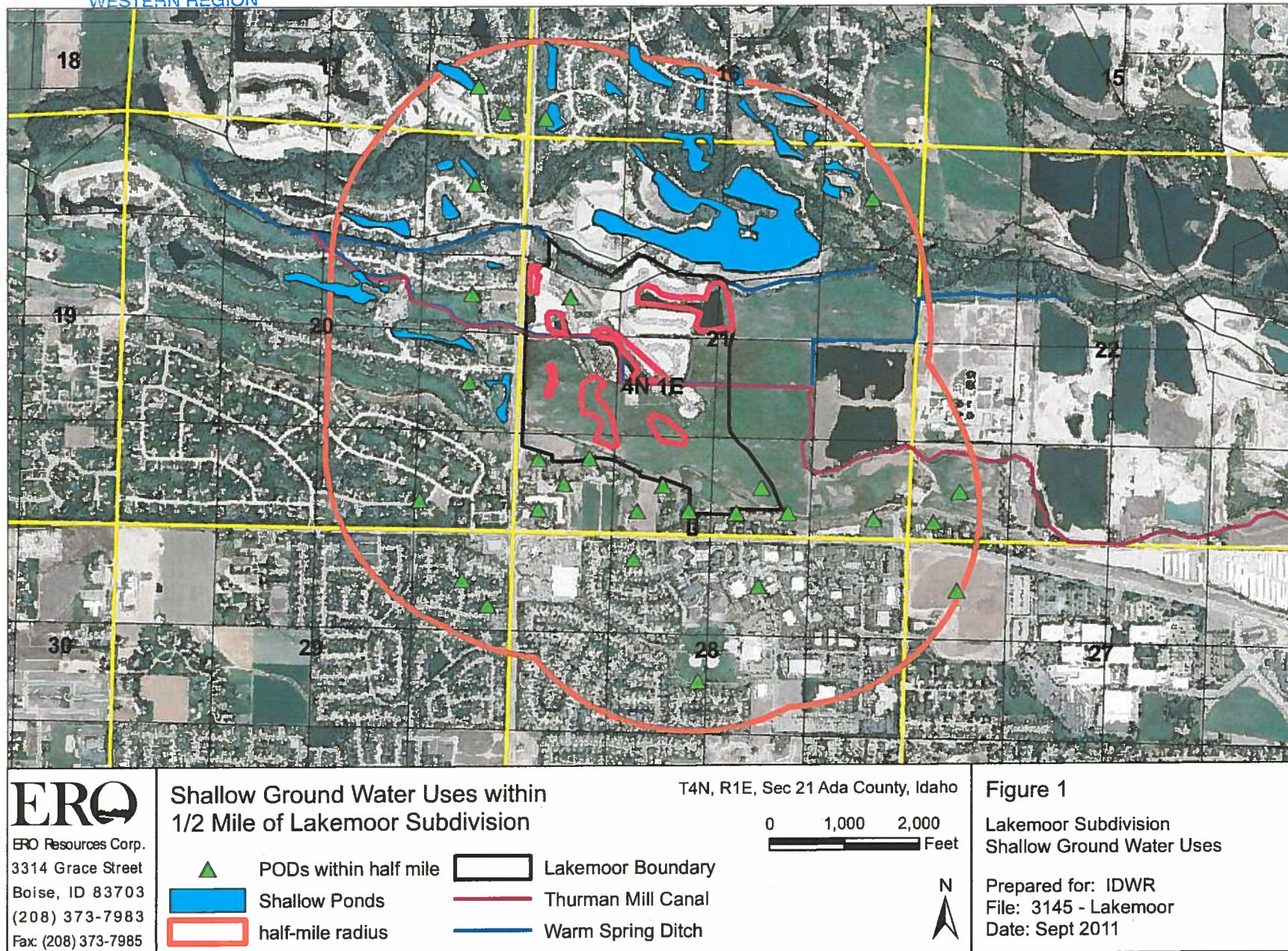
Reference

Allen, Richard G. and Clarence W. Robison. 2009. Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho: Supplement updating the Time Series through December 2008, Research Technical Completion Report. Kimberly Research and Extension Center, University of Idaho, Moscow, ID.

RECEIVED

SEP 29 2011

WATER RESOURCES
WESTERN REGION



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SEP 29 2011

WATER RESOURCES
WESTERN REGION

COPY

Recording Requested By and
When Recorded Return to:

Planning and Zoning Administrator
City of Eagle
P.O. Box 1520
Eagle, Idaho 83616

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 11/19/07 04:48 PM
DEPUTY Bonnie Oberbillig
RECORDED - REQUEST OF
Eagle City

AMOUNT .00 76



For Recording Purposes Do
Not Write Above This Line

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This First Amended and Restated Development Agreement (this "Development Agreement"), made and entered into on the date as indicated herein, by and between the CITY OF EAGLE, a municipal corporation in the State of Idaho ("Eagle"), DMB Investments, LLC, an Idaho limited liability company ("DMB") and EAGLE LIFESTYLE CENTER, LLC, a Delaware limited liability company ("ELC"). DMB and ELC are sometimes referred to herein, individually or collectively, as the context dictates, as "Applicant." Upon recordation of this Development Agreement, that certain Development Agreement recorded in the real property records of Ada County, Idaho, on March 10, 2005, as instrument number 105029058 (the "Original Development Agreement") shall be void and of no further force or effect.

WHEREAS, Applicant is the owner of record of certain real estate consisting of approximately one hundred eighty three (183) acres located south of the Boise River, and east of Eagle Road, Eagle, Idaho, all as shown on Exhibits A1 and A2 ("Concept Plan") and described on Exhibit B ("Property"), which is the subject of an application for rezone, identified as Eagle Rezone Application No. RZ-5-02 and which is subject to an application for modification of development agreement, identified as Eagle Rezone Modification Application No. RZ-5-02-MOD; and

WHEREAS, the proposed development includes properties within an area that, at the time the Original Development Agreement was recorded, were designated on the Land Use Map of the Comprehensive Plan as Mixed Use and zoned "R-2, R-1, and RUT (Ada County Residential Zoning Designation)"; and

WHEREAS, Applicant desires to develop the Property for office, commercial, residential and open space purposes as generally shown on the Concept Plan; and

WHEREAS, the City Council of Eagle has determined that the scope of any office, commercial and residential project upon the Property should be limited to prevent undue damage to, and to otherwise be in harmony with, the existing community; and

WHEREAS, the intent of this Development Agreement is to protect the right of Applicant to use, enjoy and develop the Property while at the same time limit any adverse impacts of the development upon neighboring properties and the existing community and ensure the Property is developed in a manner consistent with Eagle's Comprehensive Plan and City Code; and

WHEREAS, Applicant has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and has consented to the Mixed Use District ("MU-DA") zoning designation for the Property with the requirements set forth in the Original Development Agreement as replaced by this Development Agreement; and

WHEREAS, this Development Agreement provides approval of a height exception as allowed by Eagle City Code Section 8-2A-6(B)(6)(a) because this Development Agreement is approved in lieu of a PUD as described herein; and

WHEREAS, the City Council has determined that, in accordance with Eagle City Code Section 8-2-1, the Original Development Agreement as replaced by this Development Agreement is to be used in-lieu of the PUD and conditional use process; and

WHEREAS, DMB and ELC as owners of the Property have previously provided Eagle with affidavits agreeing to submit the Property to a development agreement pursuant to Eagle City Code Section 8-10-1(C)(1); and

WHEREFORE, Applicant and the City of Eagle desire to enter into this Development Agreement and for and in consideration of the mutual covenants contained herein, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

1.1 This Development Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Eagle City Code, Title 8, Chapter 10.

ARTICLE II COMPREHENSIVE PLAN AMENDMENT AND ZONING ORDINANCE AMENDMENT

2.1 Eagle has adopted, by resolution, an amendment to the Land Use Map of the Eagle Comprehensive Plan to designate the Property Mixed Use, as described in Chapter 6 of the Eagle Comprehensive Plan.

Eagle has adopted an ordinance amending the Eagle Zoning Ordinance to rezone the Property to MU-DA, subject to the provisions of this Development Agreement. Ordinance #510 became effective after its passage, approval, and publication November 14, 2005, and the execution and

recordation of the Original Development Agreement and Ordinance #510 will continue to be effective after the execution and recordation of this Amended and Restated Development Agreement.

ARTICLE III CONDITIONS ON DEVELOPMENT

3.1 DMB and ELC will develop the Property subject to the conditions and limitations set forth in this Development Agreement. Further, DMB and ELC, as applicable will submit such applications regarding floodplain development permit review, design review, preliminary and final plat reviews, and/or any conditional use permits, if applicable, and any other applicable applications as may be required by the Eagle City Code, which shall comply with the Eagle City Code, as it exists at the time such applications are made except as otherwise provided within this Development Agreement.

3.2 The residential Area A (“**Carriage Home Sites**”) as depicted on **Exhibit A2** shall be developed by DMB in a combination of attached town homes and detached patio homes at an approximate density of five units per acre.

- Setbacks and Minimum lot size proposed for the Carriage Home Sites:

Front	15 feet
Rear	10 feet
Common Side (town home)	0 feet
Interior Side	5 feet
Additional Setback for Multi-Story structures	5 feet
Street Side	15 feet

Minimum Lot Size 5,000 square feet

Any reduction of lot sizes below the minimum lot size of the standard lot within the MU-DA zone (7,000 square feet) shall require an offsetting increase of the same square footage of open space. The specific calculation for the offsetting increase of open space and such open space shall be incorporated into and shall be reviewed with the preliminary plat for Area A.

The residential Area B (“**Luxury Home Sites**”) as depicted on **Exhibit A2** shall be developed by DMB for single-family detached homes at an approximate density of two units per acre.

- Setbacks proposed for the Luxury Home Sites:

Front	20 feet
Rear	25 feet
Interior Side	7.5 feet

Additional Setback for	
Multi-story structures	5 feet per story
Street Side	20 feet

The residential Area C (“**Custom Home Sites**”) as depicted on **Exhibit A2** shall be developed by DMB in single-family detached homes at an approximate density of four units per acre.

- Setbacks proposed for the Custom Home Sites:

Front	20 feet
Rear	25 feet
Interior Side	7.5 feet
Additional Setback for	

Multi-story structures	2.5 feet per story – When the 2 nd story wall section is designed to be offset toward the inside of the house from the lower story so that there is “break” in the plane of the wall sections between stories then the second story setback may be reduced by 2.5 feet.
------------------------	--

5 feet per story - When the first and second story wall sections are designed as a flat, single plane then the side setback shall be increased by 5 feet for a total side setback of 12.5 feet.

For the purposes of implementation of the setbacks noted herein, the first story shall have a top plate no higher than ten feet (10’).

Street Side	20 feet
-------------	---------

The residential portion of this development proposal is recognized by Eagle and DMB as a desired component to a mixed use development. A residential component substantially in conformance to that depicted in the Concept Plan shall be maintained.

3.3 The Mixed Use Commercial Area D of the Property, as depicted on **Exhibits A2 and A3**, is proposed to be developed by ELC with a combination of any commercial uses allowed within Eagle City Code Section 8-2-3 “Official Schedule of District Regulations” under the MU zoning designation (except as limited in Section 3.10 below), a copy of which is attached as **Exhibit C**. Buildings up to a maximum 50,000 square feet each are permitted in Area D. The maximum height of commercial buildings shall be 50 feet; non-habitable architectural elements shall be a maximum height of 60 feet. The setback from East Eagles Gate Road for the buildings identified as Building 300 and Building 600 shall be a minimum of 10 feet. Multiple buildings are permitted to be located on the same lot, provided however, that the maximum lot coverage requirements stated in Eagle City Code are not exceeded.

3.4 Area E, depicted on **Exhibit A2**, may be developed similar to the commercial uses proposed to be developed by ELC within Area D (except as limited in Section 3.10 below). If ELC or DMB does so develop Area E, buildings up to a maximum 50,000 square feet each are permitted for this Area E and multiple buildings are permitted to be located on the same lot,

provided however, that the maximum lot coverage requirements stated in Eagle City Code are not exceeded. The maximum height of commercial buildings shall be 50 feet; non-habitable architectural elements shall be a maximum height of 60 feet. If Area E does not become an expansion of the commercial uses proposed to be developed within Area D, Area E shall be developed as provided in Section 3.5 below.

3.5 If Area E of the Property, as depicted on **Exhibit A2**, does not become an expansion of the commercial uses proposed to be developed within Area D as provided in Section 3.4 above, Area E is to be developed by DMB with a combination of any office and retail uses allowed within Eagle City Code Section 8-2-3 "Official Schedule of District Regulations" under the MU zoning designation (except as limited in Section 3.10, below), a copy of which is attached as **Exhibit C**. Buildings up to a maximum of 50,000 square feet each are permitted for this area. This square foot limitation does not apply to Fitness/Indoor Recreation Facilities, Education Facilities, and Hotels. The maximum height of Hotels and Office Buildings shall be 50 feet; non-habitable architectural elements shall be a maximum height of 60 feet. Multiple buildings are permitted to be located on the same lot, provided however, that the maximum lot coverage requirements stated in Eagle City Code are not exceeded.

3.6 The Mixed Use Corporate Campus Areas F, G, H and I of the Property, as depicted on **Exhibit A2**, are to be developed by DMB with a combination of any office and commercial uses allowed within Eagle City Code Section 8-2-3 "Official Schedule of District Regulations" under the MU zoning designation (except as limited in Section 3.10, below). A privately owned and operated special events facility and clubhouse, consisting of reception areas, meeting rooms, dining facilities, and indoor and outdoor recreational facilities, which special events facility may also function as a clubhouse for the owners of residential properties to be developed on the Property, shall be a permitted use in Area F. Buildings up to a maximum of 100,000 square feet each are permitted for this area, except that retail buildings shall be a maximum of 50,000 square feet each. This square foot limitation does not apply to Fitness/Indoor Recreation Facilities, Education Facilities, Office Buildings and Hotels. The maximum height of Hotels and Office Buildings shall be 50 feet; non-habitable architectural elements shall be a maximum height of 60 feet. Multiple buildings are permitted to be located on the same lot, provided however, that the maximum lot coverage requirements stated in Eagle City Code are not exceeded.

3.7 This Development Agreement approves the height exceptions enumerated in paragraphs 3.3, 3.4, 3.5 and 3.6 as allowed by Eagle City Code Section 8-2A-6(B)(6)(a) based on the Design Guidelines, defined below, substantially in compliance with Exhibit E, attached hereto and incorporated herein by reference, and the ELC Design Guidelines, defined below, substantially in compliance with Exhibit F, attached hereto and incorporated herein by reference.

3.8 The total square footage of building area for retail uses allowed in ECC Section 8-2-3 within this development shall not in the aggregate exceed 330,000 square feet.

3.9 The Areas of the Property labeled H and I as depicted on **Exhibit A2** are encouraged by Eagle to be developed by DMB with apartments or multi-family dwellings, with a maximum density of up to 16-units per acre. 15% open space within Areas H and I will be

required if developed as multi-family residential. However, the use of Areas H and I as indicated on the Concept Plan (office) is approved as part of this Development Agreement. A change in the development of these Areas from office to multi-family residential (as encouraged herein) will not require a modification to this Development Agreement. This change may be considered at the time a design review application is made for these Areas.

3.10 All uses shown as “P” permitted under the MU zoning designation within Eagle City Code Section 8-2-3 “Official Schedule of District Regulations,” a copy of which is attached as **Exhibit C**, shall be considered permitted uses. All uses shown as “C” conditional uses under the MU zoning designation within Eagle City Code Section 8-2-3 “Official Schedule of District Regulations,” a copy of which is attached as **Exhibit C**, shall require a conditional use permit, except the residential portions of the Property described in Section 3.2 shall not require a conditional use permit. In addition to all other uses prohibited within said section of Eagle City Code and on the entire Property as noted above, the following uses shall also be prohibited on the Property:

- Residential, Mobile Home (Single Unit);
- Residential, Mobile Home (Single Unit Temporary Living Quarters);
- Residential, Mobile Home Park;
- Commercial, Adult Business;
- Commercial, automotive, mobile home, travel trailer, and/or farm implement sales;
- Commercial, Cemetery;
- Commercial, Drive-In Theatre;
- Commercial, Mortuary;
- Commercial, Storage (fenced area);
- Industrial, Railroad yard or shop;
- Industrial, Terminal yard, trucking; and
- Industrial, Truck and equipment repair and sales (heavy).

However, if the permitted and conditional uses in the MU zoning designation are expanded, such expanded uses shall be allowed as permitted or conditional uses as the case may be.

3.11 Except for the limitations and allowances expressly set forth above and the other terms of this Development Agreement, the Property can be developed and used consistent with the Mixed Use District land uses allowed by the Eagle City Code Section 8-2-3 “Official Schedule of District Regulations”, a copy of which is attached as **Exhibit C**.

3.12 The conditions, covenants and restrictions for the Property shall contain at least the following:

- (a) An allocation of responsibility for maintenance of all community and privately owned landscaping and amenities.

- (b) A requirement insuring compliance with the Design Guidelines or ELC Guidelines, as applicable, approved with this Development Agreement.

3.13 All development within Areas A through C and F through I, as depicted on **Exhibit A2**, shall be consistent with the Site Design Guidelines (“**Design Guidelines**”) attached hereto as **Exhibit E** and generally consistent with the Concept Plan attached hereto as **Exhibits A1 and A2**. All development within Areas D through E, as depicted on **Exhibit A2**, shall be consistent with the Site Design Guidelines (“**ELC Design Guidelines**”) attached hereto as **Exhibit F** and generally consistent with the Concept Plan attached hereto as **Exhibits A1 and A2**. The Concept Plan attached hereto indicates the general nature and relative location of certain elements for the Property. The intent of this Development Agreement is to allow sufficient flexibility at the time of detailed planning and platting while still maintaining the general intent of the Concept Plan with the requirements set forth in this Development Agreement. Specific design elements shall be clarified during the platting and design review application processes. However, the streetscape as shown on the concept plan (the roundabouts, center islands, and street trees) shall be required design elements as part of the final design for the site and the open space for Area D and Area E shall be 25% in the aggregate, and open space for Area F and G shall be 25% in the aggregate, and open space in Area H and Area I (subject to Section 3.9 above) shall be 25% in the aggregate. For the purpose of this Development Agreement, open space shall be defined as all areas other than buildings, parking lots, roadways, and individual residential lots within Areas A, B, and C.

3.14 Applicant agrees all development and improvement of the Property shall comply with applicable rules and regulations pertaining to regulated wetlands.

3.15 Applicant will comply with all applicable provisions of Title 10, Flood Control, of the Eagle City Code.

3.15.1 Area K (as shown on the concept plan as a pond and is 6.2 acres in size) may be used for flood water holding capacity and the area therein may be used as part of the site’s no net loss calculation if the area is included within the corporate limits of the City of Eagle and is subsequently approved as part of the floodplain development permit pursuant to Title 10 of the Eagle City Code for the overall development.

3.16 DMB shall construct a meandering six foot (6’) wide (minimum) concrete sidewalk within a one hundred-foot (100’) wide landscape area (not including right-of-way) along the portion of the Property adjacent to Eagle Road. The possible construction of a sidewalk connecting the sidewalk required herein to the existing sidewalk located along Eagle Road approximately three hundred feet (300’) south of the southwest corner of the Property was addressed as a part of the preliminary plat application for the Property.

3.17 DMB shall provide and construct, in accordance with the provisions of Eagle City Code Section 9-4-1-6 a minimum ten (10) foot wide public asphalt pathway in a landscaped strip located within the Chevron Pipeline easement, the design and landscaping for which shall be reviewed and approved by the Eagle Design Review Board prior to the submittal of the final plat

application(s) wherein the pathway is located. The asphalt pathway, but not the landscaped areas, shall be located in an easement or easements which shall be dedicated to and accepted by Eagle as provided in Eagle City Code Section 9-4-1-6:E.2, upon recordation of the final plat(s) wherein the pathway is located

3.18 DMB shall provide bus stops as may be recommended by Eagle.

3.19 Building placement shall be designed such that parking areas are not concentrated between the buildings and Eagle Road. The parking areas depicted on the Conceptual Plan for Area D depicted on **Exhibit A3** are not considered to be concentrated between the buildings and Eagle Road. The side of any buildings facing Eagle Road shall be provided with architectural design elements and architectural relief, as may be approved by the Eagle Design Review Board.

3.20 DMB shall keep and maintain for use on the Property such irrigation water rights as are reasonably required in order to provide a pressurized irrigation system or systems for all landscaped areas on the Property. In the event that DMB desires to transfer, sell or convey any excess water rights (that is, water rights not necessary to provide an adequate source of irrigation water for the landscaped areas on the Property), DMB shall first submit to Eagle reasonable written evidence that such water rights proposed for transfer are not necessary to provide an adequate source of irrigation water for the landscaped areas on the Property, including Areas D and E, and reasonable written evidence of the agreement to purchase said water rights by a third party purchaser and the price and complete terms agreed to be paid therefor. Eagle shall have forty-five (45) days after receipt of said notice within which to elect, in writing, to purchase such water rights upon the same terms which DMB is to receive from said third party purchaser, whereupon the water rights shall be sold to Eagle on such terms and conditions, each party being bound thereby. In the event Eagle shall not have given written notice of its intent to purchase the water rights within the said forty-five (45) day period, the first right of refusal created hereby shall terminate and DMB shall be entitled to sell its water rights free of any right or claim of right by Eagle. DMB shall have no obligation to Eagle hereunder in the event DMB sells, transfers or conveys any such excess water rights to any person or entity affiliated with DMB. As used herein, an affiliated person or entity is one which owns, is owned by, or shares any common ownership with DMB.

3.21 Subject to the conditions and limitations set forth herein, DMB shall provide a park site along the eastern boundary of the Property in Area J as generally depicted in **Exhibit A2** attached hereto (hereinafter "**Park Site**") which Park Site is to be developed, owned and maintained by and at the expense of Eagle. DMB's obligations to provide said Park Site shall be fulfilled as follows:

A. Upon recordation of a final plat of any portion of the Property, DMB shall enter into an agreement to lease the Park Site to Eagle for use as a public park or for other public purposes reasonably acceptable to DMB, such purposes and terms to be specified in the lease agreement. Said lease agreement shall include, among other provisions acceptable to DMB and Eagle, a provision permitting DMB to use and occupy the Park Site for grazing or other uses not inconsistent with this Development Agreement and DMB's development project until such time as Eagle is prepared to fully develop the public facilities thereon.

B. Upon completion of a road or roads constructed to ACHD standards by DMB to provide public access to the Park Site, DMB shall dedicate the Park Site to Eagle, which such dedication shall be subject to the following restrictions and reservations:

1. The Park Site shall be restricted for use only as a public park and shall act as a non-residential buffer for Boise City's waste water treatment facility and any expansions thereof, located easterly of the Property.

2. Dedication of the Park Site shall be subject to all reservations, restrictions and easements established of record or by use upon the Premises. Subject to the provisions of subparagraphs 4 and 5 below, (a) no such reservations, restrictions and easements made by DMB shall impair the future use of the Park Site by Eagle as described in this Development Agreement; and (b) the Park Site shall not be made subject to any restrictive covenants DMB may impose upon any other portion of the Property.

3. Eagle shall obtain DMB's written approval for any and all improvements to be made to the Park Site prior to the commencement of construction or installation thereof, such approval not to be unreasonably withheld or delayed over thirty (30) days from the date sent to DMB. Failure of the DMB to respond to the City within the 30-day period is deemed as approved by the DMB.

4. The dedication shall be subject to a reversionary interest in DMB in the event that at least fifty percent (50%) of the total area of the Park Site has not been developed for use as a park or other public purposes reasonably acceptable to DMB within five (5) years after the date of dedication thereof to Eagle. Once fifty percent (50%) of the total area of the Park Site has been developed, the reversionary interest is extinguished.

5. The dedication shall be subject to a reservation of a public road right-of-way of up to 100 feet in width along the southerly boundary of the Park Site as generally depicted in **Exhibits A1 and A2** attached hereto for a public road connection to the east.

C. In the event Eagle shall desire to develop the Park Site (or a portion thereof) for a use approved by DMB pursuant to the provisions of subparagraph B.3., above, prior to the completion of construction of a public road as described in subparagraph B, above, Eagle may so advise DMB thereof in writing and DMB shall dedicate to Eagle the portion of the Park Site which Eagle intends to develop and shall provide Eagle a temporary easement for access thereto, subject to the following:

1. The location of the temporary access easement shall be reasonably determined by DMB.

2. DMB shall, within 120 days of Eagle's request therefor, weather permitting, rough grade a 20 foot wide temporary roadway in the temporary easement area. Eagle shall be responsible for all other necessary roadway improvements as may be approved by DMB, such approval not to be unreasonably withheld.

3. Eagle shall be responsible for the maintenance and repair of the temporary roadway and shall provide for dust abatement thereon.

4. DMB may, at DMB's cost, relocate the temporary roadway, provided that such relocation shall not materially interfere with access to the Park Site.

5. The temporary easement, or any unnecessary portions thereof, shall terminate as construction of a public road providing access to the Park Site is completed.

6. Eagle shall defend, indemnify and hold DMB and its directors, officers, agents, employees, successors and assigns harmless from any and all claims, actions, causes of action, damages or liabilities of any description ("**Claims**") arising out of or in any manner connected with the use of the temporary easement and roadway, except Claims arising out of the intentional or willful misconduct of DMB and its directors, officers, agents, employees, successors and assigns.

D. DMB's dedication of the Park Site shall include any and all water rights and/or water shares or certificates evidencing the same, which are appurtenant to the Park Site, the amount or number of which shall be calculated on a proportionate basis with the rights appurtenant to the Property; provided that Eagle shall be responsible, at Eagle's sole cost and expense, to (a) deliver irrigation water to DMB's property at the western boundary of the Park Site at such locations as may be required for the continued flood irrigation of DMB's property, it being understood and recognized that DMB presently has a right to receive irrigation water at three locations along the eastern boundary of the Park Site and, unless otherwise agreed, will require delivery of irrigation water at three locations westerly thereof in the locations depicted on **Exhibit D** attached hereto; and (b) to take such action as may be required in order to prevent irrigation and other surface water from flowing, migrating or draining onto DMB's property located westerly of the Park Site. DMB shall not sell or otherwise transfer any water rights/shares appurtenant to the Park Site prior to its dedication to Eagle nor shall DMB impair or impede the existing works which deliver irrigation water to the Park Site.

E. To the extent permissible under the law, DMB shall be entitled to claim any available income tax benefits which may arise out of DMB's donation (and, if applicable, development) of the Park Site as set forth herein, and Eagle shall cooperate with DMB in seeking any such tax benefits.

F. In the event Eagle shall desire to develop the Park Site (or a portion thereof) for a use approved by DMB pursuant to subparagraph B.3., above, DMB shall, within 120 days of Eagle's request therefor, weather permitting, provide rough grading and general contouring in conformance with such approved plans on a phase by phase basis as the Park Site is developed. Nothing contained herein shall be construed to require DMB to construct any improvements beyond rough grading and general contouring, including but not limited to irrigation or drainage facilities nor shall DMB be obligated to import any material to the Park Site in order to perform such rough grading and general contouring.

3.22 Considerations specifically regarding gravel extraction operations and stub streets to adjacent properties will be addressed as part of the City's review of any preliminary and final plat applications for the Property.

ARTICLE IV AFFIDAVIT OF PROPERTY OWNERS

4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Eagle City Code Section 8-10-1 shall be provided and is incorporated herein by reference.

ARTICLE V DEFAULT

5.1 In the event Applicant or any successor fails to comply with the commitments set forth herein, within thirty (30) days of written notice of such failure from Eagle, Eagle shall have the right, without prejudice to any other rights or remedies, to enjoin such violation and otherwise enforce the requirements contained in this Development Agreement or to terminate the Development Agreement following the process established in Eagle City Code Section 8-10-1. However, if a default occurs after the Property is divided, any termination shall only affect the lot or parcel in default and shall not affect other portions of the Property.

5.2 If required to proceed in a court of law or equity to enforce any provision of this Development Agreement, the enforcing party shall be entitled to recover all direct out-of-pocket costs so incurred to cure or enjoin such default and to enforce the commitments contained in this Development Agreement, including attorney's fees and court costs.

5.3 If any term, provision, commitment, or restriction of this Development Agreement or the application thereof incorporated for the benefit of Eagle shall be held invalid or unenforceable and not voluntarily adhered to by Applicant and their successors notwithstanding any such invalidity or unenforceability, the remainder of this instrument shall terminate and the zoning of the Property (except that portion thereof for which a plat has been recorded or which has otherwise been improved in accordance with the provisions of this Development Agreement) shall revert to the A-R (Agricultural Residential) zoning designation, unless the portion of this instrument determined to be invalid or unenforceable is re-negotiated in good faith between Applicant (or other appropriate party) and Eagle as an amendment to this Development Agreement processed in accordance with the notice and hearing provisions of Idaho Code § 67-6509 and Eagle City Code Section 8-10-1.

ARTICLE VI UNENFORCEABLE PROVISIONS

6.1 Subject to terms of Section 5.3 above, if any term, provision, commitment, or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument shall nevertheless remain in full force and effect and that portion determined to be

invalid or unenforceable shall be re-negotiated in good faith between Applicant (or other appropriate party) and Eagle.

ARTICLE VII ASSIGNMENT AND TRANSFER

7.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of Applicant. Each commitment and restriction contained herein shall be a burden on the Property and shall be appurtenant to and for the benefit of the Property and shall run with the land. This Development Agreement shall be binding on Eagle and Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels or lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Development Agreement with respect only to such owner's lot or parcel.

ARTICLE VIII GENERAL MATTERS

8.1 Amendments. Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Eagle City Code Section 8-10-1.

8.2 Exceptions and Variances. Nothing in this Development Agreement shall be construed to prevent Applicant, nor shall Applicant otherwise be prevented, from seeking, by appropriate application thereof, approval for such waivers, exceptions or variances as may be authorized by the provisions of the Eagle City Code.

8.3 Paragraph Headings. This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

8.4 Choice of Law. This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.

8.5 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight

delivery service, to the party to whom the notice is directed at the address of such party set forth below.

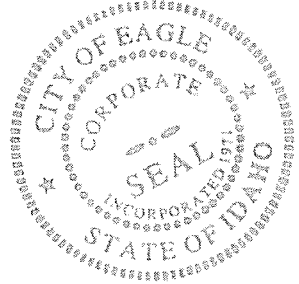
Eagle:	City of Eagle 310 E. State Street Eagle, Idaho 83616
With Copy to:	Susan E. Buxton Moore Smith Buxton & Turcke, Chtd. 950 W. Bannock Street, Suite 520 Boise, Idaho 83702
DMB:	DMB, Inc. Attn: Dennis M. Baker 250 S. Beechwood, Suite 120 Boise, Idaho 83709
With Copy to:	Stephen A. Bradbury Williams Bradbury, PC 1015 West Hays Street Boise, ID 83702
ELC:	c/o Poag & McEwen Lifestyle Centers, LLC 6410 Poplar Avenue, Suite 850 Memphis, Tennessee 38119 Attn: Joshua D. Poag cc: Robert L. Rogers, Jr.
With a Copy to:	Bass, Berry & Sims PLC 315 Deaderick Street, Suite 2700 Nashville, Tennessee 37238 Attn: Lori B. Morgan Christopher L. Haley
And With a Copy to:	JoAnn C. Butler Spink Butler, LLP 251 East Front Street, Suite 200 Boise, Idaho 83702

or such other addresses and to such other persons as the parties may hereafter designate as provided herein. Any such notice shall be deemed delivered upon personal delivery twenty-four (24) hours after deposit with Federal Express or other reputable overnight delivery service, or three (3) days after deposit in the United States mail, if sent by mail pursuant to the foregoing.

8.6 Effective Date. This Development Agreement shall be effective upon recordation of a fully executed and notarized original of this Development Agreement.

IN WITNESS WHEREOF, the parties have executed this First Amended and Restated Development Agreement.

DATED this 13 day of November 2007.



ATTEST:

By: Sharon K. Bergmann
Sharon K. Moore, City Clerk
Bergmann

CITY OF EAGLE, a municipal corporation
organized and existing under the laws of the
State of Idaho

By: Nancy C. Merrill
Nancy C. Merrill, Mayor

DMB Investments, LLC, an Idaho corporation

By: Dennis M. Baker
Dennis M. Baker, President

EAGLE LIFESTYLE CENTER, LLC,
a Delaware limited liability company

By: Poag & McEwen Lifestyle
Centers— Eagle, LLC, Its Manager

By: Joshua O. Poag
Name: Joshua O. Poag
Title: CFO

STATE OF IDAHO)

: SS.

County of Ada)

On this 13 day of November, 2007, before the undersigned notary public in and for the said state, personally appeared NANCY C. MERRILL, known or identified to me to be the Mayor of the City of Eagle and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

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

Tracy E. Osborn
Notary Public for Idaho
Residing at: Blundell
My Commission Expires: 12/23/08

STATE OF IDAHO)

) SS.

County of Ada)

On this 7th day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared DENNIS M. BAKER, known or identified to me to be the President of DMB Investments, LLC, the Idaho limited liability company that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho limited liability company, and acknowledged to me that such Idaho limited liability company executed the same.

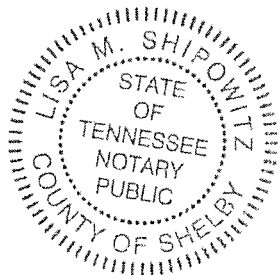
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

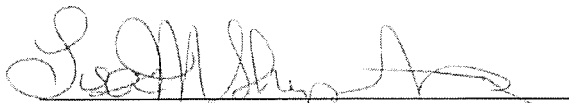
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 9/25/2013

STATE OF Tennessee)
County of Shelby) ss.

On this 27th day of June, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua D. Poag, known or identified to me to be the Chief Financial Officer of Poag & McEwen Lifestyle Centers—Eagle, LLC, the Manager of Eagle Lifestyle Center, LLC, the Delaware limited liability company that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Delaware limited liability company, and acknowledged to me that such Delaware limited liability company executed the same.

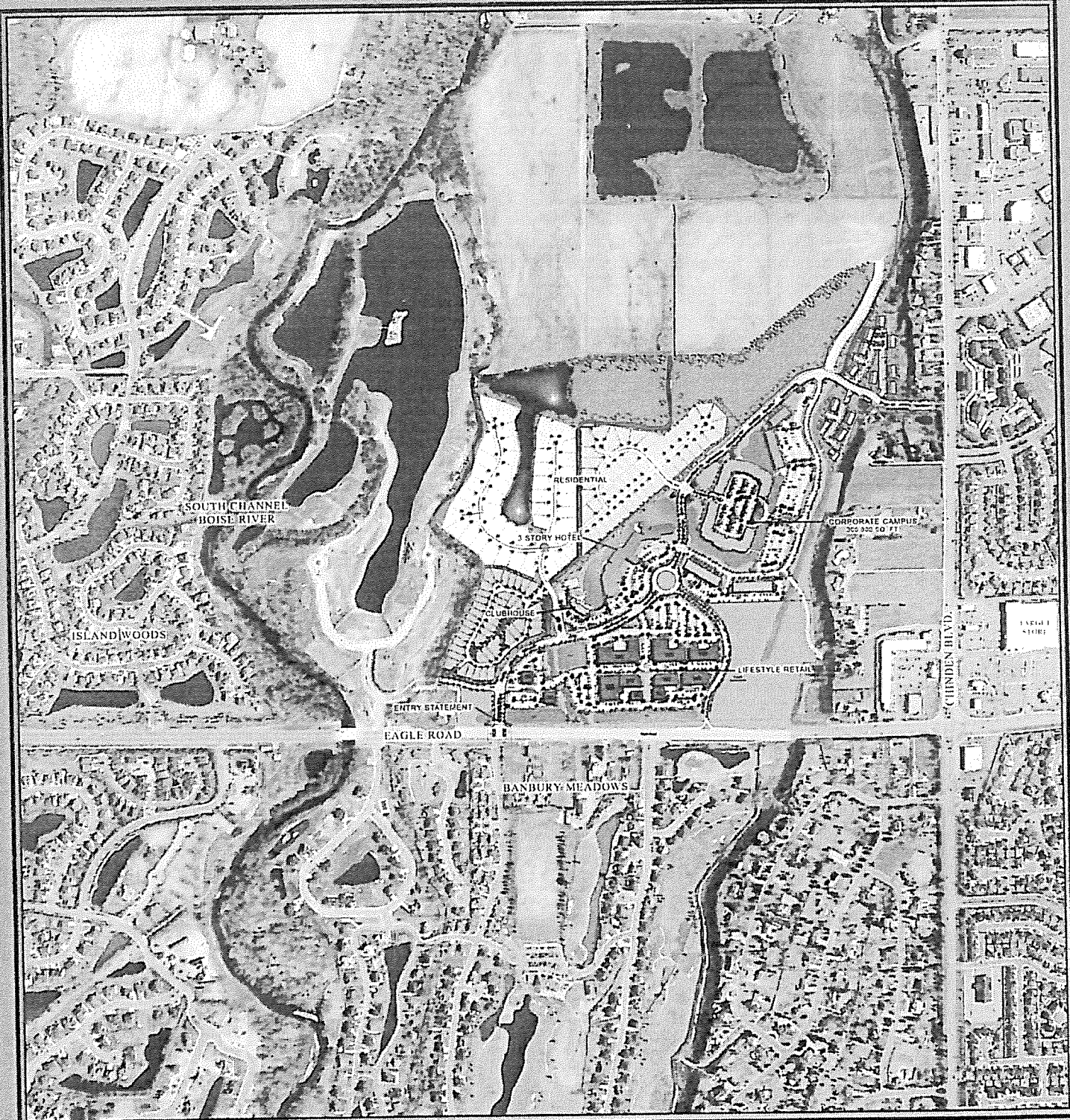
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




Notary Public for State of Tennessee
Residing at Shelby County, Germantown, TN
My commission expires: MY COMMISSION EXPIRES SEPT 16, 2009

INDEX OF EXHIBITS

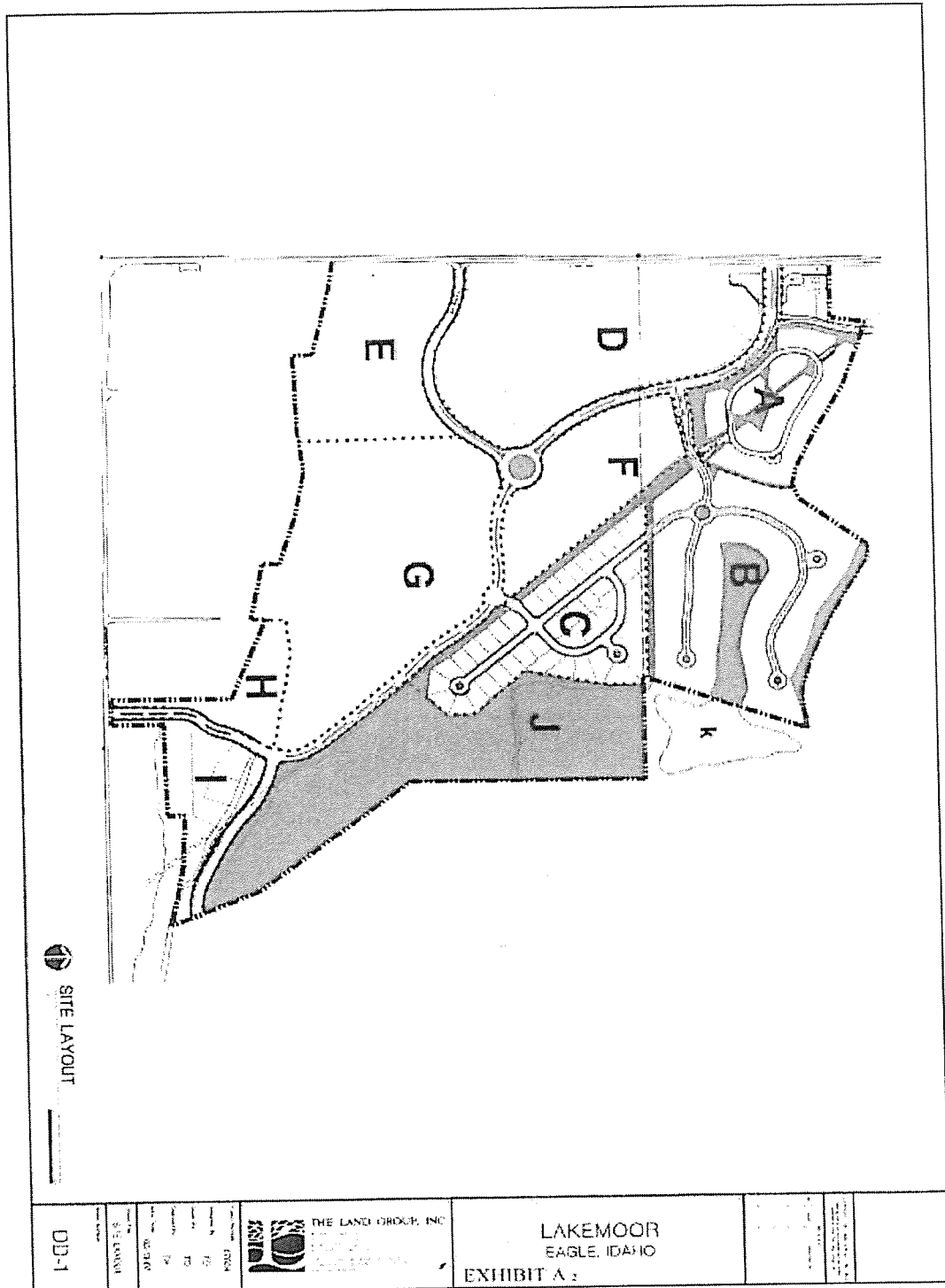
A1	-	Concept Plan of Property
A2	-	Concept Plan of Property
A3	-	Concept Plan of Area D of Property
B	-	Legal Description of Property
C	-	Eagle City Code Section 8-2-3 "Official Schedule of District Regulations"
D	-	Location of Irrigation Water Deliveries
E	-	Design Guidelines
F	-	ELC Design Guidelines




LAKEMOOR

EXHIBIT
A-1

EXHIBIT A2
CONCEPT PLAN OF PROPERTY





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

September 6, 2011

Steve Hannula
ERO Resources, Inc.
3314 Grace St.
Boise, ID 83703 - 5836

Re Application for Permit 63-32366 (B.W. Eagle Inc.)

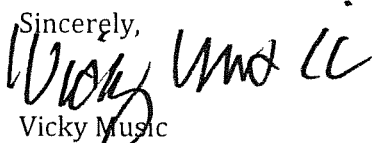
Dear Mr. Hannula:

This application for permit for the system of ponds in the Lakemoor development proposes storage of 533 afa of shallow ground water upstream from the Star Bridge, in an area of the Boise River basin considered to be fully appropriated. Though transfers were filed in conjunction with 63-32366 to mitigate for evapotranspiration of the ponds, IDWR needs additional information regarding this proposed appropriation pursuant to IDWR Appropriation Rule 40. Attached are the Rule 40 requirements. You need only provide the following information pertinent to this application:

- 1 - Please submit a map showing the shallow ground water uses [diverting from 1 -200 feet bgl] within a ½ mile radius of the Lakemoor development;
- 2- Explain why the application will not impact these uses, or if there is an impact, how the impact will be mitigated; and,
- 3 - Please describe any local government approvals needed for the pond system and the status of obtaining those approvals.

The requested information is due October 6, 2011. The applications will be voided or rejected without a timely response and fees will not be refunded. Call me at 208.334.2190 if you wish to discuss the matter. Thank you.

Sincerely,



Vicky Music
Sr. Water Resource Agent

Attachment: Water Appropriation Rules 40.05c through 40.05g

Water Appropriation Rules 40.05.c through 40.05.g

c. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 11, 2011

Steve Hannula
ERO Resources, Inc.
3314 Grace St.
Boise, ID 83703 - 5836

Re Application for Permit 63-32366 (B.W. Eagle Inc.)
Application for Transfer 73930 (Warm Springs Ditch Co., water right nos. 63-192,
63-19425 and 63-216C)
Application for Transfer 73900 (Thurman Mill Ditch Co., water right no. 63-250)

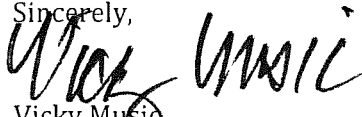
Dear Mr. Hannula:

The applications referenced above have been assigned to me for review and processing. The applications were filed in 2006 and held due to the SRBA status of the water rights proposed to be transferred. The SRBA Court issued the Partial Decrees for the Warm Springs Ditch Co. rights in 2007 and for the Thurman Mill Ditch Co. right in 2009.

Due to the number of years that have elapsed since the applications were filed, do the applicants still wish to pursue these applications? Please confirm in writing either via e-mail or a letter.

The requested information is due September 12, 2011. The applications will be voided or rejected without a timely response and fees will not be refunded. Call me at 208.334.2190 if you wish to discuss the matter. Thank you.

Sincerely,


Vicky Music
Sr. Water Resource Agent



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 13, 2006

STEVEN HANNULA
ERO RESOURCES CORP
3314 GRACE ST
BOISE ID 83703-5836

Re: Application for Permit for B. W. Eagle Inc.
Applications for Transfer for Thurman Mill Ditch Co. and Warm Springs Ditch Co.

Dear Mr. Hannula:

The above referenced applications for the Lakemoor Development pond project were recently received. Processing of all the applications must be delayed as explained below.

The transfer applications serve to mitigate consumptive use proposed by the permit application. The transfer applications describe water rights for which Snake River Basin Adjudication (SRBA) Claims have been filed. SRBA Claims in the area affected by the transfer applications are currently being reviewed. The role of the Idaho Department of Water Resources (IDWR) in the SRBA is to review claims and make recommendations regarding those claims to the SRBA Court. Recommendations are presented to the court in a Director's Report. Potentially affected parties may object to recommendations in a Director's Report. This process introduces uncertainty regarding water rights until the objection period is over.

IDWR's limited staff resources must be used to complete the remaining Director's Reports during the coming months. Additionally, experience indicates that processing an application for transfer in an area where a Director's Report is being prepared can result in confusion and complications by mixing judicial (SRBA) and administrative (transfer) actions.

The SRBA objection period for the area in question is expected to conclude sometime during the latter half of this year if not earlier. Based on that schedule and the above reasoning, the transfer applications cannot be processed at this time. The application for permit cannot be processed for obvious reasons. IDWR will hold all three applications and will notify you at the appropriate time when they can be processed.

IDWR regrets the inconvenience undoubtedly caused by this necessary delay. Please contact me at 208-334-2190 if you have any questions in this regard.

Sincerely,

Steve Lester
Water Rights Supervisor



ERO Resources Corp.
3314 Grace Street
Boise, ID 83703-5836
(208) 373-7983
Fax: 373-7985
Denver • Boise • Durango
www.eroresources.com
eroboise@eroresources.com

February 9, 2006

Mr. Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RE: BW Eagle Application for Permit

Dear Mr. Lester

Enclosed, please find an Application for Permit in the name of BW Eagle Inc. The application seeks to appropriate groundwater for the initial fill of 22.2 acres of shallow ponds to be constructed in the Lakemoor Development along Eagle Rd. in Boise. The application seeks 533 ac-ft of water, so the fee of \$450 is included. The Request to Process form is included.

Mitigation will come in the form of water from Warm Springs Ditch Co. and Thurman Mill Ditch Co. The applicant is assessed by each ditch company and both ditch companies serve lands within the Lakemoor Development boundary. Enclosed, please find Applications for Transfer from each ditch company. When combined, the transfers fully compensate the consumptive use resulting from evaporative losses from the ponds' surface.

The Warm Springs Transfer has a fee of \$250 and the Thurman Mill Transfer has a fee of \$100. The fee amounts are based on the diversion rate associated with the amount of land being retired from irrigation.

If there are any questions, please call me.

Regards,

A handwritten signature in black ink, appearing to read "Steven R. Hannula". The signature is fluid and cursive.

Steven R. Hannula

cc: Warm Springs Ditch Co. c/o Hoff Companies Inc., Thurman Mill Ditch Co. c/o Bryce Farris, BW Eagle Inc.