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DEPARTMENT OF
WATER RESOURCES

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May 13, 2004

Mr. Robert Haynes
Regional Director, Idaho Dept.
Of Water Resources
1910 Northwest Blvd., Ste. 210
Coeur d'Alene, ID 83814

RE: PERMIT NO. 95-08856-- McCORMACK PROPERTIES OF IDAHO
INC.

Dear Bob:

As you are aware, McCormack Properties of Idaho Inc. received a permit on or about May 1, 1994 to supply domestic water to residents of a subdivision named, The Ridge at Cougar Bay, which was then in the approval process before Kootenai County. A local environment activist group, Rural Kootenai Organization ("RKO") appealed every approval granted by Kootenai County as well as the wastewater permit granted by DEQ and the river crossing permit granted by the Department of Water Resources and the Army Corps of Engineers. The litigation prevented McCormack from putting the water to beneficial use, which would have completed the permit process within the statutory time requirements because the right to develop the subdivision was always in jeopardy. The litigation was finally resolved in favor of the subdivision in 2002. Even the Idaho Supreme Court in the 1999 Opinion No 120 acknowledged that "The procedural history of this matter is long and complex." A detailed summary of the litigation is attached for your information.

Idaho Code § 42-204(1) allows the Department of Water Resources to extend the time to complete the construction of work and the application of the water to beneficial use by the amount of time lost by delays caused by litigation which would in any nature bring the permittee's title to the water into question. The Department must also find that the applicant is proceeding diligently and in good faith. Since McCormack's title to water under Permit No. 95-08856 was dependent upon securing the land and development rights for beneficial use of the water, the provisions on this portion of the Idaho Code appear to apply in this case. There should be little question that McCormack diligently pursued the right to develop the land as intended in the beneficial use.

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The letter to Ms. Yarbough indicated that the Department of Water Resources was aware of the delay caused by the ongoing litigation in 1999. We respectfully request that the time requirements for construction and placing the water into beneficial use for Permit No. 95-08856 be tolled as provided in Idaho Code Section §42-204(1). The attached chronology clearly demonstrates that McCormack was involved in at least one or more litigation with RKO in one forum or another from the date the permit was issued until the summer of 2001, and the litigation with the Johnson Family ran until September 2002. We respectfully submit that the water permit should be valid as of this date and that the permittee's assignee should have a lawful permit, so long as the water is put to beneficial use on or before September 2007.

Sincerely,

WETZEL & WETZEL P.L.L.C.



Steven C. Wetzel

Cc Bill Radobenko
Freeman Duncan (Fax 773-8720)

HISTORY OF LAND USE APPROVALS AND APPEALS

- An application for approval of a PUD and the preliminary plat of the first phase of the subdivision, known as The Ridge at Cougar Bay, was submitted to the Kootenai County Planning Department in August of 1993.
- The application was reviewed by the Kootenai County Board of Commissioners and approved on January 5, 1994.
- RKO immediately appealed the approval to the First Judicial District in Case No. CV-94-00276 before Judge Kosonen.
- On June 2, 1995, Judge Kosonen entered a decision upholding most of the approval and directing that a portion of the decision be remanded back for consideration by the County Commissioners.
- Judge Kosonen's decision was appealed by RKO to the Idaho Supreme Court on June 15, 1995 and set as Docket No. 22271.
- The Kootenai County Commissioners reheard that portion of the case remanded by Judge Kosonen and on November 22, 1995 again approved the PUD and preliminary plat for the first phase of the subdivision.
- RKO immediately appealed the approval of the Board of County Commissioners to the First Judicial District, which was set as Case No. CV-95-6927.
- The final plat for PUD and final plat for the first phase of the subdivision, The Ridge at Cougar Bay, was concurrently submitted to the Planning Department.
- Approval was recommended by the Planning and Zoning Commission and the final plat was approved by the Board of County Commissioners on January 5, 1996.
- The approval of the final plat was immediately appealed by RKO to the First District Court and set before Judge Michaud in Case No. CV-96-663.
- The appeal in Case No. 95-6927 was consolidated with the case before Judge Michaud.
- On March 19, 1998, Judge Michaud entered a decision upholding the approval by the Board of County Commissioners in both cases.

- The final approval of the PUD and the approval of the final plat of the first phase of the subdivision, The Ridge at Cougar Bay was, in all respects, affirmed. RKO did not appeal Judge Michaud's decision.
- McCormack Properties of Idaho, Inc. requested the County Commissioners approve an extension of time limits and a stay of the development-phasing schedule contained in the original order approving The Ridge at Cougar Bay until all litigation was resolved.
- The County Commissioners approved the request on March 11, 1998.
- RKO immediately appealed the decision of the County Commissioners granting the Stay to the First District Court set as Case No. CV-98-01492.
- Judge Judd upheld the decision of the County Commissioners by Order dated November 12, 1998.
- RKO appealed this Order to the Idaho Supreme Court as Docket No. 25735.
- The Idaho Supreme Court suspended any activity on Docket No. 25735 until a decision was rendered in Docket No. 22271.
- On December 9, 1999, four years and six months after the appeal was filed, the Supreme Court rendered a decision in Docket No. 22271 upholding the preliminary approval of the PUD and the preliminary approval of the first phase of the subdivision in all but one aspect.
- The Supreme Court remanded a portion of the original decision regarding the ownership of certain submerged lands within the PUD back to the Board of County Commissioners for further findings.
- On March 20, 2000 the Idaho Supreme Court entered an order dismissing Docket No. 25735.
- On April 14, 2000, Judge Kosonen entered his Order Following Remand remanding the matter to the Board of County Commissioners.
- On June 28, 2000 the Board of County Commissioners held the hearing required by the Supreme Court and on July 17, 2000 entered an order denying the PUD but affirming the approval of the preliminary plat of the first phase of the subdivision, The Ridge at Cougar Bay.
- On August 10, 2000, RKO filed its notice of appeal of the approval of the preliminary subdivision by the Board of County Commissioners to the District Court.

- On January 9, 2001 Judge Judd upheld the approval of the preliminary subdivision by the Board of County Commissioners.
- The January 9, 2001 decision was appealed to the Supreme Court by RKO.
- On July 30, 2001 all parties met and agreed settle the litigation allowing the subdivision to proceed at a reduced number of lots.

HISTORY OF THE FORECLOSURE ACTION

- In 1992, McCormack and the Johnsons entered an "Earnest Money Agreement" for the property to become known as the Ridge at Cougar Bay.
- On April 15, 1993, McCormack entered a Purchase Agreement with the Johnsons to purchase the property to become known as the Ridge at Cougar Bay.
- In August 1993, after a significant investment in engineering and planning, McCormack applied to Kootenai County for a PUD and subdivision.
- Following a series of approvals then appeals by RKO as specified above, McCormack was forced to stop making payment and paying taxes on the property purchased from the Johnsons.
- On December 15, 1998 Johnsons declared McCormack to be in default of the terms of the mortgage.
- On July 30, 1999 Johnsons filed a foreclosure action against McCormack.
- On March 22, 2000 Johnsons moved for summary judgment on the foreclosure action.
- On May 26, 2000 Judge Hosack granted the summary judgment to Johnsons foreclosing McCormack's interest in the property.
- On June 21, 2000, McCormack appealed the Judgment and Decree of Foreclosure entered by Judge Hosack to the Idaho Supreme Court.
- Given the RKO appeal of the Preliminary Plat approval it was not possible to finance an appeal bond to stay the action of execution, so on July 20, 2000 a Sheriff's Sale occurred in which Johnsons purchased the property for \$500,000.
- By Statute McCormack had the right to redeem the property for 12 months from the date of sale.

- By stipulation McCormack and Johnsons agreed to a deficiency judgment of \$356,490.48. That stipulation was reduced to order by Judge Hosack on November 2, 2000.
- After failed attempt to finance the redemption due to the RKO appeal and the loss of lender capability due to the September 11 attack on the World Trade Center, Johnsons and McCormack reach a settlement to sell the project to William and Julie Radobenko.
- September 20, 2002, the last Supreme Court case was dismissed.
- In September 2002, William and Julie Radobenko purchased the real property from the Johnsons and the project development rights from McCormack, including the Water Agreement with Norm' Plumbing and Utilties and the related water permit.

HISTORY OF THE ADMINISTRATIVE APPEALS

- In addition to the litigation listed above, RKO pursued an administrative appeal of the Wastewater Permit issued by DEQ in September 21, 1995, as Docket Mo. 0102-95-34, which was resolved in favor of McCormack Properties in November 1996.
- In November 1995, RKO also pursued an appeal of the permit to cross the Spokane River jointly issued by the Idaho Department of Water Resources and the Army Corps of Engineers, Permit No. L-95-S-4006. The appeal was resolved in favor of McCormack in November 1995.

HISTORY OF WATER PERMIT

- McCormack Properties of Idaho Inc. applied for and received a water appropriation permit on or about May 1, 1994, Permit No. 95-08856, to supply water for domestic purposes to a subdivision known as The Ridge at Cougar Bay.
- On September 23, 1997 the water system including the Permit No. 95-08856 was sold by McCormack Properties of Idaho Inc. to Norm's Plumbing & Heating Inc.
- On October 8, 1999, Wetzel & Wetzel P.L.L.C. sent to Ms. Yarbrough of the Department of Water Resources documentation of the litigation pending which challenged the approval of the subdivision.

- On September 23, 2002 McCormack Properties of Idaho Inc. sold its interest in the subdivision and the contract with Norm's Plumbing regarding the water system to William and Julie Radobenko.
- On August 12, 2003 Mr. Freeman Duncan, on behalf of Norm's Plumbing, filed a re-application for Permit No 95-8856.

R/R/R Leaseing/ridge at cougar bay/water/history of law suits - McCormack