Q. Exhibit Q – HRCIDTA's Public Ownership Objection Letter

HARRIS RANCH CID TAXPAYERS' ASSOCIATION

September 29, 2021

Members of the Board
Harris Ranch Community Infrastructure District No. 1 ("HRCID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Facilities Cannot Be Financed by the HRCID Unless They Are Publicly Owned

Members of the HRCID Board:

The purpose of this letter is to provide additional grounds for prior objections by the Harris Ranch CID Taxpayers' Association ("Association") to certain payments, totaling ***over $7 million***, previously made to and recently requested by the Harris Ranch developers ("Developer"). As the Association indicated in our earlier letters, our review of previous and proposed payments to the Developer by the City of Boise ("City"), acting through the HRCID, is in its initial stages while we await the receipt of additional documents that we have requested from the City.

We are sorely disappointed and deeply concerned about the following. It increasingly appears to us that the Developer has long been engaged in an effort to extract many millions of dollars from the HRCID (and thus from Harris Ranch homeowners and taxpayers) to which it appears they are not lawfully entitled. Moreover, it appears to us that the City, acting individually and through the HRCID, has been facilitating the Developer's efforts, as (i) you have approved those payments even though they appear to have been made on the flimsiest of legal grounds, and (ii) you have entered into agreements with the Developer in an apparent attempt to provide them legal "cover" (however slight) to support some of those payments.

Discussion

The purpose of a community infrastructure district ("CID") is to finance the acquisition and construction of "***public facilities***," defined in the Idaho CID Act ("CID Act") as "community infrastructure." The specific types of such *facilities* are listed in the CID Act and include the following:

- Roads, streets, and bridges
- Trails
- Public parking facilities

- Water supply facilities
- Wastewater facilities
- Stormwater facilities, and
- Parks, open space and recreation areas

Idaho Statutes, Secs. 50-3102(2) and 67-8203(24).

The CID Act expressly requires that: "Only community infrastructure ***to be publicly owned by this state or a political subdivision thereof*** may be financed pursuant to this chapter." Idaho Statutes, Sec. 50-3101(2). (Emphasis added.) To make that perfectly clear, the exact same language is repeated in Section 50-3107(1). Despite this requirement, the City, acting through the HRCID, has financed ***many millions of dollars in facilities which are privately owned and which are located on land which is privately owned***. We find that to be rather stunning.

The essential aspects of "public facilities" are actually twofold: (1) they are *owned* by the state or a local government (and thus "public" in that respect), and (2) they are *available for use* by the general public (and thus "public" in that respect, as well). Thus, for example, no-one could reasonably argue that a *privately*-owned parking garage which was also available for use by the public was a "public facility" within the meaning of the CID Act. Similarly, no-one could reasonably argue that a *publicly*-owned parking garage that was available for use *only* by an adjacent *private* company was a "public facility" within the meaning of the CID Act.

To be doubly sure that private facilities are not financed through CIDs, the CID Act also requires that the "public facilities" financed by a CID "may be located ***only*** in or on lands, easements or rights-of-way ***publicly owned by this state or a political subdivision thereof***." Idaho Statutes, Sec. 50-3105(2). (Emphasis added.) It is important to note that this "location on public lands" requirement *is in addition to*, and not a substitute for, the express "public ownership of facilities" requirement and the implicit "public use of facilities" requirement. Thus, for example, a public parking garage must be located on land *owned* by the state or a local government, a public road must be located on a right-of-way *owned* by the state or a local government, public parks or open space must be located on land *owned* by the state or a local government, and a public water, wastewater or storm water drainage system must be located on land or within rights-of-way *owned* by the state or a local government. The Legislature has made all of that perfectly clear. That's presumably in part because, unless the state or a local government *owns* both the facilities *and* the land in question, it does not control the ultimate use or disposition of that public property.

Thus, the CID Act prohibits the funding of *privately*-owned stormwater drainage and retention facilities, or *privately*-owned open space or wetlands. But that's exactly what the HRCID has done.

What we have discovered is that the City, acting through the HRCID, for many of the payments it has made to the Developer, has ignored the first two requirements – that the facilities financed be (1) *owned* by the public, and (2) *available for use* by the public. The City, acting through the HRCID, instead has treated the third requirement – that the facilities financed be located on

property owned by the public – as the *only* requirement. Moreover, they have allowed the Developer to satisfy that requirement on the most insubstantial of grounds. That is, the City has made payments of many millions of dollars to the Developer based not on the City or other local government entity *owning* the facilities and the land underneath them, but rather on the City having only the slightest interest in the underlying property. Public ownership of land and improvements necessarily involves substantive rights, obligations, and liabilities. The members of our Association understand that, as we suspect that you do, as well. But that's exactly what the City and Ada County Highway District ("ACHD") have sought to avoid, and understandably so. That is not what the Legislature intended, or the CID Act requires, however, to justify financing through the HRCID.

In particular, the HRCID has paid the Developer for *privately*-owned stormwater drainage and retention facilities and wetlands facilities which sit on *privately*-owned land, to which the public apparently has *no* access. Those payments apparently were based on:

- In the case of the stormwater facilities, an "easement of access," provided by the Developer to the City or ACHD, which permits the City or ACHD (respectively), in their sole discretion, to "maintain" those facilities if the private nonprofit Harris Ranch Master Homeowners Association fails to do so; and

- In the case of the wetlands facilities, a "conservation easement" provided to a *private* nonprofit corporation, which years later was amended to add or substitute the City for the apparent sole purpose of facilitating a payment to the Developer by the HRCID.[1]

That is all quite disturbing.[2]

An "easement for access" provided to the City or ACHD by the *private* owner of stormwater facilities which sit on *privately*-owned land and which are required to be *privately* maintained, which permits the City or ACHD, in their sole discretion, to maintain the facilities upon a failure of the *private* party which is obligated to do so, obviously does not convert the *private* stormwater facility into a "*public* facility." Similarly, a "conservation easement" provided to a *private* nonprofit corporation by the *private* owner of wetlands facilities, which sit on *privately*-owned land and are required to be *privately* maintained, and which does not afford access to or use of the wetlands by the public, obviously does not convert the *private* wetlands into a "*public* facility." That is not remedied by a subsequent amendment to the easement agreement to add or

[1] The "conservation easements" serve only to preserve the property as wetlands, apparently as required by the U.S. Army Corps of Engineers. The public, however, presumably is not allowed access to or use of the private property, other than to look at it from afar. *Publicly* owned property which constitutes "wetlands," on the other hand, can be used by the public for recreational and other activities under applicable law.

[2] We note that the HRCID has also made payments to the Developer totaling over $400,000 for Idaho Power electric utility line undergrounding and extensions. We are awaiting receipt of additional documents from the City regarding those payments. But we expect that the electric utility lines are owned by Idaho Power, and located in easements owned by Idaho Power, and thus that these "reimbursements" are unlawful for substantially the same reasons as those for the stormwater and wetlands facilities.

substitute the City for the apparent sole purpose of attempting to justify a payment to the Developer by the HRCID.

The specific projects for which payments have been made or recently requested include:

Project Name	Project ID No.	Payment Date	Amount Paid
2011 Conservation Easement – Wetlands – Land Value	GO15B-4	9/3/2015	$1,331,540
2011 Conservation Easement – Land Value	GO17B1-1	10/31/2017	$303,699
Barber Junction Ponds – Land Value	GO19-1	10/4/2019	$654,000
Sediment Basins/Barber Road – Land Value	GO19-1	10/4/2019	$194,000
Storm Water Ponds WS – Land Value	GO19-1	10/4/2019	$958,979
Warm Springs Creek Realignment – Land Value	GO19-1	10/4/2019	$1,230,000
2007 Wetlands Conservation Easement	GO20-7	(payment requested)	$1,979,000
TOTAL:			**$6,651,218**

We note that the Developer, with one apparent exception,[3] has *not* been paid for the costs of construction of these facilities. We don't yet know why but can speculate. Is it perhaps because ***the facilities themselves are not owned by the City or other local government entity***, and thus don't qualify for financing through a CID? The answer, it seems, is "yes".

The Developer instead has sought to be paid (and has been to date) for the supposed "value" of the land on which the facilities sit, ***even though that land is not owned by the City or other local government entity, either.***[4] We do not understand how the City could have justified this.

The City's apparent rationale would permit the HRCID to reimburse the Developer for the supposed "value" of land under a *private* road into the foothills within the HRCID north of the Harris Ranch development, on land *privately* owned by the Harris family, if the Harris family simply granted the City an "easement of access" to "maintain" the road, if the City chose to do so in its sole discretion, at the Harris family's default. The City's apparent rationale would also permit the HRCID to reimburse the Developer for the supposed "value" of land *privately* owned

[3] As we noted in our August 30, 2021, objection letter, the Developer apparently has been paid for the construction of a sediment basin owned by the Harris family located on land owned by the Harris family. We suspect that that "easement of access" was provided to the City, rather than ACHD, because only Harris family lands drain into that basin, while roads dedicated to the ACHD within the HRCID drain into the other stormwater facilities.

[4] We have separately objected, including by our letters to you dated August 16, 2021, and August 30, 2021, to the valuations of the land. We assumed at the time, however, perhaps naively, that the land under those improvements had been conveyed to the City, the ACHD or other local government entity. But we have subsequently learned that they were not. ***We note again that the "value" of land which is required to be dedicated to public use as a condition (or precondition) to development is practically nothing.*** No-one is going to pay you much if anything for land that they must immediately convey to the public.

by the Harris family, in the same foothills, if the Harris family granted a "conservation easement" on the property to the City but with the public having no access whatsoever to the property. Either suggestion is simply absurd. There would be a publicly owned "easement." But there would be no "public facilities."[5]

What the CID Act requires, as a condition of any payment to the Developer, is that those stormwater and wetlands facilities be OWNED by the City or another local government, AND that the land on which they are located be OWNED by the City or another local government.[6]

Conclusion

We thus request that the City, acting through the HRCID, (i) recover all those previous payments from the Developer, plus interest from the date of payment at the rates provided in the Development Agreement among the City, the HRCID and the Developer ("Development Agreement"), and (ii) refuse to make any additional such payments to the Developer going forward. To the extent that for any reason the City is reluctant to seek to recover those previous payments from the Developer, we suggest that you offset such amounts, with interest, against any pending or future payments that the Developer requests that are permissible under the CID Act and the Development Agreement.

As we've noted previously, the HRCID has spent considerable sums, as has the City (both at the expense of homeowners and taxpayers in Harris Ranch), for administrative, financing and other related fees and costs with respect to the payments made by the HRCID to the Developer which appear to be unlawful. We therefore also request that the City (as the party responsible for all this) refund to the HRCID the proportion of those costs and fees related to the apparently unlawful payments, and that those amounts be applied to pay down the debt incurred by the HRCID for those purposes (and/or to refund homeowners in the HRCID for the special taxes imposed on them to pay such debt).

[5] We note that a "conservation easement" by itself is ***not*** "community infrastructure" under the CID Act. It is not a "park," nor an "open space," nor a "recreation area," nor a "bank and shore protection and enhancement improvement," which are the grounds upon which the Developer is apparently requesting payment. Those, if they are publicly owned, are all "public ***facilities***". A conservation easement, on the other hand, is just a piece of paper, and not a "facility" which the public can enjoy.

[6] Why wouldn't the City or the ACHD want to own all that land? At least three potential reasons come to mind. First, the City or the ACHD, rather than a private party, would then be saddled with the expense of maintaining such properties. Second, the City or the ACHD would then also be saddled with potential liabilities for damages if the facilities failed to perform their intended functions, or someone was injured on them. Third, if the City or the ACHD owned the properties and facilities, the properties and facilities would no longer be part of the property tax base. Those all seem to be pretty good reasons for the City and the ACHD *not* to want to own these stormwater and wetlands facilities and properties.

Postscript

We note that at recent public meetings of the HRCID Board, City Council President Elaine Clegg made statements to the following effects:

- She argued that a reduction in the special tax annual levy rate for homeowners in the HRCID, to offset some of the dramatic increase in those special property taxes from the rather extraordinary increases recently in the value of homes in the Treasure Valley, would only delay the "reimbursements" to the Developer. Ms. Clegg further argued that such a delay in turn would increase the "interest" ultimately due to the Developer from the HRCID under the Development Agreement, and thus only increase the ultimate cost of those "reimbursements" to homeowners and taxpayers in the Harris Ranch CID.

- She also complained about the cost entailed in the HRCID having to retain outside legal counsel to advise the HRCID in response to the objection letters and emails submitted by the Association, as well as by innumerable Harris Ranch homeowners and taxpayers. She explained that those costs would have to be paid by the homeowners and taxpayers in the HRCID.

City Council President Clegg's supposed concern for the costs to be borne by homeowners and taxpayers in the HRCID seems to us to be disingenuous.[7] Ms. Clegg has been on the HRCID Board since its inception more than eleven years ago. In that capacity, she has approved many millions of dollars of payments to the Developer which, it appears, were unlawful. Those payments were made at the direct expense of homeowners and taxpayers in the Harris Ranch CID. Please allow us to suggest that a much more effective and substantial way for Ms. Clegg to save Harris Ranch homeowners and taxpayers millions of dollars in special taxes would have been to *reject* the Developer's requests for those payments in the first place.

We note, again, that this letter and our previous letters do not include all our objections to prior, requested or proposed reimbursements to the Developer. We again ask that the approval, let alone payment, of any further reimbursements to the Developer cease pending the resolution of our objections and related legal issues.

Sincerely,

pp Bill Doyle

Harris Ranch CID Taxpayers' Association

[7] We are developing an impression that City Council President Clegg is more sympathetic to the Developer in these matters and is unsympathetic if not somewhat antagonistic towards the homeowners and taxpayers in Harris Ranch. So far as we can recall, she has not made a single public comment in the past three months to convey understanding of or appreciation for the perspectives of homeowners and taxpayers in Harris Ranch, or the concerns expressed by our Association. This was further confirmed by her comments at the September 7 HRCID Board meeting. We are at a loss to understand why.

Cc: The Honorable Lauren McLean, Mayor, City of Boise
Council Member Lisa Sanchez, Council Pro Tem
Council Member Patrick Bageant
Council Member Jimmy Hallyburton
David Hasegawa, City of Boise
Jaymie Sullivan, City of Boise
Rob Lockward, City of Boise
Amanda Brown, City of Boise

R. Exhibit R – Parkcenter Blvd Development Agreement

Exhibit B

DEVELOPMENT AGREEMENT

PARKCENTER BOULEVARD EXTENSION TO WARM SPRINGS AVENUE, INCLUDING THE EAST PARKCENTER BRIDGE

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into this 29th day of July, 2005 by and between HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership ("**Harris Family Limited Partnership**"), BARBER MILL COMPANY ("**Barber Mill Company**"), an Idaho corporation (Harris Family Limited Partnership and Barber Mill Company are sometimes herein collectively referred to as "**Harris Ranch**"), and ADA COUNTY HIGHWAY DISTRICT (herein "**ACHD**").

WITNESSETH:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the recitals, which are incorporated in this Agreement, and in consideration of the premises and the agreements hereinafter contained, ACHD, Harris Family Limited Partnership and Barber Mill Company agree as follows:

SECTION 1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

A. The term "**ACHD**" shall refer to ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho whose address is 3775 Adams Street, Garden City, Idaho 83714-6499, attention: Right-of-Way & Development Services Manager, whose telephone number is (208) 387-6170 and whose fax telephone number is (208) 387-6393.

B. The term "**Agreement**" shall refer to this Development Agreement.

C. The term "**Bridge Permits**" shall mean all permits, reviews and agreements required to be obtained from applicable governmental agencies for crossing the Boise River and constructing the East ParkCenter Bridge and using the East ParkCenter Bridge as a public right-of-way and Highway, including but not limited to: U.S. Army Corps of Engineers Section 404 Permit, Idaho Department of Water Resources Stream Channel Alteration Permit, Boise River System Application Permit, Boise City Flood Plain Review Approval, and the Idaho Department of Lands Crossing Agreement.

D. The term "**Harris Ranch**" shall refer, collectively, to Harris Family Limited Partnership, an Idaho limited partnership (successors in interest to

EXHIBIT C

Harris Family Ranch, LLP, an Idaho limited liability partnership), whose address is c/o Doug Fowler, 4940 Mill Station Drive, Boise, Idaho 83716, whose telephone number is (208) 344-1131 and whose fax number is (208) 340-5585, and Barber Mill Company, an Idaho corporation, whose address is c/o David Turnbull, 12601 W. Explorer, Boise, Idaho 83713, whose telephone number is (208) 378-4000 and whose fax telephone number is (208) 377-8962.

E. The term "**Harris Ranch, Idaho**" shall refer to the planned mixed use development by Harris Ranch on the real property described on **Exhibit "A"** attached hereto.

F. The term "**Highway**" is as defined in *Idaho Code* Section 40-109(5).

G. The term "**Impact Fee Ordinance**" means the ACHD Impact Fee Ordinance and Capital Improvement Plan, as may be amended from time to time, or the term "**Impact Fees**" shall mean the Impact Fees set forth in such Ordinance.

H. The term "**Project**" shall mean the extension of ParkCenter Boulevard from the end of the pavement section near Riverside Elementary School to intersections with existing Warm Springs Avenue southeast of Starview Drive, and including a four-lane bridge across the Boise River and a crossing over Loggers Creek and all necessary facilities, including but not limited to, drainage facilities and drainage and slope protection areas, and related pedestrian and bicycle facilities. The Project is generally depicted on **Exhibit "B"** attached hereto. For purposes of this Agreement the Project can be divided into three parts, identified as follows:

(i) The portion of the Project that shall be a bridge over and across the Boise River, and including its structure, piers and other supports, its lanes for vehicular traffic and related bicycle lanes and pedestrian pathways over and under the same, and the bridge abutments at each end thereof (a portion of the southerly abutment shall be on ACHD Right-of-Way) and further including a crossing over Loggers Creek is referred to in this Agreement as the "**East ParkCenter Bridge.**"

(ii) That portion of the Project that is located between the southerly end of the East ParkCenter Bridge and the end of the pavement section by Riverside Elementary School is referred to in this Agreement as the "**Southerly Phase of the Project.**"

(iii) The portion of the Project that is located between the northerly end of the East ParkCenter Bridge to the intersections of ParkCenter Boulevard and Warm Springs Avenue is referred to as the "**Northerly Phase of the Project.**"

I. The term "**Right-of-Way**" shall mean the right-of-way required for the Project, including fee simple to the Highway itself and all facilities required for drainage, slope protection and other facilities related to the proper use, operation and maintenance of the Highway.

J. The terms "**Substantial Completion**" and "**Substantially Complete**" shall mean that the Project has reached sufficient completion so that the Project is being used by the motoring public.

K. The term "**System Improvements**" is as defined in *Idaho Code* Section 67-8203(28).

L. The terms "**Reimbursed**" or "**Reimbursement**" as used herein shall be defined as repayment of funds to Developer or ACHD from Impact Fee eligible costs as allowed by ACHD's Impact Fee Ordinance and Capital Improvement Plan.

SECTION 2. Recitals.

2.1 ACHD is the owner of all the Right-of-Way required for the Southerly Phase of the Project.

2.2 Barber Mill Company is the owner of all the Right-of-Way for the Northerly Phase of the Project.

2.3 ACHD adopts a Five-Year Work Program ("**FYWP**") each year. The FYWP identifies and allocates funding for right-of-way construction projects in Ada County. The Project is included in the 2006-2010 FYWP attached hereto as **Exhibit "C"** and is identified as programmed for construction over a two-year period staring in fiscal year in 2010. ACHD acknowledges and agrees that the Project shall be subject to and included in ACHD'S future FYWPs and shall be identified and programmed in for construction in fiscal year 2008. Harris Ranch acknowledges and agrees that the programming of the Project in future FYWPs does not guarantee that the construction of the Project will begin in 2008 or be completed in fiscal year 2009.

2.4 Portions of the Project costs are presently Impact Fee eligible and other portions may become impact fee eligible in the future. The parties shall be Reimbursed or credited from Impact Fees solely as set forth in this Agreement.

SECTION 3. Responsibility for Costs of Project and Right-of-Way Responsibilities.

3.1 ACHD shall be responsible for paying all costs and expenses of (i) the design of the Project, (ii) the construction of the entire Project, and (iii) the inspection, testing and quality assurance monitoring of the construction of the Project. ACHD represents that it has adequately programmed ACHD

funds to cover design costs in connection with the Project. ACHD shall provide the Right-of-Way for the Southerly Phase of the Project.

3.2 Harris Family Limited Partnership shall provide $3.5 million towards the costs and expenses associated with the Project, which shall be used and allocated by ACHD in its sole, absolute, and unreviewable discretion. ACHD shall draw on these funds as bills in connection with the Project are received at the commencement of the Project. In order to ensure payment of this amount, Harris Family Limited Partnership shall provide to ACHD an irrevocable letter of credit from a financially responsible Idaho lender in the amount of $3.5 million in force through December 31, 2010, or such other date as the parties may mutually agree in writing. This letter of credit shall be provided to ACHD within ten (10) days of execution of a construction contract that obligates ACHD for payment of construction of the Project, which letter of credit shall be in a form reasonably acceptable to ACHD, and shall give ACHD the unconditional right to draw funds as necessary and upon demand to partially or fully complete and/or pay for the Project as soon as construction commences on the Project. Harris Family Limited Partnership agrees that the letter of credit shall authorize ACHD to draw upon the letter of credit as bills are received by ACHD only in connection with the construction costs and expenses associated with the Project.

3.3 Barber Mill Company shall provide the Right-of-Way for the Northerly Phase of the Project. The two center lanes of the Right-of-Way for the Northerly Phase shall be deeded to ACHD by a gift deed upon execution of this Agreement in the form attached hereto as **Exhibit "D."** The two outer lanes of the Right-of-Way for the Northerly Phase shall be deeded to ACHD by a warranty deed upon execution of this Agreement in the form attached hereto as **Exhibit "E."** The deeds described herein shall be delivered to ACHD through a mutually agreed upon closing agent instructed to obtain title insurance insuring title in ACHD free and clear of all liens and encumbrances except those approved in writing by ACHD prior to execution of this Agreement. The executed deeds shall be delivered to ACHD for recording upon execution of this Agreement. Within ten (10) days of execution of a Construction Contract that obligates ACHD for payment of construction of the Project, temporary construction easements determined necessary by ACHD shall also be granted by Barber Mill Company at no cost and shall be in effect until the Project has been completed at which time they shall then be terminated.

SECTION 4. Design and Construction; Delivery of Design Plans; Construction Easement; Bridge Permits.

4.1 The design of the Project, the preparation of the plans and specifications and the construction pursuant thereto shall all be accomplished in accordance with the standards and requirements set forth by applicable ACHD policy.

(a) Upon execution of this Agreement, Harris Ranch shall forward to ACHD copies of all previously prepared design plans for the Project in its and/or its consultant's (i.e., HDR Engineering, Inc. ("**HDR**")) possession, including but not limited to design plans and consultant reports prepared by third parties, soil reports, engineering reports, and right-of-way plans (collectively "**design plans**"). Harris Ranch specifically authorizes ACHD to use any and all of these design plans to the extent authorized by law and Harris Ranch shall obtain any necessary third-party consents required by ACHD to use such plans; that portion of the design plans that remain useable and/or useful in connection with the Project shall be as determined by HDR in HDR's reasonable judgment. Without limiting the foregoing, Harris Ranch shall obtain the consent of HDR for ACHD to use the design plans previously prepared for the design of the Project in the form attached hereto as **Exhibit "F."** ACHD hereby indemnifies and holds Harris Ranch harmless from and against any and all loss, injury, death and damage, and attorney's fees and costs that might be incurred by Harris Ranch in defending any claim that may result solely from the use of the design plans by ACHD, its Commissioners, employees, contractors and/or agents.

4.2 At all times during the development of the Project, Barber Mill Company shall provide ACHD access to the Right-of-Way for the Northerly Phase of the Project, including granting ACHD a temporary construction easement in the form attached hereto as **Exhibit "G."**

4.3 A portion of the Right-of-Way provided in fee by Barber Mill Company shall provide ACHD with slope protection for the north side of the East ParkCenter Bridge. Such portion of the Right-of-Way is often provided to ACHD in the form of an easement. However, ACHD shall acquire this slope protection area in fee as part of the Right-of-Way. Once such slope protection area is acquired by ACHD, if requested by Barber Mill Company, ACHD shall transfer fee title to such slope protection area back to Barber Mill Company at a price of $3.50 per square foot provided that Barber Mill Company provides ACHD with a permanent slope easement providing ACHD with permanent access and use of such real property required by ACHD for the north side of the East ParkCenter Bridge in the form attached hereto as **Exhibit "H."**

4.4 ACHD shall prepare and submit all applications for, and obtain all Bridge Permits. Harris Ranch shall cooperate with ACHD in its efforts to obtain the Bridge Permits.

4.5 The parties agree and understand that the final engineering plans for the Project have not been completed. Upon final completion of the plans and specifications, it is anticipated that there may be adjustments required to the real property granted by Barber Mill Company to ACHD. The parties agree that if adjustments are made to the property conveyed by Barber Mill Company to ACHD due to the alignment of the Project that the deeds shall be amended and

re-recorded to reflect these required changes. Barber Mill Company agrees to execute any correction deeds within ten (10) days of submission of such deed to Barber Mill Company by ACHD. If such amended deeds require additional square footage to be provided to ACHD, ACHD shall provide Barber Mill Company with an upward adjustment of Impact Fee credits, calculated at $7.00 per square foot. If such amended deeds require a reconveyance of real property to Barber Mill Company, ACHD shall provide Barber Mill Company with a downward adjustment of Impact Fee Credits calculated at $7.00 per square foot.

SECTION 5. Design and Construction of the Project.

5.1 ACHD shall design the Project, which design shall be in ACHD's sole, absolute and unreviewable discretion, which shall include plans for four lanes for vehicular traffic through the Northerly Phase, the East ParkCenter Bridge, and the Southerly Phase.

5.2 ACHD shall enter into such construction or design-build contracts, as it desires with respect to the Project and to engage all necessary third parties in connection with completion of the Project.

5.3 ACHD may have to provide wetland mitigation as is required by the U.S. Army Corps of Engineers or other governmental agencies. Harris Ranch agrees to cooperate in assisting ACHD in any wetland mitigation requirements identified during the permitting process, including but not limited to donating a portion of wetlands owned by Harris Ranch in order to accomplish the wetland mitigation required by governmental agencies; provided, however any such provision of wetlands shall be eligible for Impact Fee Reimbursement collected only in Harris Ranch, Idaho.

SECTION 6. Impact Fees Reimbursement.

6.1 A portion of the Project presently is a System Improvement, and such portion of the Project shall be eligible for Reimbursement from Impact Fees collected by ACHD on and after the date of this Agreement in Harris Ranch, Idaho and in the Southeast Service Area as defined by the Impact Fee Ordinance subject to the condition set forth in Section 6.1(a). Harris Ranch shall be entitled to Impact Fee eligible credits as follows:

(a) ACHD acknowledges Barber Mill Company's right to submit to ACHD a traffic analysis conducted by a professional engineer that attempts to demonstrate that the deeded right-of-way for the two center lanes may qualify as a System Improvement in accordance with Idaho law.

Barber Mill Company shall submit its traffic impact analysis no later than November 1, 2005, in order for its analysis to be fully considered in ACHD's next Capital Improvement Plan update in 2006. If ACHD, following the necessary statutory process, determines that the two center lanes qualify as System Improvements and are included in the updated Capital Improvement

Plan, Barber Mill Company shall be entitled to Reimbursement for the deeded Right-of-Way for such two center lanes as a portion of the allocated impact fee eligible costs provided in this Agreement calculated at $7.00 per square foot, subject to the limitations that Reimbursement shall be limited to Impact Fees collected only in Harris Ranch, Idaho, and no where else in the Southeast Service Area. If all of the above criteria are not established in the 2006 update, there shall be no Reimbursement for the two center lanes.

(b) The $3.5 million payment by Harris Family Limited Partnership to ACHD for Project construction qualifies for Impact Fee Reimbursement, which shall be allocated to Impact Fee eligible costs associated with the construction of the Project.

(c) The value of all real property conveyed by Barber Mill Company to ACHD, including but not limited to wetlands, Right-of-Way and slope protection areas, excluding the two center lanes deeded by Harris Ranch to ACHD as described on Exhibit D. The two outer lanes of the Right-of-Way for the Northerly Phase provided by Barber Mill Company, any necessary slope protection areas and wetlands as set forth herein, shall be subject to Impact Fee Reimbursement calculated at $7.00 per square foot.

(d) The value of wetlands donated by Harris Ranch for wetlands mitigation required by governmental agencies due to the Project, which shall be Reimbursed at $7.00 per square foot.

(e) The Two Hundred Thousand Dollars ($200,000) representing the value of the HDR plans delivered by Harris Ranch to ACHD, of which One Hundred Eighty Thousand Dollars ($180,000) shall be Reimbursed to Harris Family Limited Partnership, and Twenty Thousand Dollars ($20,000) shall be Reimbursed to Barber Mill Company.

(f) The costs and expenses paid by ACHD in connection with the design and construction of the Project that qualify for Impact Fee Reimbursement.

6.2 Harris Ranch shall be Reimbursed for the eligible Impact Fee costs set forth herein from any and all Impact Fees collected by ACHD in connection with Harris Ranch, Idaho, and shall be eligible for Reimbursement commencing upon execution of this agreement in accordance with the priority schedule set forth in Section 6.3.

In addition, Harris Ranch and ACHD may also be Reimbursed the eligible Impact Fee costs set forth herein from any and all additional Impact Fees collected by ACHD in the Southeast Service Area as defined by the Impact Fee Ordinance, which are not being allocated to repay the existing loan balance in the Southeast Service Area and/or allocated to fund other impact fee eligible projects as identified in the Southeast Service Area 2006-1010 FYWP.

Harris Ranch shall be Reimbursed by ACHD for unpaid Impact Fee credits on October 1, 2009, or upon Substantial Completion of the Project, which ever occurs later, but in no event shall Reimbursement be later than December 31, 2012. The parties agree that Harris Ranch shall be Reimbursed for its reimbursable Impact Fees provided for herein before ACHD receives any reimbursable Impact Fees as provided herein.

6.3 Reimbursement to Harris Family Limited Partnership, Barber Mill Company and ACHD shall be made by ACHD in the following priority:

(a) One Hundred Eighty Thousand Dollars ($180,000) to Harris Family Limited Partnership representing a partial value of the HDR plans delivered by Harris Ranch to ACHD.

(b) Twenty Thousand Dollars ($20,000) to Barber Mill Company representing a partial value of the HDR plans delivered by Harris Ranch to ACHD.

(c) The value agreed to herein of all real property conveyed by Harris Ranch to ACHD.

(d) The $3.5 Million provided by Harris Family Limited Partnership.

(e) The Impact Fee eligible costs and expenses paid by ACHD in connection with the design and construction of the Project.

SECTION 7. Remedies.

7.1 In the event Harris Ranch defaults or fails or neglects to perform its obligations hereunder in the time and manner required herein, ACHD shall be entitled to all remedies available to it at law or in equity, including but not limited to the following remedies:

(a) ACHD may immediately draw upon and pursue all rights under Harris Family Limited Partnership's line of credit as set forth in Section 3.2 above;

(b) ACHD may deny any preliminary and/or final plats within Harris Ranch, Idaho, not previously approved; and

(c) ACHD shall have no obligation to pay Harris Ranch any credits or Reimbursement from Impact Fees as provided herein.

7.2 In the event ACHD defaults or fails or neglects to perform its obligations hereunder in the time and manner required herein, Harris Ranch shall be entitled to all remedies available to Harris Ranch at law or in equity.

SECTION 8. Attorneys' Fees.

Should any party find it necessary to employ an attorney for representation in any action seeking enforcement of any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, or to resolve any disagreement in interpretation of this Agreement, the unsuccessful party in any final judgment entered therein agrees to reimburse the prevailing party for all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred by the prevailing party in connection therewith and in connection with any appeal, and the same may be included in such judgment.

SECTION 9. Notices.

Any and all notices given by any of the parties hereto shall be in writing and deemed delivered when: (i) delivered personally, or (ii) sent by fax to the other party at the fax telephone number set forth in Section 1, or (iii) deposited in the United States Mail, certified, return receipt requested, postage prepaid, addressed to the other party at the address set forth in Section 1, in each case with a copy to JoAnn C. Butler, 251 E. Front Street, Suite 200, Boise, Idaho 83702, whose telephone number is (208) 388-1000 and whose fax telephone number is (208) 388-1001, or such other fax telephone number or mailing address as may be provided by written notice of such change given to the other party in the same manner as above provided.

SECTION 10. Applicable Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho. It is understood and agreed that this Agreement shall in no way be construed so as to bind or obligate ACHD beyond the term of any particular appropriation of funds as set forth in Article VII of the Idaho Constitution.

SECTION 11. Incorporation of Exhibits.

It is agreed that all exhibits to this Agreement are incorporated herein by reference and made a part of the terms, provisions and covenants of this Agreement.

SECTION 12. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

SECTION 13. Time of Essence.

All times provided for in this Agreement or in any other instrument or document incorporated herein or contemplated hereby for the performance of an

act shall be strictly construed, it being agreed that time is of the essence of this Agreement.

SECTION 14. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SECTION 15. Joint and Several Liability.

Harris Family Limited Partnership and Barber Mill Company, and each of them, shall be jointly and severally liable for all obligations of Harris Family Ranch Limited Partnership and Barber Mill Company under this Agreement.

SECTION 16. Future Applications.

Harris Ranch acknowledges and agrees that ACHD's execution of this Development Agreement does not confer any additional rights or constitute any approval of any related developments or other applications submitted to ACHD.

[Signature page follows.]

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

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership

By: Harris Management, LLC, its General Partner

By: Felicia Harris Burkhalter
Felicia Harris Burkhalter
Manager

By: Mildred H Davis
Mildred H. Davis
Manager

By: Brian Randolph Harris
Brian Randolph Harris
Manager

By: Alta M. Harris
Alta M. Harris
Manager

BARBER MILL COMPANY, an Idaho corporation

By
Larry Williams
President

Attest:

Secretary

ADA COUNTY HIGHWAY DISTRICT

By John L. Franden
Title: President

Attest:
William J. Schweiter
Director

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

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership

By: Harris Management, LLC, its General Partner

By: Felicia Harris Burkhalter
Felicia Harris Burkhalter
Manager

By: Mildred H Davis
Mildred H. Davis
Manager

By: Brian Randolph Harris
Brian Randolph Harris
Manager

By: Alta M. Harris
Alta M. Harris
Manager

BARBER MILL COMPANY, an Idaho corporation

By _____
Larry Williams
President

Attest:
Marianne Williams
Secretary

ADA COUNTY HIGHWAY DISTRICT

By _____
Title: President

Attest:

_____
Director

EXHIBITS TO DEVELOPMENT AGREEMENT

Exhibit "A" Legal Description of Harris Ranch, Idaho

Exhibit "B" Depiction of Project

Exhibit "C" ACHD 2006-2010 Five Year Work Plan

Exhibit "D" Gift Deed

Exhibit "E" Warranty Deed

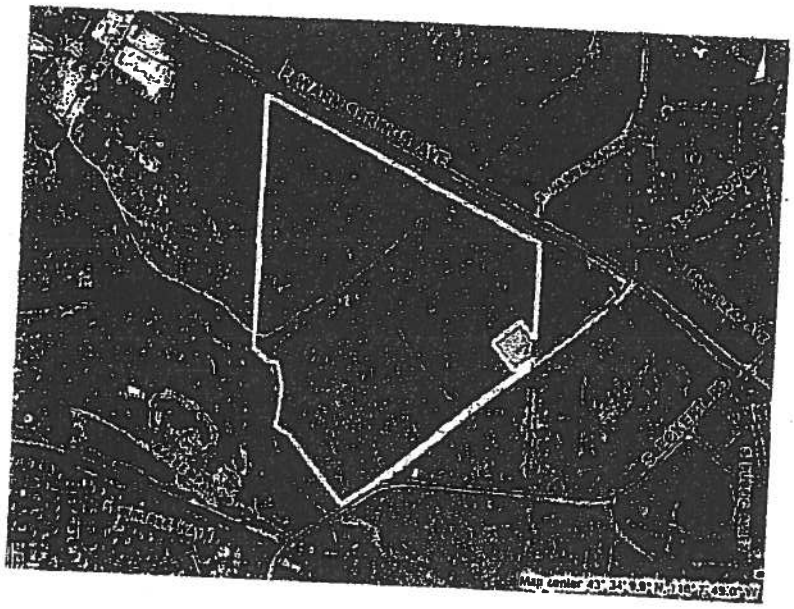
Exhibit "F" Consent of HDR Engineering, Inc.

Exhibit "G" Construction Easement

Exhibit "H" Slope Easement

S. Exhibit S – Easement Appraisal

THE APPRAISAL OF:



The Wetlands Conservation Easement
Eckert Road at Harris Ranch
Boise, Idaho

File No. MS-7822(B)-08

AS OF: November 12, 2007

PREPARED FOR:
Harris Family Limited Partnership
3051 Wise Way
Boise, Idaho 83716

PREPARED BY:
Joe Corlett, MAI, SRA

Mountain States Appraisal and Consulting, Inc.
1459 Tyrell Lane, Suite B
Boise, Idaho 83706

500-6

MOUNTAIN STATES APPRAISAL
AND CONSULTING, INC.
1459 Tyrell Lane, Suite B
Boise, Idaho 83706

G. Joseph Corlett, MAI, SRA
Maurice J. Therrien, MAI
Dan Oxford, CGA, MBA
Shawn Scudder
Dan Spanfelner
Michelle Cappo, CGA

August 13, 2008

Harris Family Limited Partnership
3051 Wise Way
Boise, Idaho 83718

Re: The Appraisal of the Conservation Easement
Of the Wetlands Site on Eckert Road
At Harris Ranch, Boise, Idaho
MS-7822B-08

Gentlemen:

As requested, I have completed an appraisal of the easement value with respect to the Deed of Conservation Easement granted on November 12, 2007. The Conservation Easement had been placed on the subject for the purpose of creating new wetlands to mitigate lost wetlands caused by the Ada County Highway District construction of the East Parkcenter River Crossing located westerly of the subject.

Attached hereto is a summary format appraisal report prepared in accordance with the Uniform Standards of Professional Appraisal Practice Standards Rule 2-2(b). As such, the content included in the attached appraisal report is somewhat more abbreviated than that necessary for a self-contained document. However, the detail of data, investigations and analyses is considered sufficient for the intended use of the report.

This valuation is based on before and after valuation analyses of the larger parcel, which is considered to be 86.245 acres. There are additional ownerships in the district owned by the Harris Family Limited Partnership which are considered to be unaffected by the Conservation Easement based on the appraiser's opinion. The easement was officially granted as of November 12, 2007. As such, this is a retrospective analysis in that the site was last inspected by the appraiser on August 10, 2008.

Extraordinary Assumptions

This appraisal is based on the **extraordinary assumption** that the property was in a similar condition to that observed during the actual inspection. It should be noted that the wetlands have been mostly developed since the date of appraisal.

This appraisal is also based on the **extraordinary assumption** that there will be no development right transfers possible out of the conservation area to adjoining lands in the larger parcel. Should this not be the case, a reanalysis will be necessary by the appraiser.

Hypothetical Condition

This appraisal is also subject to the **hypothetical condition** that the Conservation Easement is assumed not to exist for the purpose of estimating the before value of the larger parcel.

Subject to the Assumptions and Limiting Conditions set forth and based on the information and analyses presented in the attached appraisal report, the estimated market value of the Conservation Easement known as the Wetlands Site, as of November 12, 2007, was:

*****ONE MILLION NINE HUNDRED SEVENTY NINE THOUSAND DOLLARS*****

***** ($1,979,000) *****

As previously discussed, this appraisal is based on before and after appraisal techniques, which are discussed in the body of the appraisal report.

If you should have any further questions, or if I may be of additional assistance, please do not hesitate to call upon me. Thank you for this opportunity to be of service.

Respectfully submitted,

MOUNTAIN STATES APPRAISAL
AND CONSULTING, INC.

Joe Corlett, MAI, SRA

JC:vg

ASSUMPTIONS AND LIMITING CONDITIONS

EXTRAORDINARY ASSUMPTIONS

1. This appraisal is based on the **extraordinary assumption** that the property was in a similar condition to that observed during the actual inspection. It should be noted that the wetlands have been mostly developed since the date of appraisal.

2. This appraisal is also based on the **extraordinary assumption** that there will be no development right transfers possible out of the conservation area to adjoining lands in the larger parcel. Should this not be the case, a reanalysis will be necessary by the appraiser.

HYPOTHETICAL CONDITIONS

1. This appraisal is also subject to the **hypothetical condition** that the Conservation Easement is assumed not to exist for the purpose of estimating the before value of the larger parcel.

STANDARD ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal report has been made with the following general assumptions and limiting conditions:

1. No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.

2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.

3. Responsible ownership and competent property management are assumed.

4. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.

5. All engineering studies are assumed to be correct. The plot plans and illustrative material in this report are included only to help the reader visualize the property.

6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.

7. It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.

8. It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless nonconformity has been identified, described and considered in the appraisal report.

9. It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

10. It is assumed that the use of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

11. Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required to discover them. The intended user is urged to retain an expert in this field, if desired.

12. Any allocation of the total value estimated in this report between the land and the improvements applies only under the stated program of utilization. The separate values allocated to the land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

13. Possession of this report, or a copy thereof, does not carry with it the right of publication.

14. The appraiser, by reason of this appraisal, is not required to give further consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.

15. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.

16. Any estimates provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.

17. All dimensions and legal descriptions found through available records are assumed to be correct.

18. The forecasts, projections, or operating estimates contained herein are based on current market conditions, anticipated short-term supply and demand factors, and a continued stable economy. These forecasts are, therefore, subject to changes with future conditions.

19. By the client's acceptance of this report, the client hereby limits the appraiser's liability to the extent of the fee charged for the appraisal assignment. As such, the client, by accepting this report indemnifies the appraiser for any liability exceeding the fee charged.

APPRAISAL SUMMARY

Property Location:	The subject property is located on the westerly side of Eckert Road, immediately north of the Boise River in Boise, Idaho.
Owner:	The property is held in ownership by the Harris Family Limited Partnership.
Site:	The site is estimated to include 86.245 acres as a larger parcel, with a 10 acre area of that site devoted to a Conservation Easement.
Improvements:	The subject is unimproved.
Zoning:	The subject is zoned in accordance with the development plan set forth under the Harris Ranch project as illustrated in the attached exhibits. It is assumed that the subject parcel as a larger parcel would be considered as a mixed use type of property including residential and commercial development.
Highest and Best Use:	The highest and best use of the subject in the before condition would be for development as a mixed use project as outlined in the attached exhibits. In the after condition, 10 acres of the subject site will be encumbered by a Conservation Easement which will relegate that portion of the property to have no development into perpetuity. It is being utilized as a wetlands mitigation site and will therefore be preserved by the grantee.
Value Indications:	
Before Value:	$17,249,000
After Value:	$15,270,000
Estimated Easement Value (Loss):	$ 1,979,000
Property Rights Appraised:	Fee Simple title and encumbered Fee Simple Title
Date of Value Estimate:	November 12, 2007

APPRAISAL INTRODUCTION

Identification of the Property

The subject of this appraisal includes an 86.245 acre parcel legally described in the attached exhibits. In the before condition, the subject is an unimproved mixed use or planned development type of site located northerly of the Boise River and westerly of Eckert Road in Boise, Idaho. In the after condition, the subject will have an encumbered site area of 10 acres, which is to be dedicated as a wetland mitigation site, and therefore will be rendered undevelopable into the future.

Property Rights Appraised

In both the before and after analyses, the value of the subject is appraised in fee simple title. However, in the after condition, the subject is encumbered with a Conservation Easement on 10 acres of the southerly most portion of the site adjoining the Boise River. As such, the valuation will also analyze sales of low economic use types of properties for comparison in the after condition.

Date of Value Estimate

The effective date of this appraisal is as of November 12, 2007. As such, this is a retrospective appraisal analysis on the subject property for the purpose of estimating the loss in value or the easement value as of the effective appraisal date.

Purpose of the Appraisal

The purpose of this appraisal is to provide before and after estimates of market value for the subject ownership. The difference between the value estimates is considered to be the easement value. The client will use this report for income tax purposes for reporting a charitable non-cash donation. The grantee is a qualified recipient for the donation.

Function and Intended Use

The function of this report is to estimate the market value of the easement as measured by the difference between the before and after values of the larger parcel as defined herein. As such, the intended users of the report would include the client, tax professionals, and any other entity authorized to utilize the report by the client.

Appraisal Development and Reporting Process (Scope of Work)

Initially, the appraiser was retained by the client to provide a valuation of the easement placed on the subject property. The appraiser has inspected the site numerous times, with the last inspection conducted on August 13, 2008.

Subsequently, the appraiser has analyzed sales of other riparian types of sites with mixed use development potential.

Data analyzed by the appraiser has been verified to the best of the appraiser's ability with either a principal in the various transactions or a knowledgeable third party.

The scope of the appraisal analysis included before and after valuations of the subject as a larger parcel. Although the Harris Family Limited Partnership owns a significant amount of land in the immediate area, it was considered appropriate to value the subject based on its proration of the larger legally defined parcel as outlined herein. It is estimated there is no adverse or positive impact on surrounding land values as a result of the Conservation Easement being placed on 10 acres of the subject property adjacent to the Boise River. Thus, if analyzed, the remaining interest in the Harris Ranch project would be considered unaffected by the encumbrance on the subject parcel.

Typical Income and Cost Approaches are not applicable to the valuation of vacant land.

Finally, the presentation of this analysis is in a summary format, intended to comply with the Uniform Standards of Professional Appraisal Practice Standards Rule 2-2(b). As required by Treasury Regulations, the subject is appraised both in before and after conditions. In the before condition, the subject is valued as if unencumbered by any easements or other encumbrances as if in fee simple title. Subsequently, the subject is valued as an encumbered parcel with 10 acres of the site devoted to a Conservation Easement area for wetlands mitigation. According to city personnel, the donation was not required in order to receive potential benefits as a result of the Parkcenter Bridge crossing of the Boise River, or as a potential for density bonuses on the remaining unencumbered land areas. Thus, the appraiser is making an **extraordinary assumption** in this analysis that no density can be transferred out of the easement area, which is typically a common prohibition in conservation easements. Thus, the property will include 10 acres of encumbered land area that will be undevelopable into perpetuity.

Compliance Provision

As required by law, the appraiser is certified as a General Appraiser by the State of Idaho, CGA-7. Additionally, the appraiser has the necessary education and experience backgrounds to provide an analysis of this type.

Market Value Defined

The Treasury Regulations (at §1.170A-1(c)(2)) define market value as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion and both having reasonable knowledge of relevant facts." The appraisal of Real Estate (Eleventh edition, beginning at page 20) provides a discussion of several current definitions of market value, summarizing them as, "The most probable price in cash [or its equivalent]...for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under due duress." Other measures of value exist, such as investment value and insurable value; however, they may not be relied upon for federal tax purposes.

Implicit in the definition of Market Value are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- buyer and seller are typically motivated;
- both parties are well informed or well advised, and acting in what they consider their own best interests;
- a reasonable time is allowed for exposure in the open market;
- payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Exposure Time Defined

1. The time a property remains on the market. 2. The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market. Exposure time is always presumed to occur prior to the effective date of the appraisal. The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time but also adequate, sufficient and reasonable effort. Exposure time is different for various types of real estate and value ranges and under various market conditions. [1]

Marketing Time Defined

1. The time it takes an interest in real property to sell on the market subsequent to the date of an appraisal. 2. Reasonable marketing time is an estimate of the amount of time it might take to sell an interest in real property at its estimated market value during the period immediately after the effective date of the appraisal; the anticipated time required to expose the property to a pool of prospective purchasers and to allow appropriate time for negotiation, the exercise of due diligence, and the consummation of a sale at a price supportable by concurrent market conditions. Marketing time differs from exposure time, which is always presumed to precede the effective date of the appraisal.

Market value estimates imply that an adequate marketing effort and reasonable time for exposure occurred prior to the effective date of the appraisal. In the case of disposition value, the time frame allowed for marketing the property rights is somewhat limited, but the marketing effort is orderly and adequate. With liquidation value, the time frame for marketing the property rights is so severely limited that an adequate marketing program cannot be implemented. [2]

Exposure Time Comments

The subject is a portion of the Harris Ranch development located in southeast Boise. The Harris Ranch project has been developed over the years and still includes a significant amount of vacant land that will be accessed by the East Parkcenter route through downtown Boise. Previously, major access to the subject neighborhood has been from Warm Springs Avenue and East Boise Avenue. The subject

[1] Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Third Edition, (Chicago, Illinois, 1993), pg. 127.
[2] Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Third Edition, (Chicago, Illinois, 1993), pg. 220.

is strongly identified with the Boise River, and therefore has extremely good amenity appeal. It is therefore the appraiser's opinion that an exposure time effectively predating the date of appraisal would be from one to two years due to current market conditions.

REGIONAL AND CITY DESCRIPTION – BOISE

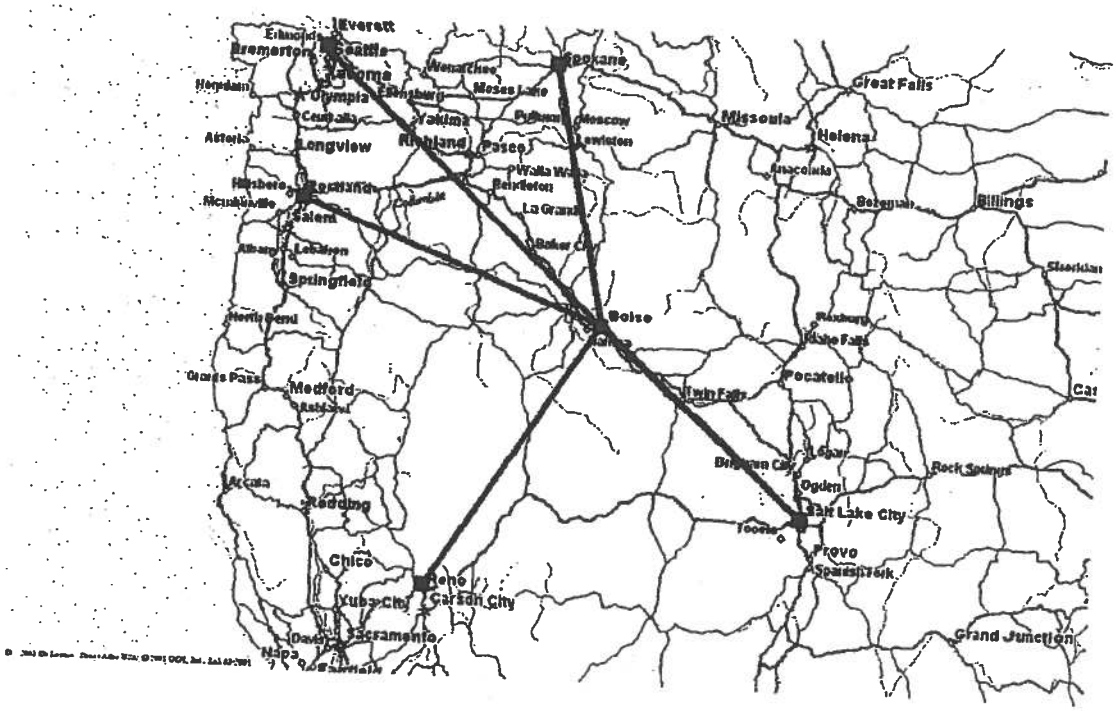
Introduction:

The general and statistical information to follow has been compiled by Mountain States Appraisal over a number of years and is periodically updated. Additional information concerning Boise, and its market surrounds can be found on the following websites among others:

1. adaweb.net
2. achd.ada.id.us
3. adacounty-realtors.com
4. state.id.us
5. boisechamber.org
6. compassidaho.org
7. boise.org
8. visitid.org

Location:

Ada County and the city of Boise are centrally located in the Pacific Northwest. Boise's relative location to other major cities:



City	Driving Distance	Flying Time
Seattle	520	1:25
Portland	430	1:10
Reno	430	1:05
Salt Lake City	340	1:00
Spokane	373	1:00

Location Description:

The subject property is located in Boise, Idaho, which is the capital for the State of Idaho and county seat for Ada County. Ada County ranks first among Idaho counties in population at 370,738 (2007), approximately one-quarter of the state total. Ada County populations has grown approximately 23% in the period between the 2000 and 2007 STDB surveys, with concurrent annual average total civilian employment growing 25.4% during the time frame.

Within Ada County is Boise, the state's capitol and largest city, with a 2007 STDB survey population of 203,529, accounting for 55% of the Ada County population. Boise has experienced 9.5% growth in population between the 2000 and 2007 figures.

The growth Boise has enjoyed results from its broad employment base. The economy of the area has not experienced the economic fluctuations impacting many other regions in the state or the nation. Boise is headquarters for a number of major corporations, the state capital, and a regional trade center for Southwest Idaho, Eastern Oregon, and Northern Nevada. Boise's status as the state's administrative center will continue to reap economic benefits from new development throughout the state. Boise has ranked within the top five on the Forbes List of Best Places for Business and Careers for the fourth year in a row.

The long-term economic outlook for Ada County appears positive. The area has good future growth potential attributed to the availability of reasonably priced land, housing costs below the national average, an abundance of water for irrigation and recreational use, the high quality of living available. Development of the downtown area, a regional shopping center, and other large commercial projects have provided a substantial boost to the local economy in the form of construction jobs and permanent employment. As a result, the strength and performance of the local economy in Ada County represent the vector for population growth and economic expansion in Idaho.

Historical populations and forecasts of the projected growth by Site To Do Business Online are reprinted in the following tables. The charts illustrate the expectation of continued growth for the foreseeable future.

Population:

Ada County Demographic Profile

Summary	2000	2007	2012
Population	300,904	370,738	428,133
Households	113,408	142,723	166,855
Families	77,361	96,055	110,391
Average Household Size	2.59	2.54	2.53
Owner Occupied HUs	80,135	103,263	120,347
Renter Occupied HUs	33,273	39,460	45,508
Median Age	32.8	33.9	34.3

Trends: 2007-2012 Annual Rate	Area	National
Population	2.92%	1.22%
Households	3.05%	1.27%
Families	2.82%	1.00%
Owner HHs	3.11%	1.29%
Median Household Income	4.22%	3.29%

Boise City Demographic Profile

Summary	2000	2007	2012
Population	185,787	203,529	224,190
Households	74,438	84,370	93,957
Families	46,493	50,663	55,163
Average Household Size	2.44	2.36	2.33
Owner Occupied HUs	47,638	54,542	60,346
Renter Occupied HUs	26,800	29,828	33,611
Median Age	32.9	34.1	34.7

Trends: 2007-2012 Annual Rate	Area	National
Population	1.95%	1.22%
Households	2.18%	1.27%
Families	1.71%	1.00%
Owner HHs	2.04%	1.29%
Median Household Income	3.98%	3.29%

NEIGHBORHOOD DESCRIPTION

The subject can be generally defined as the Harris Ranch complex. This includes single-family and PUD types of improvements located northerly and adjacent to the larger parcel. Other land areas located westerly of Eckert Road are being held for future development. The East Parkcenter Bridge is currently being constructed, crossing the Boise River at the termination of Parkcenter Boulevard. When this bridge is completed, enhanced transportation capabilities will be evident in the immediate neighborhood.

On a retrospective basis, the Parkcenter Bridge had been in the planning process as of the effective dates of appraisal. Continuing development in the Harris Ranch complex was contingent upon completion of this infrastructure improvement.

The neighborhood has continually exhibited strong marketing characteristics and has experienced increasing residential values as well as fairly rapid absorption.

As with much of Southeast Boise, the Harris Ranch properties typically command higher than average prices for single-family properties.

The neighborhood is served by central water, sewer, electricity, natural gas and telephone services. Continuation of development into the undeveloped site areas of the ownership will be enhanced by the extension of the proposed Parkcenter Bridge.

Overall, the neighborhood is considered to be highly desirable and appealing, and very marketable for residential and other mixed uses such as limited commercial and office uses.

Market Profile - Appraisal Version

Eckert
Latitude: 43.565046
Longitude: -116.129874

	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
1990 Total Population	1,471	13,672	39,749
2000 Total Population	3,716	23,540	53,250
2000 Group Quarters	3	33	1,037
2000 Population Density	44.5	86.1	173.1
2007 Total Population	4,269	25,840	57,517
2007 Population Density	51.1	94.5	187.0
2012 Total Population	4,788	28,530	62,945
2007 - 2012 Annual Rate	2.32%	2%	1.82%
1990 Households	535	5,077	16,038
2000 Households	1,314	9,079	21,952
2000 Average Household Size	2.63	2.59	2.38
2007 Households	1,564	10,363	24,601
2007 Average Household Size	2.73	2.49	2.29
2012 Households	1,770	11,557	27,248
2012 Average Household Size	2.7	2.47	2.26
2007 - 2012 Annual Rate	2.51%	2.2%	2.06%
2000 Families	965	6,322	13,216
2000 Average Family Size	3.28	3.09	2.97
2007 Families	1,106	6,915	14,057
2007 Average Family Size	3.2	3.01	2.89
2012 Families	1,226	7,530	15,124
2012 Average Family Size	3.18	2.99	2.86
2007 - 2012 Annual Rate	2.08%	1.72%	1.47%
2000 Housing Units	1,417	9,537	23,078
Owner Occupied Housing Units	77.2%	72.5%	59.1%
Renter Occupied Housing Units	16.4%	22.5%	35.9%
Vacant Housing Units	6.5%	5.0%	5.0%
2007 Housing Units	1,704	10,986	26,096
Owner Occupied Housing Units	75.9%	72.1%	58.9%
Renter Occupied Housing Units	15.9%	22.2%	35.3%
Vacant Housing Units	8.2%	5.7%	5.7%
2012 Housing Units	1,911	12,180	28,737
Owner Occupied Housing Units	76.3%	72.3%	58.8%
Renter Occupied Housing Units	16.3%	22.5%	36.0%
Vacant Housing Units	7.4%	5.1%	5.2%
Median Household Income			
1990	$39,255	$41,426	$29,873
2000	$60,146	$58,074	$44,100
2007	$80,920	$77,905	$58,313
2012	$103,944	$98,971	$71,582
Median Home Value			
1990	$86,506	$85,293	$70,378
2000	$136,341	$136,300	$122,753
2007	$240,441	$244,851	$224,136
2012	$295,139	$297,050	$266,128
Per Capita Income			
1990	$18,961	$17,929	$15,651
2000	$28,215	$29,083	$25,073
2007	$41,543	$41,197	$34,614
2012	$56,073	$54,540	$44,782
Median Age			
1990	33.3	31.7	30.8
2000	32.8	33.2	31.6
2007	35.3	35.5	33.2
2012	36.5	36.4	34.2

Data Note: Household population includes persons not residing in group quarters. Average Household Size is the household population divided by total households. Persons in families include the householder and persons related to the householder by birth, marriage, or adoption. Per Capita Income represents the income received by all persons aged 15 years and over divided by total population. Detail may not sum to totals due to rounding.

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing. ESRI forecasts for 2007 and 2012. ESRI converted 1990 Census data into 2000 geography.

Market Profile - Appraisal Version

Eckert
Latitude: 43.565046
Longitude: -116.129074

	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
2000 Households by Income			
Household Income Base	1,285	9,034	21,947
< $15,000	3.9%	5.9%	11.4%
$15,000 - $24,999	7.9%	9.4%	14.3%
$25,000 - $34,999	8.5%	8.9%	12.7%
$35,000 - $49,999	18.5%	17.2%	17.7%
$50,000 - $74,999	26.1%	23.1%	19.5%
$75,000 - $99,999	16.1%	15.4%	11.2%
$100,000 - $149,999	11.5%	12.5%	8.3%
$150,000 - $199,999	3.3%	3.1%	2.2%
$200,000+	4.3%	4.3%	2.8%
Average Household Income	$75,049	$75,157	$60,160
2007 Households by Income			
Household Income Base	1,562	10,363	24,602
< $15,000	2.0%	3.1%	7.7%
$15,000 - $24,999	4.1%	5.4%	9.1%
$25,000 - $34,999	6.0%	7.2%	10.6%
$35,000 - $49,999	10.3%	11.8%	15.0%
$50,000 - $74,999	22.0%	19.9%	19.3%
$75,000 - $99,999	18.5%	17.0%	14.1%
$100,000 - $149,999	21.6%	20.2%	14.0%
$150,000 - $199,999	7.7%	8.1%	5.1%
$200,000+	7.8%	7.3%	4.8%
Average Household Income	$105,226	$102,004	$80,096
2012 Households by Income			
Household Income Base	1,772	11,558	27,249
< $15,000	1.5%	2.3%	6.1%
$15,000 - $24,999	2.3%	3.6%	6.2%
$25,000 - $34,999	4.0%	5.2%	9.1%
$35,000 - $49,999	7.0%	8.2%	12.2%
$50,000 - $74,999	16.0%	16.5%	18.3%
$75,000 - $99,999	16.3%	14.8%	13.1%
$100,000 - $149,999	27.4%	25.7%	19.5%
$150,000 - $199,999	11.7%	10.7%	6.9%
$200,000+	13.8%	13.2%	8.5%
Average Household Income	$140,262	$133,601	$102,600
2000 Owner Occupied HUs by Value			
Total	1,067	6,897	13,601
<$50,000	6.1%	3.8%	4.4%
$50,000 - 99,999	13.2%	15.2%	26.5%
$100,000 - 149,999	38.4%	39.8%	35.4%
$150,000 - 199,999	18.7%	18.3%	15.3%
$200,000 - $299,999	15.7%	15.9%	12.6%
$300,000 - 499,999	5.6%	5.4%	4.4%
$500,000 - 999,999	2.2%	1.6%	1.3%
$1,000,000+	0.2%	0.1%	0.1%
Average Home Value	$169,291	$166,231	$150,398
2000 Specified Renter Occupied HUs by Contract Rent			
Total	239	2,155	8,321
With Cash Rent	95.8%	97.6%	98.6%
No Cash Rent	4.2%	2.4%	1.4%
Median Rent	$783	$697	$557
Average Rent	$810	$743	$589

Data Note: Income represents the preceding year, expressed in current dollars. Household income includes wage and salary earnings, interest, dividends, net rents, pensions, SSI and welfare payments, child support and alimony. Specified Renter Occupied HUs exclude houses on 10+ acres. Average Rent excludes units paying no cash rent.

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing. ESRI forecasts for 2007 and 2012.

Market Profile - Appraisal Version

Eckert
Latitude: 43.565046
Longitude: -116.129074

	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
2000 Population by Age			
Total	3,712	23,543	53,250
0 - 4	8.5%	7.5%	6.9%
5 - 9	8.9%	8.3%	6.8%
10 - 14	8.5%	8.3%	6.6%
15 - 19	5.9%	7.0%	7.8%
20 - 24	4.8%	5.6%	10.1%
25 - 34	17.6%	16.5%	17.4%
35 - 44	19.1%	18.3%	15.9%
45 - 54	13.8%	15.2%	13.7%
55 - 64	6.1%	6.6%	6.5%
65 - 74	3.6%	3.6%	4.1%
75 - 84	2.2%	2.3%	3.1%
85+	0.8%	0.7%	1.0%
18+	70.0%	71.1%	75.7%
2007 Population by Age			
Total	4,267	25,842	57,518
0 - 4	8.3%	7.4%	6.8%
5 - 9	8.5%	7.4%	6.2%
10 - 14	8.0%	7.5%	6.2%
15 - 19	6.8%	6.7%	7.1%
20 - 24	3.8%	5.5%	8.9%
25 - 34	14.1%	14.6%	17.5%
35 - 44	19.6%	17.3%	14.7%
45 - 54	15.2%	16.2%	14.4%
55 - 64	8.7%	10.1%	9.6%
65 - 74	3.6%	3.8%	4.2%
75 - 84	2.4%	2.5%	2.9%
85+	1.0%	1.0%	1.3%
18+	70.6%	73.3%	77.2%
2012 Population by Age			
Total	4,790	28,533	62,948
0 - 4	8.3%	7.5%	6.8%
5 - 9	7.9%	7.2%	6.1%
10 - 14	8.3%	7.3%	6.1%
15 - 19	6.5%	6.5%	7.0%
20 - 24	4.8%	5.5%	8.9%
25 - 34	11.8%	14.0%	16.5%
35 - 44	17.9%	16.4%	14.6%
45 - 54	16.9%	16.0%	13.8%
55 - 64	9.9%	11.5%	11.1%
65 - 74	4.2%	4.7%	5.0%
75 - 84	2.2%	2.2%	2.6%
85+	1.3%	1.3%	1.5%
18+	71.2%	73.9%	77.6%
2000 Population by Sex			
Males	50.3%	49.5%	49.6%
Females	49.7%	50.5%	50.4%
2007 Population by Sex			
Males	50.0%	49.3%	49.5%
Females	50.0%	50.7%	50.5%
2012 Population by Sex			
Males	50.0%	49.2%	49.5%
Females	50.0%	50.8%	50.5%

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing. ESRI forecasts for 2007 and 2012.

Market Profile - Appraisal Version

Eckert
Latitude: 43.565046
Longitude: -116.128074

	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
2000 Population 15+ by Sex and Marital Status			
Total	2,734	17,957	42,562
Females	50.3%	51.0%	50.8%
Never Married	9.3%	10.1%	13.3%
Married, not Separated	32.0%	30.1%	25.1%
Married, Separated	0.1%	0.3%	0.6%
Widowed	2.4%	2.8%	3.2%
Divorced	5.9%	7.2%	7.8%
Males	49.7%	49.0%	49.2%
Never Married	11.1%	12.9%	17.2%
Married, not Separated	32.3%	29.9%	24.7%
Married, Separated	0.3%	0.3%	0.4%
Widowed	0.4%	0.4%	0.6%
Divorced	4.9%	5.0%	5.5%
2000 Population 16+ by Employment Status			
Total	2,679	17,562	41,819
In Labor Force	77.8%	76.7%	75.6%
Civilian Employed	73.0%	72.5%	71.5%
Civilian Unemployed	3.1%	3.0%	3.4%
In Armed Forces	1.6%	1.2%	0.7%
Not in Labor Force	22.2%	23.3%	24.4%
2007 Civilian Population 16+ in Labor Force			
Civilian Employed	97.2%	97.2%	97.0%
Civilian Unemployed	2.8%	2.8%	3.0%
2012 Civilian Population 16+ in Labor Force			
Civilian Employed	97.4%	97.4%	97.1%
Civilian Unemployed	2.6%	2.6%	2.9%
2000 Females 16+ by Employment Status and Age of Children			
Total	1,353	8,998	21,269
Own Children < 6 Only	11.3%	9.6%	9.1%
Employed/in Armed Forces	6.6%	5.8%	5.4%
Unemployed	0.4%	0.3%	0.5%
Not in Labor Force	4.4%	3.7%	3.3%
Own Children < 6 and 6-17 Only	8.9%	7.3%	5.3%
Employed/in Armed Forces	6.1%	4.7%	3.7%
Unemployed	0.0%	0.1%	0.0%
Not in Labor Force	2.7%	2.6%	1.6%
Own Children 6-17 Only	22.2%	22.5%	17.5%
Employed/in Armed Forces	17.1%	17.3%	13.2%
Unemployed	0.2%	0.4%	0.4%
Not in Labor Force	4.9%	4.8%	3.9%
No Own Children < 18	57.6%	60.3%	68.0%
Employed/in Armed Forces	37.3%	38.3%	43.7%
Unemployed	1.7%	1.5%	1.8%
Not in Labor Force	18.6%	20.5%	22.6%

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing. ESRI forecasts for 2007 and 2012.

Market Profile - Appraisal Version

Eckert
Latitude: 43.585046
Longitude: -116.129074

	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
2007 Employed Population 16+ by Industry			
Total	2,292	14,252	32,631
Agriculture/Mining	1.0%	0.8%	1.0%
Construction	6.3%	6.1%	6.4%
Manufacturing	16.1%	14.1%	11.5%
Wholesale Trade	3.5%	3.4%	3.1%
Retail Trade	11.3%	11.0%	11.7%
Transportation/Utilities	4.2%	3.7%	3.8%
Information	1.7%	1.9%	2.0%
Finance/Insurance/Real Estate	10.3%	10.2%	9.0%
Services	38.4%	41.1%	44.9%
Public Administration	7.2%	7.6%	6.6%
2007 Employed Population 16+ by Occupation			
Total	2,291	14,253	32,631
White Collar	75.3%	76.0%	70.3%
Management/Business/Financial	22.4%	22.0%	16.7%
Professional	28.8%	28.3%	26.3%
Sales	11.4%	11.9%	11.6%
Administrative Support	12.7%	13.9%	15.8%
Services	10.7%	11.6%	15.0%
Blue Collar	14.1%	12.3%	14.7%
Farming/Forestry/Fishing	0.2%	0.2%	0.4%
Construction/Extraction	3.7%	3.2%	4.2%
Installation/Maintenance/Repair	2.5%	2.5%	2.4%
Production	4.4%	3.7%	4.2%
Transportation/Material Moving	3.2%	2.8%	3.6%
2000 Workers 16+ by Means of Transportation to Work			
Total	1,979	12,812	29,842
Drove Alone - Car, Truck, or Van	83.3%	84.1%	80.2%
Carpooled - Car, Truck, or Van	9.8%	8.6%	9.6%
Public Transportation	0.5%	0.8%	1.3%
Walked	0.8%	1.0%	2.7%
Other Means	1.5%	1.4%	2.5%
Worked at Home	4.1%	4.1%	3.7%
2000 Workers 16+ by Travel Time to Work			
Total	1,980	12,811	29,842
Did Not Work at Home	95.9%	95.9%	96.3%
Less than 5 minutes	2.6%	2.5%	3.2%
5 to 9 minutes	12.3%	12.4%	13.9%
10 to 19 minutes	44.7%	49.4%	48.5%
20 to 24 minutes	16.6%	15.9%	15.3%
25 to 34 minutes	12.7%	9.9%	10.0%
35 to 44 minutes	2.0%	1.6%	1.3%
45 to 59 minutes	2.3%	1.9%	1.6%
60 to 89 minutes	1.2%	1.0%	1.4%
90 or more minutes	1.6%	1.1%	1.2%
Worked at Home	4.1%	4.1%	3.7%
Average Travel Time to Work (in min)	19.1	17.6	17.5
2000 Households by Vehicles Available			
Total	1,314	9,075	21,950
None	3.5%	3.6%	5.3%
1	24.0%	28.4%	34.5%
2	50.8%	47.1%	41.7%
3	16.1%	15.8%	13.8%
4	4.6%	4.3%	3.7%
5+	1.0%	0.8%	1.0%
Average Number of Vehicles Available	2.0	1.9	1.8

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing. ESRI forecasts for 2007.

Market Profile - Appraisal Version

Eckert
Latitude: 43.565046
Longitude: -116.129074

	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
2000 Households by Type			
Total	1,314	9,078	21,951
Family Households	73.4%	69.6%	60.2%
Married-couple Family	63.5%	58.1%	47.0%
With Related Children	35.6%	31.8%	23.3%
Other Family (No Spouse)	10.0%	11.5%	13.2%
With Related Children	7.5%	8.6%	9.2%
Nonfamily Households	26.6%	30.4%	39.8%
Householder Living Alone	19.5%	23.1%	28.6%
Householder Not Living Alone	7.1%	7.3%	11.2%
Households with Related Children	43.1%	40.5%	32.5%
Households with Persons 65+	13.2%	12.9%	14.8%
2000 Households by Size			
Total	1,314	9,079	21,952
1 Person Household	19.5%	23.1%	28.6%
2 Person Household	33.9%	33.6%	35.2%
3 Person Household	17.7%	17.5%	16.0%
4 Person Household	16.8%	17.0%	13.0%
5 Person Household	7.1%	6.3%	4.9%
6 Person Household	2.1%	1.7%	1.4%
7+ Person Household	0.9%	0.8%	0.8%
2000 Households by Year Householder Moved In			
Total	1,314	9,074	21,950
Moved in 1999 to March 2000	26.1%	24.6%	29.2%
Moved in 1995 to 1998	42.9%	38.8%	33.7%
Moved in 1990 to 1994	18.7%	19.7%	15.8%
Moved in 1980 to 1989	8.1%	12.1%	11.4%
Moved in 1970 to 1979	3.9%	3.5%	5.5%
Moved in 1969 or Earlier	0.3%	1.3%	4.5%
Median Year Householder Moved In	1997	1996	1997
2000 Housing Units by Units in Structure			
Total	1,405	9,553	23,106
1, Detached	71.3%	68.6%	60.7%
1, Attached	4.7%	7.8%	7.5%
2	1.1%	1.7%	4.6%
3 or 4	2.1%	3.3%	5.1%
5 to 9	3.4%	4.6%	4.6%
10 to 19	3.3%	4.2%	4.9%
20+	2.8%	4.6%	8.1%
Mobile Home	11.0%	5.0%	4.4%
Other	0.2%	0.1%	0.2%
2000 Housing Units by Year Structure Built			
Total	1,417	9,534	23,079
1999 to March 2000	8.6%	4.6%	2.7%
1995 to 1998	29.1%	18.3%	11.9%
1990 to 1994	26.0%	24.7%	15.2%
1980 to 1989	16.6%	24.3%	16.8%
1970 to 1979	15.9%	21.7%	23.1%
1969 or Earlier	3.7%	6.3%	30.3%
Median Year Structure Built	1993	1989	1979

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing.

Market Profile - Appraisal Version

Eckert
Latitude: 43.585046
Longitude: -116.129074

2000 Population 3+ by School Enrollment	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
Total	3,513	22,437	51,024
Enrolled in Nursery/Preschool	2.1%	1.8%	1.4%
Enrolled in Kindergarten	1.9%	1.5%	1.2%
Enrolled in Grade 1-8	15.1%	14.1%	11.6%
Enrolled in Grade 9-12	5.5%	6.7%	5.5%
Enrolled in College	4.3%	5.0%	9.1%
Enrolled in Grad/Prof School	1.4%	1.6%	1.5%
Not Enrolled in School	69.8%	69.2%	69.6%
2000 Population 25+ by Educational Attainment			
Total	2,325	14,917	32,929
Less than 9th Grade	1.1%	0.9%	1.6%
9th - 12th Grade, No Diploma	2.8%	3.1%	5.6%
High School Graduate	15.8%	14.9%	17.6%
Some College, No Degree	28.1%	27.8%	29.4%
Associate Degree	7.7%	6.9%	6.2%
Bachelor's Degree	31.8%	32.3%	26.9%
Master's/Prof/Doctorate Degree	12.7%	14.0%	12.7%

Source: U.S. Bureau of the Census, 2000 Census of Population and Housing. ESRI forecasts for 2007.

Market Profile - Appraisal Version

Eckert
Latitude: 43.565046
Longitude: -116.129074

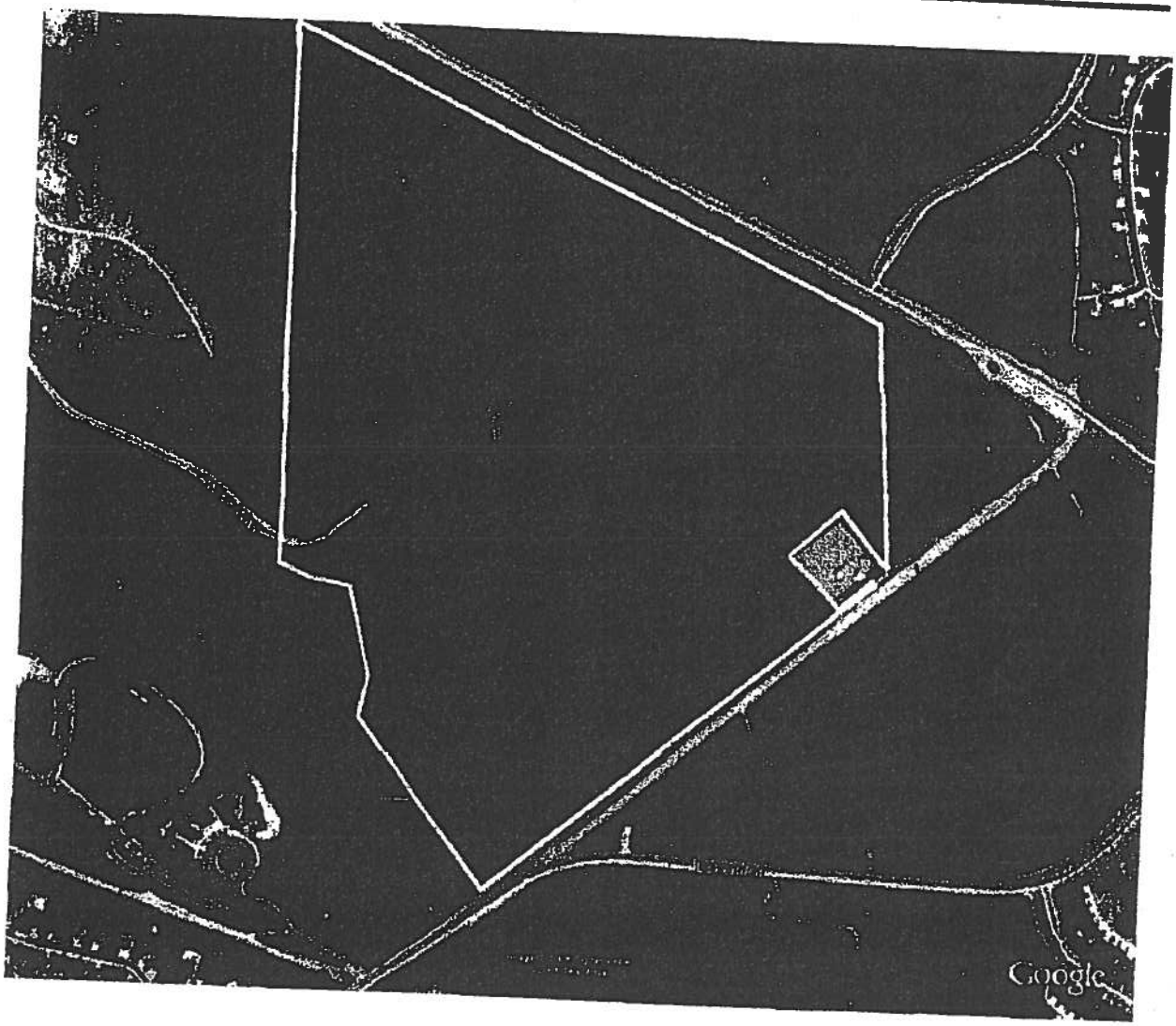
	Radius: 1.0 mile	Radius: 3.0 mile	Radius: 5.0 mile
Top 3 Tapestry Segments			
1.	Up and Coming Families	In Style	In Style
2.	In Style	Up and Coming Families	Up and Coming Families
3.	Exurbanites	Milk and Cookies	Aspiring Young Familie

2007 Consumer Spending shows the amount spent on a variety of goods and services by households that reside in the market area. Expenditures are shown by broad budget categories that are not mutually exclusive. Consumer spending does not equal business revenue.

Apparel & Services: Total $	$5,509,496	$35,892,850	$68,639,118
Average Spent	$3,522.70	$3,463.56	$2,790.09
Spending Potential Index	128	126	101
Computers & Accessories: Total $	$575,881	$3,721,663	$7,237,485
Average Spent	$368.21	$359.13	$294.19
Spending Potential Index	148	144	118
Education: Total $	$2,813,006	$18,412,833	$40,167,590
Average Spent	$1,798.60	$1,776.79	$1,632.76
Spending Potential Index	140	138	127
Entertainment/Recreation: Total $	$7,792,201	$49,675,362	$91,846,012
Average Spent	$4,982.23	$4,793.53	$3,733.43
Spending Potential Index	145	140	109
Food at Home: Total $	$10,638,840	$69,407,198	$133,534,891
Average Spent	$6,802.33	$6,697.60	$5,426.03
Spending Potential Index	135	133	108
Food Away from Home: Total $	$7,436,898	$48,400,636	$93,465,363
Average Spent	$4,755.05	$4,670.52	$3,799.25
Spending Potential Index	140	138	112
Health Care: Total $	$8,151,866	$52,089,963	$98,174,107
Average Spent	$5,212.19	$5,026.53	$3,990.66
Spending Potential Index	133	129	102
HH Furnishings & Equipment: Total $	$5,128,666	$32,527,285	$59,137,376
Average Spent	$3,279.20	$3,138.79	$2,403.86
Spending Potential Index	145	139	106
Investments: Total $	$3,642,000	$22,633,368	$40,335,273
Average Spent	$2,328.64	$2,184.06	$1,639.58
Spending Potential Index	156	146	110
Retail Goods: Total $	$57,476,594	$369,784,237	$696,014,186
Average Spent	$36,749.74	$35,683.13	$28,292.11
Spending Potential Index	139	135	107
Shelter: Total $	$34,613,546	$223,280,824	$414,056,411
Average Spent	$22,131.42	$21,545.96	$16,830.88
Spending Potential Index	147	143	112
TV/Video/Sound Equipment: Total $	$2,532,237	$16,478,505	$31,961,285
Average Spent	$1,619.08	$1,590.13	$1,299.19
Spending Potential Index	139	137	112
Travel: Total $	$4,283,078	$27,135,760	$49,874,853
Average Spent	$2,738.54	$2,618.52	$2,027.35
Spending Potential Index	148	142	110
Vehicle Maintenance & Repairs: Total $	$2,393,661	$15,420,419	$29,089,045
Average Spent	$1,530.47	$1,488.03	$1,182.43
Spending Potential Index	144	140	111

Data Note: The Spending Potential Index represents the amount spent in the area relative to a national average of 100.

Source: Expenditure data are derived from the 2002, 2003 and 2004 Consumer Expenditure Surveys, Bureau of Labor Statistics.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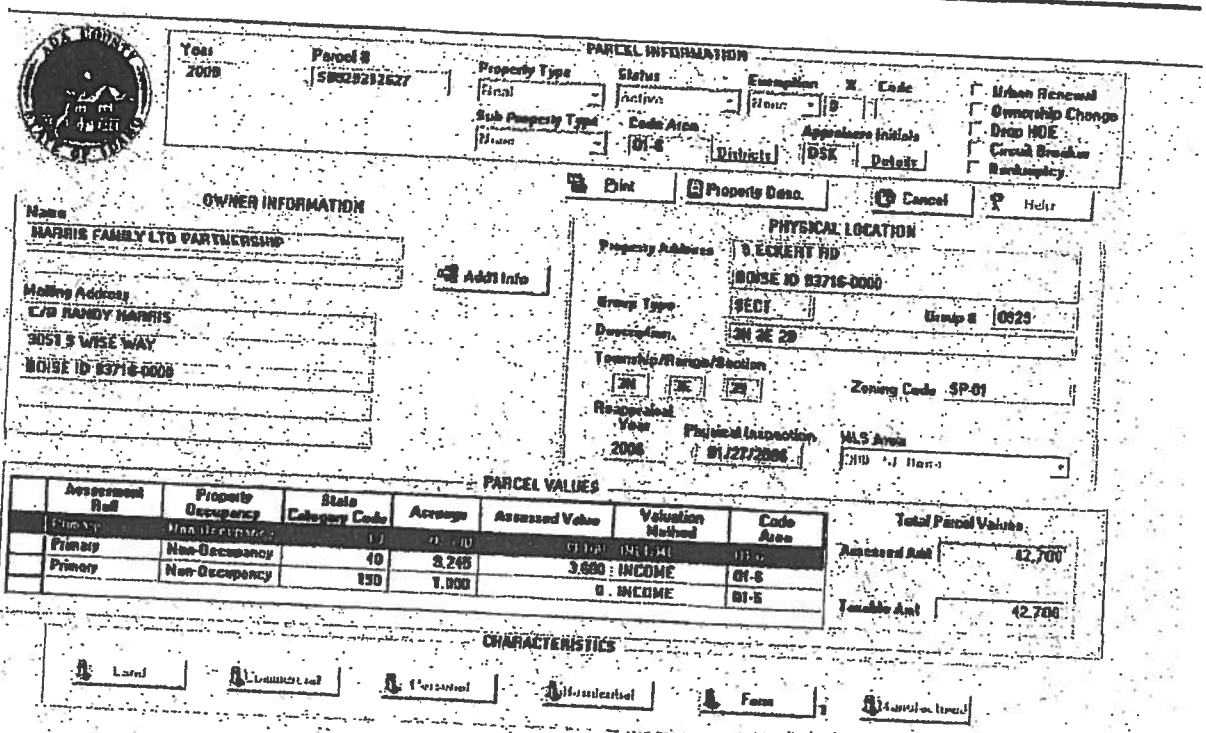
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Parcel #
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Status
Active
Exemption
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Code
Code Area
01-6
Appraiser Initials
DSK
Urban Renewal
Ownership Change
Drop HOE
Circuit Breaker
Bankruptcy
Print
Property Desc.
Cancel
Help
OWNER INFORMATION
Name
HARRIS FAMILY LTD PARTNERSHIP
Addl Info
Mailing Address
C/O RANDY HARRIS
3051 S WISE WAY
BOISE ID 83716-0008
PHYSICAL LOCATION
Property Address
0 ECKERT RD
BOISE ID 83716-0000
Group Type
SECT
Group #
0029
Description
3N 3E 29
Township/Range/Section
3N
3E
29
Zoning Code
SP-01
Reappraisal Year
2008
Physical Inspection
01/27/2006
MLS Area
PARCEL VALUES
Assessment Roll
Property Occupancy
State Category Code
Acreage
Assessed Value
Valuation Method
Code Area
Primary
Non-Occupancy
40
9.245
3,680
INCOME
01-6
Primary
Non-Occupancy
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0
INCOME
01-5
Total Parcel Values
Assessed Amt
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Taxable Amt
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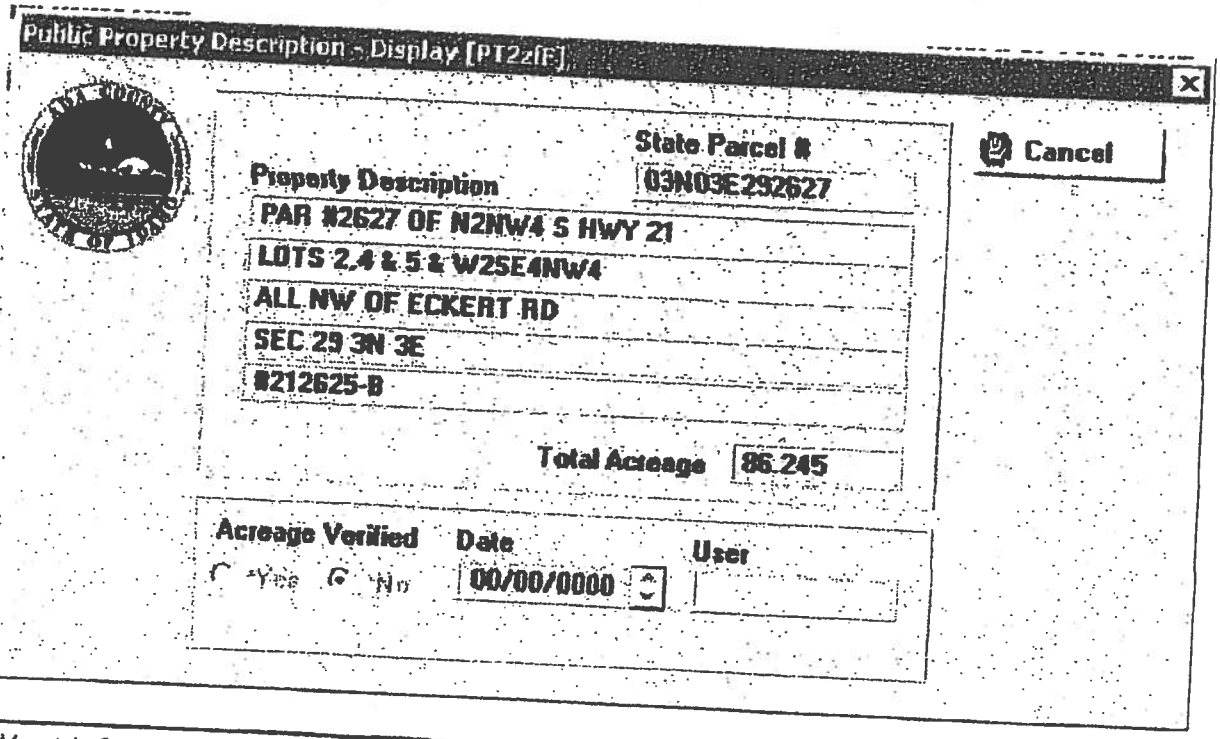
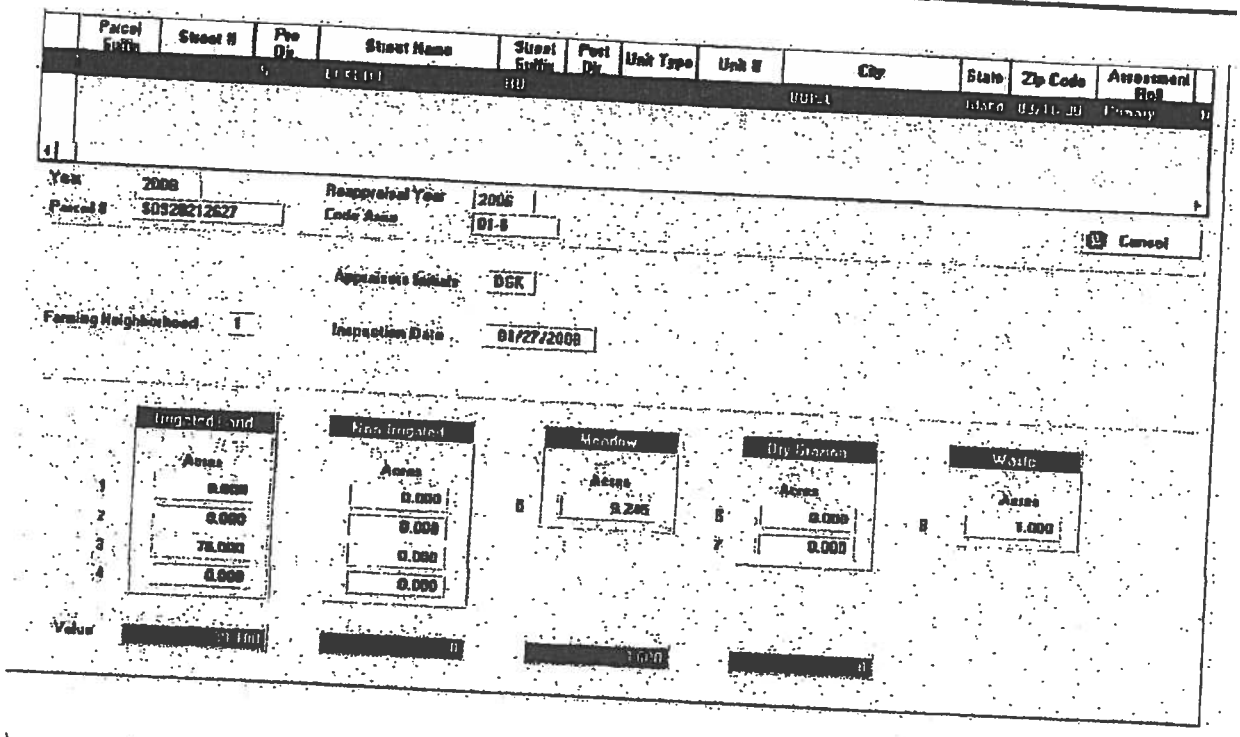
CHARACTERISTICS
Land
Farm


Public Property Description - Display [PT2zfE]
State Parcel #
03N03E292627
Property Description
PAR #2627 OF N2NW4 S HWY 21
LOTS 2,4 & 5 & W2SE4NW4
ALL NW OF ECKERT RD
SEC 29 3N 3E
#212625-B
Total Acreage
86.245
Cancel
Acreage Verified
Yes
No
Date
00/00/0000
User

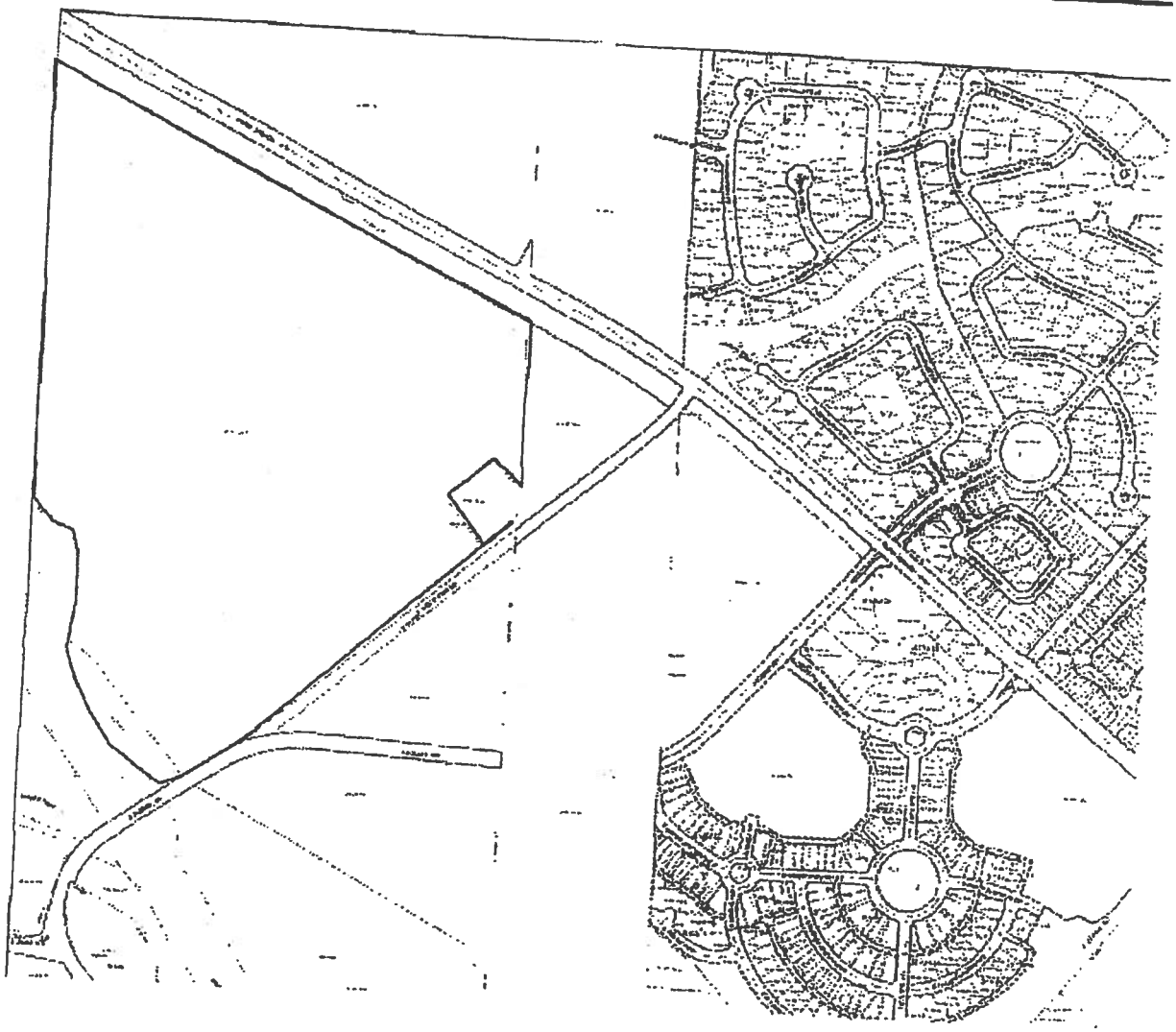


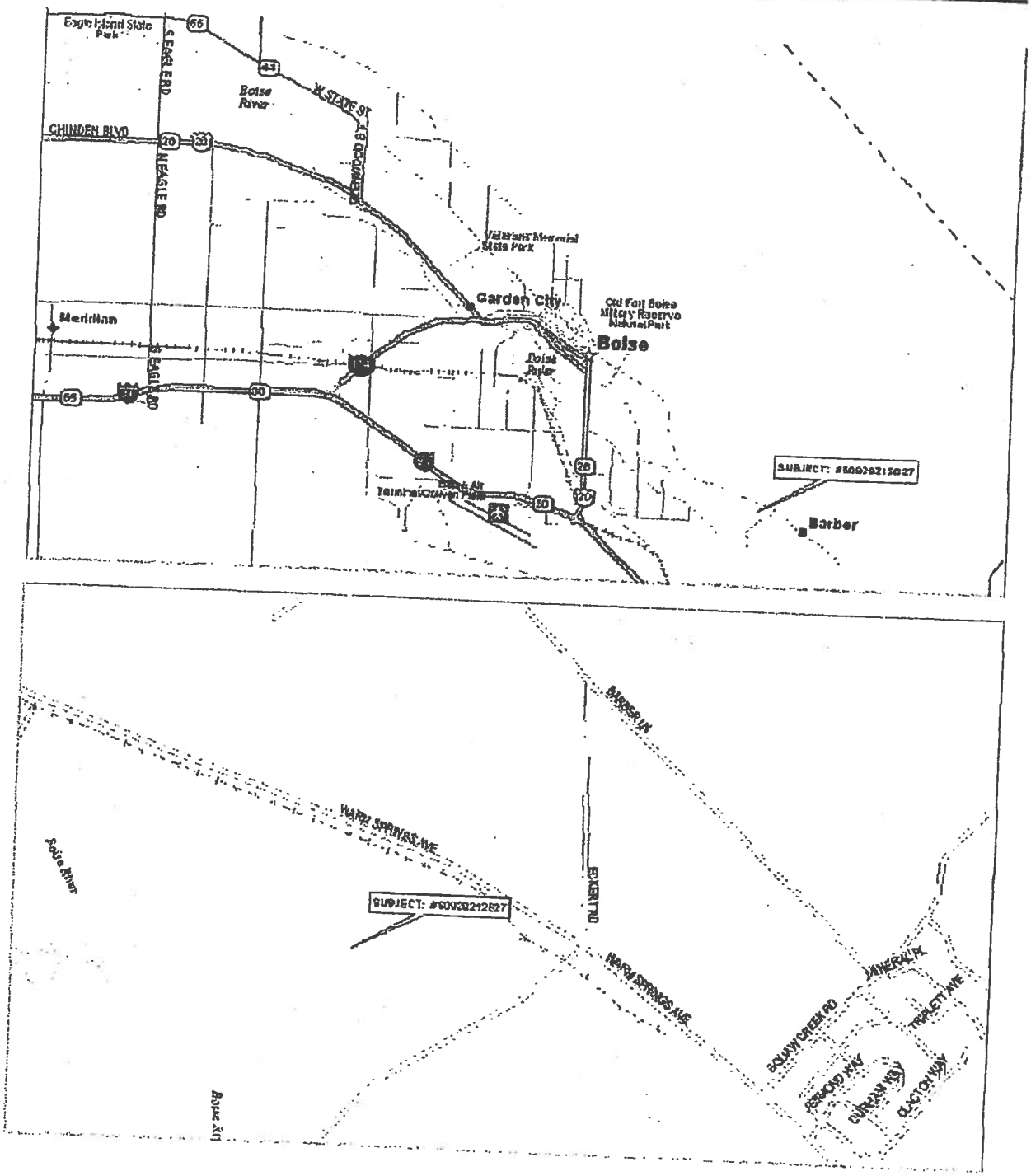
Tax Summary | Public Pre-Paid

Charge Summary

Year	Assessment Roll	Date Due	Total Payments	Tax Charge	Tax Payment	Tax Adjustment	Cert Charge	Cert Payment	Cert Adjustment
2007	Primary	12/20/2007	-719.66	719.66	-719.66	0.00	0.00	0.00	0.00
2006	Primary	12/20/2006	-1202.40	1202.40	-1202.40	0.00	0.00	0.00	0.00

Instrument #	Parcel #	Grantor	Grantee	Action Type	Action Code	Transaction Date	Effective Date
105032726	S0529212627	ALLIANCE TITLE & ESCR	IDAHO POWER CO	Split	Target	4/21/2006	3/18/2005
105017196	S0529212627	ALLIANCE TITLE & ESCR	HARRIS FAMILY LTD PTNRS	No Action	No Action	1/9/2006	2/11/2005
104051906	S0529212627	ALLIANCE TITLE & ESCR	HARRIS FAMILY LTD PTNRS	No Action	No Action	1/3/2006	4/29/2004




Eagle Island State Park
S EAGLE RD
Boise River
W STATE ST
CHINDEN BLVD
N EAGLE RD
Meridian
Garden City
Boise
Old Fort Boise Military Reserve National Park
Boise River
SUBJECT: #60202212827
Barber
BARBER LN
Boise River
HARRIS RANCH
SUBJECT: #60202212827
ECKERT RD
HARRIS RANCH AVE
COLONY CREEK RD
PERSHING WAY
DURHAM WAY
CLACTON WAY
Boise Arm

basin that will not be closer than 40 feet removed from the Boise River High Water Mark (6500 cfs line). Additionally, the site will provide a forest buffer along the river and will retain additional floodwaters during high flood flows, benefiting the overall river system.

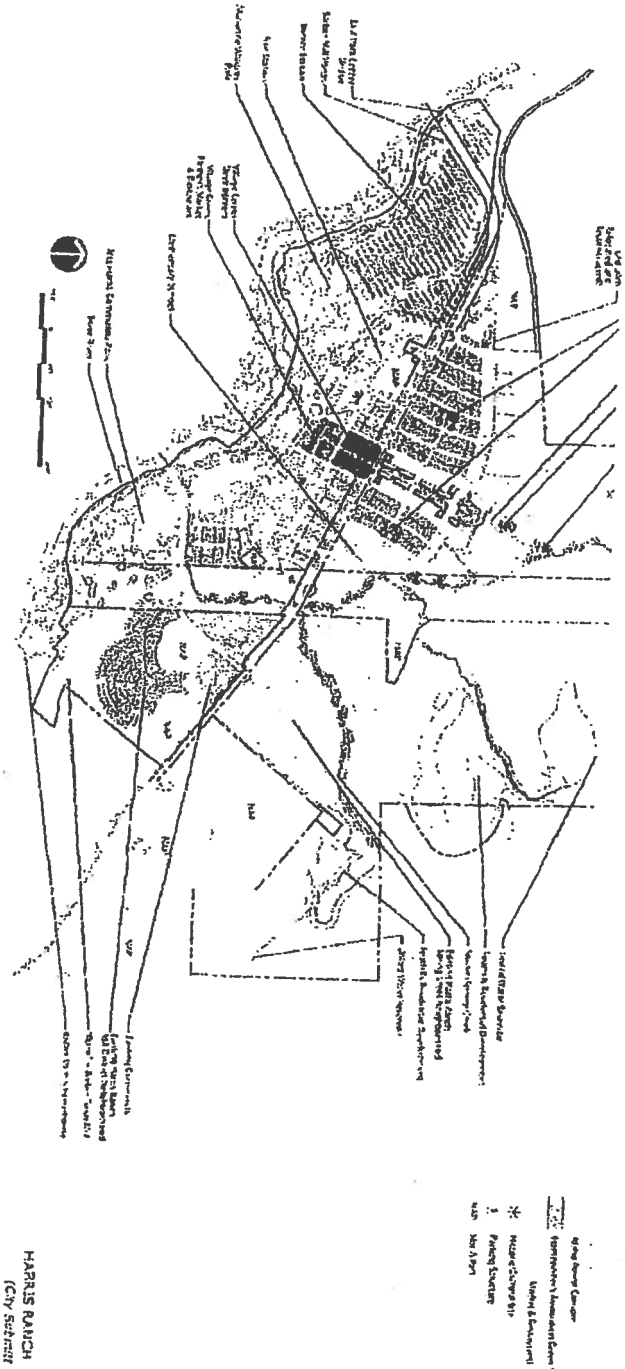
How are you mitigating the impact on the environment?
Keeping with the Harris Ranch Wildlife Mitigation Plan, this site will replace wetlands impacted by the construction of the East ParkCenter Bridge by creating a ten-acre area of habitat to replace the 2.4 acres that will be disturbed during future construction. Existing pastureland will be converted to an expansive wetland. The wetland will enhance the existing wildlife habitat in the area, provide additional floodwater retention, groundwater recharge and filter surface water. The wetland will also provide a buffer zone for the Boise River and be protected in perpetuity with a conservation easement.

Who is paying for this?
Harris Ranch donated the 10 acre parcel valued at three million dollars and ACHD is paying for the construction of the mitigation site. The Wetlands Group, LLC is responsible for the design, construction, and performance of the wetland.

When will the project be complete?
The construction phase of the wetland mitigation site was completed in January 2008. The site is scheduled to be fully planted by May 2008 with optimum river flows. This planting schedule may be adjusted depending on river flows and in that case will be completed by mid summer. After the site is planted, it will be maintained and monitored until performance standards for vegetation, soil and hydrology have been met. Once the standards are met, the wetland will be considered self-sustaining and the project complete.

What will this area look like once the project is complete?
Once the area has been complete, a stroll down the Dallas Harris Legacy pathway will lead you along a diverse riparian wetland area with plant communities very similar to those historically found along the Boise River. Cottonwood trees will line the outer basin rim, while the shrub layer located just inside the cottonwoods will consist of willows, alders and dogwoods. Grasses, sedges and rushes will dominate the center of the wetland, also known as the herbaceous emergent zone. The end result will be an expansive area of habitat that will attract a wider variety and number of local wildlife, as the site will offer greater structural diversity than the current habitat area.

Phone: 208.344.1131, Fax: 208.344.1148
Harris Ranch 4210 E. Mill Station Rd, Suite 101-A, Boise, Idaho 83716


HARRIS RANCH
(City Services)

HIGHEST AND BEST USE

Defined

A definition of highest and best use is: "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."

More specifically, the highest and best use of land or a site as though vacant is: "Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements."

The highest and best use of a property as improved is: "The use that should be made of a property as it exists. An existing property should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one." [3]

Analysis

Based on the subject's development plan, the zoning will allow for a mixed use development on the subject and adjacent parcels. The subject was approved as a mixed use project by the City of Boise, and is zoned accordingly. Thus, the development plan for the project is paramount to the zoning. The subject would therefore have multiple highest and best uses at the point of development ranging from single-family uses to more intensively developed commercial and retail uses.

It is therefore the appraiser's conclusion that the highest and best use of the subject in the before condition would be for a mixed use development consistent with the development plan outlined herein. Additionally, in the after condition, the subject would also hold a highest and best use of being a mixed use development parcel, together with a provision of having 10 acres of undevelopable wetlands located on the southerly boundary of the larger parcel.

[3] The Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Third Edition, (Chicago, Illinois, 1993), pg. 171.

VALUATION

Appraisal Process

Valuation Methods:

The **Cost Approach** is the summation of the estimated value of the vacant land, and the estimated cost of replacing or reproducing the improvements, less deductions for accrued depreciation.

The **Income Approach** is the summation of the estimated annual market income for the subject property, less allowances for vacancy loss, credit loss and lessor-paid expenses, divided by an appropriate overall capitalization rate or discounted via an appropriate discount rate.

The **Sales Comparison Approach** compares other similar properties that have recently sold to the subject. This method for estimating market value by the Sales Comparison Approach was employed. In this method, the direct sales method, comparisons are made to demonstrate a probable price (i.e. market value) at which the subject property would be sold if offered on the market. These sales are subsequently adjusted to reflect market-recognized differences, as compared to the subject.

Appraisal Methods Used

The subject is appraised both in before and after conditions. As such, the Sales Comparison Approach is used in these analyses to estimate initially the value of the subject in the unencumbered condition and subsequently, as encumbered by a 10 acre conservation easement. Typical Cost and Income Approaches are not applicable to the subject property.

Based on the analysis of the subject ownership, it is possible to consider the entire unimproved ownership of the Harris Family Limited Partnership as a larger parcel. However, due to the nature of the encumbrance, it is estimated that all parcels within the geographic area owned by the Harris Family Limited Partnership would not benefit nor suffer as a result of the placement of this easement. Therefore, the appraiser has elected to define the larger parcel as the legally described parcel by Ada County since the subject is still an undeveloped property in both the before and after conditions.

Estimated Market Value of the Property – Before Condition

In this analysis, sales of undeveloped riparian sites are analyzed to estimate a market value for the subject in the before condition.

Adjustment criteria includes locational characteristics whereby a plus adjustment is made for inferior locational attributes and a negative adjustment is placed on the comparable for a superior attribute. Sales 2, 3, 4 and 5 all received adjustments both positive and negative for locational differences.

Market Conditions adjustments are estimated at 1% per month prior to December of 2006. Subsequent to December of 2006, the market is perceived as being flat, having no appreciation apparent.

Finally, Sale No. 3 receives a downward adjustment for its relative size and development density to high density residential.

Following the narrative summary of the sales, a grid depicting these adjustments is presented.

Sale No. 1 – This sale is located in the **Waterfront District** on the Boise River, westerly of downtown Boise. This sale occurred in March of 2005 at a price of $2,668,050. This results in a sales price of $151,853 per acre for this 17.57 acre site. This is a planned development that features single-family units that are semi-detached. This sale is adjusted upwards for passage of time to $187,082 per acre. No other adjustments are applied to this sale, providing an indication of $187,082 per acre.

Sale No. 2 is located on Ulmer Lane off of State Street in northwest Boise. This property sold for $1,850,000 in January of 2004. This represents $100,543 per acre for this 18.40 acre site. This site is also a riparian site located adjacent to the Boise River. It is being developed for single-family purposes.

This sale is adjusted upwards for passage of time to $142,470 per acre.

This sale is considered to have an inferior location when compared to the subject. It is also adjusted upwards for its inferior zoning characteristics when compared to the subject, and is therefore adjusted upwards by 15%. This results in an adjusted value indication of $196,609 per acre.

Sale No. 3 – This property is located on Parkcenter Boulevard in southeast Boise. This site has frontage on Logger's Creek and sold for $5,750,000 in June of 2006. This property includes 11.50 acres. The property has been subsequently cleared and approved for high-density development. This sale is adjusted upwards for passage of time to $531,000 per acre.

This sale is considered to have a superior location when compared to the subject, and is therefore adjusted downwards by 40%. A downward adjustment is also indicated due to relative parcel size and the devoted high-density of development. This results in an adjusted value indication of $229,392 per acre.

Sale No. 4 – This property is located on Riverside Drive in Eagle, Idaho. This sale occurred between June 2005 and October of 2007 at a total price of $12,118,620. This results in a price of $255,928 per acre for this 47.35 acre site. The site has excellent frontage on the Boise River and has Planned Unit Development capabilities. The sale is adjusted upwards for passage of time to $281,009 per acre.

This sale is considered to have a somewhat superior location when compared to the subject, and is therefore adjusted downwards by 20%. After adjustment, the indication of value is $224,808 per acre.

Sale No. 5 – This property is located on Highway 44 or State Street, adjacent to Sale No. 4. This property sold in September of 2005 at a price of $8,200,000. This is also riparian development land located on the Boise River. It has 40.70 acres of total site area. It also has capability as a Planned Unit Development.

This sale is adjusted upwards for passage of time to $233,436 per acre.

As with Sale No. 4, this sale is considered to have a superior location to the subject, in view of its proximity to Eagle, Idaho, a rapidly growing bedroom community for the city of Boise. After adjustment, the indicated value is $186,748 per acre.

Summary and Conclusions

The sales presented in this analysis range from $186,748 per acre to $229,392 per acre after adjustment. The sales are considered to be appropriate comparables for the subject, primarily due to the Planned Unit nature of the subject together with the riparian influences. There was no support for relative size adjustments based on analysis of the sales with the exception of Sale No. 3, the smallest of the five sales. Thus, the appraiser has concluded a value for the subject as a larger parcel at a rate of $200,000 as follows:

86.245 acres @ $200,000 per acre = $17,249,000

Thus, the subject's value in the before condition is estimated at $17,249,000.

SALES COMPARISON ANALYSIS

Harris Ranch- Wetlands Tract- Larger Parcel Before Analysis
MS-7822-B-08

	SUBJECT	1	2	3	4	5
	PROPERTY	Waterfront District	Ulmer Lane off State Street	ParkCenter	Riverside Drive Eagle	Lonesome Dove Eagle
NAME:	Harris Family Limited Partnership	Waterfront	Ulmer	Roth Homes	Cornerstone	Hawkins
SALES PRICE	N/A	$2,668,050	$1,850,000	$5,750,000	$12,118,620	$8,200,000
ESTIMATED IMPROVEMENT VALUE	$0	$0	$0	$0	$0	$0
LAND RESIDUAL	N/A	$2,668,050	$1,850,000	$5,750,000	$12,118,620	$8,200,000
PRICE PER ACRE	N/A	$151,853	$100,543	$500,000	$255,928	$201,064
DATE OF SALE	November 12, 2007	March 2006	January 2004	June 2006	June 2005-10/07	September 2005
TERMS OF SALE	Assume Cash	Cash	Cash	Cash	Option/Cash	Cash
PROPERTY RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
PHYSICAL CHARACTERISTICS:						
LAND TYPE	Riparian Development Land	Riparian Development Land	Riparian Development Land	Riparian Development Land	Riparian Development Land	Riparian Development Land
TOPOGRAPHY	Mostly level	Mostly level	Mostly level	Mostly level	Mostly level	Mostly level
PHYSICAL CHARACTERISTICS	Irregular shaped	Irregular shaped	Rectangular	Irregular shaped	Irregular shaped; Both sides of HWY 44	Irregular shaped
WATER AMENITY	Boise River	Boise River	Boise River	Mallard Creek	Boise River	Boise River
OTHER	Planned PUD	Planned PUD	Single Family	Planned PUD	Planned PUD	Planned PUD
ACCESS	Eckert/Warm Springs	E. 36th St.	Ulmer	ParkCenter	Hwy 44 & Riverside	Hwy 44 & Riverside
SITE SIZE IN ACRES	88.245	17.67	18.40	11.50	47.35	40.78
ZONING/ DENSITY	Proposed Mixed Use	Proposed Mixed Use	Single Family	High Density	Proposed Mixed Use	Proposed Mixed Use
ADJUSTMENT FOR TERMS/		123.20%	141.70%	106.20%	109.80%	116.10%
ADJUSTED PRICE-LAND ONLY		$3,287,038	$2,621,450	$6,106,500	$13,306,245	$9,520,200
ADJUSTED PRICE-LAND ONLY/ACRE		$187,082	$142,470	$531,000	$281,009	$233,436
ADJUSTMENTS						
LOCATION		100.00%	120.00%	60.00%	80.00%	80.00%
PHYSICAL CHARACTERISTICS		100.00%	115.00%	90.00%	100.00%	100.00%
OTHER		100.00%	100.00%	80.00%	100.00%	100.00%
TOTAL ADJUSTMENT		100.00%	138.00%	43.20%	80.00%	80.00%
INDICATED VALUE/ ACRE		$187,082	$196,609	$229,392	$224,808	$186,748

Estimated Market Value – After Condition

In the after condition, the subject will include 76.245 acres of mixed use development area plus 10 acres of encumbered property that will be perpetually preserved as a wetlands and therefore totally undevelopable. In this analysis, the sales used include the previous five sales used in the before condition for the analysis of the 76.245 acre parcel. However, three additional sales are presented for the valuation of the wetlands area which is considered to be a low economic value since it cannot be developed. As such, it would serve as a potential amenity to surrounding land uses while having no or nominal intrinsic value. The three sales are discussed in the following paragraphs, and a presentation of the sales is outlined in the following sales grid.

Sale No. 6 – This property is located off of West Hill Road in northwest Boise. It sold in August of 2007 at a price of $200,000, which represents $5,006 per acre for this 39.95 acre parcel. This is an undeveloped site that is in an RP zone, which typically limits development to no less than one unit per 40 acres. Thus, this property had limited economic value and would require a significant developer's effort to create a legally buildable site. Nevertheless, this property does have retained development rights based on comparison with Sales 7 and 8. Thus, a downward adjustment on this sale is required at a rate of 55% to reflect an indication of $2,253 per acre for the encumbered portion of the subject ownership.

Sale No. 7 – This property is located at 2505 West State Street in Eagle. The property involved includes an island site that contained 9.67 acres. The developer's acquisition of this property in 2005 allocated $17,000 of the total sales price to the island portion of the property, representing $1,759 per acre. This is undevelopable land and is to be used for open space.

This sale is adjusted upwards by 25.7% to provide an indication of $2,211 per acre.

No other adjustments are necessary to this sale since it is viewed as an undevelopable site and will be used as an amenity for the adjoining development. Thus, the indication for value on this property is $2,211 per acre.

Sale No. 8 – This property is located on Rocky Canyon Road in Ada County, Idaho. It sold for $47,500 in May of 2005. This parcel included 40.90 acres of old mining claims that were patented. The unadjusted sales price is $1,161 per acre. This sale is considered to be of limited economic potential

requiring significant effort by the owner to acquire development rights. The sale is adjusted upwards for passage of time to $1,459 per acre.

This sale requires an upward adjustment of 50% for differences in property size and characteristics, being more remote and more difficult to access. After adjustment, the indicated value is $2,190 per acre.

Summary and Conclusion

After adjustment, the above sales range from $2,190 to $2,253 per acre for limited economic site sales. These are considered to be more representative of the subject's encumbered portion as a result of the conservation easement. Therefore, the subject's value is estimated as follows:

76.245 acres at $200,000 per acre =	$15,249,000
Add 10 acres at $2,250 per acre =	$ 22,500
Total After Value =	$15,271,500
Rounded To:	$15,270,000

SALES COMPARISON ANALYSIS Harris Ranch- Wetlands Tract- Larger Parcel After Analysis ms-7822-8-08	SUBJECT PROPERTY NAME: Harris Family Limited Partnership	1 Waterfront District Boise Waterfront	2 Ulmer Lane off State Street Ulmer	3 ParkCenter Roth Homes	4 Riverside Drive Eagle Cornerstone	5 Lonesome Dove Eagle Hawkins
SALES PRICE	N/A	$2,668,050	$1,850,000	$5,750,000	$12,118,620	$8,200,000
ESTIMATED IMPROVEMENT VALUE	$0	$0	$0	$0	$0	$0
LAND RESIDUAL	N/A	$2,668,050	$1,850,000	$5,750,000	$12,118,620	$8,200,000
PRICE PER ACRE	N/A	$151,853	$100,543	$500,000	$255,928	$201,064
DATE OF SALE	November 12, 2007	March 2005	January 2004	June 2006	June 2005-10/07	September 2005
TERMS OF SALE	Assume Cash	Cash	Cash	Cash	Option/Cash	Cash
PROPERTY RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
PHYSICAL CHARACTERISTICS:						
LAND TYPE	Riparian Development Land	Riparian Development Land	Riparian Development Land	Riparian Development Land	Riparian Development Land	Riparian Development Land
TOPOGRAPHY	Mostly level	Mostly level	Mostly level	Mostly level	Mostly level	Mostly level
PHYSICAL CHARACTERISTICS	Irregular shaped	Irregular shaped	Rectangular	Irregular shaped	Irregular shaped; Both sides of HWY 44	Irregular shaped
WATER AMENITY	Boise River	Boise River	Boise River	Mallard Creek	Boise River	Boise River
OTHER	Planned PUD	Planned PUD	Single Family	Planned PUD	Planned PUD	Planned PUD
ACCESS	Eckert/Warm Springs	E. 36th St.	Ulmer	ParkCenter	Hwy 44 & Riverside	Hwy 44 & Riverside
SITE SIZE IN ACRES	76.245	17.57	18.40	11.50	47.35	40.78
ZONING/ DENSITY	Proposed Mixed Use	Proposed Mixed Use	Single Family	High Density	Proposed Mixed Use	Proposed Mixed Use
ADJUSTMENT FOR TERMS/		123.20%	141.70%	106.20%	109.80%	116.10%
ADJUSTED PRICE-LAND ONLY		$3,287,038	$2,621,450	$6,106,500	$13,306,245	$9,520,200
ADJUSTED PRICE-LAND ONLY/ACRE		$187,082	$142,470	$531,000	$281,009	$233,436
ADJUSTMENTS						
LOCATION		100.00%	120.00%	60.00%	80.00%	80.00%
PHYSICAL CHARACTERISTICS		100.00%	115.00%	80.00%	100.00%	100.00%
OTHER		100.00%	100.00%	80.00%	100.00%	100.00%
TOTAL ADJUSTMENT		100.00%	138.00%	43.20%	80.00%	80.00%
INDICATED VALUE/ ACRE		$187,082	$196,609	$229,392	$224,808	$186,748

SALES COMPARISON ANALYSIS **Harris Ranch- Wetlands Analysis** **MS-7822-B-08**	**SUBJECT PROPERTY**	**6** **W. Hill Road Boise**	**7** **2505 W. State Eagle**	**8** **Rocky Canyon Rd. Ada County**
NAME:	**Harris Family Limited Partnership**	**N/A**	**Tri Cedars Management**	**Twilegar**
SALES PRICE	N/A	$200,000	$17,000	$47,500
ESTIMATED IMPROVEMENT VALUE	$0	$0	$0	$0
LAND RESIDUAL	N/A	$200,000	$17,000	$47,500
PRICE PER ACRE	N/A	$5,006	$1,759	$1,161
DATE OF SALE	November 12, 2007	August 2007	January 2005	May 2005
TERMS OF SALE	Assume Cash	Cash-Auction	Cash	Cash
PROPERTY RIGHTS CONVEYED	Fee Simple	Fee Simple	Fee Simple	Fee Simple
PHYSICAL CHARACTERISTICS:				
LAND TYPE	Wetlands	Foothill - Undeveloped Land	Island Site	Foothill Site
TOPOGRAPHY	Mostly level	Sloping	Mostly level	Sloping
PHYSICAL CHARACTERISTICS	Irregular shaped	Sectional	Irregular shaped	Sectional
WATER AMENITY	Boise River	None	Boise River	None
OTHER	Donated Wetland Tract	Raw Land- Limited Economic Value: Possible Homesite	Undevelopable island to be used as open space	Old Mining Site: Limited Economic Value: Buyer had to Extend Power
ACCESS	Eckert	Hill Rd. to Moore access	State	State
SITE SIZE IN ACRES	10.000	39.95	9.67	40.90
ZONING/ DENSITY	Wetlands	RP	Transitional	Transitional
ADJUSTMENT FOR TERMS/		100.00%	125.70%	125.70%
ADJUSTED PRICE-LAND ONLY		**$200,000**	**$21,369**	**$59,708**
ADJUSTED PRICE-LAND ONLY/ACRE		**$5,006**	**$2,211**	**$1,460**
ADJUSTMENTS				
LOCATION		100.00%	100.00%	100.00%
PHYSICAL CHARACTERISTICS		100.00%	100.00%	150.00%
RETAINED RIGHTS		45.00%	100.00%	100.00%
TOTAL ADJUSTMENT		45.00%	100.00%	150.00%
INDICATED VALUE/ ACRE		**$2,253**	**$2,211**	**$2,190**

RECONCILIATION AND FINAL MARKET VALUE ESTIMATE

Only the Sales Comparison Approach was been used to value the subject both in before and after conditions. Initially, the subject has been valued as an unencumbered 86.245 acre parcel. Subsequently, the subject was valued as a 76.245 acre parcel and a 10 acre encumbered parcel. The difference in the before and after values results in an indication of the easement value utilized in the Charitable Non-Cash Donation calculation for the grantor.

Thus, the subject's value is estimated as follows:

Before Value	$17,249,000
Less After Value	$15,270,000
Easement Value	$ 1,979,000

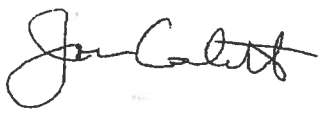
Therefore, subject to the Assumptions and Limiting Conditions set forth, and based on the information and analyses presented in this report, the estimated market value of the easement as of November 12, 2007, was:

*****ONE MILLION NINE HUNDRED SEVENTY NINE THOUSAND DOLLARS*****
***** ($1,979,000) *****

CERTIFICATION

I, Joe Corlett, MAI, SRA, certify that, to the best of my knowledge and belief:

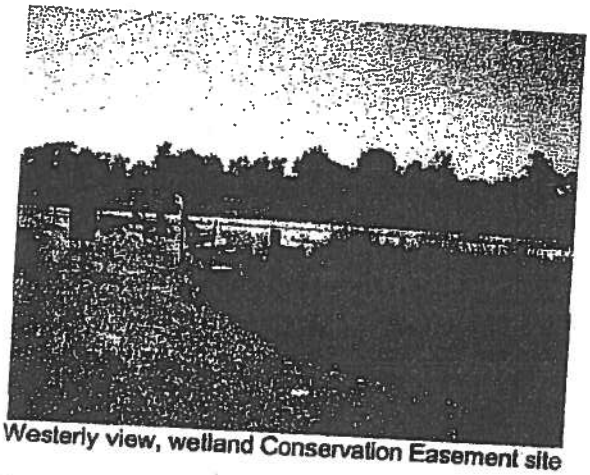
- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the a cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification.
- As of the date of this report, I, Joe Corlett, MAI, SRA, have completed the continuing education program of the Appraisal Institute.
- Effective July 1, 1992, the State of Idaho implemented a mandatory program of licensing/certification of real estate appraisers. I have met the qualifications to appraise all types of real estate and am currently certified. My certification number is CGA-7.



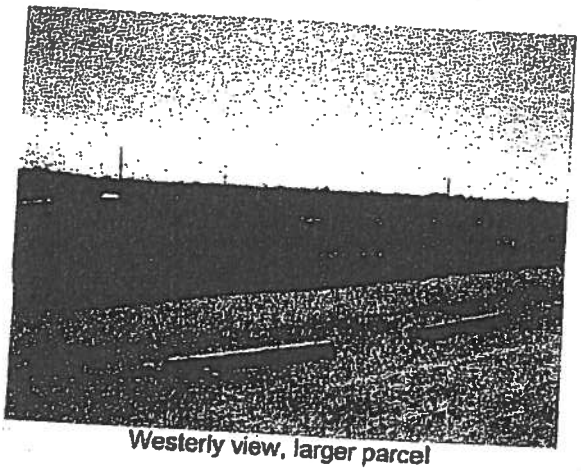
Joe Corlett, MAI, SRA

Dated: August 14, 2008

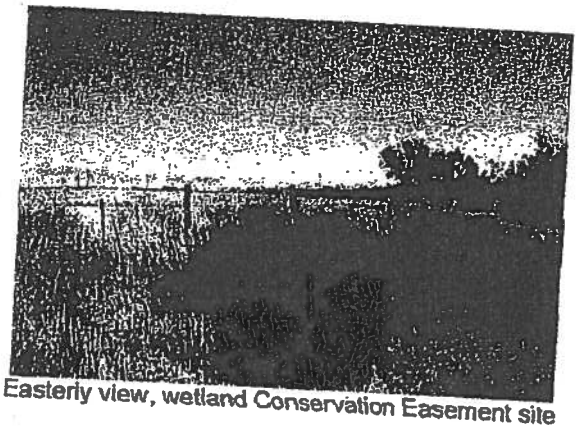
PHOTOGRAPHS OF THE SUBJECT



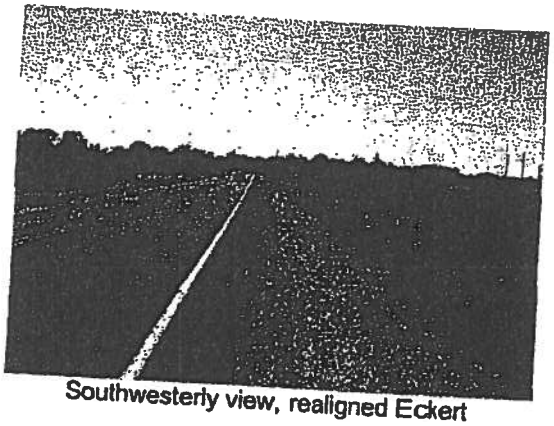
Westerly view, wetland Conservation Easement site



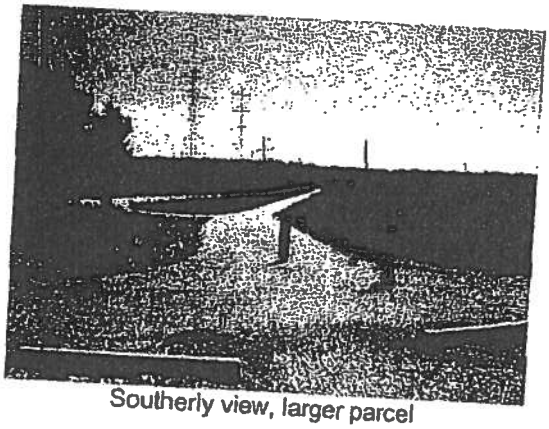
Westerly view, larger parcel



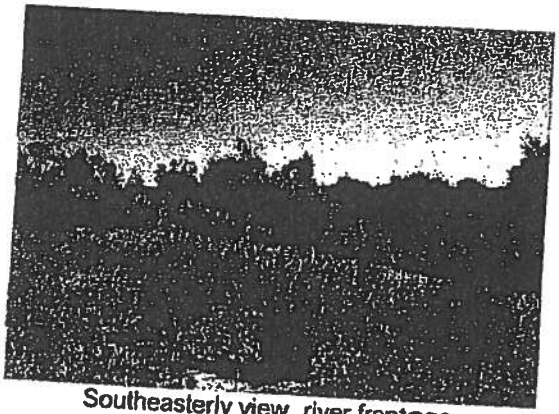
Easterly view, wetland Conservation Easement site



Southwesterly view, realigned Eckert



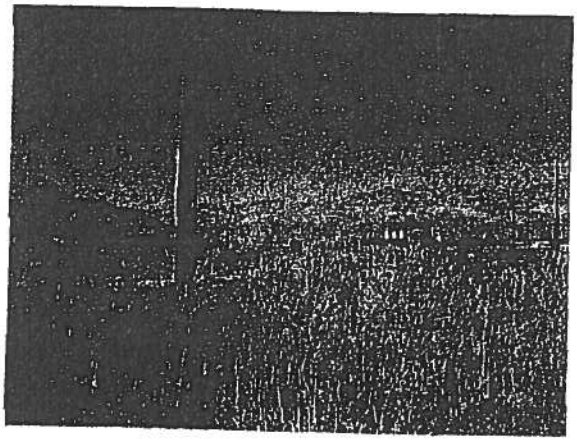
Southerly view, larger parcel



Southeasterly view, river frontage

PHOTOGRAPHS OF THE SUBJECT, Cont'd.

Northwesterly view



Northwesterly view, larger parcel

Westerly view, Warm Springs frontage

DEED OF CONSERVATION EASEMENT

To all future owners of the property described herein located in Ada County, Idaho:

This DEED OF CONSERVATION EASEMENT ("Conservation Easement") is made and entered into this ___ day of _____, 2007, by and between Harris Family Limited Partnership, an Idaho limited liability partnership ("Grantor"), whose address is c/o LeNir, Ltd. 4940 Mill Station Drive, Boise, Idaho 83716 and the Idaho Foundation for Parks and Lands, Inc., an Idaho nonprofit corporation ("Holder"), whose address is 5657 Warm Springs Avenue, Boise, Idaho 83716, and the Ada County Highway District, a body corporate and politic in the state of Idaho ("ACHD"), whose address is 3775 N. Adams Street, Garden City, Idaho 83714-6499.

RECITALS

A. The development of the East ParkCenter Bridge in Ada County, Idaho is subject to the regulatory jurisdiction of the United States Army Corps of Engineers (the "Corps").

B. The Army Corps Clean Water Act (the "CWA") 404 Permit #NWW-2006-615-B01 (the "Permit"), a copy of which is attached hereto and incorporated herein by reference as **Exhibit A**, authorizes certain activities that affect waters of the United States.

C. The Permit requires that ACHD preserve and protect the wetland functions of certain real property identified in the Permit by keeping it in substantially the condition that is specified by the East ParkCenter Bridge Wetlands Mitigation Plan and required by the Permit (the "Permitted Condition").

D. Grantor is the owner of real property more particularly described in **Exhibit B** attached hereto and incorporated herein (the "Property").

E. Grantor has agreed with ACHD pursuant to that certain Development Agreement dated July 29, 2005, as amended by that certain First Amendment to Development Agreement dated November 28, 2007 and consideration therein, that Grantor will convey to Holder a conservation easement placing certain limitations on the use of the Property and affirmative obligations on the Holder for the protection of the wetlands functions of the Property, and in order that the Property shall remain substantially in its Permitted Condition forever as may be modified in accordance with the Permit or a Corps-approved mitigation plan.

F. Holder, as a charitable corporation organized under the laws of the state of Idaho, and possessing the authority to hold this easement, desires to accept the conservation easement, including covenants and agreements, on, over, under and across the Property.

G. ACHD, as the holder of the Permit, desires a third-party right of enforcement of this Conservation Easement pursuant to Idaho Code Section 55-2103 (1)(c).

E. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

F. Agricultural use, industrial use, or commercial use;

G. Using herbicides or pesticides without prior consent of Holder or designated third-party; and

H. Any other use of, or activity on, the Property that is or may become inconsistent with the purposes of this grant, the Permit, a Corps-approved mitigation plan, the preservation of the Property substantially in its Permitted Condition, or the protection of its environment is prohibited.

III. USES AND PRACTICES CONSISTENT WITH THE CONSERVATION EASEMENT. The following uses and practices upon the Property, though not exhaustive, are consistent with and shall be permitted by this Conservation Easement, except for the requirement of prior approval by the Holder or its successors where such requirement is expressly provided herein:

A. Landscaping to prevent severe erosion or damage to the Property, provided that such landscaping is consistent with preserving the Permitted Condition of the Property. Landscaping shall be coordinated with and approved by Holder, or performed in accordance with a mitigation plan approved by the Corps;

B. Pruning trees and shrubs to prevent health and safety hazards, including but not limited to fire hazards, site obstructions, and road obstructions. Pruning shall be coordinated with and approved by Holder, or performed in accordance with a Corps-approved mitigation plan;

C. Any and all construction and maintenance work required by a mitigation plan approved by the Corps; and

D. All other acts or uses not prohibited by this Conservation Easement, which are consistent with the conservation purposes of this grant.

IV. ENFORCEMENT.

A. Grantor intends that enforcement of the Permit and provisions of this Conservation Easement shall be at the discretion of Holder, and that Holder's failure to exercise its right under this Conservation Easement in the event of any breach of this Conservation Easement by the Grantor shall not be deemed or construed to be a waiver of Holder's enforcement rights under this Conservation Easement in the event of any subsequent breach.

B. If Grantor violates the terms of this Conservation Easement, Holder shall have all remedies available at law and equity, including without limitation the right to seek an injunction with respect to such activity and to cause restoration to that portion of the Property affected by such activity to the condition that existed prior to the undertaking the prohibited activity.

C. Holder will pay all costs associated with its obligation to preserve and protect in perpetuity the natural, ecological, open space and wetland values of the Property, including costs associated with monitoring compliance with the terms of this Conservation Easement, but excluding costs associated with bringing the Property into compliance with the Permit and achieving a success point pursuant to the Permit or a Corps-approved mitigation plan, which shall be the sole responsibility of Grantor. Grantor, however, intends that any costs incurred by Holder in enforcing, judicially or otherwise, the terms and restrictions of this Conservation Easement against Grantor, its successors, assigns, or authorized agents, shall be born by Grantor, its successors, assigns, or authorized agents.

D. ACHD shall have a third-party right of enforcement under this Conservation Easement as provided in Idaho Code § 55-2102(2) and § 55-2103(1) (e), and may bring an enforcement action against Grantor, its heirs, successors, or assigns, or the Holder, its heirs, successors, or assigns, for any actions by the respective party for any violation of this Conservation Easement, the Permit, or applicable law. Without limiting the foregoing, in the event of a violation of this Conservation Easement by either Grantor or by Holder, ACHD shall immediately have the right to take all steps reasonably and necessary to ensure compliance with the Permit and/or a Corps-approved mitigation plan for the Property, including, without limitation, taking temporary possession of the Property to enable ACHD to secure any maintenance required to be in compliance with the Permit and/or a Corps-approved mitigation plan. In connection with the foregoing, in the event of notice by the Corps to ACHD that the Property is not in compliance with the Permit and/or a Corps-approved mitigation plan, Grantor or Holder, as appropriate and necessary, shall grant a power of attorney to ACHD authorizing ACHD to take any steps necessary to secure any maintenance or construction required to bring the Property into compliance with this Conservation Easement, the Permit, and/or a Corps-approved mitigation plan for the Property. In addition to all other remedies set forth in this Section, if Grantor or Holder violate the terms of this Conservation Easement, ACHD shall have all other remedies available at law and equity, including without limitation the right to seek an injunction with respect to such activity and to cause restoration to that portion of the Property affected by any activity to the condition that existed prior to the undertaking the prohibited activity.

V. **ASSIGNMENT.** Holder may assign its interest in this Conservation Easement to any qualified holder as defined under Idaho Code, Section 55-2101(2), but only upon 30 (thirty) days prior written notice to Grantor, ACHD and the Corps. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, shall fully assume all liabilities of Holder hereunder, and shall continue to carry out the purpose of this Conservation Easement. In the event that Holder is voluntarily or involuntarily dissolved without having assigned this Conservation Easement, all of Holder's right, title, and interest in and to this Conservation Easement shall be deemed automatically transferred and assigned to ACHD, which shall, in turn, be obligated to either (i) assume in writing all of Holder's obligations and responsibilities under this Conservation Easement, or (ii) assign the Conservation Easement to a qualified holder as defined in Idaho Code § 55-2101(2).

H. The state of Idaho has recognized the importance and validity of conservation easements by its enactment of the Uniform Conservation Easement Act, Idaho Code Sections 55-2101 through 2109, under which this Conservation Easement is created.

GRANT

NOW THEREFORE, for the foregoing consideration, and in further consideration of the restrictions, rights and agreements herein, Grantor conveys to Holder a conservation easement on, over, under, and across the Property, together with access, in perpetuity, consisting of and subject to the rights, conditions, and restrictions enumerated below and those interests of record as of the date of this Conservation Easement first written above. Holder accepts the Conservation Easement and agrees to all attendant terms and conditions as further provided herein:

I. **PURPOSES/RIGHTS OF HOLDER**. It is the purpose of this Conservation Easement to assure that the Property will be retained forever substantially in its Permitted Condition and to prevent any use of the Property that will impair or interfere with the existing wetland functions on the Property. To carry out this purpose, the following rights are conveyed to the Holder:

A. To identify, preserve, and protect wetlands, and in consultation with Grantor, to enhance the natural and ecological features of the Property, including without limitation topography, soil, hydrology, vegetation, and wildlife;

B. To enter upon the Property at reasonable times to enforce the rights herein granted and to observe, study, and make scientific observation of the Property, upon prior notice to the Grantor, its heirs, successors, or assigns, in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its heirs, successors or assigns at the time of entry; and

C. To enjoin any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

II. **RESTRICTIONS**. This Conservation Easement prohibits and limits the following activity on, over, under, and across the Property, except as otherwise provided herein and by the Permit or a Corps-approved mitigation plan:

A. Changing, disturbing, altering, or impairing the natural riparian ecosystem and other natural, ecological or wildlife features or values;

B. Construction or placing buildings, roads, signs, billboards, or other advertising, utilities, or other structures;

C. Dumping or placing of soil or other substances or material as landfill, or dumping or placing trash, waste, or other unsightly or offensive materials;

D. Removal or destruction of live trees, shrubs, or other vegetation, except for the removal of noxious or exotic invasive plant species;

VI. GRANTOR'S TRANSFER OF THE PROPERTY.

A. This Conservation Easement shall run with and burden title to the Property in perpetuity for the benefit of the Holder or its assigns and successors, and shall bind Grantor's heirs, successors or assigns.

B. If Holder, its heirs, successors, or assigns, acquire fee title to the Property from Grantor, its heirs, successors, or assigns, it is agreed that the easement will not merge into the dominant estate. Rather, the restrictions, responsibilities, and rights of the Grantor will pass to the Holder upon taking title to the Property. This instrument will continue to be a conservation deed restriction on the Property, subject to all rights, restrictions, and purposes described herein.

C. Grantor shall be responsible for construction, monitoring, and maintenance, consistent with the Corps-approved mitigation plan and Permit until the wetlands have met its performance standards as specified in the mitigation plan. After that time, Holder will assume long-term maintenance of the site.

VII. REVOKE, RELEASE, ALTER, AMEND. This Conservation Easement may be amended, altered, released, or revoked only by written agreement between the parties, their heirs, assigns, or successors. Such an agreement shall be filed in the public records of Ada County, Idaho.

VIII. EXTINGUISHMENT AND PROCEEDS. Upon the recordation hereof, this Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that a subsequent unexpected change in the conditions surrounding the Property make impossible or impracticable the continued use of all or a portion of the Property for the conservation purposes established herein, such that the conservation restrictions contained in this Conservation Easement are extinguished for all or such portion of the Property by judicial proceeding, and all or such portion of the Property is sold, exchanged or involuntarily converted following extinguishment (including but not limited to the exercise of eminent domain), Holder shall use its share of any proceeds it receives to purchase substitute conservation lands, to the extent such proceeds allow, which shall be subject to the same terms and conditions of the this Conservation Easement and Permit.

IX. TAXES AND OTHER ASSESSMENTS. Grantor shall pay all real property taxes and other assessments levied by competent authority on the Property.

X. WARRANTY. This Conservation Easement is made with general warranty of title. Grantor owns the unencumbered Property in fee simple, and has all requisite power and authority to convey the interest herein.

XI. SEVERABILITY. If any part of this Conservation Easement is found to be void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

XII. NOTICES. Any notice required to be given hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if

not, then on the next business day, (c) four (4) days after having been sent by prepaid registered or certified mail, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be to the following addresses:

If to Grantor:
Harris Family Limited Partnership
Attn: Doug Fowler, LeNir, Ltd.
4940 Mill Station Drive
Boise, ID 83716
Telephone: (208) 344-1131
Facsimile: (208) 344-1148

If to ACHD:
Ada County Highway District
Attn: Director
3775 N. Adams Street
Garden City, Idaho 83714-6499
Telephone: (208) 387-6180
Facsimile: (208) 387-6393

If to the Holder:
Idaho Foundation for Parks and Lands, Inc.
Attn: Sharon Hubler
5657 Warm Springs Avenue
Boise, ID 83716
Telephone: (208) 344-7141
Facsimile: (208) 344-5910

All notices provided to Grantor shall be provided with a copy of notice to ACHD, and all notices provided to ACHD shall be provided with a copy of notice to Grantor.

XIII. **EFFECTIVE UPON RECORDING.** This Conservation Easement shall be effective upon recording. The Holder shall record this instrument in a timely fashion in the official records of Ada County, Idaho, and may re-record it at any time as may be required to preserve Holder's rights in this Conservation Easement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Conservation Easement as of the date first written above.

GRANTOR

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership

By: Harris Management Company, LLC, its General Partner

MEMBERS:

Brian R. Harris
Class A

Mildred H. Davis
Class B

Felicia H. Burkhalter
Class C

Alta M. Harris
Class D

MANAGERS:

Brian R. Harris
Class A Manager

Mildred H. Davis
Class B Manager

Felicia H. Burkhalter
Class C Manager

Alta M. Harris
Class D Manager

HOLDER

Idaho Foundation for Parks and Lands, Inc.

By: _____
Its: _____

ACHD

Ada County Highway District

By: John S. Franden
Its: President

[Notary acknowledgments follow.]

STATE OF IDAHO)
) ss.
County of Ada)

On this 9 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian R. Harris, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 9 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Mildred H. Davis, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 9 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Felicia H. Burkhalter, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.

County of Ada)

On this 12 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Alta M. Harris, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Idaho Foundation for Parks and Lands, Inc., the individual who executed the instrument on behalf of said corporation, and acknowledged to me that such person 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 _____
Residing at _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John S. Franden known or identified to me to be the President of the Ada County Highway District, a body corporate and politic, who executed the instrument on behalf of said entity, and acknowledged to me that such person 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.

SUSAN K. SLAUGHTER NOTARY PUBLIC STATE OF IDAHO

Notary Public for Susan K. Slaughter
Residing at Boise, Idaho
My commission expires: 4-8-2009

DEPARTMENT OF THE ARMY PERMIT

Permittee: Ada County Highway District

Permit Number: NWW-2006-615-B01

Issuing Office: Walla Walla District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Discharge 15,125 cubic yards of concrete, rock riprap, gravel fill, pit run fill, native dirt fill, bedding gravel, asphalt and structural steel into 2.40 acres of wetlands (emergent 0.9 acre; scrub/shrub 0.9 acre; forested 0.60 acre) adjacent to Logger's Creek, the Boise River and Walling Ditch. Work would also impact 0.04 acre of open channel on Logger's Creek and temporary fills from the construction of equipment pads would impact 0.21 acre of open water in the Boise River. Project is to construct the East Park Center Bridge. Specific discharges authorized for this project are as follows:

- Discharge 557 cubic yards of concrete, rock, earth fill and structural steel into Logger's Creek (0.04 acre open water) and adjacent wetlands (0.03 acre) to install a 36- by 178-foot pre-cast Con/Span arch culvert. Discharge 338 cubic yards of gravel fill material with two 48- by 50-foot culverts into Logger's Creek to install a temporary equipment access road. This temporary access road would be located in the same location as the proposed arch culvert.
- Discharge 120 cubic yards of pre-cast concrete into the Boise River to install two temporary construction tower fills, one measuring 24.5- by 80-feet and the other measuring 20- by 75-feet (open water impacts 0.09 acre; 0.02 acre wetlands). Discharge 910 cubic yards of gravel fill material in the Boise River to construct a temporary crane equipment pad (50- by 80-feet and 15- by 75-feet) along the north bank of the river (open water 0.12 acre; 0.01 acre wetlands). The fill would be contained within either a steel sheet pile wall or a concrete barrier wall.
- Discharge 250 cubic yards of concrete, earthen fill material, rock riprap and structural steel into 0.02 acre of scrub-shrub wetlands to construct Bridge Abutment #2, as shown on Sheet 6 of the drawings.
- Excavate 1,300 cubic yards of native fill material from 0.5 acre of scrub/shrub and forested wetlands and discharge 300 cubic yards of reinforced turf into the same wetland area to create an overflow channel.
- Discharge 519 cubic yards of gravel fill and concrete into wetlands (0.07 acre) to construct pathway F, as shown on Sheet 7 of the drawings.
- Discharge 350 cubic yards of gravel fill material into wetlands (0.04 acre) to construct pathway G, as shown on Sheet 7 of the drawings.

EXHIBIT
A

- Discharge 2,796 cubic yards of gravel fill and asphalt into wetlands (0.35 acre) to construct pathway H, as shown on Sheets 8 and 9 of the drawings.
- Discharge 500 cubic yards of native dirt fill into 0.81 acre of wetlands associated with the realignment and back filling of 850 linear feet of Walling Ditch.
- Discharge 583 cubic yards of concrete, rock riprap and pit run fill material into 0.06 acre of wetlands associated with the construction of a 101- by 76-foot span bridge with concrete abutments and wing walls over the re-aligned Walling Ditch.
- Discharge 500 cubic yards of bedding gravel and native dirt fill into 0.04 acre of wetlands to install a buried sewer line. Wetlands disturbed would be restored to pre-construction conditions.
- Discharge 150 cubic yards of gravel fill material into 0.04 acre of wetlands to install a temporary equipment construction access in the Walling Ditch.
- Discharge 8,500 cubic yards of pit run fill material and asphalt into 0.52 acre of wetlands to construct the roadway from the new Walling Ditch Bridge to the connection with existing Warm Springs Avenue.
- Discharge 4 cubic yards of native dirt fill and rock riprap to install a storm water outfall along the south bank of the Boise River.
- Discharge 30 cubic yards of native dirt fill and concrete into an unnamed ditch to replace an existing 36-inch diameter culvert on Warm Spring Avenue with twin 36-inch diameter culverts with concrete headwalls.

THE PROJECT SHALL BE CONSTRUCTED ACCORDING TO THE ENCLOSED PLANS AND DRAWINGS (SHEETS 1 THROUGH 12)

Project Location:

Loggers Creek, Boise River, Walling Ditch, unnamed drainage ditch and adjacent wetlands, in the SW ¼ of Section 19, Township 3 North, Range 3 East, approximately 5 miles east of Boise, in Ada County, Idaho.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on October 26, 2010. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall implement the May 2007 mitigation plan entitled "East Park Center Bridge Wetland Mitigation Site, Boise, Idaho" concurrent with project construction to compensate for the loss of 2.4 acres of wetlands.

2. The permittee shall accomplish the following regarding the conservation easement:

   a. Provide the Corps of Engineers with a copy of the draft conservation easement and obtain written approval of the draft from the Corps of Engineers.
   b. Submit a copy of the Corps-approved conservation easement signed by Idaho Foundation for Parks and Lands, Inc., the landowner, and the permittee, and recorded with Ada County within 60 days of the date the Corps of Engineers signs the Department of the Army permit.
   c. The permittee shall not amend, alter, or terminate the conservation easement, or transfer the holder of the conservation easement to another holder, without prior written approval from the Corps of Engineers.
   d. The permittee shall enforce the terms of the conservation easement. The signed, Corps-approved conservation easement and terms contained therein are incorporated by reference into this permit.

3. The permittee shall close the Chatburn Weir when the temporary equipment access road is installed into Logger Creek and when it is removed to minimize the transport of sediment downstream into Loggers Creek and the Boise River. The Chatburn Weir shall be open when the temporary equipment access road is in place to maintain flows downstream and avoid adverse effects to the resident fishery.

4. The permittee may not install the temporary crane tower pads and the equipment pad fill along the north bank of the Boise River in the river unless river flows are equal to or less than 400 cfs. This is to minimize scour affects on the south bank Boise River and prevent damage to the

Chatburn Weir. If flows are predicted to reach 500 cfs after the temporary fill is installed, the permittee shall hold an on-site meeting with the Corps of Engineers and contractor to determine if flows are adversely affecting the south river bank and the weir. If the Corps of Engineers determines the equipment pad and crane tower pads will result in an adverse affect to the river bank or the weir, the permittee shall remove the temporary pad fills from the Boise River. If flows are predicted to exceed 500 cfs, the permittee shall remove the temporary equipment pad and crane tower pads from the river.

5. The permittee shall implement the conservation measures and construction sequencing measures as outlined in Attachment E-Biological Assessment and Section 7 Consultation to minimize impacts to wintering bald eagles. A bald eagle monitoring plan based on the programmatic Biological Assessment for Bald Eagles (Moroz, P. and R.A. House, 1998) shall be developed and coordinated directly with the US Fish and Wildlife Service.

6. The permittee shall remove the temporary equipment pad fill and temporary crane pad fill from the river and restore the river bottom to pre-construction contours, to minimize impacts to current and circulation patterns in the Boise River.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities

undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

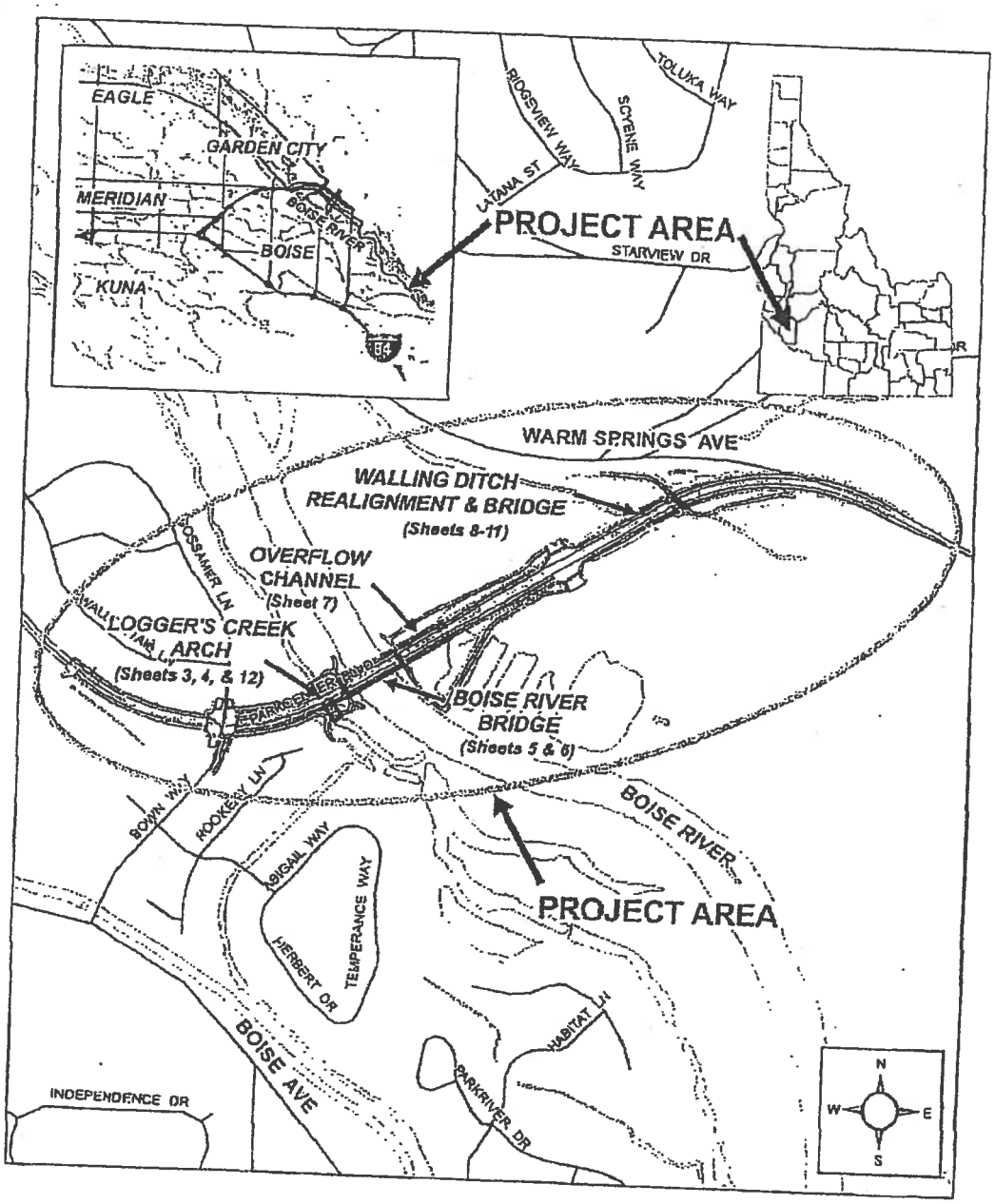
(PERMITTEE) _____ _____ *(DATE)*

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for (DISTRICT COMMANDER) *(DATE)*
A. Bradley Daly
Chief, Regulatory Division

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) *(DATE)*



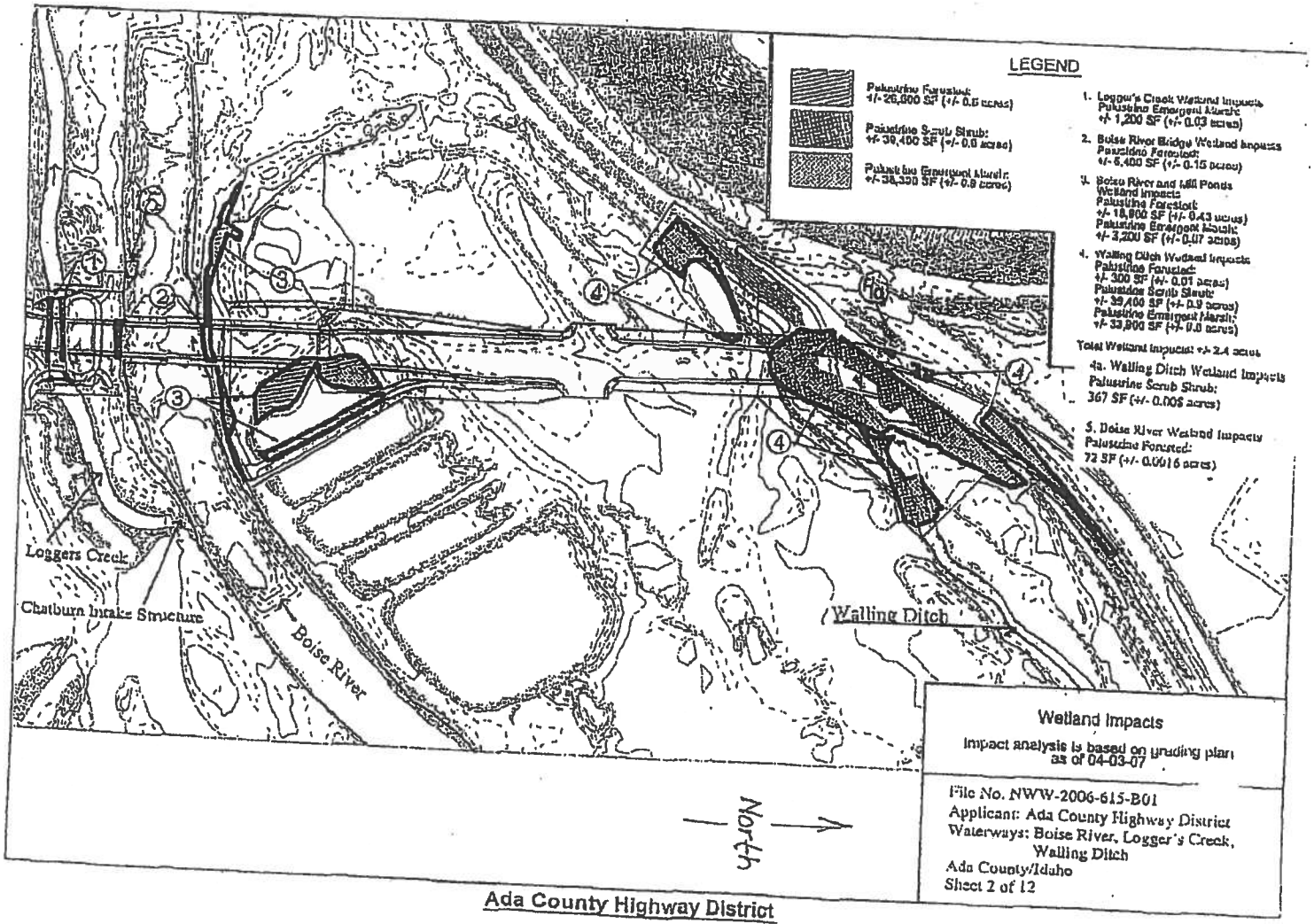
Ada County Highway District

PROPOSED EAST PARKCENTER RIVER CROSSING

Project No. 60079

Sec. 19, T. 3 N., R 3 E., B.M.

File No. NWW-2006-615-BOI
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County / Idaho
Sheet 1 of 12
Date: May 11, 2007
(Updated: Oct. 3, 2007)

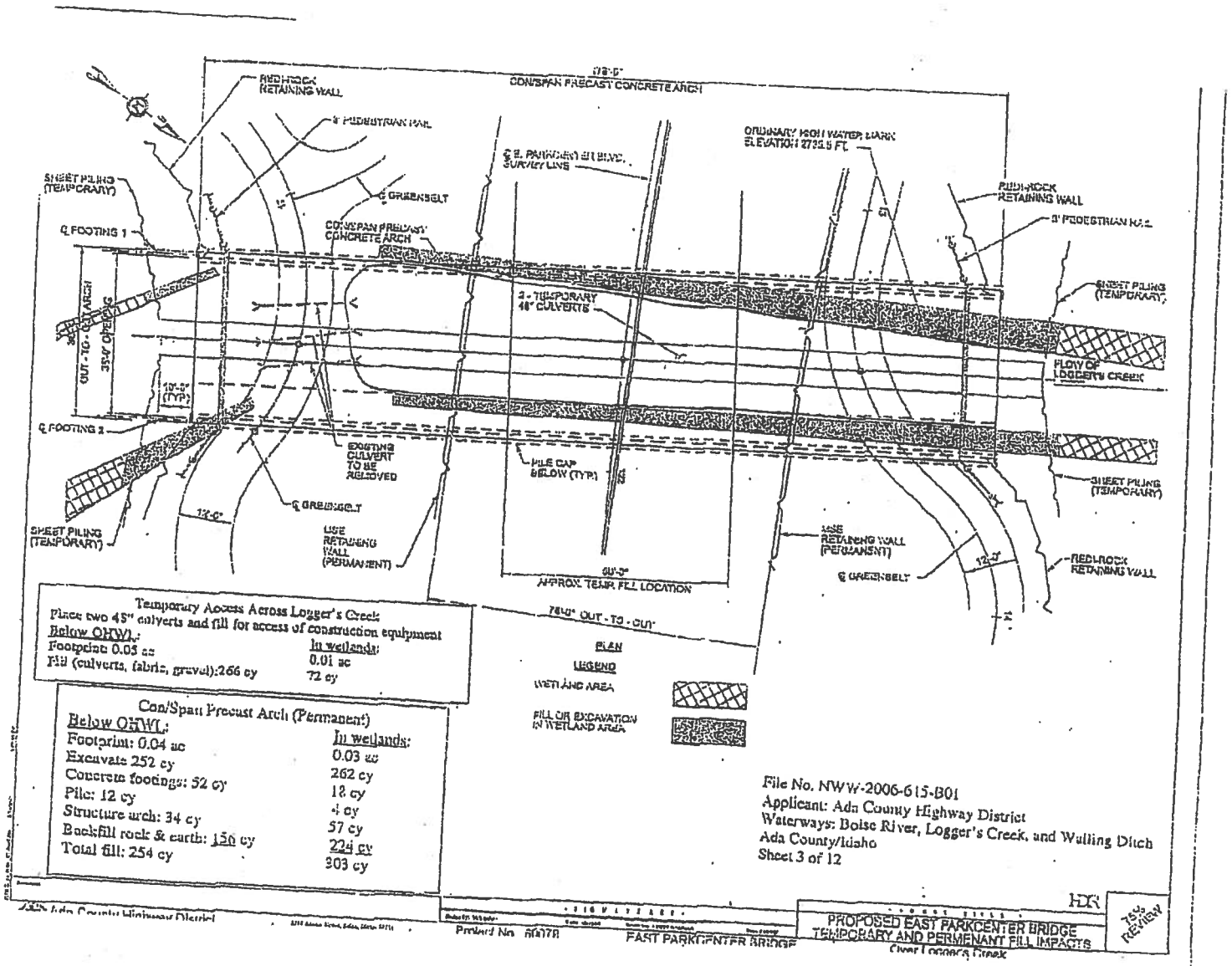


Ada County Highway District

EAST PARKCENTER RIVER CROSSING

Project No. 60079

Sec. 19, T. 3 N., R 3 E., B.M.



Temporary Access Across Logger's Creek:
Place two 48" culverts and fill for access of construction equipment

Below OHW):	In wetlands:
Footprint 0.05 ac	0.01 ac
Fill (culverts, fabric, gravel):266 cy	72 cy

Con/Span Precast Arch (Permanent)

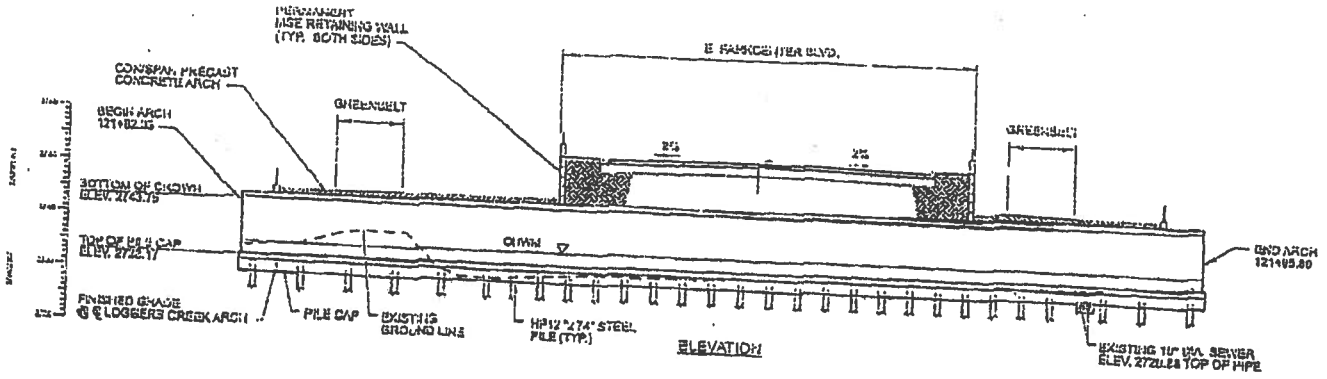
Below OHW):	In wetlands:
Footprint: 0.04 ac	0.03 ac
Excavate 252 cy	262 cy
Concrete footings: 52 cy	18 cy
Pile: 12 cy	4 cy
Structure arch: 34 cy	57 cy
Backfill rock & earth: 156 cy	224 cy
Total fill: 254 cy	303 cy

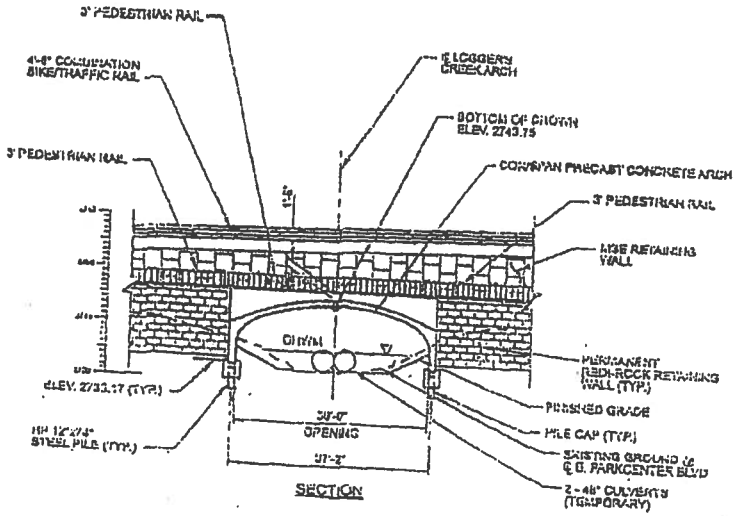
File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 3 of 12

HDR

PROPOSED EAST PARKCENTER BRIDGE
TEMPORARY AND PERMENANT FILL IMPACTS
Over Logger's Creek

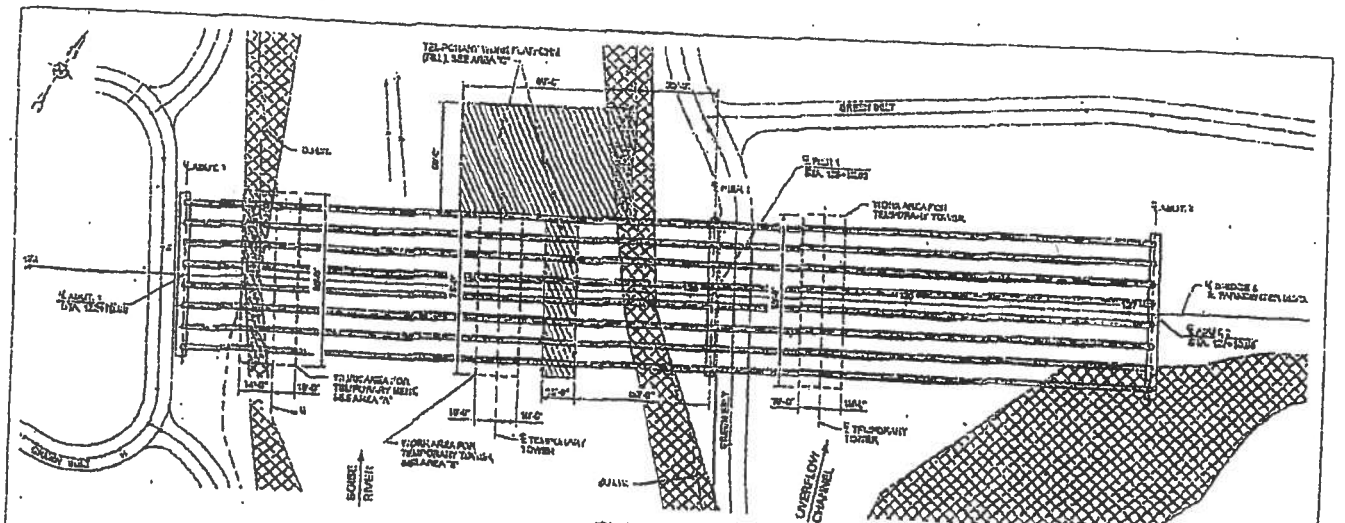
ITD REVIEW





File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 4 of 12

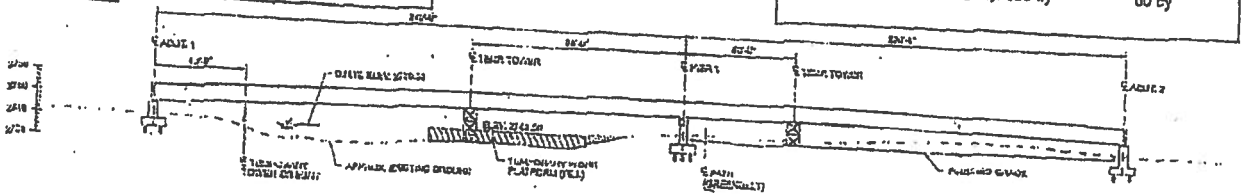
Ada County Highway District | Project No. 60070 | EAST PARKCENTER BRIDGE | PROPOSED EAST PARKCENTER BRIDGE | LOGGERS CREEK BRIDGE | HDR | JOB REVIEW



Area "A" (Temporary Tower or Bent)
Excavate and temporary construct tower (wet)
Below OHWL:
Footprint: 0.05 ac
Excavation: 60 cy (level bottom)
Fill (concrete pad):60 cy
In wetlands:
0.02 (crane pad)

Area "B" (Temporary Tower)
Below OHWL:
Footprint: 0.04 ac
Excavation: 60 cy (leveling)
Fill (concrete pad by crane): 60 cy

Area "C" (Temporary Work Platform)
Install sheet pile or concrete barrier, place geotextile fabric, fill with natural rock and fines, chain link fence (wetlands).
Below OHWL:
Footprint: 0.12 ac
Fill (barrier, fabric, rock/fines): 850 cy
In Wetlands:
0.01 ac
60 cy

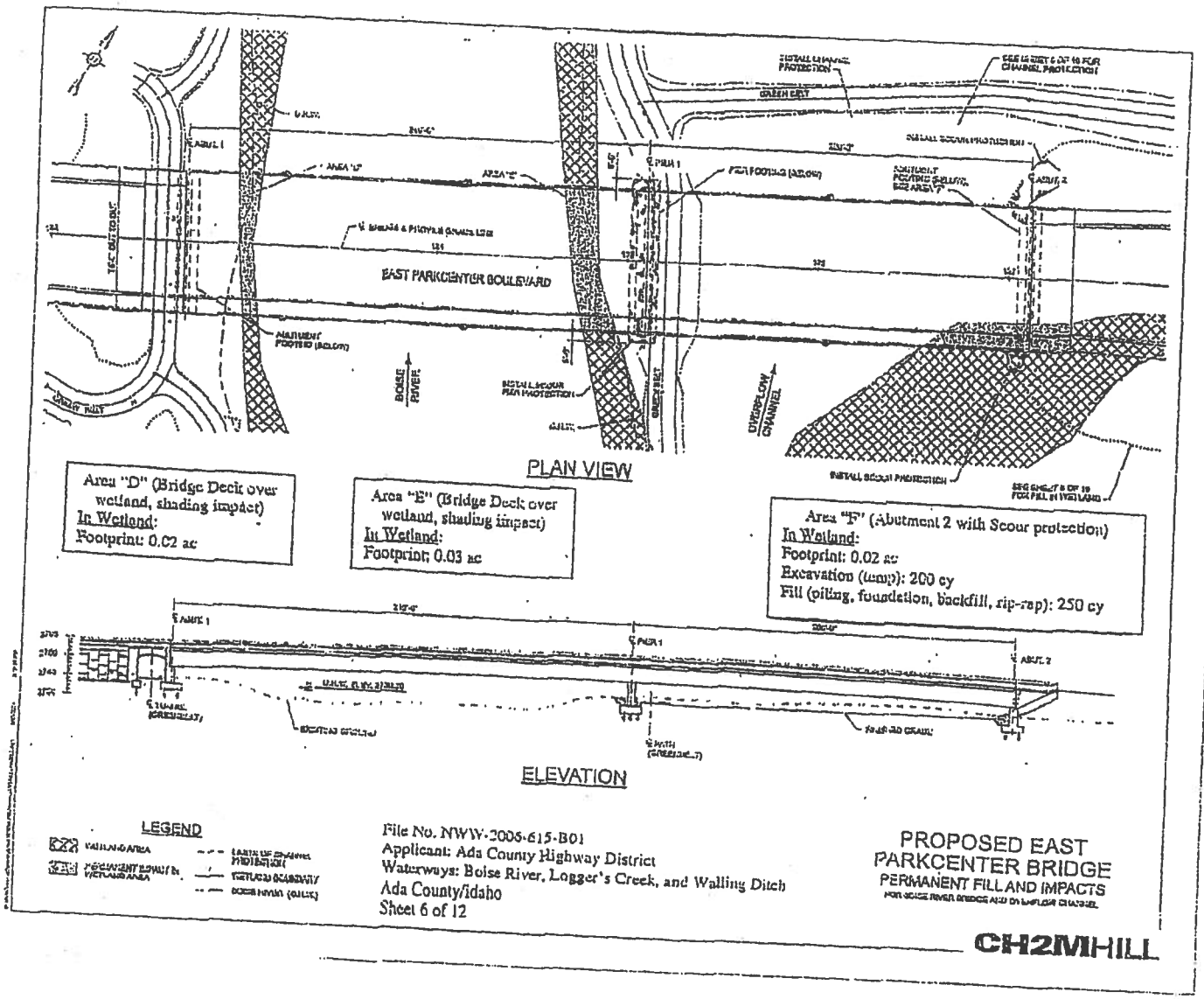


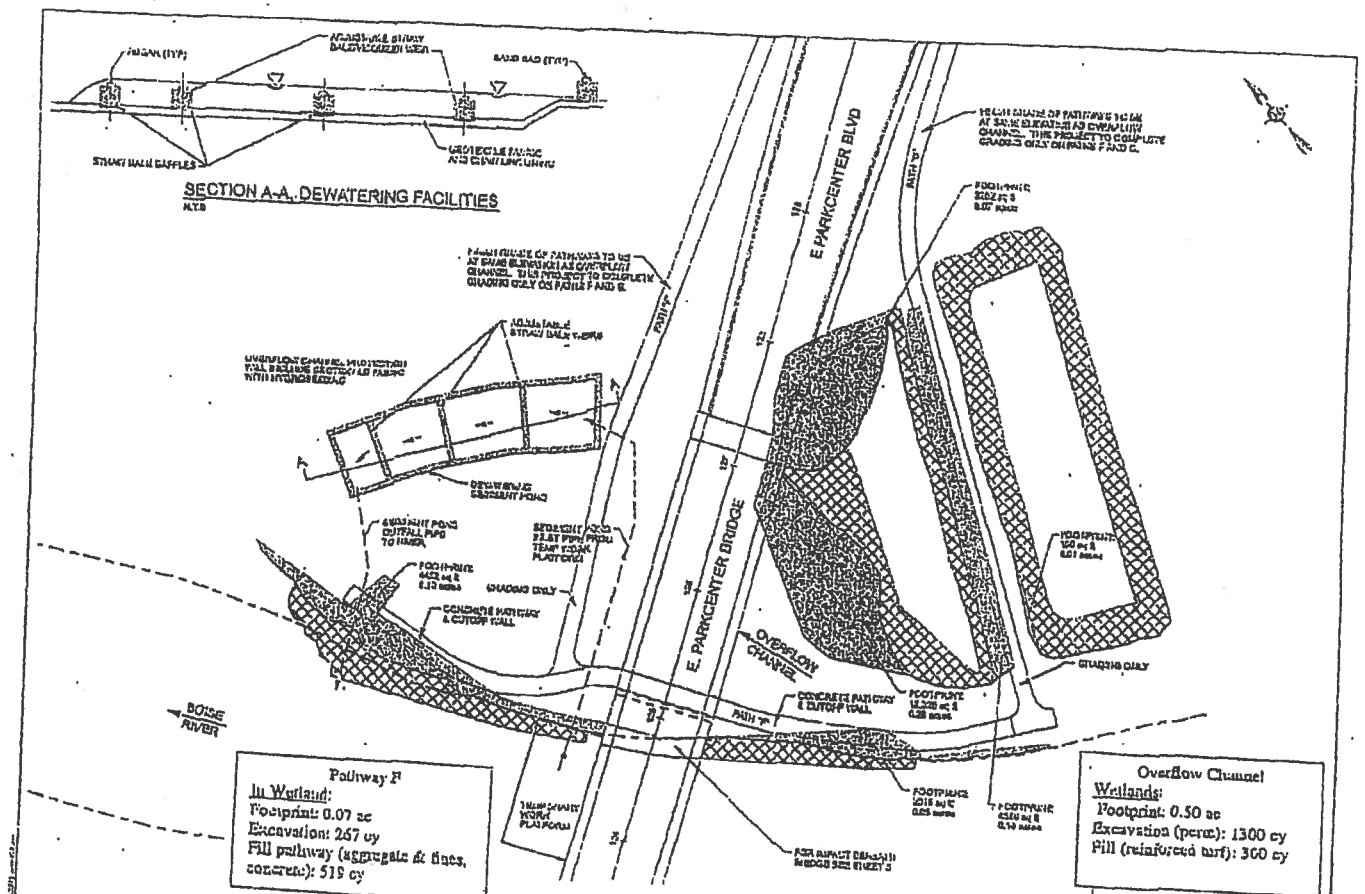
LEGEND

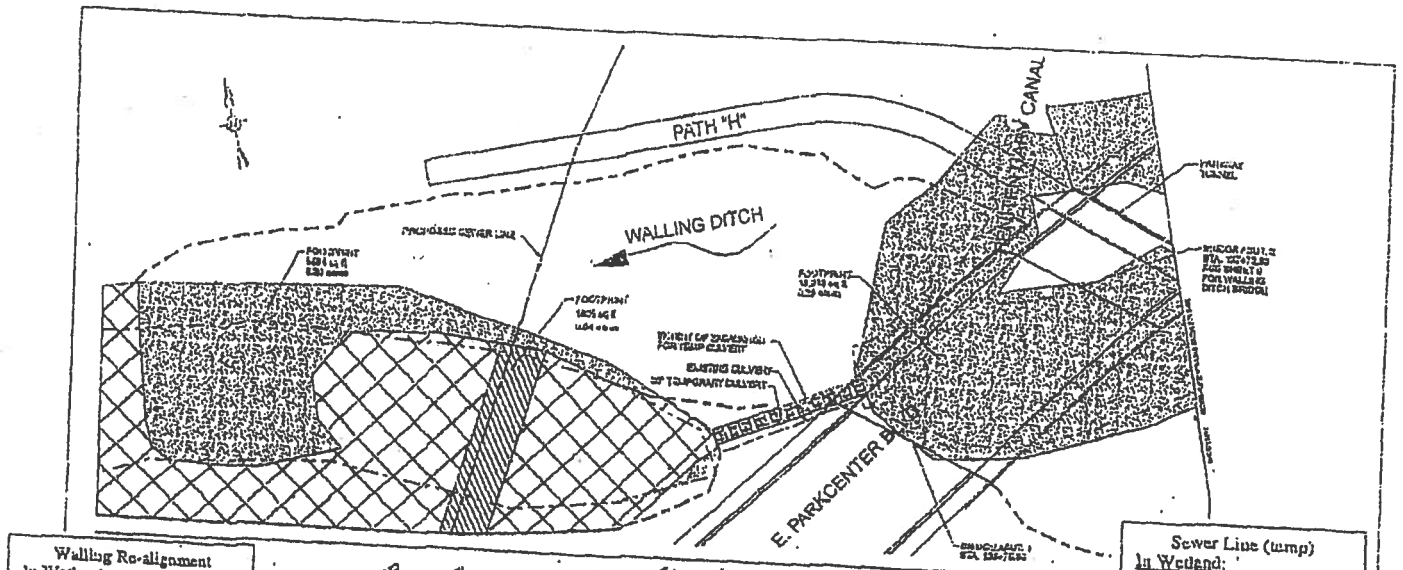
File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 5 of 12

PROPOSED EAST PARKCENTER BRIDGE
TEMPORARY FILL AND IMPACTS

CH2MHILL

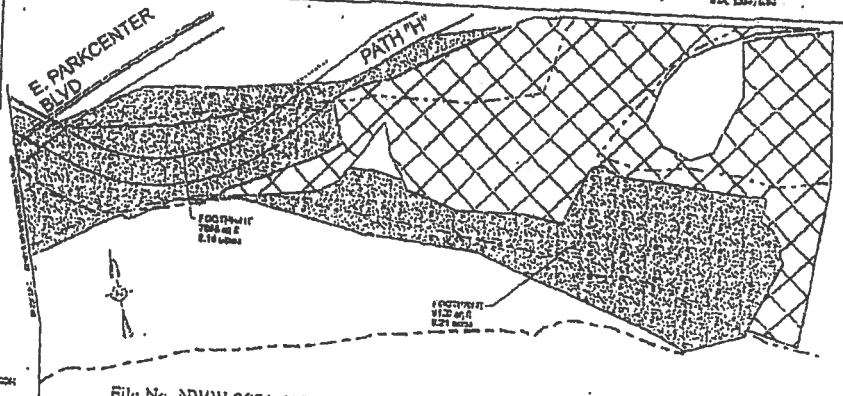

EAST PARKCENTER BOULEVARD
BOISE RIVER
GREEN BELT
DIVERSION CHANNEL
PLAN VIEW
Area "D" (Bridge Deck over wetland, shading impact)
In Wetland:
Footprint: 0.02 ac
Area "E" (Bridge Deck over wetland, shading impact)
In Wetland:
Footprint: 0.03 ac
Area "F" (Abutment 2 with Scour protection)
In Wetland:
Footprint: 0.02 ac
Excavation (temp): 200 cy
Fill (piling, foundation, backfill, rip-rap): 250 cy
ELEVATION
LEGEND
File No. NWW-2005-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 6 of 12
PROPOSED EAST PARKCENTER BRIDGE
PERMANENT FILL AND IMPACTS
CH2MHILL


SECTION A-A, DEWATERING FACILITIES
E PARKCENTER BLVD
E. PARKCENTER BRIDGE
OVERFLOW CHANNEL
BOISE RIVER
Pathway F
In Wetland:
Footprint: 0.07 ac
Excavation: 267 cy
Fill pathway (aggregate & fines, concrete): 519 cy
Overflow Channel
Wetlands:
Footprint: 0.50 ac
Excavation (perm): 1300 cy
Fill (reinforced turf): 300 cy
Pathway G
In Wetland:
Footprint: 0.04 ac
Excavation: 350 cy
LEGEND
WETLAND AREA
File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 7 of 12
PROPOSED EAST PARKCENTER BRIDGE
FLOOD CHANNEL WETLAND IMPACTS
CH2MHILL



Walling Re-alignment
In Wetland:
Footprint: 0.81 ac
Excavation: 6200 cy
Fill (armoring, veg): 500 cy

Sewer Line (temp)
In Wetland:
Footprint: 0.04 ac
Excavation: 500 cy
Fill (earth & veg): 500 cy



Pathway H
In Wetland:
Footprint: 0.13 ac
Excavation: 963 cy
Fill pathway (aggregate & fines, asphalt): 1200 cy
Fill tunnel: 295 cy
Total fill: 1496 cy

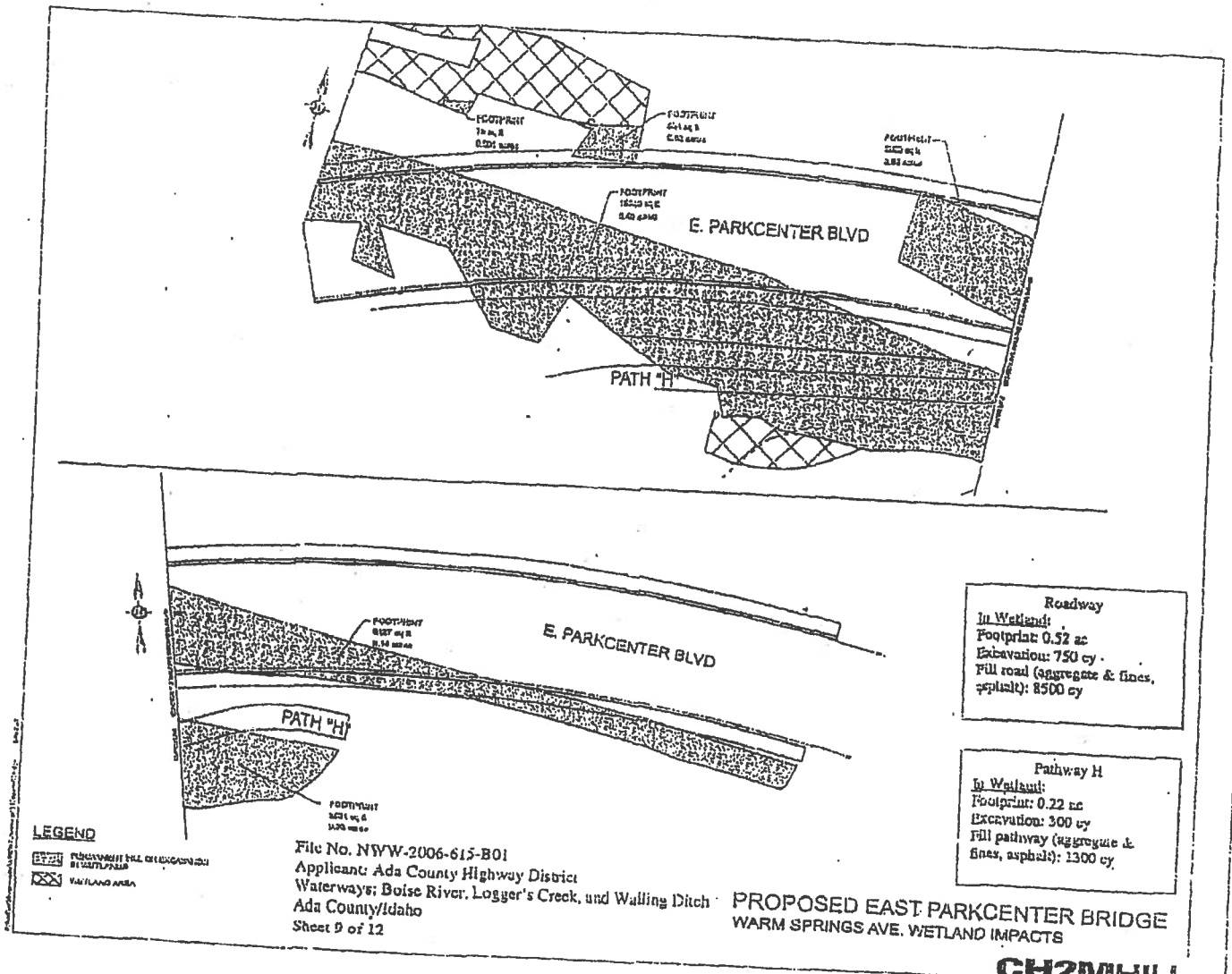
Culvert (temp)
In Wetland:
Footprint: 0.04 ac
Excavation: 150 cy
Fill (culvert, fabric, gravel: 150 cy

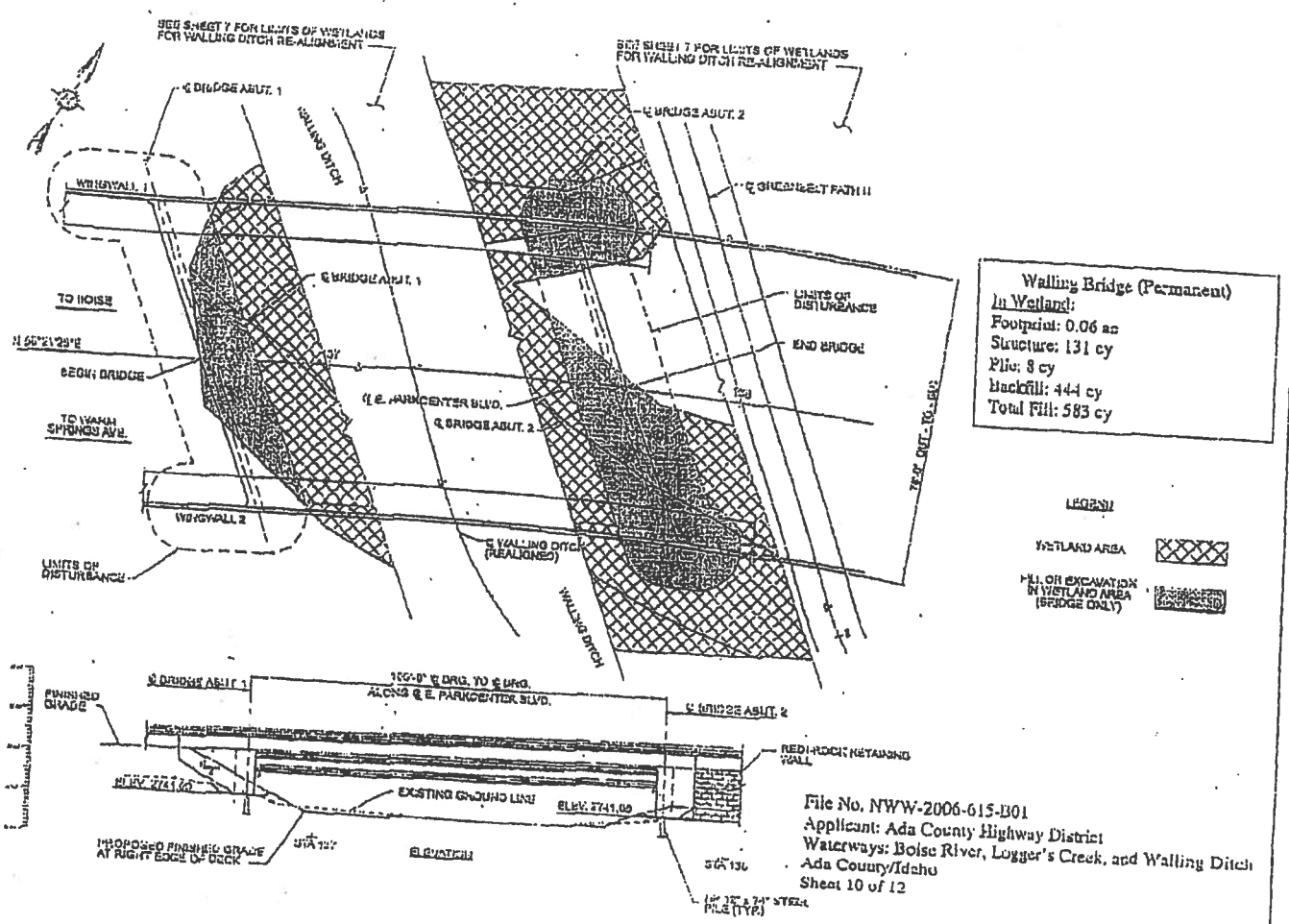
LEGEND
WETLAND AREA

File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 8 of 12

PROPOSED EAST PARKCENTER BRIDGE
WALLING DITCH WETLAND IMPACTS

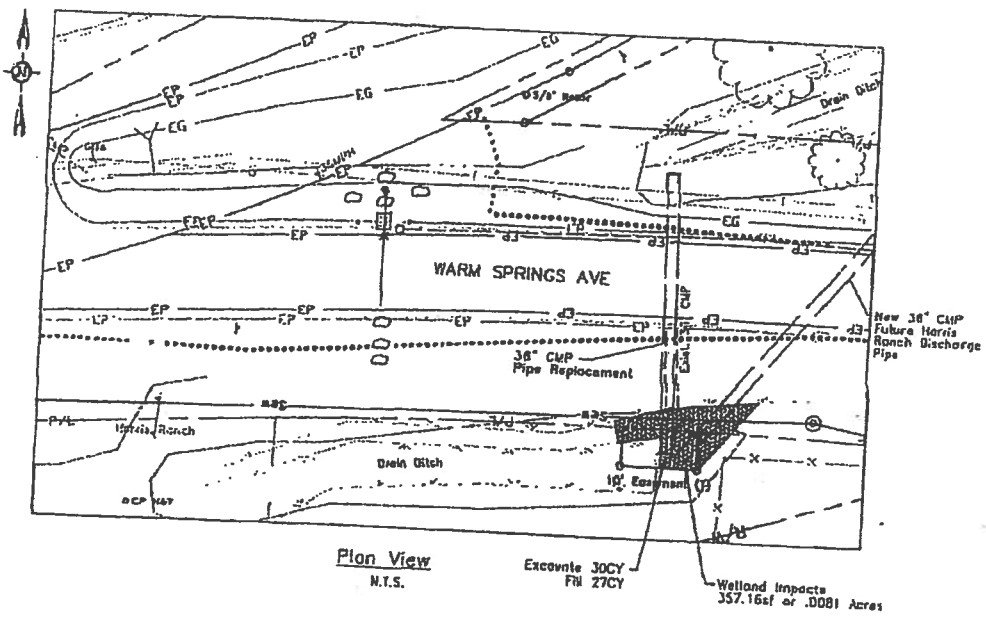
CH2MHILL


E. PARKCENTER BLVD
PATH "H"
E. PARKCENTER BLVD
PATH "H"
LEGEND
WETLAND AREA
Roadway
In Wetland:
Footprint: 0.52 ac
Excavation: 750 cy
Fill road (aggregate & fines, asphalt): 8500 cy
Pathway H
In Wetland:
Footprint: 0.22 ac
Excavation: 300 cy
Fill pathway (aggregate & fines, asphalt): 1300 cy
File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 9 of 12
PROPOSED EAST PARKCENTER BRIDGE
WARM SPRINGS AVE. WETLAND IMPACTS
CH2MHILL



File No. NWW-2006-615-B01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, and Walling Ditch
Ada County/Idaho
Sheet 10 of 12

Ada County Highway District
Project No. 60079
EAST PARKCENTER BRIDGE
PROPOSED EAST PARKCENTER BRIDGE
PERMANENT FILL AND IMPACTS FROM BRIDGE
(Over Walling Ditch)
HDR



Plan View
N.T.S.

Excavate 30CY
Fill 27CY

Wetland Impacts
357.16sf or .0081 Acres

General Notes

There is One Existing 36" CMP Drain Pipe To Be Replaced In Kind And At The Same Elevations. Harris Ranch Wishes To Add A Second 36" CMP Drain Pipe Crossing At Similiar Elevations As Original 36" CMP. The Total Headwall Area is 357.16sf Or .0081 Acres.

1. Location Shown On Sheet 2 Of 12 As Ref.
2. (2) 36" CMP Pipe Crossings
   One is Future Harris Ranch Discharge.
3. Existing Pipe Crossing To Be Replaced In Kind And At Existing Invert Elevations.

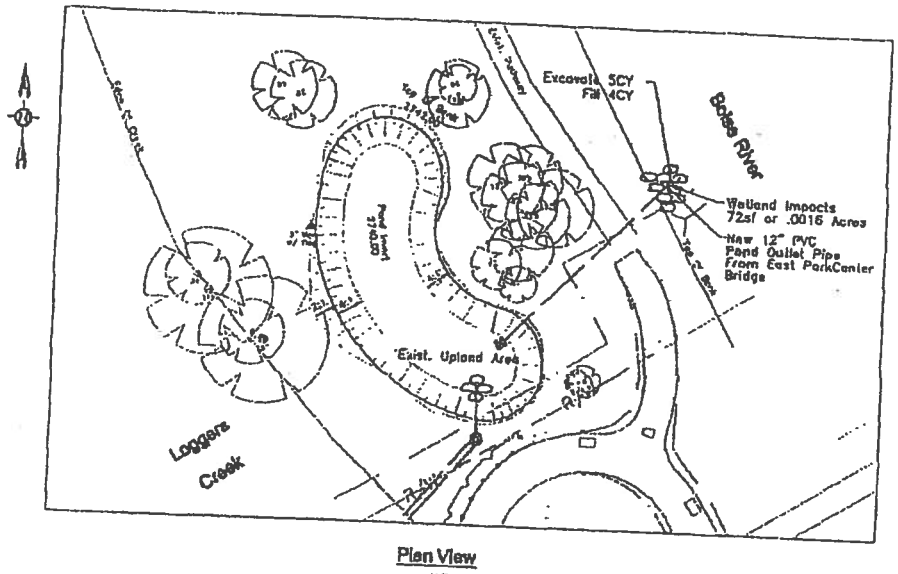
   New 36" CMP Pipe For Harris Ranch Discharge Will Hold Similiar Elevations As Existing Pipe Crossing.
4. Total Wetland Vegetation Impacted .0081 Acres This Sheet Only.
5. Excavate 30CY
   Fill 27CY

Proposed East ParkCenter Bridge

Permanent Fill And Impacts For Walling Ditch

File No. NWW-2006-815-ID1
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, & Walling Ditch
Ada County / Idaho

Sheet 11 of 12



Plan View
N.T.S.

General Notes

Proposed East ParkCenter Bridge Storm Drain Outfall To The Boise River.

1. Location Shown On Sheet 2 Of 12 As 5.
2. (1) 12" PVC Discharge Pipe
   From Detention Pond To Boise River.
3. Total Wetland Vegetation Impacted
   .0016 Acres This Sheet Only.
4. Excavate 5CY
   Fill 4CY

Proposed East ParkCenter Bridge

Permanent Fill And Impacts
Relocate Loggers Creek Outfall To Boise River

File No. NWW-2006-615-R01
Applicant: Ada County Highway District
Waterways: Boise River, Logger's Creek, & Walling Ditch
Ada County / Idaho

Sheet 12 of 12

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1445 North Orchard • Boise, Idaho 83706 • (208) 373-0550

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

August 13, 2007

Kent Brown, P.E.
Ada County Highway Department
3775 Adams Street
Garden City, ID 83714

Re: Reference No. 2006-615-B01
East Park Center Bridge Over Boise River

Dear Mr. Brown:

The Department of Environmental Quality (Department) has considered water quality certification for construction related to the referenced project. We have reviewed the subject application and have the following comments and conditions.

General

If dewatering is required during construction, a short-term activity exemption must be obtained from this office. Please contact Craig Shepard at 373-0557 for further information if necessary.

If this proposed project contains a direct or indirect discharge to the Boise River or its tributaries, please be advised that a Total Maximum Daily Load (TMDL) allocation has been developed for water quality limited water bodies in the Lower Boise River watershed for pollutants of concern. This may affect your proposed project as your discharge must provide for a no net increase in pollutants of concern. In addition, the TMDL could require a further reduction in pollutant discharge from this proposed project.

Fills

Material may not be placed in excess of the minimum needed for erosion protection. All temporary fills shall be removed in their entirety on or before the completion of construction.

Material may not be placed in any location or in any manner so as to impair surface or subsurface water flow into or out of any wetland area. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.

Fill material shall be free of organic and easily suspendable fine material. The fill material to be placed shall include clean earth fill, sand, and stone only.

Whenever practicable, discharges of dredged or fill material shall be conducted during low flow periods, during periods when spawning is not occurring and during periods when recreational use is relatively low.

Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the watercourse.

Discharges of dredged or fill material in excess of that necessary to complete the project shall not be permitted.

Erosion Control

Disturbance of the existing channel bottom and native vegetation shall be kept to a minimum. Areas disturbed by a project which are suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.

Sediment that is the result of this activity must be mitigated to prevent violations of the turbidity standard as stipulated under Section 58.01.02 of the Idaho Water Quality Standards and Wastewater Treatment Requirements. Any violation of this standard must be reported to this office immediately.

Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout the operation of the project. One of the first construction activities shall be the placement of permanent and temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.

Construction Activities

Work in open water is to be kept at a minimum and only when necessary. Equipment shall not enter the stream channel unless absolutely necessary to complete the work. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.

Equipment and machinery must be removed from the area of waterway prior to refueling, repair and/or maintenance. Measures shall be taken to prevent spilled fuels, lubricants, or other toxic materials from entering the watercourse.

Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.

Construction operations in watercourses and water bodies shall be restricted to areas specified in the application for the federal license or permit.

Measures shall be taken to prevent the entrance of wet concrete into the watercourse when placed in forms and/or from washing of trucks.

To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.

If construction is completed and mitigation implemented in accordance with the information provided in the application and the comments and conditions above, the Department certifies under Clean Water Act Section 401 that the construction of the project will comply with applicable requirements of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act (PL92-500), as amended, and will not violate Idaho Water Quality Standards and Wastewater Treatment Requirements (IDAPA 58.01.02). This certification shall remain in effect until December 31, 2009, at which time construction must be completed.

Water quality certification provided herein shall be revoked for failure of the permittee to comply with the conditions of this certification or the terms and conditions of the referenced permit. Revocation shall become effective upon written notice to the permittee, and all activities permitted under the referenced permit shall immediately cease until the permittee obtains another water quality certification from the Department.

This Section 401 Water Quality Certification and associated conditions may be appealed by submitting a request in writing within 35 days for a hearing, pursuant to Title 67, Chapter 52, Idaho Code and the Rules of Administrative Procedure before the Board of Environmental Quality, IDAPA 58.01.23. The request for a hearing must be filed with the hearing coordinator at the following address:

Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Please contact me at (208) 373-0599 if you have any questions or further information to present.

Sincerely,

Jack M. Gantz, P.E.
Technical Engineer

JMG:vee

cc: Greg Martinez, COE, Boise
Source File #20, Reading File

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Ada County Highway District	File Number: NWW-2006-615-B01	Date: October 19, 2007
Attached is:		See Section Below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
District Engineer ATTN: A. Bradley Daly Regulatory Division Walla Walla District 201 North 3rd Avenue Walla Walla, Washington 99362-1876 Telephone (509) 527-7150	U.S. Army Corps of Engineers Northwestern Division Attn: Karen Kochenbach, Regulatory Program Manager P.O. Box 2870 Portland, Oregon 97208-2870 Telephone (503) 808-3888

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent	Date:	Telephone number

EXHIBIT B

November 28, 2007

Quadrant Consulting, Inc.

EAST PARKCENTER BRIDGE
WETLANDS MITIGATION SITE

A parcel of land situated in a portion of Government Lots 4 and 5 located in the Northwest ¼ of Section 29, Township 3 North, Range 3 East, Boise Meridian, being more particularly described as follows:

Commencing at the Northwest corner of said Section 29, thence South 0°16'50" West 1837.52 feet along the West line of said section to a point, thence leaving said West line, South 89°43'10" East 347.70 feet to the **POINT OF BEGINNING**, thence

South 51°52'42" East 169.07 feet, thence
South 20°51'16" East 24.98 feet, thence
Along a curve to the left 603.25 feet, said curve having a radius of 624.00 feet, a delta angle of 55°23'27" and a chord bearing South 16°05'28" East 580.04 feet, thence
Along a curve to the right 257.03 feet, said curve having a radius of 530.91, a delta angle of 27°44'20 feet, and a chord bearing South 29°55'01" East 254.53 feet, thence
South 16°02'51" East 222.99 feet to a point on the Northwesterly line of a "Public Bicycle Path Easement", Instrument Number 99002820, Ada County records, thence tracing said Northwesterly line the following 4 courses:
Along a curve to the right 54.96 feet, said curve having a radius of 1849.82 feet, a delta angle of 1°42'08" and a chord bearing South 53°19'05" West 54.96 feet, thence
South 55°54'06" West 165.26 feet, thence
South 64°37'30" West 15.12 feet to **POINT "A"**, thence leaving said Northwesterly line
North 06°06'57" West 16.97 feet, thence
North 13°07'55" West 48.39 feet, thence
Along a curve to the left 3.72 feet, said curve having a radius of 11.00 feet, a delta angle of 19°22'54" and a chord bearing North 22°49'22" West 3.70 feet, thence
North 33°21'41" West 28.28 feet, thence
North 30°36'11" West 17.67 feet, thence
Along a curve to the left 15.36 feet, said curve having a radius of 11.00 feet, a delta angle of 80°00'48" and a chord bearing North 70°36'35" West 14.14 feet, thence
South 69°23'01" West 53.78 feet, thence
South 59°12'18" West 33.91 feet, thence
South 38°36'03" West 33.03 feet, thence
Along a curve to the right 6.28 feet, said curve having a radius of 4.00 feet, a delta angle of 90°00'00" and a chord bearing South 83°36'03" West 5.66 feet, thence
North 51°23'57" West 108.06 feet, thence
Along a curve to right 35.35 feet, said curve having a radius of 94.00 feet, a delta angle of 21°32'40", and a chord bearing North 40°37'37" West 35.14 feet, thence
North 29°51'17" West 264.33 feet, thence

1904 W. Overland • Boise, ID 83705 • Phone (208) 342-0091 • Fax (208) 342-0092 • Email: quadrant@quadrant.cc
Civil Engineering • Surveying • Construction Management

November 28, 2007

Quadrant Consulting, Inc.

Along a curve to the right 49.02 feet, said curve having a radius of 194.00 feet, a delta angle of 14°28'37" and a chord bearing North 22°36'59" West 48.89 feet, thence
North 15°22'40" West 45.66 feet, thence
Along a curve to the right 47.41 feet, said curve having a radius of 94.00 feet, a delta angle of 28°54'02" and a chord bearing North 00°55'39" West 46.91 feet, thence
North 13°31'22" East 47.06 feet, thence
Along a curve to the left 30.26 feet, said curve having a radius of 206.00 feet, a delta angle of 8°25'00" and a chord bearing North 09°18'52" East 30.23 feet, thence
North 05°06'22" East 194.75 feet, thence
Along a curve to the left 72.86 feet, said curve having a radius of 206.00 feet, a delta angle of 20°15'52" and a chord bearing North 05°01'34" West 72.48 feet, thence
North 15°09'30" West 132.70 feet, thence
North 16°04'41" West 25.90 feet, thence
North 18°22'41" West 62.63 feet, thence
North 04°32'29" West 30.63 feet, thence
North 46°37'24" East 232.37 feet to the **POINT OF BEGINNING.**

Said parcel contains 422,050 square feet or 9.69 acres, more or less.

TOGETHER WITH:

A parcel of land situated in a portion of Government Lot 4 located in the Northwest ¼ of Section 29, Township 3 North, Range 3 East, Boise Meridian, being more particularly described as follows:

Commencing at said **POINT "A"** thence South 23°07'47" West 17.86 feet to the **POINT OF BEGINNING,** thence

South 42°04'23" West 40.74 feet, thence
South 54°10'04" West 17.05 feet, thence
North 51°23'57" West 136.93 feet, thence
North 38°36'03" East 49.25 feet, thence
North 59°12'18" East 30.63 feet, thence
North 69°23'01" East 52.80 feet, thence
South 33°21'59" East 47.44 feet, thence
South 13°07'55" East 47.98 feet, thence
South 02°43'45" East 28.66 feet, thence
South 47°55'37" East 4.47 feet to the **POINT OF BEGINNING.**

Said parcel contains 13,582 square feet or 0.31 acres, more or less.

PROFESSIONAL LAND SURVEYOR REGISTERED 7876 STATE OF IDAHO PETER W. LOUNSBURY

1904 W. Overland • Boise, ID 83705 • Phone (208) 342-0091 • Fax (208) 342-0092 • Email: quadrant@quadrant.cc
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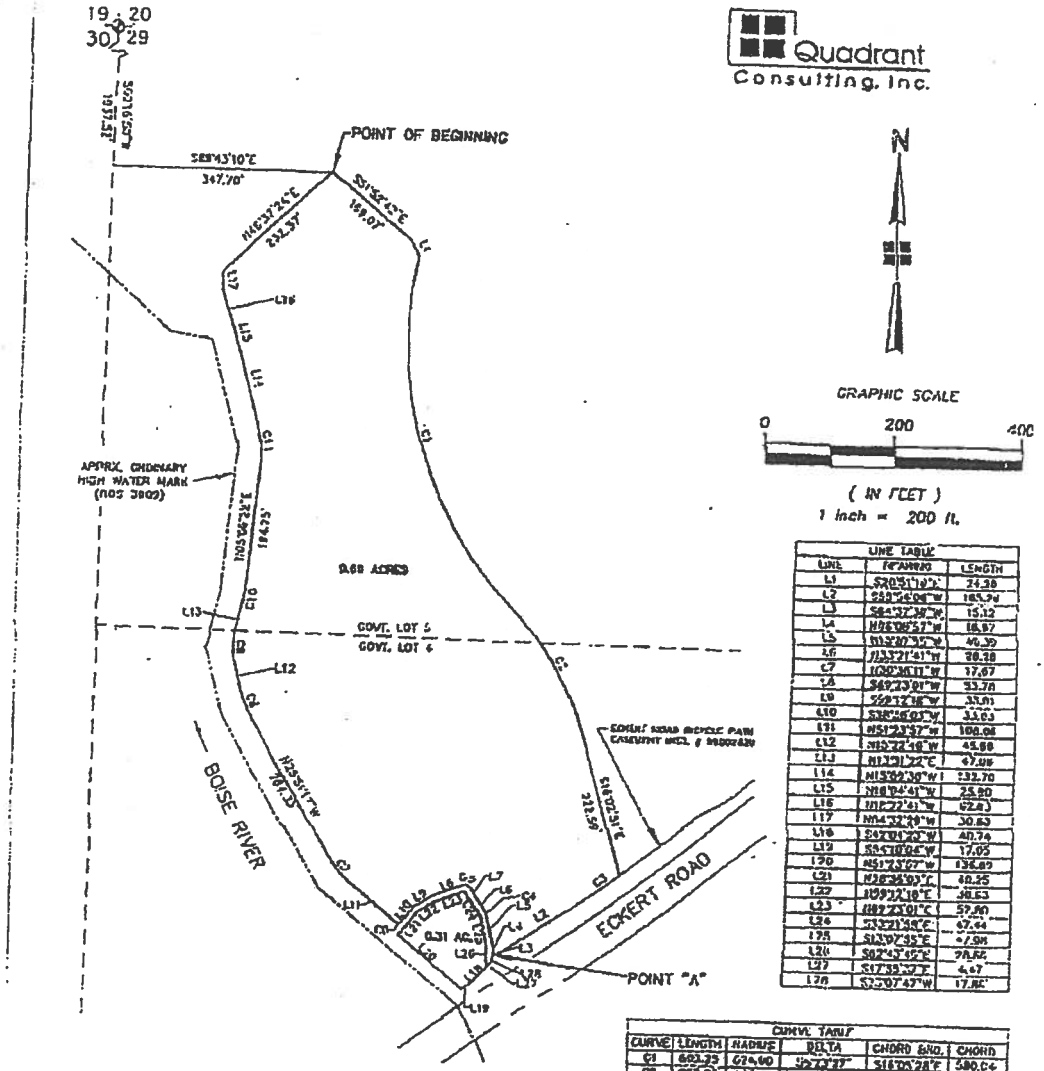

LINE TABLE		
LINE	BEARING	LENGTH
L1	S20°51'10"E	24.38
L2	S55°26'06"W	185.94
L3	S64°37'38"W	15.12
L4	N78°08'57"W	18.97
L5	S13°07'35"W	46.39
L6	N33°21'41"W	20.38
L7	N06°36'11"W	17.67
L8	S69°23'01"W	33.78
L9	S58°12'18"W	33.01
L10	S38°46'03"W	33.03
L11	N51°23'37"W	100.08
L12	N15°22'18"W	45.88
L13	N13°01'22"E	47.08
L14	N15°09'38"W	132.70
L15	N18°04'41"W	25.80
L16	N01°27'41"W	62.83
L17	N14°32'19"W	30.83
L18	S62°01'20"W	40.74
L19	S51°10'04"W	17.05
L20	N51°25'07"W	136.89
L21	N28°36'03"E	40.35
L22	N09°27'18"E	38.63
L23	N82°25'01"E	57.80
L24	S13°21'36"E	67.44
L25	S12°07'35"E	47.08
L26	S02°45'15"E	78.86
L27	S17°35'37"E	4.47
L28	S25°07'47"W	17.86

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BRG.	CHORD
C1	602.25	674.00	51°12'37"	S16°00'28"E	580.04
C2	257.01	530.91	27°44'20"	S28°55'01"E	254.53
C3	54.08	1848.03	1°40'09"	S33°19'05"W	54.96
C4	3.72	91.00	1°52'36"	N32°49'27"W	3.70
C5	15.36	91.00	9°00'18"	N28°06'35"W	14.14
C6	6.28	4.00	89°00'00"	N01°36'10"E	5.66
C7	35.35	24.00	84°22'50"	N40°37'57"W	32.14
C8	48.82	164.00	16°26'27"	N22°45'29"W	48.65
C9	47.41	94.00	28°54'32"	N00°38'32"W	46.91
C10	30.26	208.00	8°20'00"	N09°18'52"E	30.23
C11	72.86	204.00	20°28'24"	N02°04'34"W	72.48

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HOLDER

Idaho Foundation for Parks and Lands, Inc.

By: _____
Its: _____

ACHD

Ada County Highway District

By: _____
Its: _____

[Notary acknowledgments follow.]

County of Ada)

On this 12 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Alta M. Harris, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 12 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Don K. Weimunster known or identified to me to be the President of Idaho Foundation for Parks and Lands, Inc., the individual who executed the instrument on behalf of said corporation, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

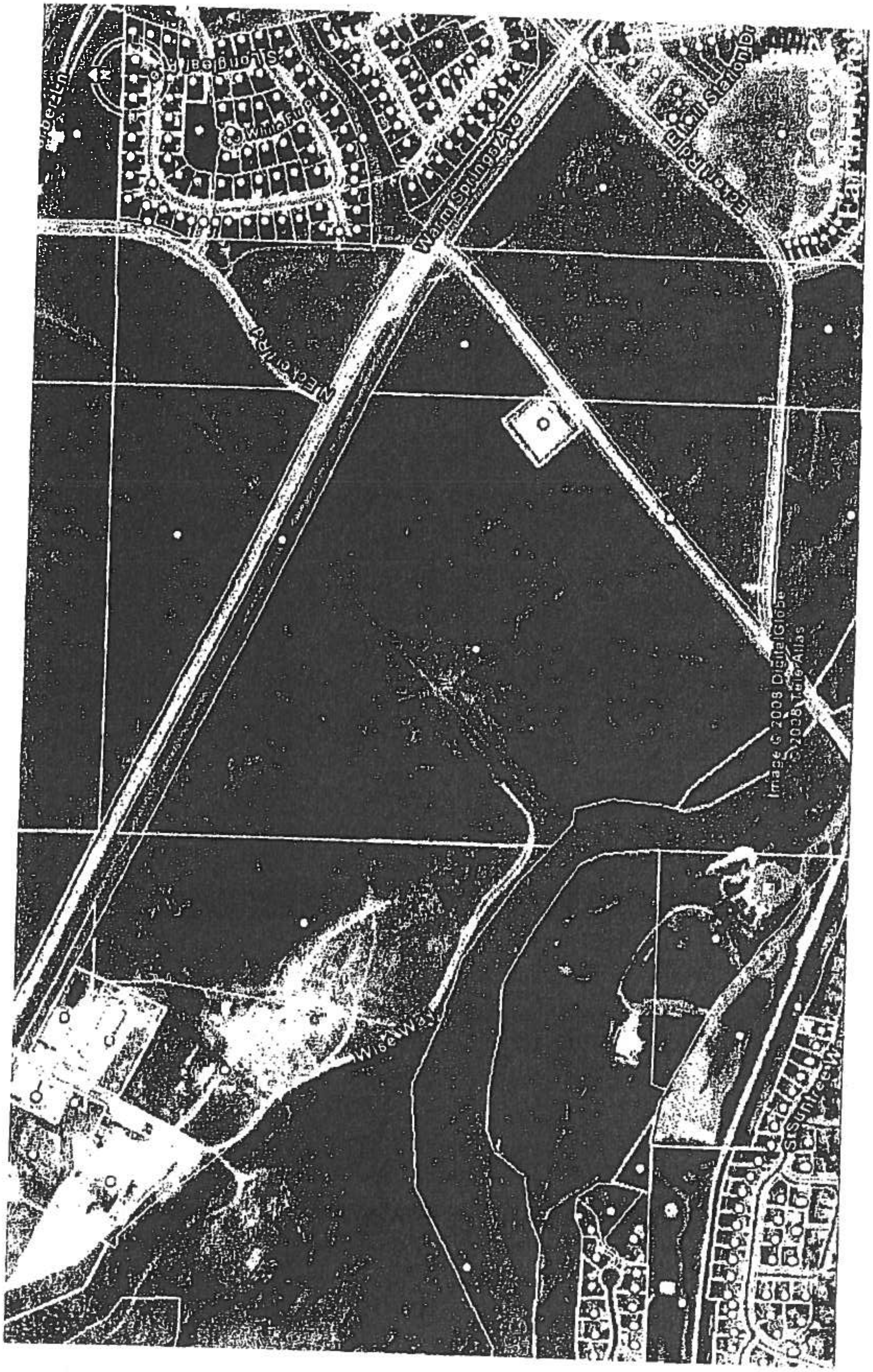
STATE OF IDAHO)
) ss.
County of Ada)

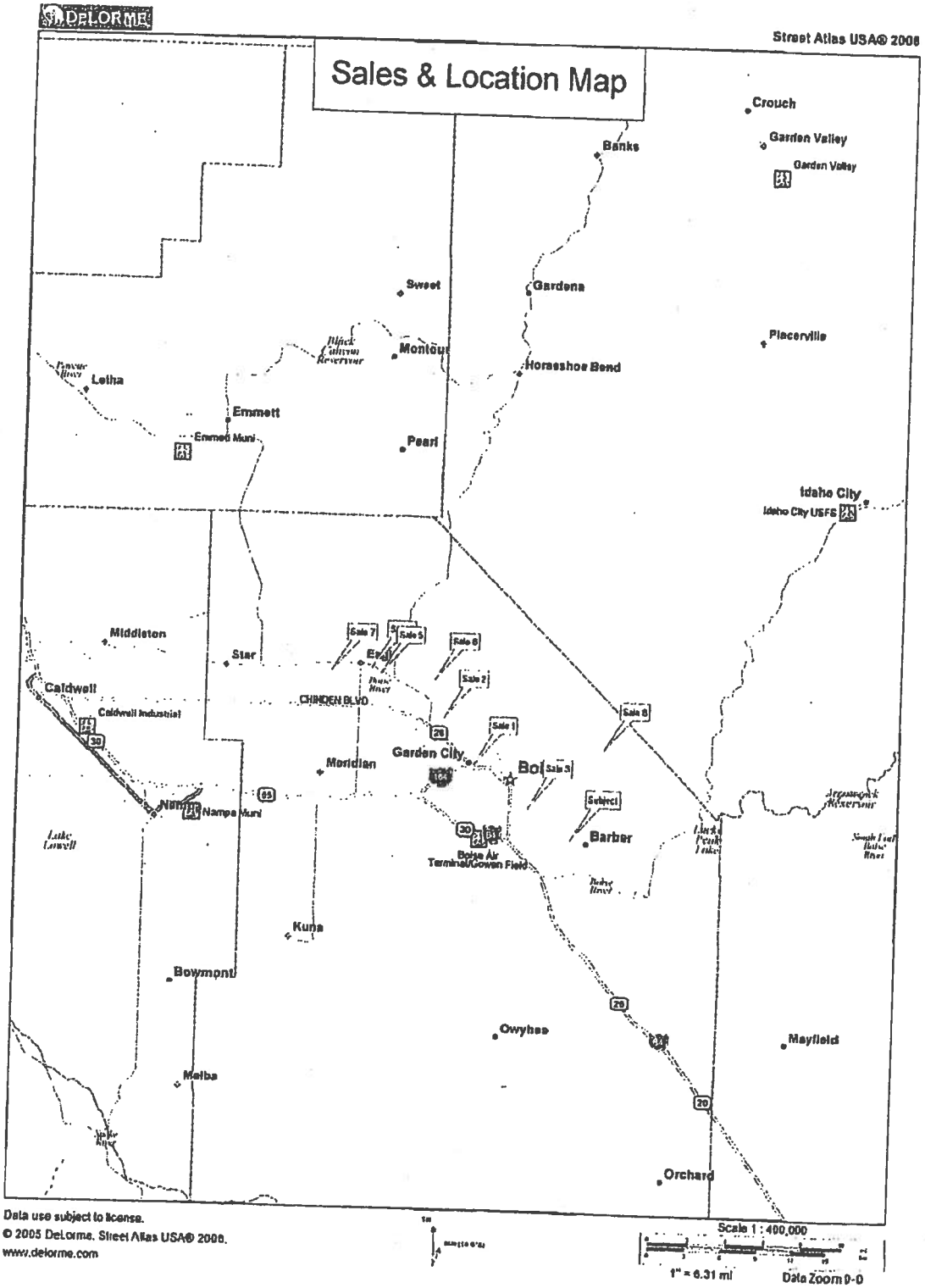
On this 28th day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John S. Franden known or identified to me to be the President of the Ada County Highway District, a body corporate and politic, who executed the instrument on behalf of said entity, and acknowledged to me that such person 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.

SUSAN K. SLAUGHTER NOTARY PUBLIC STATE OF IDAHO

Notary Public for Susan K Slaughter
Residing at Boise, Idaho
My commission expires: 4-8-2009


Warm Springs Ave
W Eckert Rd
Wise Way
Image © 2008 DigitalGlobe
© 2008 Tele Atlas


DeLORME
Street Atlas USA® 2006
Sales & Location Map
Crouch
Garden Valley
Banks
Garden Valley
Sweet
Gardena
Placerville
Montour
Horseshoe Bend
Letha
Emmett
Emmett Muni
Pearl
Idaho City
Idaho City USFS
Middleton
Star
Sale 7
Sale 5
Sale 6
Sale 2
Caldwell
CHINDEN BLVD
Caldwell Industrial
Sale 8
Sale 1
Garden City
Meridian
Sale 3
Subject
Nampa Muni
Barber
Boise Air Terminal/Gowen Field
Kuna
Bowmont
Owyhee
Mayfield
Melba
Orchard
Data use subject to license.
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www.delorme.com
Scale 1 : 400,000
1" = 6.31 mi
Data Zoom 9-0

QUALIFICATIONS OF G. JOSEPH CORLETT, MAI, SRA

Biographic Data

Born in Nampa, Idaho; raised in Boise, Idaho. Summer employment as farm laborer, data processing assistant, and supply clerk for Bank of Idaho. After graduation from University of Idaho, full-time fee appraiser.

Education

Elementary School - Boise, Idaho
High School - San Rafael Military Academy, San Rafael, California
College - University of Idaho (Bachelor of Science Degree in Business, Major in Finance) - 1973
AIREA Appraisal Courses Passed (Since 1973) (Appraisal Institute):

I-A	Basic Appraisal Principles, Methods & Techniques - 2 weeks
I-B	Capitalization Theory & Techniques - 2 weeks
II	Urban Properties - 2 weeks
VII	Industrial Properties - 1 week
VIII	Single-Family Residential Appraisal - 1 week
Cap. III	Capitalization Theory & Techniques, Part 3 - 1 week - 1980
II-3	Standards of Prof. Practice - 1982, 1986, 1989, 1993 (#410/420), 1997, 2002 (#410), 1998, 2002 (#430), 2004 USPAP Update, 2005 USPAP Update, 2007 USPAP Update
VI	Investment Analysis - 1984
X	Market Analysis - 1987
301	Basic Capitalization - 1993
530	Advanced Sales Comparison and the Cost **Approach** – 1997
	Valuation of Conservation Easements (33 hrs. classroom) – 2007

University Courses:
Principles of Real Estate
The Appraisal of Real Estate
Seminars:
Graduate Realtors Institute Course 100
Regulatory Compliance and Idaho Law (1998)
SREA Narrative Report Seminar on Income Producing Property Condominium Seminar
R-2 Examination and Math Stat Finance - SREA
AIREA Capitalization Workshop
AIREA Feasibility Seminar
SREA Instructor's Clinic, Course 101 - Purdue University
Leasehold Seminar
Hotel/Motel Seminar
Money Markets
Financial Institution Review Considerations (1998)
FHLBB R-41B/C Seminars - 1986, 1987
Real Estate and Taxation
Market Analysis Seminar - 1987
Professional Practice Seminar - 1986, 1991
SREA - Professional Practice - 1988
AIREA - Cash Equivalent Seminar - 1988
AIREA - Litigation Valuation - 1988
AIREA - Investment Analysis - 1989
AIREA - Applied Sales Comparison Approach - 1989
AIREA - Rates, Ratios and Reasonableness – 1989
PSI, Inc. - Asbestos and Other Environmental Concerns - 1990
Environmental Law Issues, 1991
Appraisal Institute - Appraising Contaminated Properties - 1992
Appraisal Institute - Appraisal Review Seminar – 1992

T. Exhibit T – 1st Amendment to Development Agreement

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

PARKCENTER BOULEVARD EXTENSION TO WARM SPRINGS AVENUE, INCLUDING THE EAST PARKCENTER BRIDGE

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "**Amendment**") is made and entered into this 28th day of November, 2007 by and between HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership ("**Harris Family Limited Partnership**"), BARBER MILL COMPANY ("**Barber Mill Company**"), an Idaho corporation (Harris Family Limited Partnership and Barber Mill Company are sometimes herein collectively referred to as "**Harris Ranch**"), and ADA COUNTY HIGHWAY DISTRICT (herein "**ACHD**").

RECITALS

A. The parties entered into a Development Agreement dated July 29, 2005 (the "**Development Agreement**").

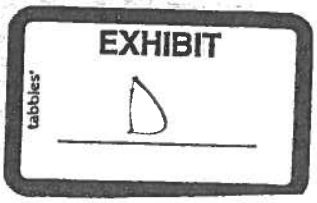
B. Section 5.3 of the Development Agreement states that ACHD may have to provide wetlands mitigation as required by the U.S. Army Corps of Engineers or other governmental entities in connection with the Project, as such term is defined in the Development Agreement.

C. Section 5.3 of the Development Agreement also states that Harris Ranch will cooperate in assisting ACHD in any wetland mitigation requirements identified during the permitting process, including but not limited to donating a portion of wetlands owned by Harris Ranch in order to accomplish the wetland mitigation required by governmental agencies.

D. Section 5.3 of the Development Agreement also states that any such provision of wetlands shall be eligible for Impact Fee Reimbursement collected in Harris Ranch, Idaho.

E. The parties desire to amend their obligations under Section 5.3 of the Development Agreement as set forth in this Amendment. The Development Agreement remains in full force and effect except as specifically amended by this Amendment.

F. The parties intend by this Amendment to specify the means by which Harris Ranch will satisfy its obligations regarding the wetland mitigation requirements set forth in the Development Agreement. Harris Family Limited Partnership agrees pursuant to this Amendment to donate approximately 10 acres of wetlands and does hereby waive any potential Impact Fee



Reimbursement set forth in the Development Agreement of $7.00 per square foot relating to wetland mitigation reimbursement for the donation.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the recitals, which are incorporated in this Amendment, and in consideration of the premises and the agreements hereinafter contained, ACHD, Harris Family Limited Partnership and Barber Mill Company agree as follows:

SECTION 1. Definitions. All capitalized terms in this Amendment that are not defined herein shall have the same meaning ascribed to them in the Development Agreement.

SECTION 2. Recitals. The recitals above are incorporated into the body of this Amendment.

SECTION 3. Amendment of Section 5.3. Section 5.3 of the Development Agreement is hereby amended and restated in its entirety as follows:

"5.3 ACHD is required by the U.S. Army Corps of Engineers to provide a certain number of acres of improved wetlands to satisfy the wetland mitigation due to the construction of the Project. Harris Family Limited Partnership has agreed to the following:

i. Harris Family Limited Partnership shall provide a conservation easement on acreage north of the Boise River near the Project, which acreage (the "**Property**") is identified and more particularly described in the conservation easement, which is substantially in the form attached hereto, marked as **Schedule 1** (the "**Conservation Easement**") and incorporated herein by reference. Harris Family Limited Partnership agrees to make any additional changes or modifications to the Conservation Easement as may be reasonably required by the U.S. Army Corps of Engineers and/or ACHD.

ii. Harris Family Limited Partnership agrees to construct improvements on the Property to meet requirements of the U.S. Army Corps of Engineers to satisfy in all respects the U.S. Army Corps of Engineers' requirements for ACHD's wetland mitigation for the Project. To provide such construction, Harris Family Limited Partnership shall engage a professional firm pursuant to a written agreement (the "**Services Agreement**") approved in writing by ACHD that complies with all requirements of the U.S. Army Corps of Engineers. In connection with the Services Agreement, Harris Family Limited Partnership agrees as follows:

(1) After ACHD approves the Services Agreement, Harris Family Limited Partnership shall not amend, terminate, or assign the agreement without the prior written consent of ACHD;

(2) Harris Family Limited Partnership shall not consent to the professional firm using subcontractors or engaging consultants not employed by the professional firm without ACHD's prior written consent;

(3) The Services Agreement shall provide that Harris Family Limited Partnership may require the professional firm to deliver a public presentation regarding the project. Harris Family Limited Partnership shall request the professional firm to deliver such a presentation if requested to do so by ACHD.

(4) Harris Family Limited Partnership shall not approve any design plans, mitigation plans, or project schedule changes pursuant to the Services Agreement without the prior written consent of ACHD.

(5) Harris Family Limited Partnership shall not waive any rights under the Services Agreement without the prior written consent of ACHD.

(6) If ACHD determines that the professional firm has defaulted under the Services Agreement, Harris Family Limited Partnership shall assign the Professional Services Agreement to ACHD if ACHD requests such assignment and Harris Family Limited Partnership shall take all steps necessary under the Services Agreement to effect such assignment.

iii. In exchange for providing the Conservation Easement and the construction and maintenance of the wetlands as provided in the Conservation Easement, the Services Agreement, the 404 permit, or any other applicable regulations, ACHD agrees to pay to Harris Family Limited Partnership the sum of One Million Three Hundred Three Thousand Five Hundred Thirty Three and No/100ths Dollars ($1,303,533.00). Payment by ACHD to Harris Family Limited Partnership of such sum shall be made at such times as Harris Family Limited Partnership is required to make payments under the Services Agreement. Neither Harris Family Limited Partnership nor Harris Ranch shall be eligible for any Impact Fee Reimbursement for the acreage provided by Harris Family Limited Partnership for wetlands mitigation. All funds paid by ACHD shall be paid to Harris Family Limited Partnership and not to Barber Mill Company, and Barber Mill Company hereby releases any claim, right, title or interest in and to such payments by ACHD to Harris Family Limited Partnership.

iv. This Amendment shall fully satisfy the requirements of ACHD, Harris Family Limited Partnership, Barber Mill Company, and Harris

Ranch, for the requirements set forth in paragraphs 5.3 and 6.1(d) of the Development Agreement."

SECTION 4. Restatement of Development Agreement. The Development Agreement, except as modified by this Amendment, shall remain in full force and effect.

SECTION 5. Miscellaneous.

5.1 Incorporation of Schedules.

It is agreed that all schedules to this Amendment are incorporated herein by reference and made a part of the terms, provisions and covenants of this Amendment.

5.2 Binding Effect.

This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

5.3 Counterparts.

This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

5.4 Confidentiality.

The parties agree that the terms of this Amendment shall be held in confidence and shall not be revealed to any third person or entity except (i) as agreed by both parties, or (ii) as required by law or a court of competent jurisdiction.

[Signature page follows.]

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

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership

By: Harris Management, LLC, its General Partner

By: _____
Felicia Harris Burkhalter
Manager

By: _____
Mildred H. Davis
Manager

By: _____
Brian Randolph Harris
Manager

By: _____
Alta M. Harris
Manager

BARBER MILL COMPANY, an Idaho corporation

By _____
Larry Williams
President

Attest:

_____
Secretary

ADA COUNTY HIGHWAY DISTRICT

By _____
Title: President

Attest:

_____
Director

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

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership

By: Harris Management, LLC, its General Partner

By: _____
Felicia Harris Burkhalter
Manager

By: _____
Mildred H. Davis
Manager

By: _____
Brian Randolph Harris
Manager

By: _____
Alta M. Harris
Manager

BARBER MILL COMPANY, an Idaho corporation

By _____
Larry Williams
President

Attest:

_____
Secretary

ADA COUNTY HIGHWAY DISTRICT

By _____
Title: President

Attest:

_____
Director

U. Exhibit U – Deed of Conservation Easement

ADA COUNTY RECORDER J. DAVID NAVARRO AMOUNT 108.00 36
BOISE IDAHO 10/23/08 02:57 PM
DEPUTY Lisa Irby
RECORDED – REQUEST OF
Holland & Hart
108117302

DEED OF CONSERVATION EASEMENT

To all future owners of the property described herein located in Ada County, Idaho:

This DEED OF CONSERVATION EASEMENT ("Conservation Easement") is made and entered into this 28th day of November, 2007, by and between Harris Family Limited Partnership, an Idaho limited liability partnership ("Grantor"), whose address is c/o LeNir, Ltd. 4940 Mill Station Drive, Boise, Idaho 83716 and the Idaho Foundation for Parks and Lands, Inc., an Idaho nonprofit corporation ("Holder"), whose address is 5657 Warm Springs Avenue, Boise, Idaho 83716, and the Ada County Highway District, a body corporate and politic in the state of Idaho ("ACHD"), whose address is 3775 N. Adams Street, Garden City, Idaho 83714-6499.

RECITALS

A. The development of the East ParkCenter Bridge in Ada County, Idaho is subject to the regulatory jurisdiction of the United States Army Corps of Engineers (the "Corps").

B. The Army Corps Clean Water Act (the "CWA") 404 Permit #NWW-2006-615-B01 (the "Permit"), a copy of which is attached hereto and incorporated herein by reference as **Exhibit A**, authorizes certain activities that affect waters of the United States.

C. The Permit requires that ACHD preserve and protect the wetland functions of certain real property identified in the Permit by keeping it in substantially the condition that is specified by the East ParkCenter Bridge Wetlands Mitigation Plan and required by the Permit (the "Permitted Condition").

D. Grantor is the owner of real property more particularly described in **Exhibit B** attached hereto and incorporated herein (the "Property").

E. Grantor has agreed with ACHD pursuant to that certain Development Agreement dated July 29, 2005, as amended by that certain First Amendment to Development Agreement dated November 28, 2007 and consideration therein, that Grantor will convey to Holder a conservation easement placing certain limitations on the use of the Property and affirmative obligations on the Holder for the protection of the wetlands functions of the Property, and in order that the Property shall remain substantially in its Permitted Condition forever as may be modified in accordance with the Permit or a Corps-approved mitigation plan.

F. Holder, as a charitable corporation organized under the laws of the state of Idaho, and possessing the authority to hold this easement, desires to accept the conservation easement, including covenants and agreements, on, over, under and across the Property.

G. ACHD, as the holder of the Permit, desires a third-party right of enforcement of this Conservation Easement pursuant to Idaho Code Section 55-2103 (1)(c).

H. The state of Idaho has recognized the importance and validity of conservation easements by its enactment of the Uniform Conservation Easement Act, Idaho Code Sections 55-2101 through 2109, under which this Conservation Easement is created.

GRANT

NOW THEREFORE, for the foregoing consideration, and in further consideration of the restrictions, rights and agreements herein, Grantor conveys to Holder a conservation easement on, over, under, and across the Property, together with access, in perpetuity, consisting of and subject to the rights, conditions, and restrictions enumerated below and those interests of record as of the date of this Conservation Easement first written above. Holder accepts the Conservation Easement and agrees to all attendant terms and conditions as further provided herein:

I. **PURPOSES/RIGHTS OF HOLDER**. It is the purpose of this Conservation Easement to assure that the Property will be retained forever substantially in its Permitted Condition and to prevent any use of the Property that will impair or interfere with the existing wetland functions on the Property. To carry out this purpose, the following rights are conveyed to the Holder:

A. To identify, preserve, and protect wetlands, and in consultation with Grantor, to enhance the natural and ecological features of the Property, including without limitation topography, soil, hydrology, vegetation, and wildlife;

B. To enter upon the Property at reasonable times to enforce the rights herein granted and to observe, study, and make scientific observation of the Property, upon prior notice to the Grantor, its heirs, successors, or assigns, in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its heirs, successors or assigns at the time of entry; and

C. To enjoin any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

II. **RESTRICTIONS**. This Conservation Easement prohibits and limits the following activity on, over, under, and across the Property, except as otherwise provided herein and by the Permit or a Corps-approved mitigation plan:

A. Changing, disturbing, altering, or impairing the natural riparian ecosystem and other natural, ecological or wildlife features or values;

B. Construction or placing buildings, roads, signs, billboards, or other advertising, utilities, or other structures;

C. Dumping or placing of soil or other substances or material as landfill, or dumping or placing trash, waste, or other unsightly or offensive materials;

D. Removal or destruction of live trees, shrubs, or other vegetation, except for the removal of noxious or exotic invasive plant species;

E. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

F. Agricultural use, industrial use, or commercial use;

G. Using herbicides or pesticides without prior consent of Holder or designated third-party; and

H. Any other use of, or activity on, the Property that is or may become inconsistent with the purposes of this grant, the Permit, a Corps-approved mitigation plan, the preservation of the Property substantially in its Permitted Condition, or the protection of its environment is prohibited.

III. USES AND PRACTICES CONSISTENT WITH THE CONSERVATION EASEMENT. The following uses and practices upon the Property, though not exhaustive, are consistent with and shall be permitted by this Conservation Easement, except for the requirement of prior approval by the Holder or its successors where such requirement is expressly provided herein:

A. Landscaping to prevent severe erosion or damage to the Property, provided that such landscaping is consistent with preserving the Permitted Condition of the Property. Landscaping shall be coordinated with and approved by Holder, or performed in accordance with a mitigation plan approved by the Corps;

B. Pruning trees and shrubs to prevent health and safety hazards, including but not limited to fire hazards, site obstructions, and road obstructions. Pruning shall be coordinated with and approved by Holder, or performed in accordance with a Corps-approved mitigation plan;

C. Any and all construction and maintenance work required by a mitigation plan approved by the Corps; and

D. All other acts or uses not prohibited by this Conservation Easement, which are consistent with the conservation purposes of this grant.

IV. ENFORCEMENT.

A. Grantor intends that enforcement of the Permit and provisions of this Conservation Easement shall be at the discretion of Holder, and that Holder's failure to exercise its right under this Conservation Easement in the event of any breach of this Conservation Easement by the Grantor shall not be deemed or construed to be a waiver of Holder's enforcement rights under this Conservation Easement in the event of any subsequent breach.

B. If Grantor violates the terms of this Conservation Easement, Holder shall have all remedies available at law and equity, including without limitation the right to seek an injunction with respect to such activity and to cause restoration to that portion of the Property affected by such activity to the condition that existed prior to the undertaking the prohibited activity.

C. Holder will pay all costs associated with its obligation to preserve and protect in perpetuity the natural, ecological, open space and wetland values of the Property, including costs associated with monitoring compliance with the terms of this Conservation Easement, but excluding costs associated with bringing the Property into compliance with the Permit and achieving a success point pursuant to the Permit or a Corps-approved mitigation plan, which shall be the sole responsibility of Grantor. Grantor, however, intends that any costs incurred by Holder in enforcing, judicially or otherwise, the terms and restrictions of this Conservation Easement against Grantor, its successors, assigns, or authorized agents, shall be born by Grantor, its successors, assigns, or authorized agents.

D. ACHD shall have a third-party right of enforcement under this Conservation Easement as provided in Idaho Code § 55-2102(2) and § 55-2103(1) (c), and may bring an enforcement action against Grantor, its heirs, successors, or assigns, or the Holder, its heirs, successors, or assigns, for any actions by the respective party for any violation of this Conservation Easement, the Permit, or applicable law. Without limiting the foregoing, in the event of a violation of this Conservation Easement by either Grantor or by Holder, ACHD shall immediately have the right to take all steps reasonably and necessary to ensure compliance with the Permit and/or a Corps-approved mitigation plan for the Property, including, without limitation, taking temporary possession of the Property to enable ACHD to secure any maintenance required to be in compliance with the Permit and/or a Corps-approved mitigation plan. In connection with the foregoing, in the event of notice by the Corps to ACHD that the Property is not in compliance with the Permit and/or a Corps-approved mitigation plan, Grantor or Holder, as appropriate and necessary, shall grant a power of attorney to ACHD authorizing ACHD to take any steps necessary to secure any maintenance or construction required to bring the Property into compliance with this Conservation Easement, the Permit, and/or a Corps-approved mitigation plan for the Property. In addition to all other remedies set forth in this Section, if Grantor or Holder violate the terms of this Conservation Easement, ACHD shall have all other remedies available at law and equity, including without limitation the right to seek an injunction with respect to such activity and to cause restoration to that portion of the Property affected by any activity to the condition that existed prior to the undertaking the prohibited activity.

V. **ASSIGNMENT**. Holder may assign its interest in this Conservation Easement to any qualified holder as defined under Idaho Code, Section 55-2101(2), but only upon 30 (thirty) days prior written notice to Grantor, ACHD and the Corps. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, shall fully assume all liabilities of Holder hereunder, and shall continue to carry out the purpose of this Conservation Easement. In the event that Holder is voluntarily or involuntarily dissolved without having assigned this Conservation Easement, all of Holder's right, title, and interest in and to this Conservation Easement shall be deemed automatically transferred and assigned to ACHD, which shall, in turn, be obligated to either (i) assume in writing all of Holder's obligations and responsibilities under this Conservation Easement, or (ii) assign the Conservation Easement to a qualified holder as defined in Idaho Code § 55-2101(2).

VI. GRANTOR'S TRANSFER OF THE PROPERTY.

A. This Conservation Easement shall run with and burden title to the Property in perpetuity for the benefit of the Holder or its assigns and successors, and shall bind Grantor's heirs, successors or assigns.

B. If Holder, its heirs, successors, or assigns, acquire fee title to the Property from Grantor, its heirs, successors, or assigns, it is agreed that the easement will not merge into the dominant estate. Rather, the restrictions, responsibilities, and rights of the Grantor will pass to the Holder upon taking title to the Property. This instrument will continue to be a conservation deed restriction on the Property, subject to all rights, restrictions, and purposes described herein.

C. Grantor shall be responsible for construction, monitoring, and maintenance, consistent with the Corps-approved mitigation plan and Permit until the wetlands have met its performance standards as specified in the mitigation plan. After that time, Holder will assume long-term maintenance of the site.

VII. REVOKE, RELEASE, ALTER, AMEND. This Conservation Easement may be amended, altered, released, or revoked only by written agreement between the parties, their heirs, assigns, or successors. Such an agreement shall be filed in the public records of Ada County, Idaho.

VIII. EXTINGUISHMENT AND PROCEEDS. Upon the recordation hereof, this Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that a subsequent unexpected change in the conditions surrounding the Property make impossible or impracticable the continued use of all or a portion of the Property for the conservation purposes established herein, such that the conservation restrictions contained in this Conservation Easement are extinguished for all or such portion of the Property by judicial proceeding, and all or such portion of the Property is sold, exchanged or involuntarily converted following extinguishment (including but not limited to the exercise of eminent domain), Holder shall use its share of any proceeds it receives to purchase substitute conservation lands, to the extent such proceeds allow, which shall be subject to the same terms and conditions of the this Conservation Easement and Permit.

IX. TAXES AND OTHER ASSESSMENTS. Grantor shall pay all real property taxes and other assessments levied by competent authority on the Property.

X. WARRANTY. This Conservation Easement is made with general warranty of title. Grantor owns the unencumbered Property in fee simple, and has all requisite power and authority to convey the interest herein.

XI. SEVERABILITY. If any part of this Conservation Easement is found to be void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

XII. NOTICES. Any notice required to be given hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if

not, then on the next business day, (c) four (4) days after having been sent by prepaid registered or certified mail, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be to the following addresses:

If to Grantor:	Harris Family Limited Partnership Attn: Doug Fowler, LeNir, Ltd. 4940 Mill Station Drive Boise, ID 83716 Telephone: (208) 344-1131 Facsimile: (208) 344-1148
If to ACHD:	Ada County Highway District Attn: Director 3775 N. Adams Street Garden City, Idaho 83714-6499 Telephone: (208) 387-6180 Facsimile: (208) 387-6393
If to the Holder:	Idaho Foundation for Parks and Lands, Inc. Attn: Sharon Hubler 5657 Warm Springs Avenue Boise, ID 83716 Telephone: (208) 344-7141 Facsimile: (208) 344-5910

All notices provided to Grantor shall be provided with a copy of notice to ACHD, and all notices provided to ACHD shall be provided with a copy of notice to Grantor.

XIII. **EFFECTIVE UPON RECORDING.** This Conservation Easement shall be effective upon recording. The Holder shall record this instrument in a timely fashion in the official records of Ada County, Idaho, and may re-record it at any time as may be required to preserve Holder's rights in this Conservation Easement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Conservation Easement as of the date first written above.

GRANTOR

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership

By: Harris Management Company, LLC, its General Partner

MEMBERS:

Brian R. Harris
Class A

Mildred H. Davis
Class B

Felicia H. Burkhalter
Class C

Alta M. Harris
Class D

MANAGERS:

Brian R. Harris
Class A Manager

Mildred H. Davis
Class B Manager

Felicia H. Burkhalter
Class C Manager

Alta M. Harris
Class D Manager

HOLDER

Idaho Foundation for Parks and Lands, Inc.

By: _____
Its: _____

ACHD

Ada County Highway District

By: _____
Its: _____

[Notary acknowledgments follow.]

STATE OF IDAHO)
) ss.
County of Ada)

On this 9 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian R. Harris, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 9 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Mildred H. Davis, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 9 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Felicia H. Burkhalter, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.

County of Ada)

On this 12 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Alta M. Harris, known or identified to me to be a Manager of Harris Management, LLC, the general partner of Harris Family Limited Partnership, and Idaho limited partnership that executed the instrument or the person who executed the instrument on behalf of said partnership, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 12 day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Don K. Weimunster known or identified to me to be the President of Idaho Foundation for Parks and Lands, Inc., the individual who executed the instrument on behalf of said corporation, and acknowledged to me that such person 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.

SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Notary Public for Sarah Martz
Residing at Boise, ID
My commission expires: November 10, 2011

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John S. Franden known or identified to me to be the President of the Ada County Highway District, a body corporate and politic, who executed the instrument on behalf of said entity, and acknowledged to me that such person 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.

SUSAN K. SLAUGHTER NOTARY PUBLIC STATE OF IDAHO

Notary Public for Susan K Slaughter
Residing at Boise, Idaho
My commission expires: 4-8-2009

V. Exhibit V – Assignment and Assumption Agreement

ADA COUNTY RECORDER Phil McGrane
BOISE IDAHO Pgs=3 NIKOLA OLSON
ALLIANCE TITLE - BOISE PRODUCTION CENTER

2019-097428
10/08/2019 12:27 PM
$16.00

After Recording, Return To:

ACCOMMODATION

FOR RECORDING INFORMATION

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**"), dated effective as of 9/23, 2019, (the "**Effective Date**") is made between the Idaho Foundation for Parks and Lands, Inc., an Idaho corporation ("**Assignor**"), and the City of Boise City, a body corporate and politic in the state of Idaho, by and through its Department of Parks and Recreation ("**Assignee**"). Assignor and Assignee may be referred to herein as a "Party" or "Parties", as the case may be.

RECITALS

A. On November 28, 2007, Assignor (as "Holder") entered into that certain Deed of Conservation Easement recorded on October 23, 2008 in the records of Ada County as Instrument No. 108117302 (the "**Conservation Easement**"), with Harris Family Limited Partnership, an Idaho limited partnership (as "**Grantor**") and the Ada County Highway District, a body corporate and politic ("**ACHD**"), having a third-party right of enforcement.

B. In April 2010, the parties to the Conservation Easement entered into an Amendment No. 1 to Deed of Conservation Easement and Assignment of Third-Party Enforcer (the "**First Amendment**"). The First Amendment assigned certain third-party enforcement rights to The Wetlands Group, LLC, an Idaho limited liability company (the "**Wetlands Group**") in connection with U.S. Army Corps Clean Water Act 404 Permit #NWW-2006-615 B01 (the "**Permit**").

C. By letter dated January 17, 2014, the U.S. Army Corps confirmed that the requirements under the Permit have been satisfied and Grantor has assumed long-term maintenance responsibility for the site.

D. Pursuant to Section V of the Conservation Easement, Holder of the Conservation Easement may assign its interest with thirty (30) days' prior written notice.

E. In connection with the arrangements associated with long-term maintenance of the Conservation Easement, Assignor now desires to assign its rights, title and interest in the Conservation Easement (as amended by the First Amendment), and Assignee desires to accept and assume said responsibilities, as of the Effective Date.

NOW, THEREFORE, for the recitals set forth above, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Assignment. Pursuant to Section V of the Conservation Easement, Assignor hereby grants, conveys, assigns, and transfers to Assignee all of Assignor's right, title, and interest in the Agreement, together with any and all rights and appurtenances thereto in any way belonging to Assignor.

2. Acceptance and Assumption. Assignee hereby accepts and assumes all of Assignor's right, title and interest in the Conservation Easement and First Amendment and agrees to all of the restrictions, rights, and provisions set forth therein, and agrees to assume all liabilities of "Holder" under

After Recording, Return To:

ACCOMMODATION

FOR RECORDING INFORMATION

ASSIGNMENT AND ASSUMPTION AGREEMENT

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2. Acceptance and Assumption. Assignee hereby accepts and assumes all of Assignor's right, title and interest in the Conservation Easement and First Amendment and agrees to all of the restrictions, rights, and provisions set forth therein, and agrees to assume all liabilities of "Holder" under

STATE OF IDAHO)
) ss.
County of Ada)

On this 15 day of July, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Sharon Hubler, known or identified to me to be the Vice President of Idaho Foundation for Parks and Lands, Inc., the individual who executed the instrument on behalf of said corporation, and acknowledged to me that such person 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 Meridian, ID
My commission expires: 6/23/20

STATE OF IDAHO)
) ss.
County of Ada)

On this 23rd day of September, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared David H. Bieter and ~~Jade~~ Lynda Lowry Riley, known or identified to me to be the Mayor and Ex-Officio City Clerk of Boise City, Idaho, the individuals who executed the instrument on behalf of Boise City, and acknowledged to me that such persons 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, ID
My commission expires: 12/16/20

said instruments. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors in interest, and assigns.

3. Additional Acts. The Parties agree to execute such other documents and perform such other acts as may be necessary to effectuate this Assignment.

4. Entire Agreement. This Assignment constitutes the entire agreement of the Parties relating to the subject matter hereof.

5. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original copy, and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment to be effective as of the Effective Date.

ASSIGNOR:

IDAHO FOUNDATION FOR PARKS AND LANDS, INC., an Idaho corporation

By: Sharon Hubler
Name: Sharon Hubler
Title: Vice President

ASSIGNEE:

CITY OF BOISE CITY

David H. Bieter, Mayor

Attest:

Lynda Lowry, *Ex Officio* City Clerk

[notary acknowledgments on following page]

W. Exhibit W – Resident Letters

David Hasegawa

From: Harris Ranch CID Taxpayers <hrcidtaxpayers@gmail.com>
Sent: Wednesday, October 16, 2024 8:58 PM
To: Jimmy Hallyburton; Meredith Stead; Strasser M Dennis
Cc: Mayor McLean; Colin Nash; Luci Willits; Kathy Corless; Jordan Morales; David Hasegawa; Jayme Sullivan; Rob Lockward; Amanda Brown
Subject: [External] Objections to Proposed Resolutions
Attachments: Objection Letter 10.16.24.2_FINAL.pdf

Harris Ranch Community Infrastructure District No. 1 ("Boise CID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Members of the Board:

In accordance with the provisions of the Notice of Public Meeting posted on or about October 8, 2024, regarding the meeting of the Harris Ranch CID No 1 scheduled for October 22, 2024, attached please find the written comments of the Harris Ranch CID Taxpayers' Association (Association) detailing the Association's objections to the Proposed Resolutions to be considered at your October 22 meeting. The purpose of the attached letter is to express our objections to the adoption of the Proposed Resolution, to any proposed payments to the Developer, and to the proposed payment of the Boise CID's legal expenses apparently to be approved by the Proposed Resolution.

The Association's letter also notes our objection to the fact that no oral testimony will be permitted at the meeting thereby denying ordinary citizens the opportunity to speak about matters which the Board knows are in dispute and currently on appeal by the homeowners and taxpayers affected. Also noted is the grossly insufficient amount of time allowed for any affected party to review and analyze the legal and other issues presented by the Proposed Resolutions and the referenced Staff Report prepared in support of the Proposed Resolutions. Such deliberate scheduling practices constitute a denial of due process to affected homeowners and taxpayers in the Harris Ranch CID.

Finally, all the documents and attachments referenced in the attached Letter of Objection have been filed with the Boise City Clerk's office in electronic format to facilitate your reference to the materials included with our Letter of Objection.

Sincerely,

L A Crowley

Larry Crowley, President
The Harris Ranch CID Taxpayers' Association
3738 S Harris Ranch Ave
Boise, ID 83716
Mobile: (208) 890-1871
E-mail: hrcidtaxpayers@gmail.com

David Hasegawa

From: CHRISTOPHER CLOUGHERTY <chrisclougherty@msn.com>
Sent: Thursday, October 17, 2024 11:20 AM
To: Harris Ranch CID Taxpayers; Jimmy Hallyburton; Meredith Stead; Strasser M Dennis
Cc: Mayor McLean; Colin Nash; Luci Willits; Kathy Corless; Jordan Morales; David Hasegawa; Jayme Sullivan; Rob Lockward; Amanda Brown
Subject: [External] Re: Objections to Proposed Resolutions

Good email Larry

From: Harris Ranch CID Taxpayers <hrcidtaxpayers@gmail.com>
Sent: Wednesday, October 16, 2024 8:58 PM
To: Hallyburton Jimmy <jhallyburton@cityofboise.org>; Stead Meredith <mstead@cityofboise.org>; Strasser M Dennis <strasser.hrcidboard@gmail.com>
Cc: McLean Lauren <mayormclean@cityofboise.org>; Nash Colin <cmnash@cityofboise.org>; Willits Lucy <lwillits@cityofboise.org>; Corless Kathy <kcorless@cityofboise.org>; Morales Jordan <jmorales@cityofboise.org>; Hasegawa David <dhasegawa@cityofboise.org>; Sullivan Jaymie <jsullivan@cityofboise.org>; Lockward Rob <rlockward@cityofboise.org>; Brown Amanda <abrown@cityofboise.org>
Subject: Objections to Proposed Resolutions

Harris Ranch Community Infrastructure District No. 1 ("Boise CID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Members of the Board:

In accordance with the provisions of the Notice of Public Meeting posted on or about October 8, 2024, regarding the meeting of the Harris Ranch CID No 1 scheduled for October 22, 2024, attached please find the written comments of the Harris Ranch CID Taxpayers' Association (Association) detailing the Association's objections to the Proposed Resolutions to be considered at your October 22 meeting. The purpose of the attached letter is to express our objections to the adoption of the Proposed Resolution, to any proposed payments to the Developer, and to the proposed payment of the Boise CID's legal expenses apparently to be approved by the Proposed Resolution.

The Association's letter also notes our objection to the fact that no oral testimony will be permitted at the meeting thereby denying ordinary citizens the opportunity to speak about matters which the Board knows are in dispute and currently on appeal by the homeowners and taxpayers affected. Also noted is the grossly insufficient amount of time allowed for any affected party to review and analyze the legal and other issues presented by the Proposed Resolutions and the referenced Staff Report prepared in support of the Proposed Resolutions. Such deliberate scheduling practices constitute a denial of due process to affected homeowners and taxpayers in the Harris Ranch CID.

Finally, all the documents and attachments referenced in the attached Letter of Objection have been filed with the Boise City Clerk's office in electronic format to facilitate your reference to the materials included with our Letter of Objection.

Sincerely,

L A Crowley

Larry Crowley, President
The Harris Ranch CID Taxpayers' Association
3738 S Harris Ranch Ave
Boise, ID 83716
Mobile: (208) 890-1871
E-mail: hrcidtaxpayers@gmail.com

X. Exhibit X – Correspondence with HRCIDTA

David Hasegawa

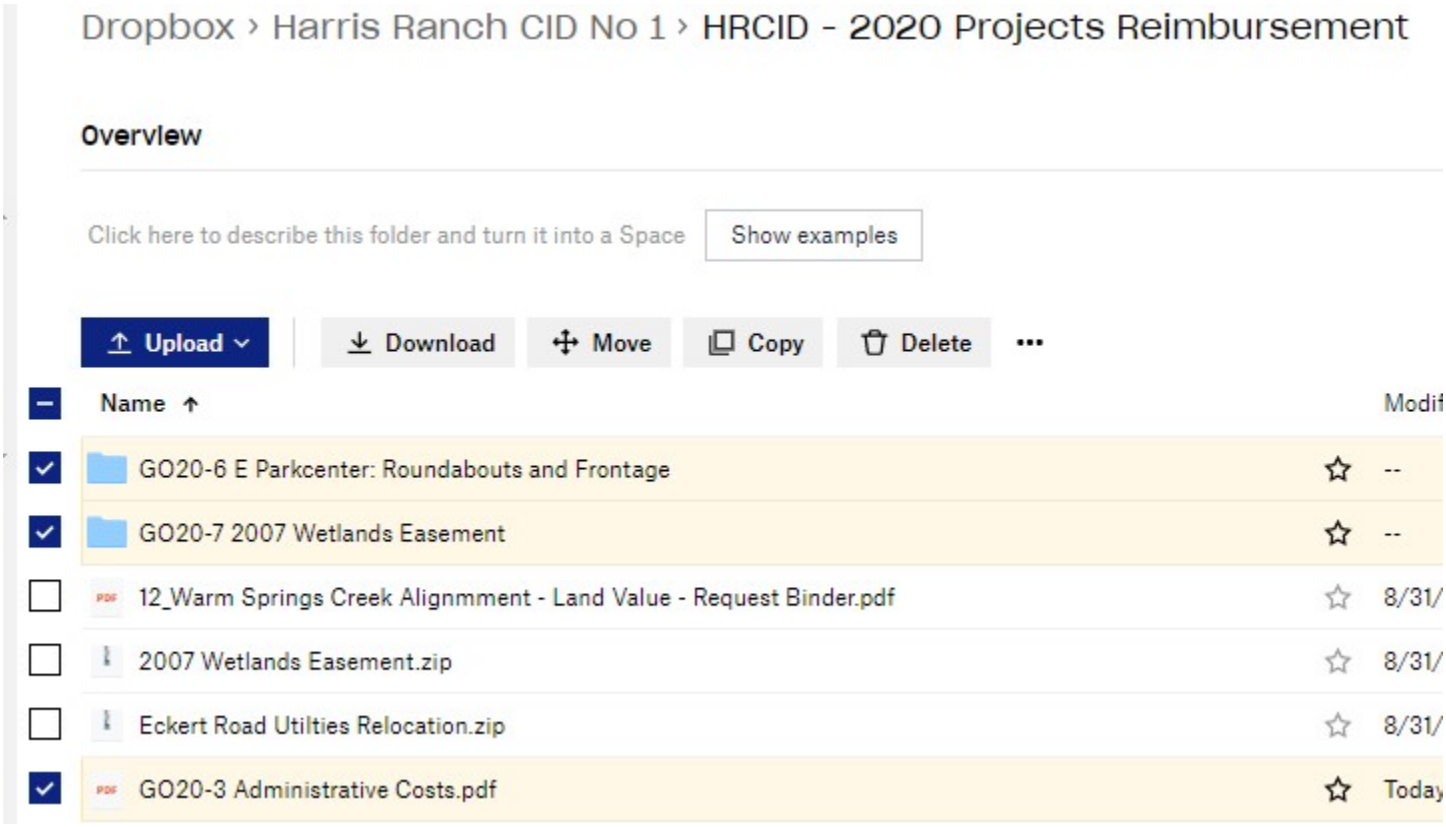
From: David Hasegawa <dhasegawa@cityofboise.org>
Sent: Thursday, May 20, 2021 9:40 AM
To: Harris Ranch CID Taxpayers
Subject: RE: [External] Harris Ranch CID

Hi Larry,

Thank you! Mom and baby are doing well.

Answers to your questions:

- GO20 series requests – Those were already in your DropBox account. I renamed them to make them easier to distinguish (see below).
- Conservation easement – My understanding is that this is wetlands held by ACHD (or they have right-of-way). I'm not an attorney, but my understanding is that the reason it qualifies is that it falls under :
    - Idaho Code § 50-3102(2) indicates that community infrastructure includes the definitions within § 67-8203(24). There are a few subsections that look like they qualify. Let me confirm with bond counsel under which of these they approved it as community infrastructure.
    - Subsection c:
        - Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways
        - ACHD has the right-of-way on this property
    - Subsection d:
        - Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements
    - Subsection e:
        - Parks, open space and recreation areas, and related capital improvements;
- GO20-4 – I created a new folder for the 2021 series request called HRCID – 2021 Project Reimbursements.
- GO21-1 I don't have the request from the developer yet. I have a preliminary document from last year, but it won't match the amount below.
- Notification process: The developer submits a "binder" with the reimbursement requests. I upload those to the DropBox as I receive them. However, feel free to reach out in case I forget.



Regards,
David Hasegawa
208-972-8174

From: Harris Ranch CID Taxpayers <hrcidtaxpayers@gmail.com>
Sent: Tuesday, May 11, 2021 5:31 PM
To: David Hasegawa <dhasegawa@cityofboise.org>
Subject: Re: [External] Harris Ranch CID

Hey David,

CONGRATULATIONS!! I hope mom and the baby are doing well. It must be a very exciting and demanding time for you.

Thank you for your responses to our questions about the CID, again. You mentioned that the GO20 series projects have been submitted, could I get a copy of the requests for reimbursement that support those project amounts? Also, what exactly is a conservation easement and how does that qualify as an infrastructure project?

Re GO21-4, can we get a copy of the material that has been submitted and is under review by District staff. Do you have the backup information for request GO21-1? Obviously, we are interested all requests submitted as they are submitted, do you have a formal notification process as these requests are submitted or should I check with you from time-to-time?

Thanks again for your help and congratulations again. Stay well and best regards.

Larry Crowley
3738 S Harris Ranch Ave
Boise, ID 83716

Mobile: (208) 890-1871
E-mail: hrcidtaxpayers@gmail.com

On May 11, 2021, at 8:52 AM, David Hasegawa <dhasegawa@cityofboise.org> wrote:

Hi Larry,

Thank you, I had a very good leave. My wife and I just had our first child – a little girl!

Yes there are several projects that we expect to receive. The GO20 series projects have been submitted. See notes section for status of the GO21 series requests

Project ID	Project Name	Amount	Notes
GO20-3	Admin costs	$99,955.60	
GO20-6	Frontage Rd / Roundabouts	$197,026.95	Remainder from 2020 reimbursement
GO20-7	Conservation Easement	$1,979,000	
GO21-1	Accrued Interest	$3,004,332.76	Pending formal reimbursement request
GO21-2	Dallas Harris Estates Townhomes #9 Infrastructure	Pending	Pending formal reimbursement request
GO21-3	Dallas Harris Estates Townhomes #11 Infrastructure	Pending	Pending formal reimbursement request
GO21-4	Southern Half Roadways	$1,874,000	District staff reviewing

I don't have a schedule for the Special Assessment refinance, however we cannot refinance the bond until after September 1, 2021, the call date of the bond.

With regards to value of the District, see attached. The total taxable value of the District in 2020 was $349 million. The County's current estimate for the District is $489 million, keep in mind that is an estimate. Last year the County reduced the assessment amount from their springtime estimate ($377 million was reduced to $349 million).

Please let me know if you have any questions.

Regards,
David Hasegawa
208-972-8174

From: Harris Ranch CID Taxpayers <hrcidtaxpayers@gmail.com>
Sent: Monday, May 10, 2021 3:48 PM
To: David Hasegawa <dhasegawa@cityofboise.org>
Subject: [External] Harris Ranch CID

Hi David,

Welcome back, hope you are well and that you had an enjoyable leave or time off.

After today's CID board meeting, I had some initial questions for you. First, are there any pending or anticipated requests for reimbursement for infrastructure projects from the Harris Ranch developer(s)? And second, do you have a schedule for the refinance of the Special Assessment bonds? The CID tax issue seems to be getting more attention given the news yesterday from the Ada County Assessors office about increased valuations for residential property - 28 to 30% increases are going to have a significant impact on homeowners particularly given the fixed nature of the CID tax.

I look forward to hearing from you and to working with you this summer on the CID issue, stay safe and best regards.

Larry Crowley
3738 S Harris Ranch Ave
Boise, ID 83716
Mobile: (208) 890-1871
E-mail: hrcidtaxpayers@gmail.com

<2021.4.13 - 2021 harris ranch abstract.pdf><3.16.2021 - 2020 Final Report.pdf>

David Hasegawa

From: David Hasegawa <dhasegawa@cityofboise.org>
Sent: Monday, December 4, 2023 4:12 PM
To: Harris Ranch CID Taxpayers; Bill Doyle
Subject: HRCID Appraisal Reviews
Attachments: Final_12.1.23_appraisal_review_Roadways_18100702_1.pdf; Final_12.1.23 _appraisal_review_Cons_Eas_18100701_1.pdf

Hello Larry and Bill,

Attached are the appraisal reviews for the two land projects that the Board will consider next.

Thank you,
David Hasegawa
208-972-8174

David Hasegawa

From: David Hasegawa
Sent: Tuesday, October 8, 2024 4:57 PM
To: Harris Ranch CID Taxpayers; Bill Doyle
Cc: Zechariah Taylor
Subject: HRCID Meeting - October 22
Attachments: 08 HRCIDTAs Objection Letter.pdf; 09 Development Agreement.pdf; 10 Easement Appraisal.pdf; 11 1st Amend to Development Agreement.pdf; 12 Deed of Conservation Easement.pdf; 13 Assignment and Assumption Agreement.pdf; 01 Developers Purchase Request.pdf; 02 Developers Completeness Letter.pdf; 03 Certficate of HFLP and BVD.pdf; 04 Developer Letter Regarding Effective Date of Conservation Easement.pdf; 05 FInal Appraisal Review.pdf; 06 Initial Appraisal Review.pdf

Hello Larry and Bill,

I hope this e-mail finds you both well. I'm writing to inform you and the HRCIDTA that on October 22nd, the HRCID Board will be considering whether to approve the purchase of the 2007 Wetlands Conservation Easement project (GO20-7). Because this year there is now incremental revenue, the Board may also consider a bond resolution.

Attached are the documents that will be posted on the webpage within the next week. Two documents are new:

- Update to Appraisal Review: On December 4, 2023, I sent you the appraisal reviews for the Southern Half Roadway Parcels and for the 2007 Conservation Easement. Since then, the appraiser we hired as made updates to the Conservation Easement review.
- Effective Date: We had some questions regarding the effective date of the deed of the conservation easement and asked the Developer to provide a letter regarding the date. That is attached here.

We're asking for any feedback in addition to your August 14, 2021, objection letter to be sent by Thursday, October 17, 2024. Please let me know if you have any questions.

Thank you,
David Hasegawa
208-972-8174

Y. Exhibit Y – District Development Agreement

ADA COUNTY RECORDER J. DAVID NAVARRO AMOUNT .00 76
BOISE IDAHO 11/30/10 03:40 PM
DEPUTY Lisa Bell
RECORDED - REQUEST OF
Boise City
110112805

When recorded, return to:

Dick Mollerup, Esq.
Meuleman Mollerup
755 W. Front St
Suite 200
Boise, ID 83702

DISTRICT DEVELOPMENT AGREEMENT NO. 1

FOR THE HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1 (CITY OF BOISE, IDAHO) (Including the June 22, 2010 modifications thereto)

by and among

CITY OF BOISE, IDAHO,

HARRIS RANCH DISTRICT COMMUNITY INFRASTRUCTURE DISTRICT NO. 1 (CITY OF BOISE, IDAHO),

and

HARRIS FAMILY LIMITED PARTNERSHIP

Dated as of August 31, 2010

Exhibit A

DISTRICT DEVELOPMENT AGREEMENT NO. 1
FOR THE HARRIS RANCH
COMMUNITY INFRASTRUCTURE DISTRICT NO. 1
(CITY OF BOISE, IDAHO)

THIS DISTRICT DEVELOPMENT AGREEMENT NO. 1 FOR THE HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1 (CITY OF BOISE, IDAHO), as modified on June 22, 2010, is entered into this _____ day of _____, 2010, (hereinafter referred to as the "***Agreement***"), by and among the City of Boise, Idaho, a municipal corporation duly incorporated in accordance with the laws of the State of Idaho (hereinafter referred to as the "***Municipality***"), Harris Ranch Community Infrastructure District No. 1, a Community Infrastructure District duly formed and organized by the Municipality and validly existing pursuant to the laws of the State of Idaho (hereinafter referred to as the "***District***"), and Harris Family Limited Partnership, duly formed, validly existing and authorized to do business pursuant to the laws of the State of Idaho; and Alta M. Harris (as to a life estate); (hereinafter referred to as the "***Owner(s)***") having an interest in all or substantially all of the real property within the District. Other persons owning or having an interest in any real property within the District (collectively, the "Other Parties"), have acknowledged and agreed to the terms and provisions of the Agreement and have consented to the recording of this Agreement as a binding encumbrance against their respective property, by the execution of the Consent and Agreement attached hereto.

W I T N E S S E T H :

WHEREAS, this Agreement is being entered into pursuant to The Community Infrastructure District Act codified at Title 50, Chapter 31, Idaho Code, (hereinafter referred to as the "***Act***"), and is in addition to, but does not supplant any development agreement entered into between the Municipality and the Owner pursuant to Section 67-6511A, Idaho Code. The Municipality, the District, the Owner and Other Parties enter into this "District Development Agreement," as that term is defined in Section 50-3102, Idaho Code, to establish the obligations of the parties with regard to the property described in *Exhibit A* attached hereto and incorporated by reference (hereinafter referred to as the "***Property***") which is comprised of the real property included within the boundaries of the District and includes the property added to the District by resolution of the Board June 22, 2010. This District Development Agreement sets forth the understanding of the parties regarding District financing and development, which includes: intergovernmental agreements; the ultimate public ownership of the community infrastructure financed by the District; the understanding of the parties with regard to future annexations of the property into the District; the total amount of bonds to be issued by the District and the property taxes and special assessments to be levied and imposed to repay the bonds and the provisions regarding the disbursement of bond proceeds; the financial assurances, if any, to be provided with respect to the bonds; impact and other fees imposed by governmental authorities, including fee credits, prepayment and/or reimbursement with respect thereto; and other matters relating to the community infrastructure, such as construction, acquisition, planning, design, inspection ownership and control; and

WHEREAS, this District Development Agreement is consistent with the "General Plan" of the District, as that term is defined in Section 50-3102, Idaho Code, and more fully set forth in Section 50-3103, Idaho Code, applicable to the Property on the date this Agreement is executed (hereinafter referred to as the "***General Plan***"); and

WHEREAS, general obligation bonds (hereinafter referred to as the "***G.O. Bonds***"), special assessment bonds (hereinafter referred to as the "***Assessment Bonds***"), and/or

Revenue Bonds (hereinafter referred to as the "***Revenue Bonds***") (collectively hereinafter referred to as the "***Bonds***") of the District will be issued to provide moneys to finance certain "community infrastructure", as that term is defined in Section 50-3102, Idaho Code, and described in the General Plan of the District heretofore approved by the Municipality and the District during the creation and the June 22, 2010 modification of the District; and

WHEREAS, the District Board of Directors (hereinafter referred to as the "***District Board***") may order and conduct G.O. Bond election at the request of the Owner, the approval of which shall not be unreasonably denied, seeking authorization for the District to levy and collect an ad valorem property tax for purposes of reimbursing or defraying the District's administrative expenses in an amount of not less than one-hundredth of one percent (.01%) of the market value as set forth in Section 50-3113, Idaho Code; and

WHEREAS, the District Board may order and conduct a G.O. Bond election at the request of the Owner, the approval of which shall not be unreasonably denied, seeking authorization for the District to levy and collect an ad valorem property tax for purposes of reimbursing or defraying the cost of eligible community infrastructure and community infrastructure purposes as defined by the Act, equal to an amount as determined by the Owner of no greater than 0.003 (three (3) mills) of the market value as set forth in Section 50-3113, Idaho Code; and

WHEREAS, if the issuance of G.O. Bonds is approved by two-thirds (2/3) of the qualified electors, as that term is defined by Section 50-3102(13), at an election called for that purpose, the proceeds of such G.O. Bonds shall be used to provide monies for community infrastructure purposes consistent with the ballot, the General Plan, this Agreement and the Act; and

WHEREAS, at the request of the Owner, which shall not be unreasonably denied, the District Board, pursuant to the procedures prescribed by Section 50-3109, Idaho Code, may levy assessments of the costs of any community infrastructure or community infrastructure purpose on any land in the District based on the direct or indirect benefit determined to be received by the land, and shall issue and sell the Assessment Bonds and the same shall be secured by and payable from amounts collected from the assessments; and

WHEREAS, pursuant to the Act, the District may enter into this Agreement with the Owner with respect to the acquisition, construction and financing of community infrastructure and community infrastructure purposes, including if monies are advanced by the Owner, the repayment of such advances; and

WHEREAS, pursuant to the Act and Sections 67-2326 through 67-2333, Idaho Code, (hereinafter referred to as the "***Intergovernmental Agreement Act***"), the District and the Municipality may be required to enter into specified sections of this Agreement as an "intergovernmental agreement" with one another, or with other agencies that are political subdivisions of the State of Idaho, including but not limited to the Ada County Highway District (ACHD), the Idaho Transportation Department (ITD), and/or other public or quasi-public agencies for joint or cooperative action for services and to jointly exercise any powers common

to them and for the purposes of the planning, design, financing, inspection, ownership or control of community infrastructure; and

WHEREAS, prior to issuing Bonds related to any community infrastructure improvements, the District Board shall, in each instance, cause a report of the projects relating to such community infrastructure improvements to be prepared by qualified persons, which shall include a description of the community infrastructure to be constructed or acquired, and all other information useful to understand the projects, including but not limited to: a map showing, in general, the location of the projects and the area benefited by the projects; an estimate of the cost to construct and/or acquire the projects; an estimated schedule for completion of the projects; a map or description of the area to be benefited by the projects; a plan for financing the projects, an appraisal in the case of special assessment bonds; as well as any other information which may be reasonably requested by the District Board (hereinafter referred to as the "***Report***").

NOW, THEREFORE, in the joint and mutual exercise of their powers, in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration, and subject to the conditions set forth herein the parties hereto agree as follows:

ARTICLE I

COMMUNITY INFRASTRUCTURE DISTRICT

Section 1.1 **CID Guidelines**. The District shall be subject to and governed by the terms and provisions of this Agreement.

Section 1.2 **District Consultants and Consulting Costs**. The District, in consultation and coordination with the Owner and as set forth herein, may retain financial advisors, legal advisors, underwriters, market consultants, appraisers, engineers, outside management companies and such other advisors and consultants (collectively hereinafter referred to as "***District Consultants***") as may be necessary to assist the District in its operations, including but not limited to evaluating budgets, reports, financing documents, construction documents and similar matters. Prior to the selection and engagement of services of each of the District Consultants, the Owner shall have the ability submit a list of each of the qualified District Consultants to the District for consideration by the District. The District shall not unreasonably deny or refuse to consider the Owner's list and recommendation of qualified District Consultants. The District shall select such District Consultants from the list submitted by the Owners along with any other listings of approved qualified District Consultants maintained by the District. The costs, fees and expenses of the District Consultants (hereinafter referred to as the "***District Consulting Costs***") shall be included as District Administrative Expenses (as defined herein), provided, however, certain District Consulting Costs may be paid with the proceeds of the Bonds.

Section 1.3 **Compliance with Law**. The District shall maintain its records and conduct its affairs in accordance with the Act and the laws of the State of Idaho.

Section 1.4 **Payment of Municipality's Costs and Expenses**. The Municipality and/or an outside management company, as appropriate and as authorized by Section 50-3105, Idaho Code, shall be paid by the District for its costs and expenses relating to the District as described in Article VII of this Agreement. On or before March 1st of each year, the Municipality and/or an outside management company, as appropriate, will provide the District with an invoice for the Municipality's and/or an outside management company's estimated costs and expenses pertaining to the Municipality's and/or an outside management company's services expected to be rendered to the District during the succeeding fiscal year. The invoice will utilize, as a base estimate, the cost and expenses of the Municipality's and/or an outside management company's services rendered to the District during the preceding year.

Section 1.5 **Contracting for District Financed Infrastructure**.

(a) **Public Bid Requirement**. All infrastructure described in the General Plan that is or expected to be financed with District monies or District Bond proceeds ("***District Financed Infrastructure***") shall be community infrastructure improvements as described in the Act. Any District Financed Infrastructure shall be publicly bid and awarded pursuant to the provisions of the Idaho Code (collectively hereinafter referred to as the "***Public Bid Requirements***").

(b) **Notice Inviting Bids**. Commencing on the date of this Agreement, the form of Notice Inviting Bids in *Exhibit B* hereto shall be used in substantially such form for publicly bidding and awarding contracts or agreements for community infrastructure improvements that are or are expected to be District Financed Infrastructure, and the use of such form of Notice Inviting Bids prior to the execution and delivery of this Agreement is hereby ratified in all respects.

(c) **Certificate of the Engineers**. Compliance with the Public Bid Requirements shall be evidenced by the certification of the engineers of the Owner and the District (hereinafter collectively referred to as the "***Engineers***") with respect thereto in the form of *Exhibit C* hereto (hereinafter referred to as the "***Certificate of the Engineers***").

(d) **Limitation on Recourse**. Each agreement or contract for construction or acquisition relating to the community infrastructure improvements or purposes that is or is expected to be District Financed Infrastructure shall provide that the respective contractors or vendors shall not have recourse, directly or indirectly, from or against the Municipality.

Section 1.6 **Submission of Reports**. Owner shall have the right to submit to the District Board multiple Reports requesting the construction, acquisition and financing of all or a part of District Financed Infrastructure or any community infrastructure purpose described in the General Plan. The District Board shall not unreasonably deny or refuse to consider any Report submitted by the Owners which is consistent with the terms of this Agreement, the General Plan, and with the policies of the District to the extent that they are not in conflict with the terms of this Agreement. Upon the approval of Report by the District Board, which approval will not be unreasonably denied, the District Board shall take such actions as may be required to cause the Bonds, which are the subject of the Report, to be issued.

Section 1.7 **Withdrawal of Reports**. Notwithstanding Section 1.6 above, Owner shall be permitted to withdraw any Report submitted by Owner from consideration by the District at any time before the conclusion of the hearing thereon. In the event of such a withdrawal, the District Board shall not approve the Report or adopt any resolution which would effect an implementation of any part of the transaction described in such Report. Owner shall be permitted to resubmit any such withdrawn Report or any Report which has been amended by Owner, at such time as Owner may, in its sole discretion, deem advisable.

Section 1.8 **District Related Costs**. Reasonable costs and expenses incurred by Owners incident to and reasonably necessary for the creation of the District and incident to and reasonably necessary for carrying out the purposes of the District shall be reimbursed by the District including, but not limited to, costs and expenses associated with engineering, surveying, legal, financial and other professional services.

ARTICLE II

CONSTRUCTION OF PROJECTS BY OWNER

Section 2.1 Construction by Owner.

(a) **At Owner's Expense**. Subject to the other terms and provisions of this Agreement, Owner may, unless the procedure to have the District construct the community infrastructure improvements as described in Article IV hereof is followed, cause to be constructed the community infrastructure improvements or purposes, including but not limited to those improvements described in the General Plan (collectively hereinafter referred to as the "***Acquired Infrastructure***" and as detailed in the General Plan on a project-by-project basis as an "***Acquisition Project***" or the "***Acquisition Projects***") in accordance with plans and specifications approved by the Municipality (hereinafter referred to as the "***Plans and Specifications***").

(b) **Compliance with Applicable Codes, Etc**. The Acquisition Projects shall be constructed in a good and workmanlike manner in compliance with all applicable standards, codes, rules, guidelines or regulations of the Municipality and/or other appropriate agencies that are political subdivisions of the State of Idaho as in effect for the same or comparable construction projects of the Municipality or such agencies.

Section 2.2 Public Bidding. The Acquisition Projects shall be bid in one or more parts pursuant to the Public Bid Requirements and the requirements described in Section 1.5 of this Agreement (hereinafter collectively referred to as the "***Acquisition Project Construction Contracts***" and individually referred to as an "***Acquisition Project Construction Contract***"). With respect to such Acquisition Project Construction Contracts, the Municipality, the District and the Owner agree that District shall assign the construction bid process to the Owner, subject to the following conditions: (i) the plans, specifications, bidding, contract documents and/or statements of qualifications will be prepared by or at the direction of the Owner, subject to the review and approval of the District; (ii) the Owner shall advertise for bids and/or statements of qualifications for the construction in accordance with the Public Bid Requirements; and (iii) the contracts for the construction of the community infrastructure shall be awarded to the lowest responsible bidder and/or most qualified as determined by the Owner in consultation with the District Engineer as herein defined. Bids and/or statements of qualifications will be submitted to, or as directed by, the District for opening and review. No award of an Acquisition Project Construction Contract shall be made without the concurrence of the District Engineer.

Section 2.3 Project Costs; Change Orders. The total bid amount of any Acquisition Project Construction Contract plus eligible costs, pursuant to the Act including but not limited to real property interests, financing costs, and any other costs of the Acquisition Project that are not statutorily required to be bid pursuant to the Public Bid Requirements shall be submitted for review and subject to the approval of the Manager for the District (hereinafter referred to as the "***District Manager***") or his designee and the engineer for the District (hereinafter referred to as the "***District Engineer***"). If an Acquisition Project Construction

Contract is bid following a Report submitted to the District Board pertaining to the applicable Acquisition Project, the total bid amount shall be deemed approved so long as the total bid amount does not exceed the estimated cost of the Acquisition Project set forth in the Report. Any change order to any Acquisition Project Construction Contract shall be subject to approval by the District Engineer. Any increase in cost caused by any change order shall be the responsibility of Owner but may be included by Owner in any applicable Segment Price pursuant to Article III below.

Section 2.4 Prior Conveyance Not a Bar. The 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.

ARTICLE III

ACQUISITION OF PROJECTS FROM OWNER

Section 3.1 Acquisition by District.

(a) **Purchase**. Subject to the other terms and provisions of this Agreement and after the District Board approves a Report pertaining to the applicable Acquisition Project, District shall acquire from Owner and Owner shall sell to the District, each Acquisition Project, together with all real property or interests therein necessary to operate the District Financed Improvements and all other community infrastructure improvements related thereto (hereinafter collectively referred to as the "***Necessary Public Property***"), as a whole (the entire Acquisition Project) or, if applicable, in completed, distinct portions as determined by the District Engineer and the District Manager and in accordance with the Plans and Specifications (hereinafter collectively referred to as a "***Segment***") at a price for the Acquisition Project, or if applicable each Segment (the "***Project Price***" or, as applicable the "***Segment Price***") established as provided in Section 3.2 hereof. Subject to the terms and provisions of this Section, construction of any Acquisition Projects may commence prior to the submittal of a Report by the District. At the request of the District and with the consent of the Municipality, Owner shall convey any acquired Acquisition Project or Segment(s) and/or the Necessary Public Property, directly to the Municipality or, if provided by an intergovernmental agreement with another governmental entity in which is not inconsistent with the terms of this Agreement, to any other governmental entity that is a political subdivision of the State of Idaho, together with a direct assignment of any warranties, guarantees and bonds.

(b) **Financing; Limited Liability**. Any such acquisition shall be financed (i) at any time before the sale and delivery of any of the Bonds only pursuant to Section 5.1(a) hereof and (ii) at any time after the sale and delivery of any of the Bonds only pursuant to Section 5.1(b) hereof. Payment of the Project Price or Segment Price is subject to the availability of proceeds of District Bonds as described in Section 5.1.

(c) **Compensation Limited**. Owner has not been and shall not be compensated for any of the Acquired Infrastructure except as provided in this Agreement.

(d) **Prior Dedication**. To the extent that any portion, right, title or interest of the Necessary Public Property or infrastructure to be Acquired Infrastructure has been or will be offered, conveyed or dedicated by Owners or accepted by the Municipality or by another governmental entity which is a political subdivision of the state of Idaho, no such prior or future conveyance, dedication, or offer of conveyance or dedication of such portion, right, title or interest in any right-of-way and/or real property interest shall proscribe the Owners' ability to sell Necessary Public Property to the District.

Section 3.2 Determining Project Price.

(a) **Actual Costs**. The Project Price for an Acquisition Project or the Segment Price for a Segment, as applicable, shall be equal to the sum of the accepted bid (together with any approved change orders), and approved pursuant to Section 2.3 hereof, plus any other amounts that are not statutorily required to be bid pursuant to the Public Bid Requirements but are approved pursuant to Section 2.3 hereof, including but not limited to: (i) design and/or engineering of the Acquisition Project or Segment; (ii) construction and/or installation of the Acquisition Project or Segment pursuant to the Acquisition Project Construction Contract for such Acquisition Project or Segment; (iii) construction management services (not to exceed seven (7) percent of the total contract amount); (iv) inspection and supervision by the District of performance under such Acquisition Project Construction Contract; (v) the fair market value of the real property for rights of way, easements and other interests in real property which are part of or related to the segment; (vi) other miscellaneous and incidental costs including but not limited to legal, financial advisory, financing costs, appraisal, surveying and engineering costs expended by Owner for such Acquisition Project or Segment attributable to construction of the Acquisition Project or Segment approved in the Report, and (vii) interest during the period starting from the date of dedication, contribution or expenditure and the time which the Project Price or the Segment Price is paid calculated at the rate of interest equal to the prime rate as reported in the West Coast Edition of the Wall Street Journal plus two (2) percent from day-to-day, on the amounts expended for purposes of clauses (i) through (vi) for such Acquisition Project or Segment attributable to construction of the Segment approved by the Engineers as certified in the Certificate of Engineers for that Acquisition Project or Segment. No other financing charges, other than those described in section (vii) above will be allowed as an eligible component of the Project Price for an Acquisition Project or Segment.

(b) **Certificate of Engineers**. In the event a cost component of a Project Price or Segment Price pertains to two or more Acquisition Projects or Segments, such cost component shall be allocated among the Acquisition Projects or Segments by the District Engineer in a reasonable manner and such amount shall be certified in the Certificate of the Engineers for each Acquisition Project or Segment.

Section 3.3 Conditions for Payment. The District shall pay the Project Price or the Segment Price, as applicable, for and acquire from Owner, and Owner shall, subject to Section 5.1(a)(ii) below, accept the Project Price or the Segment Price, as applicable, for and sell to the District, each Acquisition Project or Segment as provided in Section 3.1 hereof after receipt of the Report and after receipt by the District Manager of the following with respect to such Acquisition Project or Segment, in form and substance reasonably satisfactory to the District Manager:

(i) the Certificate of the Engineers;

(ii) a warranty deed, plat dedication or easement from the Owner for such Necessary Public Property executed by an authorized officer of the Owner or such other satisfactory evidence of public ownership of such Necessary Public Property;

(iii) such environmental assessments or other evidence satisfactory to the District Manager that such Necessary Public Property does not contain environmental contaminants which make such Necessary Public Property unsuitable for its intended use or to the extent such contaminants are present, a plan satisfactory to the District Manager which sets forth the process by which such Necessary Public Property will be made suitable for its intended use, a plan for remediation of such contaminants, if required by the District Manager, and the sources of funds necessary to accomplish such purpose;

(iv) the "Conveyance for Segment of Project" in substantially the form of *Exhibit D* hereto or such other form as may be required by the other governmental body specified in the Report (hereinafter referred to as a "***Conveyance***");

(v) evidence that all Necessary Public Property has been, or is concurrently being, conveyed to the District, Municipality, or other agency that is a political subdivision of the State of Idaho and specified in the Report, as applicable, and public access to the Segment or the Acquisition Project, as applicable, has been or will be provided;

(vi) the assignment of all contractors and materialmen warranties and guarantees as well as payment and performance bonds;

(vii) an acceptance letter issued by the District, Municipality or other agency that is a political subdivision of the State of Idaho and specified in the Report, as applicable. Such acceptance letter shall be issued by the District, Municipality or appropriate agency within thirty (30) days of receipt of a request for acquisition by Owner. The failure of the District, Municipality or such other agency to issue an acceptance letter within thirty (30) days of a receipt of a request for acquisition by the Owner shall be deemed an acceptance by such District, Municipality or such other agency, such that an acceptance letter shall not be required. Should such acceptance not be given by the District, Municipality, or such other agency, the respective agency shall state with particularity such reasonable objections as to why such letter shall not issue. Owner shall, within thirty (30) days, respond in writing to such agency objections, addressing such objections. If reasonable cause shall exist, Owner shall request that the agency reconsider such objections. Within ten (10) days of Owner's request for reconsideration, such agency shall respond in writing addressing the same with particularity; and

(viii) such other documents, drawings, instruments, approvals or opinions as may reasonably be requested by the District Manager.

Section 3.4 **Conveyance of Necessary Public Property**. Notwithstanding anything herein, the District may purchase and the Owner may sell and finance real property interests and/or related eligible community infrastructure allowable pursuant to the Act. The Owner shall, without cost to the Municipality: (a) sell, dedicate or convey to the District; (b) if directed by the District and consented to by the Municipality, sell, dedicate or convey to the Municipality, or; (c) sell, dedicate or convey to another agency that is a political subdivision of the State of Idaho, if such dedication or conveyance is provided for in the Report or required by the District Manager, all Necessary Public Property required for the Acquisition Project or Segment, as applicable.

Section 3.5 **Financing; Limited Liability**. Any such acquisition shall be financed; (i) at any time before the sale and delivery of any of the Bonds only pursuant to Section 5.1(a) hereof, and (ii) at any time after the sale and delivery of any of the Bonds only pursuant to Section 5.1(b) hereof. Payment of the costs of any Acquisition Project is subject to the availability of proceeds of District Bonds as described in Section 5.1.

ARTICLE IV

CONSTRUCTION OF PROJECTS BY THE DISTRICT

Section 4.1 Construction by District.

(a) **Generally**. Subject to the other terms and provisions of this Agreement, the District, after the District Board approves a Report for construction to be performed by the District, prior to the bidding therefore, may cause any of the community infrastructure improvements or purposes described in the General Plan (hereinafter referred to if constructed pursuant to the provisions of this Article IV as collectively the "***Constructed Infrastructure***" and as detailed in the General Plan on a project-by-project basis a "***Construction Project***" or the "***Construction Projects***") to be constructed pursuant to the Plans and Specifications.

(b) **Similar Requirements**. The Construction Projects shall be constructed in accordance with the requirements for construction projects of the Municipality similar to the Construction Projects unless heretofore agreed otherwise by the Municipality or other governmental agency as appropriate.

Section 4.2 Contracts.

(a) **Construction Projects**. The Construction Projects may be bid in one or more parts by and in the name of the District pursuant to the Public Bid Requirements, as applicable, and agreements or contracts relating to the Construction Projects shall be entered into by the District (hereinafter collectively referred to as the "***Construction Project Construction Contracts***" and as individually a "***Construction Project Construction Contract***").

(b) **Construction Costs**. The "Construction Costs" for any Construction Project shall be equal to the sum of the accepted bid, and any amount paid on account of any change orders approved by the District Manager and District Engineer, pursuant to Section 4.2 (a) plus any other amounts that are not statutorily required to be bid pursuant to the Public Bid Requirements but that are approved by the District Manager and the District Engineer, consistent with the Report, for: (i) design and/or engineering of the Construction Project; (ii) construction and/or installation of the Construction Project pursuant to the Construction Project Construction Contract(s); (iii) the construction management services (not to exceed seven (7) percent of the total contract amount); (iv) inspection and supervision by the District of performance under such Construction Project Construction Contract(s); (v) the fair market value of the real property for rights of way, easements and other interests in real property which are part of or related to the segment; (vi) other miscellaneous and incidental costs including but not limited to legal, financial advisory, financing costs, appraisal, surveying and engineering costs expended by Owner for such Acquisition Project or Segment attributable to construction of the Acquisition Project or Segment approved in the Report, and (vii) interest during the period stating from the date of dedication, contribution or expenditure and the time which the Project Price or the Segment Price is paid calculated at the rate of interest equal to the prime rate as reported in the West Coast Edition of the Wall Street Journal plus two (2) percent from day to day, on the amounts expended for purposes of clauses (i) through (vi) for such Acquisition Project or

Segment attributable to construction of the Acquisition Project or Segment approved by the Engineers as certified in the Certificate of Engineers for that Acquisition Project or Segment. . No other financing charges, other than those described in section (vii) above will be allowed as an eligible component of the Project Price for an Acquisition Project or Segment.

Section 4.3 Convey Necessary Public Property. Prior to bidding any contract for the construction of a Construction Project, the Owner shall: (a) sell, dedicate or convey to the District; (b) if directed by the District, and consented to by the Municipality, sell, dedicate or convey to the Municipality; or (c) sell, dedicate or convey to another governmental body, if such dedication or conveyance is provided for in the Report or required by the District Manager, all Necessary Public Property required for the construction of the community infrastructure improvements comprising the Construction Projects. The type, size and terms of the Necessary Public Property required for the construction and operation of the Construction Project shall be similar to the requirements for construction projects of the Municipality or as appropriate, other governmental agency, similar to the Construction Projects. In addition, such conveyance shall occur after receipt by the District Manager of the following with respect to such Necessary Public Property, in form and substance reasonably satisfactory to the District Manager:

(i) a warranty deed, plat dedication or easement from the Owner for such Necessary Public Property executed by an authorized officer of the Owner or such other satisfactory evidence of public ownership of such Necessary Public Property;

(ii) such environmental assessments or other evidence satisfactory to the District Manager that such Necessary Public Property does not contain environmental contaminants which make such Necessary Public Property unsuitable for its intended use or to the extent such contaminants are present, a plan satisfactory to the District Manager which sets forth the process by which such Necessary Public Property will be made suitable for its intended use a plan for remediation of such contaminants if required by the District Manager and the sources of funds necessary to accomplish such purpose; and

(iii) such other documents, instruments, approvals or opinions as the District Board may reasonably request including title reports, insurance and opinions.

Section 4.4 Limited Compensation. Owner has not been and shall not be compensated for any costs of any Construction Project except as provided herein.

Section 4.5 Receipt of Report. Pursuant to this Article, construction of any Construction Project has not and shall not commence prior to the receipt of the Report and the conveyance or dedication of all Necessary Public Property.

Section 4.6 Financing; Limited Liability. Pursuant to this Article, any such construction or acquisition shall be financed (i) at any time before the sale and delivery of any of the Bonds only pursuant to Section 5.2(a) hereof and (ii) at any time after the sale and delivery of any of the Bonds only pursuant to Section 5.2(b) hereof. Payment of the costs of any Construction Project is subject to the availability of proceeds of District Bonds as described in Section 5.2.

ARTICLE V

FINANCING OF PROJECTS

Section 5.1 Acquisition Projects.

(a) **Before Bond Sale.**

(i) In order to provide for any acquisition of an Acquisition Project or a Segment occurring before the sale and delivery of any Bonds, the Project Price or, if applicable, the Segment Price(s) for Segment(s), shall be paid by Owner subject to payment and acquisition by the District pursuant to the terms of this Agreement and the Conveyance of the Acquisition Project or Segment.

(ii) As soon as possible after the sale and delivery of any Bonds, issued for the purpose of acquiring an Acquisition Project or Segment, the amount of the Project Price for such Acquisition Project or such Segment Price of a Segment paid by the Owner prior to the sale and delivery of any of the Bonds shall, subject to the requirements of Section 3.3 hereof, be paid to Owner from, and only from, the proceeds of the sale and delivery of the Bonds. Neither the District nor the Municipality shall be liable to Owner (or any contractor or assigns under any Contract) for payment of any Project Price or Segment Price except, the District shall be liable only to the extent unencumbered proceeds of the sale of the Bonds issued for the purpose of acquiring an Acquisition Project or any Segment are available for such purpose. No representation or warranty is given by the District, District Board or Municipality that the Bonds approved for issuance and sale by the District Board can be sold by the District, or that sufficient proceeds from the sale of the Bonds shall be available to pay any Project Price or Segment Price. The foregoing is not intended to limit the right of Owner to payment for any amount of the Project Price or Segment Price paid by Owner in excess of the proceeds from the sale of the Bonds if the District is able to finance such amount from other or future Bond proceeds.

(iii) Until the sale and delivery of the Bonds issued and sufficient for the purpose of acquiring an Acquisition Project or any Segment, the District shall not have any obligation to repay Owner for any payment made by Owner to pay any Project Price or Segment Price.

(b) **After Bond Sale.**

(i) Any acquisition of an Acquisition Project or a Segment occurring after the sale and delivery of any of the Bonds issued for the purpose of acquiring an Acquisition Project or any Segment shall, subject to the requirements of Section 3.3 hereof, be provided for by the payment of the Project Price or Segment Price from, and only from, the proceeds of the sale and delivery of the Bonds issued and sufficient for the purpose of acquiring an Acquisition Project or any Segment.

(ii) Until the sale and delivery of the Bonds for the purpose of acquiring an Acquisition Project or any Segment, neither the District nor the Municipality shall have any

obligation to pay such Project Price or Segment Price. Neither of the District nor the Municipality shall be liable to Owner (or any contractor or assigns under any Contract) for payment of any Project Price or Segment Price except, the District shall be liable only to the extent unencumbered proceeds of the sale of the Bonds issued for the purpose of acquiring an Acquisition Project or any Segment are available for such purpose. No representation or warranty is given by the District, District Board or the Municipality that the Bonds can be sold by the District or that sufficient proceeds from the sale of the Bonds shall be available to pay such Project Price or Segment Price. The foregoing is not intended to limit the right of Owner to payment for any deficiency between the proceeds from the sale of the Bonds and the amount of any Project Price or Segment Price paid by Owner if the District is able to finance such amount from other or future Bonds.

(c) **If Sufficient Bonds Not Issued**. If the Bonds are not issued or if the proceeds of the Bonds are insufficient to pay all of the Project Price or Segment Price, there shall be no recourse to the District or the Municipality and the District and the Municipality shall not have liability with respect to, the Project Price or Segment Price, except the District shall be liable for payment only from the proceeds of the sale of the Bonds issued for the purpose of acquiring an Acquisition Project or any Segment, if any. The foregoing does not limit the Owner's right to payment for any amount of the Segment Price of a Segment paid by Owner in excess of the proceeds from the sale of the Bonds if the District is able to finance such amount from other or future Bonds proceeds and the District may proceed with future Bond issuances, whenever the same has been requested by the Owner, and whenever the District has reasonable capacity to proceed with future Bond issuances, to fully satisfy the Project Price or Segment Price. The District Board agrees to make all reasonable efforts to issue Bonds upon the request of the Owner in a timely manner.

Section 5.2 Construction Project.

(a) **Before Bond Sale**.

(i) To provide for the Construction Costs due pursuant to any Construction Project Construction Contract after the award but before the sale and delivery of any of the Bonds, the Owner may advance monies to the District to pay Construction Costs pursuant to the terms of this Agreement. Any payment of such Construction Costs by the Owner shall be consistent with the Construction Project Construction Contract and shall be advanced only upon the written approval of the District Engineer and the District Manager of each request for payment of the applicable contractor in respect of such Construction Project Construction Contract.

(ii) As soon as possible after the sale and delivery of any of the Bonds, issued for the purpose of paying the Construction Costs of a Construction Project Construction Contract and sufficient Bond proceeds are reserved to pay the remaining Construction Costs of all awarded Construction Project Construction Contract the total amounts of the Construction Costs paid by Owner prior to the sale and delivery of the Bonds shall be paid to Owner from, and only from, the proceeds of the sale and delivery of the Bonds issued for the purpose of paying Construction Costs of a Construction Project Construction Project. Neither the District nor the

Municipality shall be liable to Owner (or any contractor or assigns under any Contract) for payment of any such Construction Cost amount except the District shall be liable to the extent unencumbered proceeds of the sale of the Bonds issued for the purpose of paying Construction Costs of a Construction Project Construction Contract are available for such purpose. No representation or warranty is given by the District, District Board or Municipality (or any of them) that sufficient proceeds from the sale of the Bonds shall be available to pay such amounts of the Construction Costs paid by Owner. The foregoing is not intended to limit the right of Owner to payment for any amount of the Construction Costs paid by Owner in excess of the proceeds from the sale of the Bonds if the District is able to finance such amount from other or future Bonds and the District.

(iii) Until the sale and delivery of the Bonds issued for the purpose of paying the Construction Costs of a Construction Project Construction Contract, the District shall not have any obligation to repay Owner for any Construction Costs advanced by Owner and after the sale and delivery of the Bonds issued for the purpose of paying the Construction Costs of a Construction Project Construction Contract such obligation shall be limited to the amount of the proceeds of the Bonds issued for the purpose of paying the Construction Costs of a Construction Project Construction Contract available for such purpose.

(b) **After Bond Sale**.

(i) Any Construction Costs due pursuant to any Construction Project Construction Contract awarded after the sale and delivery of any of the Bonds issued for the purpose of paying Construction Costs of a Construction Project Construction Contract shall be paid from, and only from, the proceeds of the sale and delivery of the Bonds issued for the purpose of paying Construction Costs of a Construction Project Construction Contract.

(ii) Until the sale and delivery of the Bonds issued for the purpose of paying Construction Costs of a Construction Project Construction Contract, neither the District nor the Municipality shall have any obligation to pay such Construction Cost amounts. Neither the District nor the Municipality shall be liable to Owner for payment of any such Construction Cost amount except to the extent unencumbered proceeds of the sale of the Bonds issued for the purpose of paying Construction Costs of a Construction Project Construction Contract are available for such purpose. No representation or warranty is given by the District, District Board or Municipality (or any of them) that the Bonds can be sold by the District, or that sufficient proceeds from the sale of the Bonds shall be available to pay Construction Costs.

(c) **If Sufficient Bonds Not Issued**. If the Bonds are not issued or if the proceeds of the sale of the Bonds are insufficient to pay any or all of the Construction Costs of a Construction Project Construction Contract provided in Subsections (a) or (b), there shall be no recourse to the District or the Municipality and the District and the Municipality shall have no liability with respect to any Construction Project Construction Contract, except the District shall be liable only from the proceeds of the sale of the Bonds. The foregoing does not limit the Owner's right to payment for any amount of the Construction Costs of a Construction Project Construction Contract paid by Owner in excess of the proceeds from the sale of the Bonds if the District is able to finance such amount from other or future Bonds proceeds and the District may

proceed with future Bond issuances, whenever the same has been requested by the Owner, and whenever the District has reasonable capacity to proceed with future Bond issuances, to fully satisfy the Construction Costs of a Construction Project Construction Contract. The District Board agrees to make all reasonable efforts to issue Bonds upon the request of the Owner in a timely manner.

ARTICLE VI

MATTERS RELATING TO THE BONDS AND OTHER OBLIGATIONS OF THE DISTRICT

Section 6.1 Bonds Generally.

(a) **Submission of Report; Issuance of Bonds**. Upon the submission of a Report, and upon a date established by the District Manager, the District Board shall take all such reasonable action necessary for the District to issue and sell the Bonds, pursuant to the terms and conditions established by the District Board in connection with the Report and consistent with the provisions of the Act.

(b) **Sale of Bonds; Amount**. The Bonds may be sold in one or several series, in an amount sufficient; (i) to pay the Acquisition Price or the Segment Price for an Acquisition Project and/or the Construction Costs relating to any Construction Project Construction Contract, in each case as established pursuant hereto and in the Report; (ii) to pay all other amounts indicated in the Report; (iii) to pay all relevant issuance costs related to the applicable series of the Bonds; (iv) to pay capitalized interest described in the Report, and (v) to the extent permitted by law, to fund a debt service reserve fund in an amount not in excess of that described in the Report. In the case where the Report provides for the sale of Assessment Bonds, the Acquisition Project or the Construction Project Construction Contract are hereinafter collectively referred to as the "Work" which shall be based on the estimated costs and expenses indicated in the resolution of intention establishing the assessment District, (hereinafter referred to as the "***Estimate***") and include the amounts described in clauses (i) through (v) (collectively hereinafter referred to as the "***Financeable Amount***").

(c) **Sale of Bonds; Denominations**. The Bonds will be sold in denominations of $100,000 each or $1,000 integral multiples in excess thereof unless otherwise agreed by the District Board.

(d) Assessment Bonds; Amount.

(i) Assessment Bonds shall be special assessment lien bonds payable from amounts collected from, among other sources, the hereinafter described special assessments (referred to as originally levied and as thereafter may be reallocated as described herein as the "***Assessments***").

(ii) The Assessments shall be based on the Financeable Amount indicated in the Report. None of the Acquisition Project Construction Contracts or the Construction Project Construction Contracts applicable to the Work shall be required to be bid or awarded as a prerequisite to the levying of the Assessments.

(iii) The Assessments shall be levied pursuant to the procedures prescribed by Section 50-3109, Idaho Code, and such other procedures as the District provides.

(iv) In the event of nonpayment of the Assessment, the procedures for foreclosure of the applicable portion of the Property set forth in Section 50-3109 (8), Idaho Code, shall apply. Neither the District nor the Municipality is required to purchase any of the Property at such foreclosure sale if there is no other purchaser.

(v) To prepay, from property owner payments, in whole or in part the applicable portion of the Assessment, on any interest payment date, the following shall be paid to the District: (i) the interest on such portion to the next date Bonds may be redeemed plus (ii) the unpaid principal amount of such portion rounded up to the next highest multiple of the lowest authorized denomination of the Bonds plus (iii) any premium due on such redemption date with respect to such portion plus (iv) any administrative or other fees charged by the District with respect thereto less (v) the amount by which the reserve described in Section 6.2(c) may be reduced on such redemption date as a result of such prepayment rounded up to the nearest $1,000. The reserve fund credit shall equal the lesser of: (a) the expected reduction in the reserve requirement associated with the redemption of the outstanding bonds as a result of the prepayment or (b) the amount derived by subtracting the new reserve requirement in effect after the redemption of outstanding bonds as the result of the prepayment from the balance in the reserve fund on the payment date.

Section 6.2 Requirements for Assessment Bonds.

(a) **Appraisal; Coverage Ratio**. At the time of sale of the Assessment Bonds, an appraisal in form and substance satisfactory to the District, and prepared by an MAI appraiser (hereinafter referred to as the "***Appraisal***") must show that the overall bulk aggregate wholesale value of the land contained within the assessment area to be financed with Assessment Bonds (as improved by the community infrastructure described in the relevant Report) is worth at least three (3) times the aggregate principal amount of the Assessment Bonds allocated to the assessed land. If in the event that market forces require an overall bulk aggregate wholesale value in excess of three (3) times the aggregate principal amount of the Assessment Bonds and such required valuation cannot be achieved, the Owner shall preserve the following options to provide the additional security necessary to achieve the necessary value requirements: (i) posting a letter of credit, or pledging MAI appraised real estate collateral sufficient to cover the portion of the Assessment Bonds not supported by the overall value-to-lien ratio requirement; and/or (ii) escrowing that portion of the proceeds of the Assessment Bonds not supported by the overall value-to-lien ratio requirement until the required value-to-lien ratio is achieved at which time the escrowed proceeds may be released, and/or (iii) if market conditions allow, issuing a second series of Assessment Bonds for the benefited area in question.

(b) Bonds sold in non-public sales shall be sold in a limited distribution to qualified institutional buyers, or accredited investors (as defined in Rule 144A and Rule 501(a), Regulation A, of the federal securities laws) or to sophisticated municipal market participants as that term is customarily used in the industry.

(c) **Reserve Fund**. If provided for in the Report, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve to secure payment of debt service on the Assessment Bonds in an approximate amount equal to the lesser of: (i) one year's maximum debt service, (ii) ten (10) percent of the "stated principal amount" of the Assessment Bonds as such terms in quotation are defined in the Internal Revenue Code of 1986, as amended, or (iii) one hundred twenty-five (125) percent of average annual debt service. Payment from such reserve shall not effect a reduction in the amount of the Assessment, and any amount collected with respect to the Assessment thereafter shall be deposited to such reserve to the extent the Assessment is so paid therefrom.

Section 6.3 Requirements for General Obligation Bonds.

(a) **Bond Authorization**. The total aggregate principal amount of G.O. Bonds authorized shall be $50,000,000. Immediately following the formation of the District, the District shall take such action as necessary to hold the required bond election to authorize the District to establish such G.O. bond authority. The bond election shall have a term of thirty (30) years or as otherwise provided by Idaho law. Without the approval of the Owner, neither the District nor any other third party owning property within the District shall have the ability to request the issuance of G.O. Bonds until such time as the Owner and their respective affiliates hold fee title to less than fifteen (15) percent of the total property contained within the boundaries of the District.

(b) **Tax Levy for Bonds**. The District may annually levy and collect an ad valorem tax upon all taxable property in the District which shall be sufficient after giving prudent consideration to other funds available to the District to pay when due the principal of, interest on and premium, if any, on the G.O. Debt (as such term is hereinafter defined) incurred by the District to finance community infrastructure purposes, including, the construction or acquisition of community infrastructure as provided in any Report.

(c) **Limit on Indebtedness**. No indebtedness (indebtedness shall not include administrative expenses) secured by a pledge of ad valorem taxes, which such ad valorem tax rate shall be determined by the Owner, including, but not limited to, G.O. Bonds (collectively hereinafter referred to as "***G.O. Debt***"), shall be incurred unless ninety-five percent (95%) of the amount of ad valorem taxes estimated to be collected at a tax rate of not greater than .003 (3 mills) of the assessed value of the taxable property within the District is sufficient to pay the highest combined debt service requirements for the proposed G.O. Debt and any other G.O. Debt outstanding. The assessed value of the taxable property shall, for purposes of this paragraph, be equal to the value at the time of the issuance of the proposed G.O. Debt as shown in the records of the County Assessor. Notwithstanding the foregoing or any other provision of this Agreement, G.O. Debt may be authorized by the District Board, for situations where a tax rate greater than .003 (3 mills) of the assessed value of taxable property would be necessary to pay the highest combined debt service of the proposed and outstanding G.O. Debt, if other sources of revenue or additional security acceptable to the District Board are pledged to pay debt service on the G.O. Debt in an amount that, when combined with the taxes collected at the .003 (3 mills) tax

rate or less, provides a sufficient amount to pay the highest combined debt service of the proposed and outstanding G.O. Debt.

Section 6.4 General Requirements. The following minimum requirements are hereby established and required with respect to any financing by the District sold to accredited investors (as defined in Rule 501(a), Regulation D), qualified institutional buyers (as defined in Rule 144A) or sophisticated municipal market participants (as such term is customarily used in the industry).

(a) **Public Offering.** The District shall not issue any series of the Bonds unless the corresponding series of the Bonds are rated A or better by a nationally recognized bond rating agency with restrictions on subsequent transfer thereof under such terms as the District Board, in their discretion, approve.

(b) **Limited Offering of Bonds; Transfer Restrictions.** Except as permitted below, the Bonds shall be sold only to accredited investors (as defined in Rule 501(a), Regulation D) or qualified institutional buyers (as defined in Rule 144A) or sophisticated municipal market participants (as such term is customarily used in the industry). Secondary transfers of the Bonds will be permitted as long as Bonds are sold to accredited investors (as defined in Rule 501(a)), qualified institutional investors (as defined in Rule 144A); or sophisticated municipal market participants (as such term is customarily used in the industry) with such offers and sales occurring through a broker, dealer or broker-dealer.

(c) Any disclosure document prepared in connection with the offer or sale of Bonds must clearly indicate that neither the Municipality nor the State of Idaho or any political subdivision of either, excluding the District, shall be liable for the payment or repayment of any obligation, liability, bond or indebtedness of the District, and neither the credit nor the taxing power of the Municipality, the State of Idaho, or any political subdivision of either, excluding the District, shall be pledged therefore.

(d) The District Board shall record with the county clerk, upon the records of each parcel of real property within the District a disclosure notice as required by Section 50-3115, Idaho Code, setting forth that such property will be encumbered with future Assessment Bond, and/or G.O. Bond repayment liability. Such notice shall be provided to each potential purchaser of a residential lot within the District disclosing the existence of an Assessment or tax in accordance with the Act (assuming such Assessment or tax remains at the time of sale to the potential purchaser). Each potential purchaser shall acknowledge in writing that the purchaser received and understood the disclosure document. The District shall maintain records of the written acknowledgments. To provide evidence satisfactory to the District Board that any prospective purchaser of land within the boundaries of the District has been notified that such land is within the boundaries of the District and that the Bonds may be then or in the future outstanding, a disclosure pamphlet substantially in the form of *Exhibit E* hereto (hereinafter referred to as the "***Pamphlet***") shall be produced pursuant to Section 10.2 provided, however, that the Pamphlet may be modified as necessary in the future to adequately describe the District

and the Bonds and source of payment for debt service therefore as agreed by the District Board and Owner.

(e) Each Obligated Person (as defined in Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934 (hereinafter referred to as the "***Rule***")) shall execute and deliver, and thereafter comply with and carry out all the provisions of, a "***Continuing Disclosure Undertaking***" with respect to the Bonds which shall be in a form satisfactory to the District and the purchaser of the Bonds for such purchaser to comply with the requirements of the Rule.

(f) **Financial Assurance**. At the time of sale of either General Obligation or Assessment Bonds, the Owner shall provide or cause to be provided financial assurances in the form of escrowed cash, bonds, letter of credit or other similar assurances, accessible by the District and in each case in form acceptable to the District Manager, for amounts necessary to pay all costs and expenses associated with providing all the community infrastructure improvements or purposes described in the Report in excess of the Bond proceeds, as well as any unpaid costs and expenses of issuance of such Bonds not paid or payable from the proceeds of the sale of such Bonds because such proceeds are insufficient in amount for such purposes or such Bonds are not sold. The foregoing is not intended to limit the right of Owner to reimbursement for any amount advanced in excess of the proceeds from the sale of such Bonds if the District is able to finance such amount from other or future Bond proceeds, and the District and the Municipality shall reasonably cooperate with Owner in preserving the right to any such future reimbursement.

ARTICLE VII

ACCEPTANCE BY THE MUNICIPALITY OR OTHER AGENCY; ADMINISTRATION;

Section 7.1 Upon satisfaction of the terms for acceptance set forth in this Agreement and any applicable intergovernmental agreement, and simultaneously with the payment of, or the promise to pay, the related Project Price, Segment Price or Construction Costs of a Construction Project, the Acquisition Project or Segment of Acquired Infrastructure or the Construction Project, as the case may be, shall be accepted by the Municipality or such other agency that is a political subdivision of the State of Idaho, subject to the conditions pursuant to which facilities such as the Acquisition Project, Segment or Construction Project, as the case may be, are typically accepted by the Municipality or such other agency that is a political subdivision of the State of Idaho, and thereafter shall be made available for use by the general public.

Section 7.2 Any such acceptance of such community infrastructure as set forth in this Article shall be accompanied by "Certificate of Engineers" substantially similar to that certificate set forth in *Exhibit C*, attached hereto. Such Certificate of Engineers shall specify: (i) that the community infrastructure has been completed in accordance with the plans and specifications for such community infrastructure; (ii) the Project Price or Segment Price; (iii) that such community infrastructure was constructed in compliance with the Public Bidding Requirements; (iv) that Owner has filed all construction plans, specifications, contract documents, and supporting engineering data for the construction or installation of such Acquisition Project or Segment with the Municipality or other appropriate agency that is a political subdivision of the State of Idaho; and (v) that the Owner obtained good and sufficient performance and payment bonds as required by the Agreement.

Section 7.3 Any such acceptance of community infrastructure as set forth in this Article shall also be accompanied by a **"Conveyance of Acquisition Project or Segment of Project"** substantially similar to that form set forth and attached hereto as *Exhibit D*. By means of such conveyance, Owner shall convey to Municipality or such other appropriate agency that is a political subdivision of the State of Idaho such community infrastructure, along with warranties which shall include: (i) that the Owner has the full legal right and authority to make the sale, transfer, and assignment herein provided; (ii) that Owner is not a party to any written or oral contract which adversely affects this conveyance; (iii) that the Owner is not subject to any bylaw, agreement, mortgage, lien, lease, instrument, order, judgment, decree, or other restriction of any kind or character which would prevent the execution of the conveyance; (iv) that the Owner is not engaged in or threatened with any legal action or proceeding, nor is it under any investigation, which prevents the execution of the conveyance; (v) that the person executing the conveyance on behalf of the Owner has full authority to do so, and no further official action need be taken by the Owner to validate the conveyance; and (vi) the community infrastructure conveyed are all located within property owned by the Owner, public rights-of-way, or public utility or other public easements dedicated or to be dedicated by plat or otherwise.

Section 7.4 The parties agree that the term "***District Administrative Expenses***" shall include all the administrative costs and expenses of the District. District Administrative Expenses will not include any costs or expenses paid by the District from revenues or taxes collected to pay the Debt Service (as such term is defined in the Act) on any Bonds of the District.

Section 7.5 (a) The District Board shall levy and collect an administration ad valorem tax not to exceed one-hundredth of one percent (0.01%) of market value for assessment purposes on all taxable property within the District (hereinafter referred to as the "***Administration Tax***"). To the extent the proceeds from the Administration Tax exceed the expenses and costs described in this Article VII, excess proceeds, to the extent that such proceeds may exist shall be utilized to reimburse the Owner's for the aggregate payments, if any, related to District Administration Expenses; to the extent that the proceeds from the Administration Tax exceed the District Administrative Expenses of the District, such Administration Tax shall be reduced to provide a proper matching of proceeds to expenses.

(b) The proceeds of the Administration Tax may be used by the District for any lawful administrative purpose as provided in the Act.

ARTICLE VIII

INDEMNIFICATION

Section 8.1 (a) The Owner agrees to protect and indemnify and hold the Municipality, its officers or employees and agents and each of them harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees, and court costs which the Municipality, its officers, employees or agents or any combination thereof may suffer or which may be sought against or recovered or obtained from the Municipality, its officers, employees or agents or any combination thereof as a result of or by reason of or arising out of or in consequence of: (i) the acquisition, construction or financing of Community Infrastructure by the District or Municipality pursuant to this Agreement; (ii) any environmental or hazardous waste conditions (a) which existed on any property which is part of an Acquisition Project or Segment of Acquired Infrastructure at any time prior to final acceptance of the Project by the Municipality or such other political subdivision of the State of Idaho, or which was caused by the Owner, or (b) which existed on any of the property which is assessed at any time while the Owner owned the property, or which was caused by the Owner, provided said condition was not caused by the deliberate action of the Municipality, District, or such other political subdivision of the State of Idaho; or (iii) any act or omission, negligent or otherwise, of the Owner or any of its subcontractors, agents or anyone who is directly employed by or acting in concert with the Owner or any of its subcontractors, or agents, in connection with an Acquisition Project or Segment of Acquired Infrastructure. This section is not intended and shall not be construed to be a warranty of the construction, workmanship or of the materials or equipment; it being agreed that the Owner's only warranty of such matters to the Municipality is as stated in Section 2.1(b).

(b) The Owner agrees that it shall defend the Municipality, its officers, employees and agents and each of them in any suit or action that may be brought against it or any of them by reason of the Municipality's involvement in the District and the financing thereof or any act or omission, negligent or otherwise, against the consequences of which the Owner has agreed to indemnify the Municipality, its officers, employees or agents.

(c) No indemnification is required to be paid by the Owner for any claim, loss or expense arising from the willful misconduct or gross negligence of the Municipality or its officers or employees.

Article IX

ANNEXATIONS INTO DISTRICT

Section 9.1 The purpose of the District is to provide for the financing, construction and/or acquisition of community infrastructure and community infrastructure purposes as defined in the General Plan for the District property only. Accordingly, the Municipality, District, and Owner agree that future annexations to the District pursuant to Section 50-3106, Idaho Code, shall be prohibited for the life of the District with the exception of future property which may be requested by the Owner for inclusion within the boundaries of the District; or inclusions of property within the District with the express prior written consent of the Owner.

Article X

MISCELLANEOUS

Section 10.1 Neither the Municipality, the District nor the Owner shall knowingly take, or cause to be taken, any action which would cause interest on any Bond to be includable in gross income for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended.

Section 10.2 (a) The Owner shall provide evidence satisfactory to the District Manager that any prospective purchaser of land within the boundaries of the District has been notified that such land is within the boundaries of the District and that the Bonds may be then or in the future be outstanding. The Pamphlet shall be produced, provided however, that the Pamphlet may be modified as necessary in the future to adequately describe the District and the Bonds and source of repayment for debt service therefore as agreed by the District Manager and the Owner.

(b) The Owner shall require that each homebuilder to whom the Owner has sold land shall:

(i) provide the Pamphlet to an prospective purchaser of land;

(ii) cause and purchaser of land to sign a disclosure statement upon entering into a contract for purchasing such land, such disclosure statement to acknowledge receipt of a copy of the Pamphlet and to disclose the effect of the Bonds in a form reasonably acceptable to the District Manager;

(iii)provide a copy of each fully executed disclosure statement to be filed with the District Manager; and

(iv) provide such information and documents required for compliance with Rule 15c2-12 of the Securities Exchange Act of 1934.

Owner shall assist the District in the creation of the Pamphlet; with disclosed information as such disclosure is required by Section 50-3115, Idaho Code. In accordance with said section, District shall record upon the records of each parcel of real property within the District that will be encumbered with any future obligation bond or special assessment bond repayment liability in accordance with Section 6.4 (c).

Section 10.3 This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective legal representatives, successors and assigns.

Section 10.4 Each party hereto shall, promptly upon the request of any other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 10.5 This Agreement sets forth the entire understanding of the Parties as to the matters set forth herein as of the date this Agreement is executed and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 10.6 To the extent that this Agreement may conflict with the terms of the pre-annexation and development agreement hereinabove referenced the terms of the pre-annexation and development agreement shall control.

Section 10.7 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Idaho.

Section 10.8 The waiver by any party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement or shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

Section 10.9 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

Section 10.10 In accordance with Section 50-3116, Idaho Code, the District shall be dissolved by the District Board by a resolution of the District Board upon a determination that each of the following conditions exist: (a) all community infrastructure owned by the District has been, or provision has been made for all community infrastructure to be conveyed, either to the State of Idaho or to a political subdivision thereof, which shall include a county or city in which the District is located, or to a public district or other authority authorized by the laws of this state to own such community infrastructure; (b) the District has no outstanding bond obligations; and (c) all obligations of the District pursuant to any contracts or agreements entered into by the District have been satisfied. All property within the District that is subject to the lien of District taxes or special assessments shall remain subject to the lien for the payment of general obligation bonds or special assessment bonds, as the case may be, notwithstanding dissolution of the District. The District shall not be dissolved if any Revenue Bonds of the District remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the Revenue Bonds, either at maturity or prior to redemption, has been deposited with a trustee or escrow agent and pledged to the payment and redemption of bonds. The District may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

Section 10.11 All notices, certificates or other communications hereunder (including in the Exhibits hereto) shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to the Municipality:

City of Boise, Idaho
150 North Capitol Blvd.
P.O. Box 500
Boise, Idaho 83701-0500
Attention: _____

If to the District:

Harris Ranch Community Infrastructure
District No. 1 (City of Boise, Idaho)
c/o City of Boise, Idaho
150 North Capitol Blvd.
P.O. Box 500
Boise, Idaho 83701-0500
Attention: District Manager

If to the Owner:

Mr. Doug Fowler
Harris Family Limited Partnership
4940 East Mill Station Drive
Boise, ID 83716

With a copy to:

Mr. Dick Mollerup
Meuleman Mollerup
755 East Front Street
Suite 200
Boise, ID 83702

Any of the foregoing, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 10.12 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 10.13 The headings or titles of the several Articles and Sections hereof and in the Exhibits hereto, and any table of contents appended to copies hereof and thereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "Exhibits," "Articles," "Sections," and other subdivisions are to the corresponding Exhibits, Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Exhibit, Article, Section or subdivision hereof.

Section 10.14 This Agreement does not relieve any party hereto of any obligation or responsibility imposed upon it by law.

Section 10.15 No later than ten (10) days after this Agreement is executed and delivered by each of the parties hereto, the Owner shall on behalf of the Municipality and the District record a copy of this Agreement with the County Recorder of Ada County, Idaho.

Section 10.16 Unless otherwise expressly provided, the representations, covenants, indemnities and other agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein.

Section 10.17 If any party hereto shall be unable to observe or perform any covenant or condition herein by reason of "force majeure," then the failure to observe or perform such covenant or condition shall not constitute a default hereunder so long as such party shall use its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. **"Force majeure"**, as used here, means any condition or event not reasonably within the control of such party, including, without limitation, acts of God; strikes, lockouts, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any State thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosions; and partial or entire failure of utilities. Failure to settle strikes, lockouts and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of the opposing party or parties, in either case when such course is in the judgment of the party hereto unfavorable to such party, shall not constitute failure to use its best effort to remedy such a condition or event.

Section 10.18 Whenever the consent or approval of any party hereto, or of any agency therefore, shall be required under the provisions hereof, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

Section 10.19 The Other Parties join in the execution of this Agreement for the sole purpose of binding their respective interests in lands within the District and consenting to all matters agreed to herein by the Owner, and the Other Parties do not, by joining in the execution of this Agreement, obligate themselves to any of the affirmative obligations set forth herein on the part of the Owner.

Section 10.20 All parties hereto have been, or have had the opportunity to be represented by legal counsel in the course of the negotiations for and the preparation of this Agreement and related documents. Accordingly, in all cases, the language of this Agreement and related documents shall be construed simply, according to its fair meaning, and not strictly for or against either party regardless of which party caused its preparation.

Section 10.21 The persons executing this Agreement on behalf of each respective entity each warrant and represent to the others that they have been duly authorized to act on behalf of their respective entity and have the authority to execute this Agreement and to create a binding obligation.

IN WITNESS WHEREOF, the officers of Harris Family Limited Partnership, the Municipality and the District have duly affixed their signatures and attestations, and the officers of the Owner their signatures, all as of the day and year first written above.

CITY OF BOISE, IDAHO,
a municipal corporation

By _____
Mayor

ATTEST:

_____
City Clerk

HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1 (CITY OF BOISE, IDAHO), an Idaho Community Infrastructure District

By _____
Chairman, District Board

ATTEST:

_____
District Clerk

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and is within the power and authority granted pursuant to the laws of this State to the District.

District Counsel

State of Idaho)
) ss.
County of Ada)

On this 22 day of June, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared David H. Beiter, known or identified to me to be the Mayor of the City of Boise, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation 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.

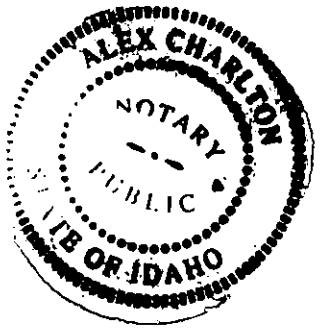
ALEX CHARLTON NOTARY PUBLIC STATE OF IDAHO

Notary Public for
Residing at: Boise Idaho
My commission Expires: 3-13-13

State of Idaho)
) ss.
County of Ada)

On this 5 day of October, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared David Eberle, known or identified to me to be the Chairman of the District Board of the Harris Ranch Community Infrastructure District No. 1, (City of Boise, Idaho), the Community Infrastructure District that executed the instrument or the person who executed the instrument on behalf of said Community Infrastructure District, and acknowledged to me that such Community Infrastructure District 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 Boise

Residing at: Boise

My commission Expires: 3-13-13

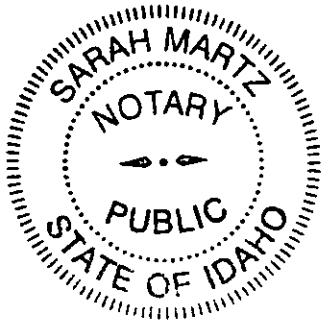
Harris Family Limited Partnership
an Idaho Limited Partnership

By: Felicia Burkhalter
Its: managing member

State of Idaho)
) ss.
County of Ada)

On this 5 day of October, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Felicia Burkhalter member of Harris Family Limited Partnership, an Idaho Limited Partnership, known or identified to me to be the Manager of Harris Family Limited Partnership, the limited liability company that executed the instrument, or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such 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.



Sarah Martz

Notary Public for Ada

Residing at: Boise, IDAHO

My commission Expires: November 10, 2011

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 _____

Residing at: _____

My commission Expires: _____

Alta M. Harris
as to a life estate

Alta M. Harris

Alta M. Harris

State of Idaho)
) ss.
County of Ada)

On this 5 day of October, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Alta M. Harris, [redacted] or the person who executed the instrument [redacted]

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

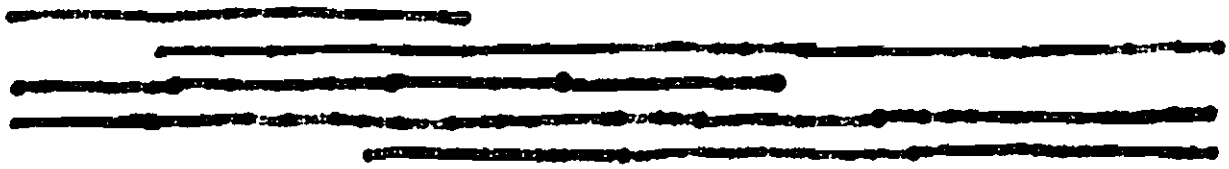
SARAH MARTZ NOTARY PUBLIC STATE OF IDAHO

Sarah Martz

Notary Public for Ada

Residing at: Boise, Idaho

My commission Expires: November 10, 2011



DISTRICT DEVELOPMENT AGREEMENT NO. 1

FOR THE HARRIS RANCH
COMMUNITY INFRASTRUCTURE DISTRICT NO. 1
(CITY OF BOISE, IDAHO)

LIST OF EXHIBITS

Harris Ranch
Community Infrastructure District No. 1
District Boundary Legal Description

Parcel B:

The West half of Section 20, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho;

EXCEPT the following tracts:

Tract 1

A parcel of land situate in the Southwest Quarter of Section 20, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

COMMENCING at the West Quarter corner of said Section 20, which lies North 2644.29 feet from the Southwest corner of said Section 20; thence
South 64°48'09" East 1680.32 feet, along a random line to the approximate centerline intersection of Barber Road and Shady Lane; thence
South 30°37'45" West 795.86 feet along the centerline of Shady Lane; thence
South 45°18'00" West 187.37 feet along the centerline of Shady Lane; thence
South 44°42'00" East 15.00 feet to the Southeasterly boundary of Shady Lane and to the REAL POINT OF BEGINNING; thence
North 45°18'00" East 114.07 feet along the Southeasterly boundary of Shady Lane; thence
South 79°29'30" East 95.26 feet; thence
South 10°30'30" West 290.68 feet; thence
North 79°29'30" West 160.34 feet; thence
North 10°30'30" East 197.80 feet to the REAL POINT OF BEGINNING.

Tract 2

A parcel of land situate in the Southwest Quarter of Section 20, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

COMMENCING at the West Quarter corner of said Section 20, which lies North 2644.29 feet from the Southwest corner of said Section 20; thence
South 64°48'09" East 1680.32 feet, along a random line, to the approximate centerline intersection of Barber Road and Shady Lane; thence
South 30°37'45" West 376.45 feet along the centerline of Shady Lane; thence
North 59°25'40" West 15.00 feet to the Northwesterly boundary of Shady Lane and to the REAL POINT OF BEGINNING; thence
South 30°37'45" West 171.11 feet along the Northwesterly boundary of Shady Lane; thence
North 59°25'40" West 254.58 feet; thence
North 30°37'45" East 171.11 feet along a line parallel to the centerline of Shady Lane; thence
South 59°25'40" East 254.58 feet to the REAL POINT OF BEGINNING.

Tract 3

The Southwest Quarter of the Northwest Quarter of Section 20, Township 3 North, Range 3 East, *Boise Meridian*, Ada County, Idaho.

Tract 4

That portion of said Section 20 conveyed to Idaho Power Company by deed recorded under Instrument No. 420137, of Official Records.

Tract 5

That portion of said Section 20 within the following described property:

A parcel of land located in the Southeast Quarter of Section 19, and the West half of the Southwest Quarter of Section 20, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 19, from which the South Quarter corner of said Section 19 bears
North 88°37'14" West, 2642.54 feet; thence
North 25°32'37" East, 1199.44 feet to the beginning of a non-tangent curve to the left said point being the REAL POINT OF BEGINNING; thence 850.03 feet along the arc of said non-tangent curve to the left, having a radius of 1949.00 feet, a central angle of 24°59'20", and a long chord bearing North 77°32'48" West, 843.31 feet; thence
South 89°57'32" West, 278.98 feet to the beginning of a curve to the left; thence 416.06 feet along the arc of said curve to the left, having a radius of 2154.51 feet, a central angle of 11°03'52", and a long chord bearing North 07°50'35" East, 415.41 feet; thence
North 84°04'00" East, 1088.99 feet to the beginning of a non-tangent curve to the right; thence 61.83 feet along the arc of said non-tangent curve to the right, having a radius of 3236.01 feet, a central angle of 1°05'41", and a long chord bearing
South 00°05'32" West, a distance of 61.83 feet; thence
North 89°39'57" East, 61.01 feet to the beginning of a non-tangent curve to the right; thence 633.35 feet along the arc of said non-tangent curve to the right, having a radius of 3297.01 feet, a central angle of 11°00'23", and a long chord bearing
South 06°07'30" West, a distance of 632.37 feet to the beginning of a compound curve; thence 39.67 feet along the arc of said compound curve, having a radius of 22.00 feet, a central angle of 103°19'11 ", and a long chord bearing
South 63°17'17" West, 34.51 feet to the REAL POINT OF BEGINNING.

Parcel C:

The Northwest Quarter of the Northwest Quarter and the West half of the East half of the Northwest Quarter lying North of Warm Springs Avenue (Highway No. 21), Section 29, Township 3 North, Range 3 East, Ada County, Idaho;

EXCEPT that portion thereof conveyed to Ada County Highway District by deed recorded September 14, 2000 under Instrument No. 100073741, of Official Records.

Parcel D:

Government Lots 4 and 5, the West half of Government Lot 3, that portion of the West half of the East half of the Northwest Quarter lying Southwesterly of the right of way for Warm Springs Avenue, and that portion of the Northwest Quarter of the Northwest Quarter lying Southwesterly of the right of way for Warm Springs Avenue, all in Section 29, Township 3 North, Range 3 East, Boise Meridian, in Ada County, Idaho;

TOGETHER WITH

A portion of S. Eckert Road — a parcel of land being a portion of the West half of Section 29, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at the North Quarter corner of Section 29, Township 3 North, Range 3 East, Boise Meridian, Ada County Idaho; thence
South 00°29'29" West on the North-South mid-section line of said Section 29, 3002.99 feet to a point; thence leaving said mid-section line
North 89°30'31" West 660.00 feet to a point on the Westerly boundary of the Idaho Power Company property as described in the Warranty Deed recorded in Book 434 of Deeds at page 108, records of Ada County, Idaho; thence
North 86°52'14" West 786.16 feet to a point of non-tangency; thence Southwesterly 365.31 feet on the arc of a non-tangent curve to the left, said curve having a central angle of 36°58'49", a radius of 566.00 feet and a long chord of 359.00 feet which bears South 74°38'20" West to a point on the Easterly right-of-way line of the existing Eckert Road as described in that deed recorded as Instrument No. 34746, dated February 11, 1911, of Ada County Records; thence along said Easterly right-of-way line
North 49°20'00" East 226.28 feet to a point of non-tangency, said point being on the Northerly right-of-way line of the new alignment of Eckert Road and also being the REAL POINT OF BEGINNING; thence on the new alignment of Eckert Road, 137.58 feet on the arc of a non-tangent curve to the left, said curve having a central angle of 12°26'00", a radius of 634.00 feet, and a long chord of 137.31 feet which bears South 70°41'16" West to a point on the existing Westerly right-of-way line of Eckert Road; thence
North 49°20'00" East 1447.08 feet on the said Westerly right-of-way line of Eckert Road as described in said Instrument No. 34746, to a point on the said Westerly Idaho Power Company property line; thence
South 00°29'29" West 66.41 feet on said Idaho Power Company property line to a point on the Easterly right-of-way line of Eckert Road as described in said Instrument No. 34746; thence
South 49°20'00" West 1275.49 feet on said Easterly right-of-way line to the REAL POINT OF BEGINNING.

AND TOGETHER WITH

Portions of the Southeast Quarter of the Southwest Quarter, and the Northwest Quarter of the Southwest Quarter, and the Southwest Quarter of the Northwest Quarter in Section 29, Township 3 North, Range 3 East, Boise Meridian, and more particularly described as follows:

COMMENCING at a brass cap monument marking the Northwest corner of said Section 29, from which an aluminum cap monument marking the North One-Quarter (1/4) corner of said Section 29 bears
South 89°35'29" East a distance of 2657.58 feet; thence
South 0°16'44" West a distance of 2447.24 feet along the West line of said Section 29 to the intersection with the meander line of the North (right) bank of the Boise River as described in the original GLO Survey Notes of 1868; thence
South 54°43'16" East (formerly described as South 55°00' East in said GLO Survey Notes), 23.27 feet along said North meander line; thence
South 56°13'16" East (formerly described as South 56°30' East in said GLO Survey Notes), 196.49 feet along said North meander line to the intersection with the ordinary high water line of the North (right) bank of the Boise River, said intersection being the REAL POINT OF BEGINNING; thence continuing
South 56°13'16" East, 113.71 feet along said North meander line; thence
South 39°43'16" East, 660.00 feet (formerly described as South 40°00' East 660.00 feet in said GLO Survey Notes), along said North meander line; thence
South 62°28'16" East a distance of 1320.00 feet (formerly described as South 62°45' East, 1320.00 feet in said GLO Survey Notes) along said North meander line; thence
South 32°43'16" East (formerly described as South 33°00' East in said GLO Survey Notes), 196.95 feet along said North meander line to the intersection with the East line of the West half of Government Lot 3; thence leaving said North meander line,
South 0°25'54" West 658.32 feet along said East line to a 5/8" iron pin monument marking the intersection with the ordinary high water line of the North (right) bank of the Boise River; thence along the said ordinary high water line to a 5/8" iron pin monuments the following courses and distances:
North 85°00'10" West 290.65 feet; thence
North 73°30'40" West 157.48 feet; thence
North 56°57'50" West 178.96 feet; thence
North 47°21'15" West 190.62 feet; thence
North 36°38'05" West 400.82 feet; thence
North 32°16'03" West 171.01 feet; thence
North 27°50'38" West 88.54 feet; thence
North 33°09'57" West 207.74 feet; thence
North 43°19'22" West 86.24 feet; thence
North 28°28'00" West 50.35 feet; thence
North 26°16'29" East 26.61 feet; thence
North 11°01'36" West 126.73 feet; thence
North 26°42'22" West 143.78 feet; thence
North 51°23'40" West 298.34 feet; thence
North 29°51'00" West 319.07 feet; thence
North 15°22'23" West 109.33; thence
North 13°31'39" East 38.90 feet returning to the REAL POINT OF BEGINNING.

EXCEPT that portion thereof conveyed to the State of Idaho Department of Parks and Recreation, by deed recorded April 25, 1988 under Instrument No. 8819518, of Official Records;

AND EXCEPT that portion of Eckert Road which has not been vacated;

AND EXCEPT

A parcel of land lying in a portion of the Southeast Quarter Northwest Quarter of Section 29, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho and being particularly described as follows:

COMMENCING at a brass cap marking the One-Quarter corner between Sections 20 and 29; thence
North 89°35'34" West along the North boundary of Section 29 a distance of 664.43 feet to a point, said point bears
South 89°35'34" East a distance of 1993.28 feet from the Northwest corner of Section 29; thence
South 0°25'53" West a distance of 1834.35 along the West boundary of the Idaho Power Company Corridor, Instrument No. 420137, to a point, said point being the REAL POINT OF BEGINNING; thence continuing along said boundary
South 0°25'53" West a distance of 144.97 feet to the Northwest right of way line of Old Eckert Road; thence
South 49°29'24" West along the right of way line, a distance of 165.00 feet; thence
North 40°30'36" West a distance of 265.00 feet; thence
North 49°29'24" East a distance of 260.00 feet; thence
South 40°30'36" East a distance of 155.49 feet to the West line of said Idaho Power Company Corridor and the POINT OF BEGINNING.

AND EXCEPT that portion thereof lying within the following described property:

A portion of Government Lot 5 of Section 29 and a portion of Government Lot 8 of Section 30, all in Township 3 North, Range 3 East, Boise Meridian, and more particularly described as follows:

COMMENCING at a brass cap monument marking the Northwest corner of said Section 29 from which an aluminum cap monument marking the North One-Quarter (1/4) corner of said Section 29 bears
South 89°35'29" East a distance of 2657.58 feet; thence
South 0°16'44" West a distance of 2447.24 feet along the West line of the Northwest Quarter of said Section 29 to the intersection with the meander line of the North (right) bank of the Boise River as described in the original GLO Survey Notes of 1868, said intersection being the REAL POINT OF BEGINNING; thence
South 54°43'16" East (formerly described as South 55°00' East in said GLO Survey Notes), 23.27 feet along said North meander line; thence
South 56°13'16" East (formerly described as South 56°30' East in said GLO Survey Notes), 196.49 feet along said North meander line to the intersection with the ordinary high water line of the North (right) bank of the Boise River; thence along said ordinary high water line of the North (right) bank of the Boise River to 5/8" iron pin monuments the following courses and distances:
North 13°31'39" East 54.63 feet; thence

North 5°06'39" East 237.01 feet; thence
North 15°09'13" West 177.42 feet; thence
North 80°09'11" West 70.03 feet; thence
North 47°01'28" West 349.12 feet; thence
North 54°21'53" West 71.40 feet; thence
North 55°32'34" West 367.84 feet; thence
North 75°17'00" West 132.39 feet; thence
North 69°08'03" West 92.50 feet; thence
North 82°45'14" West 25.67 feet to the intersection with the said North meander line; thence
South 19°58'16" East (formerly described as South 20°15' East in said GLO Survey Notes), 533.47 feet along said North meander line; thence
South 54°43'16" East (formerly described as South 55°00' East in said GLO Survey Notes), 702.73 feet along said North meander line returning to the REAL POINT OF BEGINNING.

AND EXCEPT that portion thereof conveyed to Ada County Highway District for Realigned Eckert Road by deed recorded on January 18, 2002 under Instrument No. 102007187, of Official Records.

AND EXCEPT that portion thereof lying within the following described property:

A 35.00 foot wide strip of land being located in portions of Government Lots 8 and 9 of Section 30, and Government Lots 4 and 5 of Section 29, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 30 from which the North Quarter corner of said Section 30 bears
North 88°37'14" West, 2642.54 feet; thence
South 49°59'58" West, 1391.89 feet to the REAL POINT OF BEGINNING of said 35.00 foot wide strip of land; thence
South 55°29'27" East, 306.23 feet to reference Point A; thence continuing
South 55°29'27" East, a distance of 402.67 feet; thence 198.95 feet along the arc of a curve to the left having a radius of 3,573.50 feet, a central angle of 03°11'24", and a long chord which bears
South 57°05'09" East, a distance of 198.93 feet; thence 633.68 feet along the arc of a reverse curve to the right having a radius of 7,140.53 feet, a central angle of 05°05'05", and a long chord which bears
South 56°08'18" East, a distance of 633.47 feet; thence 74.69 feet along the arc of a reverse curve to the left having a radius of 200.00 feet, a central angle of 21°23'54" and a long chord which bears South 64°17'43" East, a distance of 74.26 feet; thence 80.69 feet along the arc of a reverse curve to the right having a radius of 200.00 feet, a central angle of 23°06'53", and a long chord which bears
South 63°26'13" East, a distance of 80.14 feet; thence
South 51°52'47" East, 173.24 feet; thence 38.97 feet along the arc of a curve to the right having a radius of 35.00 feet, a central angle of 63°48'02", and a long chord which bears South 19°58'46" East, a distance of 36.99 feet; thence 589.70 feet along the arc of a reverse curve to the left having a radius of 606.50 feet, a central angle of 55°42'31", and a long chord which bears South 15°56'01" East, a distance of 566.74 feet; thence 190.25

feet along the arc of a reverse curve to the right having a radius of 548.41 feet, a central angle of 19°52'35", and a long chord which bears
South 33°50'58" East, a distance of 189.30 feet; thence 59.60 feet along the arc of a reverse curve to the left having a radius of 200.00 feet, a central angle of 17°04'26", and a long chord which bears South 32°26'54" East, a distance of 59.38 feet; thence
South 40°59'08" East, 152.72 feet; thence 38.55 feet along the arc of a curve to the right having a radius of 100.00 feet, a central angle of 22°05'14", and a long chord which bears South 29°56'30" East, a distance of 38.31 feet; thence
South 18°53'53" East, 80.41 feet to a point on the curved Northerly right-of-way line of South Eckert Road said point also being the POINT OF TERMINUS of said 35.00 foot wide strip of land.

The sidelines of said 35.00 foot wide strip of land shall lengthen or shorten as necessary to intersect a line bearing North 34°30'33" East at the point of beginning and the said curved Northerly right of way of South Eckert Road at the point of terminus.

Together with a 35.00 foot wide strip of land being more particularly described as follows:

Beginning at above said reference Point A; thence
North 89°10'17" West, 215.46 feet to the intersection with the Easterly boundary of a Boise City park parcel and the point of terminus.

The sidelines of said 35.00 foot wide strip of land shall lengthen or shorten as necessary to intersect the said Easterly boundary of a Boise City park parcel at the point of terminus.

AND EXCEPT that portion thereof described as follows:

A 35.00 foot wide strip of land located in portions of Government Lots 3 and 4 of Section 29, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho the centerline of which is more particularly described as follows:

Commencing at the Southwest corner of said Section 29 from which the South Quarter corner of said Section 29 bears
South 89°12'32" East, 2639.22 feet; thence
North 24°40'30" East, 2,356.57 feet to a point on the curved Southerly right-of-way line of South Eckert Road, said point being the REAL POINT OF BEGINNING of said 35.00 foot wide strip of land; thence leaving said right-of-way line
South 18°53'53" East, 20.46 feet; thence 70.46 feet along the arc of a curve to the right having a radius of 50.00 feet, a central angle of 80°44'38", and a long chord which bears South 21°28'26" West, a distance of 64.77 feet; thence
South 61°50'45" West, 24.01 feet; thence 66.64 feet along the arc of a curve to the left having a radius of 76.25 feet, a central angle of 50°04'39", and a long chord which bears South 36°48'26" West, a distance of 64.54 feet; thence 26.28 feet along the arc of a compound curve to the left having a radius of 277.31 feet, a central angle of 05°25'44", and a long chord which bears South 09°03'14" West, a distance of 26.27 feet; thence 57.65 feet along the arc of a compound curve to the left having a radius of 46.09 feet, a central angle of 71°40'09", and a long chord which bears
South 29°29'38" East, a distance of 53.96 feet; thence 77.08 feet along the arc of a reverse curve to the right having a radius of 125.12 feet, a central angle of 35°17'45",

and a long chord which bears South 47°40'46" East, a distance of 75.86 feet; thence 79.46 feet along the arc of a compound curve to the right having a radius of 367.28 feet, a central angle of 12°23'47", and a long chord which bears South 23°50'00" East, a distance of 79.31 feet; thence 32.57 feet along the arc of a reverse curve to the left having a radius of 140.00 feet, a central angle of 13°19'48", and a long chord which bears South 24°18'01" East, a distance of 32.50 feet; thence
South 30°57'55" East, 93.22 feet; thence 46.22 feet along the arc of a curve to the left having a radius of 50.00 feet, a central angle of 52°57'56", and a long chord which bears South 57°26'53" East, a distance of 44.59 feet; thence 179.50 feet along the arc of a reverse curve to the right having a radius of 230.00 feet, a central angle of 44°42'59", and a long chord which bears South 61°34'22" East, a distance of 174.98 feet; thence 122.70 feet along the arc of a compound curve to the right having a radius of 180.00 feet, a central angle of 39°03'21", and a long chord which bears South 19°41'11" East, a distance of 120.34 feet; thence 154.69 feet along the arc of a reverse curve to the left having a radius of 389.75 feet, a central angle of 22°44'25", and a long chord which bears South 11°31'43" East, a distance of 153.68 feet; thence 106.16 feet along the arc of a compound curve to the left having a radius of 159.82 feet, a central angle of 38°03'29", and a long chord which bears South 41°55'41" East, a distance of 104.22 feet; thence 238.02 feet along the arc of a reverse curve to the right having a radius of 361.46 feet, a central angle of 37°43'47", and a long chord which bears South 42°05'32" East, a distance of 233.75 feet; thence 181.55 feet along the arc of a reverse curve to the left having a radius of 246.00 feet, a central angle of 42°17'03", and a long chord which bears South 44°22'10" East, a distance of 177.46 feet; thence 53.42 feet along the arc of a compound curve to the left having a radius of 125.00 feet, a central angle of 24°29'11", and a long chord which bears South 77°45'17" East, a distance of 53.02 feet; thence
South 89°59'53" East, 243.37 feet to a point on the Westerly boundary line of that certain parcel described in and recorded as Warranty Deed Instrument No. 420137, Records of Ada County, Idaho, said point also being the POINT OF TERMINUS of said 35.00 foot wide strip of land.

The sidelines of said 35.00 foot wide strip of land shall lengthen or shorten as necessary to intersect the said Southerly Right of Way of South Eckert Road at the point of beginning and the said Westerly boundary line of Warranty Deed Instrument No. 420137 at the point of terminus.

Parcel E:

Those portions of the South half of the Southeast Quarter of Section 19 and of Government Lots 8 and 9 of Section 30, all in Township 3 North, Range 3 East, Boise Meridian, in Ada County, Idaho, lying Southwesterly of that parcel of land conveyed to the State of Idaho, Department of Parks and Recreation by deed recorded under Instrument No. 8819518, and lying Southeasterly and Northeasterly of the following described line:

COMMENCING at the section corner common to Sections 19, 20, 29 and 30, Township 3 North, Range 3 East, Boise Meridian, in Ada County, Idaho; thence
North 70°28'07" West, 1621.54 feet to an iron bar on the Southerly right of way of the Oregon Short Line Railroad at centerline Station 1271+23.14, being the TRUE POINT OF BEGINNING of this line description; thence
South 25°22'28" West 741.38 feet to a 5/8" x 30" rebar; thence

South 82°34'44" East 49.70 feet to a 5/8" x 30" rebar; thence
South 44°43'59" East 75 feet, more or less, to its intersection with the meander line of the North (right) bank of the Boise River as described in the original GLO Survey Notes of 1868;

TOGETHER WITH

A portion of the Northeast Quarter of Section 30, Township 3 North, Range 3 East, Boise Meridian, and more particularly described as follows:

COMMENCING at a brass cap monument marking the Northwest corner of said Section 29, from which an aluminum cap monument marking the North One-Quarter (1/4) corner of said Section 29 bears
South 89°35'29" East a distance of 2657.58 feet; thence
South 0°16'44" West a distance of 2,447.24 feet along the West line of the Northwest Quarter of said Section 29 to the intersection with the meander line of the North (right) bank of the Boise River as described in the original GLO Survey Notes of 1868; thence
North 54°43'16" West (formerly described as North 55°00' West in said GLO Survey Notes), 702.73 feet along said North meander line; thence
North 19°58'16" West (formerly described as North 20°15' West in said GLO Survey Notes), 533.47 feet along said North meander line to the intersection with the ordinary high water line of the North (right) bank of the Boise River, said intersection being the REAL POINT OF BEGINNING; thence continuing
North 19°58'16" West a distance of 1347.53 feet along said North meander line; thence
North 79°28'16" West (formerly described as North 80°00' West in said GLO Survey Notes), 528.27 feet along said North meander line to the intersection with the Northeasterly line of that certain parcel of land described in State of Idaho Disclaimer of Interest No. 39, records as Instrument No. 8750962, records of said Ada County, Idaho; thence
South 44°28'50" East (formerly described as South 44°43'59" East in said disclaimer), 95.54 feet along said Northeasterly line; thence
South 36°54'50" East, 326.62 feet (formerly described as South 37°09'59" East 326.62 feet in said disclaimer) along said Northeasterly line; thence
South 39°19'57" East 263.13 feet (formerly described as South 39°35'06" East 263.13 feet in said disclaimer along said Northeasterly line; thence
South 53°08'27" East 166.87 feet (formerly described as South 53°23'36" East, 166.87 feet in said disclaimer) along said Northeasterly line; thence
South 31°59'42" East 265.87 feet (formerly described as South 32°14'51" East 265.87 feet in said disclaimer) along said Northeasterly line; thence
South 25°24'04" East 547.31 feet (formerly described as South 25°40'01" East 547.31 feet in said disclaimer) along said Northeasterly line to a 5/8" iron pin monument marking the intersection with the ordinary high water line of the North (right) bank of the Boise River; thence
South 49°01'03" East 9.15 feet along said ordinary high water line to a 5/8" iron pin monument; thence
South 82°45'14" East 33.82 feet along said ordinary high water line returning to the REAL POINT OF BEGINNING.

EXCEPT that portion thereof lying within the following described property:

A portion of Government Lot 5 of Section 29 and a portion of Government Lot 8 of Section 30, all in Township 3 North, Range 3 East, Boise Meridian, and more particularly described as follows:

COMMENCING at a brass cap monument marking the Northwest corner of said Section 29 from which an aluminum cap monument marking the North One-Quarter (1/4) corner of said Section 29 bears
South 89°35'29" East a distance of 2657.58 feet; thence
South 0°16'44" West a distance of 2447.24 feet along the West line of the Northwest Quarter of said Section 29 to the intersection with the meander line of the North (right) bank of the Boise River as described in the original GLO Survey Notes of 1868; said intersection being the REAL POINT OF BEGINNING; thence
South 54°43'16" East (formerly described as South 55°00" East in said GLO Survey. Notes), 23.27 feet along said North meander line; thence
South 56°13'16" East (formerly described as South 56°30' East in said GLO Survey Notes), 196.49 feet along said North meander line to the intersection with the ordinary high water line of the of the North (right) bank of the Boise River; thence along said ordinary high water line of the North (right) bank of the Boise River to 5/8" iron pin monuments the following courses and distances:
North 13°31'39" East 54.63 feet; thence
North 5°06'39" East 237.81 feet; thence
North 15°09'13" West 177.42 feet; thence
North 80°09'11" West 70.03 feet; thence
North 47°01'28" West 349.12 feet; thence
North 54°21'53" West 71.40 feet; thence
North 55°32'34" West 367.84 feet; thence
North 75°17'00" West 132.39 feet; thence
North 69°08'03" West 92.50 feet; thence
North 82°45'14" West 25.67 feet to the intersection with the said North meander line; thence
South 19°58'16" East (formerly described as South 20°15' East in said GLO Survey Notes), 533.47 feet along said North meander line; thence
South 54°43'16" East (formerly described as South 55°00' East in said GLO Survey Notes), 702.73 feet along said North meander line returning to the REAL POINT OF BEGINNING.

AND EXCEPT

A tract of land, partially located in Sections 19 and 30, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at the Section corner common to Sections 19, 20, 29 and 30, Township 3 North, Range 3 East, Boise Meridian; thence
South 89°55' West a distance of 290.5 feet to Station 1284+71 on the center line of the Union Pacific Railroad, Barber Spur; thence
North 64°28' West a distance of 858.00 feet to Station 1276+13; thence
South 25°32' West a distance of 475.00 feet to the REAL POINT OF BEGINNING; thence

South 25°32' West a distance of 432.40 feet to a point; thence
North 40°48' West a distance of 214.06 feet to a point; thence
North 44°30' West a distance of 306.90 feet to a point; thence
North 25°32' East a distance of 241.45 feet to a point; thence
South 64°28' East a distance of 486.00 feet to the REAL POINT OF BEGINNING.

AND EXCEPT

That portion of the South one-half Southeast Quarter of Section 19, and the North one-half Northeast Quarter of Section 30, both in Township 3 North, Range 3 East, Boise Meridian, described as follows:

COMMENCING at the Section corner common to Sections 19, 20, 29 and 30, Township 3 North, Range 3 East, Boise Meridian; thence
South 89°55' West 290.05 feet to a point on the center line of the Union Pacific Railroad, Barber Spur; thence
North 64°28' West 858.00 feet to a point; thence
South 25°31' West 50.00 feet to the REAL POINT OF BEGINNING; thence
South 25°32' West a distance of 425.00 feet to a point; thence
North 64°28' West a distance of 485.00 feet to a point; thence
North 25°32' East a distance of 425.00 feet to a point; thence
South 64°28' East a distance of 485.00 feet to the REAL POINT OF BEGINNING.

AND EXCEPT

A tract of land situated in portions of Sections 19 and 30, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, described as follows:

COMMENCING at a found brass cap monumenting the Southeast corner of said Section 19; thence along the Southerly line of said Section 19,
North 89°04'58" West a distance of 301.06 feet (formerly South 89°55' West a distance of 290.5 feet) to a point on the centerline of the Union Pacific Railroad, Barber Spur (from which a found brass cap monumenting the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 19 bears
North 89°04'58" West a distance of 1020.31 feet); thence leaving said Southerly line along said centerline
North 64°28'00" West a distance of 301.74 feet (formerly 314.0 feet) to a set P.K. nail; thence leaving said centerline
South 25°32'00" West a distance of 50.00 feet to a set steel pin monumenting the most Easterly corner of that certain tract of land described in Instrument No. 878550 (records of Ada County, Idaho), said steel pin being the REAL POINT OF BEGINNING; thence along the Southeasterly line of said Instrument No. 878550,
South 25°32'00" West a distance of 160.00 feet to a set steel pin; thence leaving said Southeasterly line,
North 64°28'00" West a distance of 349.00 feet to a set steel pin; thence
North 50°26'00" West a distance of 103.08 feet to a set steel pin on the Southeasterly line of that certain tract of land described in Instrument No. 8044257 (records of Ada County, Idaho); thence along said Southeasterly line,
North 25°32'00" East a distance of 135.00 feet to a found steel pin; thence leaving said Southeasterly line along the Northeasterly line of that certain tract of land described in said Instrument No. 878550,

South 64°28'00" East a distance of 449.00 feet to the REAL POINT OF BEGINNING.

AND EXCEPT

A tract of land situated in portions of Sections 19 and 30, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, described as follows:

COMMENCING at a found brass cap monumenting the Southeast corner of said Section 19; thence along the Southerly line of said Section 19,
North 89°04'58" West a distance of 301.06 feet (formerly South 89'55' West a distance of 290.5 feet) to a point on the centerline of the Union Pacific Railroad, Barber Spur (from which a found brass cap monumenting the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 19 bears,
North 89°04'58" West a distance of 1020.31 feet); thence leaving said Southerly line along said centerline,
North 64°28'00" West a distance of 301.74 feet (formerly 314.0 feet) to a set P.K. Nail; thence leaving said centerline,
South 25°32'00" West a distance of 50.00 feet to a set steel pin at the most Easterly corner of that certain tract of land described in Instrument No. 878550 (records of Ada County, Idaho); thence along the Southeasterly boundary of said Instrument No. 878550,
South 25°32'00" West a distance of 160.00 feet to a set steel pin; said steel pin being the REAL POINT OF BEGINNING; thence continuing along the boundary of said Instrument No. 878550, the following courses:
South 25°32'00" West a distance of 290.00 feet to a set steel pin; thence
North 64°28'00" West a distance of 449.00 feet to a found steel pin at the Southeast corner of that certain tract of land described in Instrument No 8044257 (records of Ada County. Idaho); thence leaving the boundary of said Instrument No. 878550 along the Southeasterly boundary of said Instrument No. 8044257,
North 25°32'00" East a distance of 315.00 feet to a set steel pin; thence leaving said Southeasterly boundary,
South 50°26'00" East a distance of 103.08 feet to a set steel pin; thence
South 64°28'00" East a distance of 349.00 feet to the REAL POINT OF BEGINNING.

AND EXCEPT that portion thereof conveyed to County of Ada by deed recorded December 24, 1968 under Instrument No. 706437, of Official Records;

AND EXCEPT that portion thereof conveyed to Ada County Highway District by deed recorded September 18, 1980, under Instrument No. 8044258, of Official Records;

AND EXCEPT

A portion of Government Lot 9, of Section 30, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho being more particularly described as follows:

COMMENCING at the North Quarter corner of said Section 30 from which the Northeast corner of said Section 30 bears
South 88°37'14" East, 2642.54 feet; thence

South 76°05'32" East, 895.83 feet to the REAL POINT OF BEGINNING; thence 22.76 feet along the arc of a curve to the right having a radius of 102.00 feet, a central angle of 12°47'01", and a long chord which bears
South 51°47'24" East, a distance of 22.71 feet; thence
South 45°23'54" East, 161.44 feet; thence
South 47°14'10" East, 124.29 feet; thence 35.28 feet along the arc of a non-tangent curve to the right having a radius of 212.50 feet, a central angle of 09°30'48", and a long chord which bears South 42°49'05" West, a distance of 35.24 feet; thence
North 36°54'46" West, 180.34 feet; thence
North 44°28'46" West, 130.98 feet to the REAL POINT OF BEGINNING.

AND EXCEPT

A portion of Government Lot 9, of Section 30, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho being more particularly described as follows:

COMMENCING at the North Quarter corner of said Section 30 from which the Northeast corner of said Section 30 bears
South 88°37'14" East, 2642.54 feet; thence
South 65°25'32" East, 1,221.72 feet to the REAL POINT OF BEGINNING; thence 35.21 feet along the arc of a curve to the right having a radius of 149.50 feet, a central angle of 13°29'36", and a long chord which bears North 75°15'45" East, a distance of 35.13 feet; thence 2.86 feet along the arc of a compound curve to the right having a radius of 57.50 feet a central angle of 2°51'16", and a long chord which bears
North 83°26'11" East, a distance of 2.86 feet; thence
South 36°54'46" East, 61.90 feet; thence
South 39°19'53" East, 258.15 feet; thence
South 53°08'23" East, 164.43 feet; thence
South 47°15'05" East, 143.30 feet; thence
South 34°30'33" West, 35.00 feet; thence
North 55°29'27" West, 2.52 feet; thence
North 47°15'05" West, 144.02 feet; thence
North 53°08'23" West, 166.87 feet; thence
North 39°19'53" West, 263.13 feet; thence
North 36°54'46" West, 77.34 feet to the POINT OF BEGINNING.

AND EXCEPT that portion thereof lying within the following described property:

A 35.00 foot wide strip of land being located in portions of Government Lots 8 and 9 of Section 30, and Government Lots 4 and 5 of Section 29, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 30 from which the North Quarter corner of said Section 30 bears North 88°37'14" West, 2642.54 feet; thence
South 49°59'58" West, 1391.89 feet to the REAL POINT OF BEGINNING of said 35.00 foot wide strip of land; thence
South 55°29'27" East, 306.23 feet to reference Point A; thence continuing
South 55°29'27" East, a distance of 402.67 feet; thence 198.95 feet along the arc of a curve to the left having a radius of 3,573.50 feet a central angle of 03°11'24", and a long

chord which bears South 57°05'09" East, a distance of 198.93 feet; thence 633.68 feet along the arc of a reverse curve to the right having a radius of 7,140.53 feet, a central angle of 05°05'05", and a long chord which bears South 56°08'18" East, a distance of 633.47 feet; thence 74.69 feet along the arc of a reverse curve to the left having a radius of 200.00 feet, a central angle of 21°23'54", and a long chord which bears South 64°17'43" East, a distance of 74.26 feet; thence 80.69 feet along the arc of a reverse curve to the right having a radius of 200.00 feet, a central angle of 23°06'53", and a long chord which bears South 63°26'13" East, a distance of 80.14 feet; thence South 51°52'47" East, 173.24 feet; thence 38.97 feet along the arc of a curve to the right having a radius of 35.00 feet, a central angle of 63°48'02", and a long chord which bears South 19°58'46" East, a distance of 36.99 feet; thence 589.70 feet along the arc of a reverse curve to the left having a radius of 606.50 feet, a central angle of 55°42'31", and a long chord which bears South 15°56'01" East, a distance of 566.74 feet; thence 190.25 feet along the arc of a reverse curve to the right having a radius of 548.41 feet a central angle of 19°52'35", and a long chord which bears South 33°50'58" East, a distance of 189.30 feet; thence 59.60 feet along the arc of a reverse curve to the left having a radius of 200.00 feet, a central angle of 17°04'26", and a long chord which bears South 32°26'54" East a distance of 59.38 feet; thence South 40°59'08" East, 152.72 feet; thence 38.55 feet along the arc of a curve to the right having a radius of 100.00 feet, a central angle of 22°05'14", and a long chord which bears South 29°56'30" East, a distance of 38.31 feet; thence South 18°53'53" East, 80.41 feet to a point on the curved Northerly right-of-way line of South Eckert Road said point also being the POINT OF TERMINUS of said 35.00 foot wide strip of land.

The sidelines of said 35.00 foot wide strip of land shall lengthen or shorten as necessary to intersect a line bearing North 34°30'33" East at the point of beginning and the said curved Northerly right of way of South Eckert Road at the POINT OF TERMINUS.

Together with a 35.00 foot wide strip of land being more particularly described as follows:

BEGINNING at above said reference Point A; thence North 89°10'17" West, 215.46 feet to the intersection with the Easterly boundary of a Boise City park parcel and the POINT OF TERMINUS.

The sidelines of said 35.00 foot wide strip of land shall lengthen or shorten as necessary to intersect the said Easterly boundary of a Boise City park parcel at the POINT OF TERMINUS.

Parcel F:

A tract of land, partially located in Sections 19 and 30, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at the Section corner common to Sections 19, 20, 29 and 30, Township 3 North, Range 3 East, Boise Meridian; thence South 89°55' West a distance of 290.5 feet to Station 1284+71 on the center line of the Union Pacific Railroad, Barber Spur; thence North 64°28' West a distance of 858.00 feet to Station 1276+13; thence South 25°32' West a distance of 475.00 feet to the REAL POINT OF BEGINNING;

thence
South 25°32' West a distance of 432.40 feet to a point; thence
North 40°48' West a distance of 214.06 feet to a point; thence
North 44°30' West a distance of 306.90 feet to a point; thence
North 25°32' East a distance of 241.45 feet to a point; thence
South 64°28' East a distance of 486.00 feet to REAL POINT OF BEGINNING.

Parcel I:

All that portion of Government Lots 4 and 5 of Section 19, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, lying South and East of Barber Road and North of Highway No. 21.

EXCEPT that portion thereof conveyed to Ada County Highway District by Deed recorded February 12, 2009 as Instrument No. 109015741.

Parcel J:

All that portion of the Northeast Quarter Southeast Quarter of Section 19, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, lying South of an Old Wagon Road commonly called Barber Road.

AND

All that portion of the South half, Southeast Quarter of Section 19, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, lying North of State Highway No. 21.

EXCEPT that portion thereof conveyed to Ada County Highway District by Deed recorded April 17, 2009 as Instrument No. 109043680;

AND EXCEPT that portion thereof described as follows:

A parcel of land located in the Southeast Quarter of Section 19, and the West half of the Southwest Quarter of Section 20, Township 3 North, Range 3 East, Boise Meridian, City of Boise, Ada County, Idaho, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 19, from which the South Quarter corner of said Section 19 bears North 88°37'14" West, 2642.54 feet; thence North 25°32'37" East, 1199.44 feet to the beginning of a non-tangent curve to the left; thence 850.03 feet along the arc of said non-tangent curve to the left, having a radius of 1949.00 feet, a central angle of 24°59'20" and a long chord bearing North 77°32'48" West, 843.31 feet; thence
South 89°57'32" West, 278.98 feet to the REAL POINT OF BEGINNING.

Thence continuing
South 89°57'32" West, 585.51 feet to the beginning of a curve to the right; thence 41.30 feet along the arc of said curve to the right, having a radius of 22.00 feet, a central angle of 107°33'36", and a long chord bearing North 36°15'40" West, 35.50 feet to the intersection with the Easterly right-of-way of East Warm Springs Avenue, a public

Parcel R

A parcel of land located in the South half of Section 19 and the Northeast Quarter of the Northeast Quarter of Section 30, Township 3 North, Range 3 East of the Boise Meridian, Ada County, Idaho, more particularly described to wit:

COMMENCING at the Section Corner common to Sections 19 and 30 of said Township 3 North, Range 3 East and Sections 24 and 25 of Township 3 North, Range 2 East, Boise Meridian; thence
South 87°18'52" East 2449.93 feet on the section line common to Sections 19 and 30 to the Quarter Section Corner common to said Sections 19 and 30; thence

South 88°37'00" East 1104.02 feet on the section line common to Sections 19 and 30 to a point; thence leaving said section line,
North 01°23'00" East 511.98 feet to a point on the Southerly boundary line of the Old Railroad right of way; thence
South 64°00'54" East 11.40 feet along the said Southerly railroad right of way to the INITIAL POINT of this description; thence
North 25°58'46" East 100.00 to a point on the Northerly line of said railroad right of way; thence
South 64°00'54" East 1637.04 feet along the Northerly line of said railroad right of way to a point; thence
South 00°16'45" West 110.98 feet to a point on the Southerly line of the said railroad right of way; thence
North 64°00'54" West 1685.17 feet along the said Southerly line of the railroad right of way to the INITIAL POINT of this description.

Parcel S:

All that portion of a tract of land in the Northwest Quarter of Section 29, Township 3 North, Range 3 East, Boise Meridian, Ada County, Idaho, previously described in part by Instrument No. 8856669 and referencing Parcel 2 of said instrument more particularly described as follows:

COMMENCING at the Northwest corner of Section 29, Township 3 North, Range 3 East, Boise Meridian, a found brass monument in a concrete pillar; thence South along the Westerly boundary of the said Northwest Quarter of Section 29, approximately 84 feet, more or less, to the Northeasterly right of way of Boise City Railway and Terminal Company right of way, the REAL POINT OF BEGINNING; thence continuing South along the Westerly boundary of the said Northwest Quarter of Section 29, approximately 111 feet, more or less, to the Southwesterly right of way of the Boise City Railway and Terminal Company 100 foot right of way; thence Southeasterly along the said Southwesterly right of way approximately 2906 feet, more or less, to the intersection of the Northwesterly S. Old Eckert Road right of way; thence Northeasterly along the said Northwesterly S. Old Eckert Road right of way, approximately 100 feet, more or less, to the intersection of the Northeasterly right of way of the Boise City Railway and Terminal Company 100 foot right of way, which is also the Southwesterly right of way of Warm Springs Avenue; thence Northwesterly, approximately 2968 feet, along the Northeasterly right of way of the Boise City Railway and Terminal Company 100 foot right of way, which is also the Southwesterly right of way of Warm Springs Avenue to the POINT OF BEGINNING of this description.

Parcel T:

All of that certain strip of land heretofore acquired by Oregon Short Line Railroad Company from Intermountain Railway Company by Deed dated October 15, 1935, filed for record in Book 215 of Deeds at Page 235 of the Records of Ada County, Idaho, being described in said Deed as follows:

All the following described real estate situate in Ada County, State of Idaho, to-wit;
A tract of land in Section 29, Township 3 North, Range 3 East of the Boise Meridian, containing 1.38 acres, more or less, being more particularly described as follows:

A strip of land 60 feet in width, being 30 feet on each side of the centerline of the Intermountain Railway, which centerline is more particularly described as follows:

BEGINNING at a point on the Western boundary of the Northeast Quarter of Section 29, Township 3 North, Range 3 East, Boise Meridian and 1429.2 feet South of the North Quarter corner of said section; thence following the arc of a 2° curve to the right a distance of 377.6 feet to the point of tangent of said curve; thence
South 51°43' East 622.4 feet.

ALSO, a triangular shaped parcel of land situate in the East half Northwest Quarter of Section 29, Township 3 North, Range 3 East of the Boise Meridian in Ada County, Idaho, being more particularly described as follows:

BEGINNING at the intersection of the North-South centerline of said Section 29 with the Northwest boundary line of that certain public road running Southwesterly across the Southeast Quarter Northwest Quarter of said Section 29 at a point that is 1384.79 feet distant Southerly, measured along said North-South centerline, from the North Quarter corner of said Section 29; thence
South 43°19' West along said Northwest boundary line of said public road, a distance of 120.49 feet, more or less, to the Easterly corner of that certain parcel of land heretofore acquired by Oregon Short Line Railroad Company from Boise Payette, Inc., by Deed dated October 15, 1935, filed for record January 29, 1936, in Book 215 of Deeds at Page 238 of the Records of Ada County, Idaho, said point also being the beginning of a nontangent curve concave Southwesterly, having a radius of 1382.7 feet; thence
Southeasterly along said curve, having a long chord that bears,
South 46°47'01" East a distance of 116.10 feet, through a central angle of 4°48'44", a distance of 116.13 feet, more or less, to said North-South centerline of Section 29; thence
North 0°41' West along said North-South centerline, a distance of 167.18 feet, more or less, to the POINT OF BEGINNNING.

EXHIBIT B

FORM OF NOTICE INVITING BIDS TO BE USED SHALL BE SUBSTANTIALLY IN THE FORM OF NOTICE USED BY THE CITY OF BOISE FOR WORK BID PURSUANT TO CHAPTER 28, TITLE 67 OF THE IDAHO CODE AS MAY BE MODIFIED BY THE DISTRICT

Sealed bids will be received by _____ until 10:00 a.m. MST, on _____,20__ at _____. At this time, the bids will be publicly opened and read aloud and award will be made to the lowest responsible bidder. Each bid shall be accompanied by a cashier's check or a bid bond acceptable to _____ for a sum of not less than ten percent (10%) of the amount of the bid, made payable to _____.

No bid will be considered unless it is submitted on the provided bid form. _____ reserves the right to reject all or any part of any bid.

A Bid may not be withdrawn after the date and time specified for the opening of bids. Failure by the successful bidder to execute the contract may result in forfeiture of the bid bond.

Contact _____, Construction Coordinator, at _____ or _____, the District Engineer, for additional information.

Plans, specifications and bid forms may be obtained for the sum of $_____ from the Construction Coordinator, _____, or by calling _____. This fee is non-refundable. Construction documents will not be available before _____.

Objections to specifications or bidding procedures must be made in writing and must be received by the [clerk/secretary/authorized agent] of _____ at least three (3) business days before the date and time specified above for the opening of bids.

Any participating bidder objecting to the award of the contract shall respond in writing within seven (7) calendar days of the date of transmittal of the notice of award. Such written objection shall set forth the express reason or reasons that the award decision of _____ is in error.

For those interested in purchasing plans and specifications by mail, there will be an additional advance charge of $_____ to cover postage and handling. Therefore, a check made payable to _____ in the amount of $_____ should accompany the request. Please allow four to five days for delivery.

The infrastructure which is the subject of the bids is being bid and constructed pursuant to the terms of District Development Agreement No. 1 between the City of Boise, Idaho and Harris Ranch Community Infrastructure District No. 1. The successful contractor will not have recourse, directly or indirectly, to the City of Boise or Harris

Ranch Community Infrastructure District No. 1 for any costs under any construction contract or any liability, claim or expense arising therefrom.

A pre-bid conference will be held at _____, _____, at 10:00 a.m. MST. The work consists of construction of:

(insert description of Project/Segment)

All bids received in response to this Notice Inviting Bids shall be in conformance with the applicable Idaho State Law.

EXHIBIT C

CERTIFICATE OF THE ENGINEERS FOR CONVEYANCE OF SEGMENT OF PROJECT

(insert description of Project/Segment)

STATE OF IDAHO)
COUNTY OF ADA)
CITY OF BOISE) ss.
HARRIS RANCH COMMUNITY
INFRASTRUCTURE DISTRICT NO. 1

We the undersigned, being Professional Engineers in the State of Idaho and, respectively, the duly appointed District Engineer for Harris Ranch Community Infrastructure District No. 1 (hereinafter referred to as the ***"District"***), and the engineer employed by Harris Family Limited Partnership (hereinafter referred to as the ***"Owner"***), each hereby certify for purposes of the District Development Agreement, dated _____, 2010 (hereinafter referred to as the ***"District Development Agreement"***), by and among the District, the City of Eagle, Idaho and the Owner that:

1. The Segment indicated above has been performed in every detail pursuant to the Plans and Specifications (as such term and all of the other initially capitalized terms in this Certificate are defined in the Agreement) and the Acquisition Project Construction Contract (as modified by any change orders permitted by the Agreement) for such Segment.

2. The Segment Price as publicly bid and including the cost of approved change orders, excluding financing costs and other eligible costs pursuant to Section 3.2(a) of the District Development Agreement for such Segment is $_____, as further described in the "Improvements Conveyed" portion of *Exhibit A* attached hereto.

3. The Owner provided for compliance with the requirements for public bidding for such Segment as required by the Agreement (including, particularly but not by way of limitation, Chapter 28, Title 67, Idaho Code, as amended) in connection with award of the Acquisition Project Construction Contract for such Segment.

4. The Owner filed all construction plans, specifications, contract documents, and supporting engineering data for the construction or installation of such Segment with the Municipality.

5. The Owner obtained good and sufficient performance and payment bonds in connection with such Contract.

DATED AND SEALED THIS ..... DAY OF ....., 20.....

By.....
_____, District Engineer

[P.E. SEAL]

[P.E. SEAL]

By.....
_____, Engineer for City

Confirmed for purposes of Section 3.5 of the District Development Agreement by

.....
_____, Manager for Harris Ranch Community Infrastructure District No.1

EXHIBIT A

Harris Ranch Community Infrastructure District No. 1
_____ Segment Conveyed

Improvements Conveyed

Section I				
Scope of Work	**Unit**	**Unit Cost**	**Quantity**	**Amount**
		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

TOTAL Section I $ -

Improvements Paid Through _____ **Bond** **20**____

Section II				
Scope of Work	**Unit**	**Unit Cost**	**Quantity**	**Amount**
		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

TOTAL Section II $ -

Improvements Costs Remaining for Future CID Bond Issuances

Section III				
Scope of Work	**Unit**	**Unit Cost**	**Quantity**	**Amount**
		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

TOTAL Section III $ -

EXHIBIT D

CONVEYANCE OF SEGMENT OF PROJECT

(insert description of Project/Segment)

STATE OF IDAHO)
COUNTY OF ADA)
CITY OF BOISE) ss.
HARRIS RANCH COMMUNITY
INFRASTRUCTURE DISTRICT NO. 1

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Harris Family Limited Partnership (the ***"Owner"***), for good and valuable consideration received by the Owner from Harris Ranch Community Infrastructure District No. 1, a community infrastructure district formed by the City of Boise, Idaho (the ***"Municipality"***), and duly organized and validly existing pursuant to the laws of the State of Idaho (the "District"), to hereafter pay $_____ combined with the promise to pay $_____ exclusive of financing costs and other eligible costs pursuant to Section 3.2(a) of the Harris Ranch Community Infrastructure District No 1, District Development Agreement, dated _____, 20___, (hereinafter referred to as the ***"District Development Agreement"***) and as further described in *Exhibit A* attached hereto, does by these presents grant, bargain, sell and convey to the District, its successors and assigns, all right, title and interest in and to the following described property, being the subject of the District Development Agreement, by and among the Owner, the Municipality and the District and more completely described in such District Development Agreement:

(Attached *Exhibit A* for segment detail)

Together with any and all benefits, including warranties and performance and payment bonds, under the Acquisition Project Construction Contract (as such term is defined in such District Development Agreement) or relating thereto, all of which are or shall be located within utility or other public easements dedicated or to be dedicated by plat or otherwise free and clear of any and all liens, easements, restrictions, conditions, or encumbrances affecting the same, such subsequent dedications not affecting the promise of the District to hereafter pay the amounts described in such District Development Agreement, but subject to all taxes and other assessments, reservations in patents, and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, leases, and liabilities or other matters as set forth on *Exhibit A* hereto.

TO HAVE AND TO HOLD the above-described property, together with all and singular the rights and appurtenances thereunto in anywise belonging, including all necessary rights of ingress, egress, and regress, subject, however, to the above-described exception(s) and reservation(s), unto the District, its successors and assigns, forever; and the Owner does hereby bind itself, its successors and assigns to warrant and forever defend, all and singular, the above-described property, subject to such exception(s) and reservation(s), unto the District, its successors and assigns, against the acts of the Owner and no other.

The Owner binds and obligates itself, its successors and assigns, to execute and deliver at the request of the District any other or additional instruments of transfer, bills of sale, conveyances, releases, or other instruments or documents which may be necessary or desirable to evidence more completely or to perfect the transfer to the District of the above-described property, subject to the exception(s) and reservation(s) hereinabove provided.

This conveyance is made pursuant to such District Development Agreement, and the Owner hereby agrees that the amounts specified above and paid or promised to be paid to the Owner hereunder upon final payment will satisfy in full the obligations of the District under such District Development Agreement and hereby releases the District from any further responsibility to make payment to the Owner under such District Development Agreement except as above provided.

The Owner, in addition to the other representations and warranties herein, specifically makes the following representations and warranties:

1. The Owner has the full legal right and authority to make the sale, transfer, and assignment herein provided.

2. The Owner is not a party to any written or oral contract which adversely affects this Conveyance.

3. The Owner is not subject to any bylaw, agreement, mortgage, lien, lease, instrument, order, judgment, decree, or other restriction of any kind or character which would prevent the execution of this Conveyance.

4. The Owner is not engaged in or threatened with any legal action or proceeding, nor is it under any investigation, which prevents the execution of this Conveyance.

5. The person executing this Conveyance on behalf of the Owner has full authority to do so, and no further official action need be taken by the Owner to validate this Conveyance.

6. The facilities conveyed hereunder are all located within property owned by the Owner or utility or other public easements dedicated or to be dedicated by plat or otherwise.

IN WITNESS WHEREOF, the Owner has caused this Conveyance to be executed and delivered this ..... day of ....., 20___.

.....

By.....

By.....

Title:.....

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this _____ day of _____, 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, member of Harris Family Limited Partnership, an Idaho limited partnership, known or identified to me to be the Manager of Harris Family Limited Partnership, the limited liability partnership that executed the instrument, or the person who executed the instrument on behalf of said limited liability partnership, and acknowledged to me that such limited liability partnership 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 _____

Residing at: _____

My commission Expires: _____

EXHIBIT A

Harris Ranch Community Infrastructure District No. 1
_____ Segment Conveyed

Improvements Conveyed

Section I				
Scope of Work	**Unit**	**Unit Cost**	**Quantity**	**Amount**
		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

TOTAL Section I $ -

Improvements Paid Through _____ Bond 20____

Section II				
Scope of Work	**Unit**	**Unit Cost**	**Quantity**	**Amount**
		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

TOTAL Section II $ -

Improvements Costs Remaining for Future CID Bond Issuances

Section III				
Scope of Work	**Unit**	**Unit Cost**	**Quantity**	**Amount**
		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

		$ -		$ -
		$ -		$ -
			Sub-Total	$ -

TOTAL Section III $ -

EXHIBIT E

HARRIS RANCH
COMMUNITY INFRASTRUCTURE DISTRICT NO. 1
DISCLOSURE STATEMENT

Buyer(s): _____

Development: _____

Parcel: _____

Lot: _____

County: _____

Date of Sale: _____

Homebuilder: _____

General CID Provisions

The home you are purchasing is within the Harris Ranch Community Infrastructure District (the "CID"). The CID was formed on _____, 20___ to finance the acquisition and construction of community infrastructure. The CID issues and/or will issue general obligation ("GO") and special assessment ("SA") to raise funds to pay for the acquisition and construction of these infrastructure improvements. The CID also obtains funds from ad valorem property taxes and special assessment(s) levied against all property located within the CID.

Ad Valorem Taxes of the CID

GO bonds and the CID's operational expenses are paid from ad valorem property taxes levied against all property within the CID. Currently 0.0031 (3 mills debt service, and .1 mills administration expenses) is added to the property tax rate; however, such adjustment to the tax rate could vary depending upon factors including the amount financed with GO bonds, the terms of financing, and the assessed valuation (i.e., for tax purposes) of property within the CID. Your share of the GO bond payments and expenses are included as part of your regular Ada County property tax statement and are shown separately. This tax is in addition to taxes levied by the City of Boise and other political subdivisions of the State of Idaho.

Special Assessments of the CID

SA bonds are paid from SA payments secured by an assessment lien on each benefited lot within a Special Assessment Area ("Special Assessment Area"). Special Assessment Areas are formed from time to time based on the public infrastructure improvements being constructed and/or acquired with proceeds from the SA bonds. The amount of the special assessment liens vary depending upon the size of the lot within the Special Assessment Area, the benefits estimated to be received by each such lot, the cost of the public infrastructure

improvements to be financed, and the financing terms of the applicable SA bonds. Twice a year the CID will send the bills for the SA payments, as well as the applicable administrative charges; these special assessment bills are different and separate from your regular Ada County property tax bill.

Initial Financing's Cost to Homeowner

At the request of the Developer, the prior owner of Parcel _____, the CID has formed a Special Assessment Area that includes Parcel _____ for the construction and/or acquisition of certain public infrastructure improvements. The CID has assessed each lot within Parcel _____ in the amount of $_____ (the annual "Assessment").

The following table illustrates estimated total annual CID taxes for CID maintenance and operation expenses, repayment of expected CID GO bonds, and repayment of the Assessments.

Harris Ranch Community Infrastructure District No. 1
Tax Liability

Estimated Home Price	(A) Estimated Annual General Obligation & Expense Payment (1)	(B) Estimated Annual Special Assessment Payment (2)	(A) + (B) Estimated Total Annual CID Tax Payments (3)
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-

Footnotes:

(1) Represents the repayment of CID general obligation bond indebtedness and CID expenses based upon a _____ increase in the ad valorem property tax rate.

(2) Based upon (a) special assessment lien of $_____ per lot and (b) special assessment bond terms of ____% interest rate, ___-year amortization period, one year of capitalized interest, ___% reserve fund, and issuance expenses. This figure *does not include* any administrative charges (estimated at _____% per year), which may be charged by the District and/or third party adminstrators, if any.

(3) All of the taxes, assessments and charges described above are in addition to any taxes, fees and charges imposed by Ada County, the City of Boise or other political subdivisions and are in addition to any assessments or fees imposed by any homeowners association.

Homeowner's Acknowledgments

By signing this disclosure statement, you as a contract purchaser of a lot located within the CID and the Special Assessment Area:

(i) acknowledge receipt of this Disclosure;

(ii) agree that you have been granted an opportunity to review the material contained in this Disclosure; and

(iii) agree that you accept an assessment lien of $_____ against your lot that secures your share of the special assessments due for the Special Assessment Area. The Assessment will be paid by you, the owner of the assessed lot, in semiannual payments of principal and interest over the 29-year term of the bonds. If any semiannual payment is not paid, the CID has the right to institute proceedings to foreclose the assessment lien and sell your lot.

The obligation to retire the bonds will be the responsibility of the property owners in the CID through the payment of real property taxes and special assessments collected by the county treasurer that is in addition to al other property tax payments. All of the taxes and charges described above are in addition to any taxes, fees and charges imposed by the City of Boise, other political subdivisions and in addition to any assessments or fees imposed by the homeowner association.

In the event of the failure to maintain the tax rates, the tax rate on your parcel will increase, as needed to provide for bond payment.

Your signature below acknowledges that you have received, read and understood this document at the time you have signed our purchase contract and agree to its terms.

Delivery Instructions: After purchaser has reviewed, signed and acknowledged the CID disclosure statement, a complete copy must be sent to the District:

Harris Ranch Community Infrastructure No. 1
District (City of Boise, Idaho)
c/o City of Boise, Idaho
150 N Capitol Blvd
Boise, Idaho 83701-0500

[SIGNATURE PAGE TO FOLLOW]

_____

[name]

_____

[address]

_____

[name]

_____

[address]

(STATE OF IDAHO)
( )ss.
(County of Ada)

On the _____ day of _____, in the year of 20___, before me, the undersigned, a Notary Public, in and for the State of Idaho, personally appeared _____, know or identified to me to be person whose name is subscribed to the within instrument and acknowledged to me that he/she 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 _____

Residing at: _____

My commission Expires: _____

Petition-Exhibit E

Harris Ranch Community Infrastructure District No. 1
Ada County Tax Assessor Information

Harris Ranch
Community Infrastructure District No. 1
Ada County Tax Assessor Information

Parcel Number	Owner	Acres	Valuation	
S0920212000	Harris Family Ltd Partnership	80.00	$ 3,200	
S0929315000	Harris Family Ltd Partnership	22.79	$ 32,600	
S0929326000	Harris Family Ltd Partnership	23.46	$ 351,900	
S0929233600	Harris Family Ltd Partnership	84.90	$ 49,600	
S0930110200	Harris Family Ltd Partnership	27.88	$ 1,254,600	
S0930120900	Harris Family Ltd Partnership	13.18	$ 291,000	
S0930120650	Alta M Harris/ Harris Family Ltd Partnership	3.75	$ 90,100	
S0920314810	Harris Family Ltd Partnership	106.97	N/A	(1)
S0929212501	Harris Family Ltd Partnership	21.62	$ 29,500	
S0919449900	Harris Family Ltd Partnership	18.33	N/A	(1)
S0919449250	Harris Family Ltd Partnership	23.09	N/A	(1)
S0919449600	Harris Family Ltd Partnership	3.81	$ 5,700	
S0919417500	Harris Family Ltd Partnership	6.67	N/A	(1)
S0919417400	Harris Family Ltd Partnership	2.46	N/A	(1)
S0919317405	Harris Family Ltd Partnership	4.80	N/A	(1)
S0929212630	Harris Family Ltd Partnership	1.53	N/A	(1)
		445.24	**$ 2,108,200**	

FOOTNOTES:

Source: Ada County Assessor.

(1) Indicates a recent parcel split, no valuation data available.

Petition- Exhibit F

Harris Ranch Community Infrastructure District No. 1
Ada County Elections Statement

Matthew Look

From: carter.froelich@dpfg.com
Sent: Tuesday, February 16, 2010 1:08 PM
To: Matthew Look
Subject: Fw:
Attachments: DOC003.PDF

From: "Susan Kirkpatrick" <AUKIRKSM@adaweb.net>
Date: Tue, 16 Feb 2010 11:55:32 -0700
To: <carter.froelich@dpfg.com>
Subject:

Mr.. Froelich,
Per our earlier conversation, I have attached the copy of the form you gave me. There were 8 new parcels that needed to be checked the others had already been done back in January.
As of today February 16, 2010 there are no registered voters at any of the parcels you asked to have checked.

Susan Kirkpatrick
Election specialist
400 N Benjamin Lane
(208) 287-6862
Fax: (208) 287-6939
aukirksm@adaweb.net

ALLIANCE
TITLE & ESCROW CORP.

250 S. 5th Street, Suite 100
Boise, ID 83702
Phone: (208) 947-9100
Fax: (208) 947-9199
Invoice No.: 5000949486SRJ

Date: January 13, 2010

Meuleman Mollerup, LLP
755 W Front St, Ste 200
Boise, ID 83702-5802
Attention: Richard Mollerup

Customer No.:
Our Order No.: 5000949486SRJ
Your Order No.:

Buyer/Seller: Gary Dallas Harris and Bonnie Jean Harris, husband and wife, and Harris Family Limited Partnership, an Idaho limited partnership, as to Parcels A and H; Alta M. Harris, as to a Life Estate, and Harris Family Limited Partnership, an Idaho limited partnership, as to the remainder, as to Parcel F; Gary D. Harris, a married man as his separate estate, and Harris Family Limited Partnership, an Idaho limited partnership, as to Parcel G; And Harris Family Limited Partnership, an Idaho limited partnership, as to Parcels B, C, D, E, I, J, K, L, M, N, 0, P, Q-1, Q-2, R, 5, and T VI
Legal Desc.: /
Property Add: Warm Springs Ave, Boise, ID 83716
Tax Parcel: S0917230000, S0919317405, S0919449250, S0919449900, S0919417400, S0919417500, S0930110200, S0919449565, S0919438502, S0930120650, S0919449600, S0920212000, S0920230000, S0920314810, S0920111000, S0920438400, S0921220000, S0928211010, S0929110010, S0929131452, S0929427850, S0929438710, S0929438800, S0929131200, S0929244250, S0929212600, S0929212501, S0929233600, S0929326000, S0929315000, S0929212630, S0930120900, S0930110200

Code	Description		Charges
	Title research at $65 per hour	51 hr	3315.00
	$25 per hour legal description	32 hr	800.00
SUBTOTAL			
Less Credits			0
BALANCE DUE			**$4115.00**

DUE UPON RECEIPT

Please remit payment to:
Alliance Title & Escrow Corp.
380 E. Parkcenter Boulevard, Suite 105
Boise, ID 83706

Typed by: SJ

Silvia Rico

From: Susan Kirkpatrick [AUKIRKSM@adaweb.net]
Sent: Tuesday, January 26, 2010 8:18 AM
To: Silvia Rico
Subject: RE: Concerning Harris Ranch Development

Good morning Silvia,
I have checked all the parcels that you have sent to me. At this time our voter system does not show any registered voters on any of the parcels in question.
Thank you

Susan Kirkpatrick
Election specialist
400 N Benjamin Lane
(208) 287-6862
Fax: (208) 287-6939
aukirksm@adaweb.net

From: Silvia Rico [mailto:silvia.rico@dpfg.com]
Sent: Monday, January 25, 2010 11:59 AM
To: Susan Kirkpatrick
Subject: Concerning Harris Ranch Development

Susan,

On the 13th of this month Matthew Look and I had a conversation w/ Ms. Spencer from your office related to a letter and/or some type of proof that we have contacted the county regarding any
qualified resident elector's on the parcels listed below/attached for the Harris Ranch development.

Per our conversation w/ Ms. Spencer your office can not provide a letter, but could send an e-mail instead stating that the parcels below/attached as of today and/or the date you reply that there are no qualified resident elector's at this time, this e-mail will suffice for our purposes.

Would you be able to provide such e-mail for the parcels below?

R1621740020
SO909131100
SO917230000
SO919214101
SO919411700
SO919438700
SO920111000
SO920212000
SO920314800
SO920438400
SO921220000
SO928211010

SO929110010
SO929131452
SO929212501
So929212630
SO929427850
SO930120650
SO919438502
SO919449565
SO920230000
S0929233600
S0919449600
S0929212630
S0929244250
S0929315000
S0929326000
S0929438710
S0929438730
S0929438800
S0930110200
S0930120900

Give me a call if you have any questions.

Thanks.

Silvia Rico
Senior Associate

DPFG
DEVELOPMENT PLANNING & FINANCING GROUP, INC.
Tel: (602) 381-3226 ext. 13
Fax: (602) 381-1203
Email: silvia.rico@dpfg.com

From: Silvia Rico
Sent: Wednesday, January 06, 2010 12:52 PM
To: 'Susan Kirkpatrick'
Subject: FW: concerning Harris Ranch Development

Hello Susan,

As promised attached is the new parcel list.
Per our conversation last month, there *are no* qualified electors on these parcels.
I have attached a sample letter of what I'm looking for to adhere to the County statute.

Z. Exhibit Z – Letter dated October 16, 2024, titled “Objections to Proposed Resolutions”

October 16, 2024

(Delivered via email)

Board Member Jimmy Hallyburton
Board Member Meredith Stead
Board Member M. Dennis Strasser
Harris Ranch Community Infrastructure District No. 1 ("Boise CID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Objections to Proposed Resolutions

Members of the Board:

On or about Tuesday, October 8, 2024, the City of Boise ("City"), acting as the Boise CID, posted notice on the City's website of a meeting of the Board of the Boise CID ("Board") to be held on Tuesday, October 22, 2024, at 3 p.m. ("Website Notice"). A similar notice was posted at one or more of the postal pavilions within the Harris Ranch development on or about Friday, October 11, 2024 ("Posted Notice"). At that meeting, the Boise CID Board apparently is going to consider the adoption of two resolutions (collectively, "Proposed Resolutions"). The Proposed Resolutions would authorize: (i) the issuance of additional "general obligation" bonds by the Boise CID ("2024 Bonds") and the levy of additional special *ad valorem* property taxes on homeowners in the Boise CID to pay such bonds (such resolution, the "Bond Resolution"), and (ii) additional payments to the Harris Ranch developer (with related entities, generally, "Developer") totaling almost $2 million for the "2007 Wetlands Conservation Easement project" ("Project GO20-7"), the payment of potential legal fees, and the payment of accrued interest with respect to Project GO20-7 (such resolution, the "Payments Resolution"). The payments apparently have been requested by the Developer.

The Posted Notice states that the meeting is not a public hearing, and that there will not be any oral testimony taken. The Notices request that any "written comments" be submitted by Thursday, October 17, 2024. Posted along with the Website Notice were certain related documents. The Notice, however, does not include the forms of the Proposed Resolutions, nor a staff report, which in the recent past has amounted to many hundreds of pages.

As this Board is well aware, the Boise CID has been unable to issue any bonds, and thus to make any payments to the Developer, since 2020. That is a result of the litigation filed by the Association which challenges the Boise CID, its bonds, its special taxes and its payments to the

Developer on a wide variety of statutory and constitutional grounds ("Litigation"). If those challenges were lacking in merit, the Boise CID could have proceeded with the issuance of additional bonds regardless. But you have not been able to do so and will be unlikely to do so yet again. So, it appears that the sole purpose of the Board in considering and approving the Proposed Resolutions, knowing that additional bonds cannot be issued and thus that additional payments to the Developer cannot be made, is to again harass and abuse the homeowners and property tax payers in the Boise CID by forcing them to bring yet another appeal – their fourth.

We therefore request that the Board defer consideration of the Proposed Resolutions at least until the pending appeal before the Idaho Supreme Court has been finally resolved. This would have the added benefit of not further burdening Idaho courts with yet another unnecessary appeal and related motions for what is a nearly identical matter involving nearly identical issues.

We note that interested persons have been afforded ***only ten business days*** from the October 8 posting of the Notice and related documents within which to review and analyze the legal and other issues presented, request additional documents from the City, prepare responses, and submit them to the City. And we have not been provided any opportunity to review the as-yet unreleased resolutions and staff report. That is a *grossly* insufficient amount of time for those undertakings for anyone no matter how skilled, much less ordinary citizens, and by itself constitutes a denial of due process under the Idaho and Federal Constitutions. As the Idaho Supreme Court stated in *Allen v. Partners in Healthcare, Inc.*, 170 Idaho 470, 512 P.3d 1093 (2022), *as amended* (July 5, 2022), "The touchstone of due process 'is the opportunity to be heard at a meaningful time and in a meaningful manner'."

The purpose of this letter is to express our objections, nonetheless, to the consideration and adoption of the Proposed Resolutions, to the proposed issuance of the 2024 Bond and imposition of the related additional special property taxes, and to the proposed payments to the Developer for Project GO20-7, and to the use of bond proceeds to pay the Boise CID's legal expenses.

The Board obviously knows that the pending Litigation challenges nearly identical resolutions adopted by the Board in October 2021 (collectively, "Challenged Resolutions"). The Board also knows that the Association also had to file nearly identical litigation in February 2023 and again in February 2024 to challenge more nearly identical resolutions. Rather than simply wait until the Litigation is fully resolved, the Board is now choosing to advance yet another two resolutions that suffer from legal deficiencies identical to those currently under judicial review before the Idaho Supreme Court. That is unethical and unconscionable.

Objections to Proposed Resolutions

Our objections to the Proposed Resolutions are as follows:

(1) **The powers of the Boise CID are strictly limited to only those that are expressly granted by statute or necessarily implied**. We incorporate herein by this reference Section IV.A. of the Association's Opening Brief before the Ada

County District Court filed in the Litigation ("Opening Brief"), which brief is attached hereto and incorporated herein by this reference.[1]

(2) **The authorization of the 2024 Bonds and the imposition of the related taxes pursuant to the Bond Resolution would violate the Idaho Constitution because the 2024 Bonds were not approved by a two-thirds vote of qualified electors**. We incorporate herein by this reference Section IV.L. of the Opening Brief and Section II.I of the Association's Reply Brief before the Ada County District Court filed in the Litigation ("Reply Brief"), which brief is attached hereto and incorporated herein by this reference.[2]

(3) **The adoption of the Bond Resolution would violate the Idaho and Federal Constitutions because the *ad valorem* property taxes it levies would not be uniform across all properties of a similar class**. We incorporate herein by this reference Section IV.M of the Opening Brief and Section II.J. of the Reply Brief.

(4) **The issuance of the 2024 Bonds and the payments to the Developer pursuant to the Proposed Resolutions would violate prohibitions in the Idaho Constitution against local governments lending their credit to, raising money for, or donating money to any private person, association, or corporation**. We incorporate herein by this reference Section IV.N. of the Opening Brief and Section II.K. of the Reply Brief.

(5) **The Proposed Resolutions would be invalid because the Boise CID consists of several noncontiguous sections in violation of the CID Act**. We incorporate herein by this reference Section IV.O. of the Opening Brief and Section II.L. of the Reply Brief.

(6) **The Proposed Resolutions would violate the CID Act because they approve financing for "Project Improvements."** We incorporate herein by this reference Section IV.B. of the Opening Brief and Section II.A. of the Reply Brief.

(7) **The Payments Resolution would violate the CID Act because it approves payments for facilities "fronting" individual single-family residential lots**. We incorporate herein by this reference Section IV.B. of the Opening Brief and Section II.B. of the Reply Brief. It appears, based on a preliminary review, that the proposed payments to the Developer are for an interest in property fronting individual single-family residential lots.

[1] Also incorporated are the documents and websites referenced in footnotes to the Opening Brief and Reply Brief, including without limitation in footnotes 1, 2, 3, and 9 of the Opening Brief, and footnote 63 of the Reply Brief.
[2] We also attach hereto and incorporate by this reference the transcript of the proceedings with respect to the bonds issued by the Boise CID in 2020. That transcript, obtained from the City pursuant to a public records request, includes certified copies of various documents, including documents related to the formation of the Boise CID and the 2010 bond election, which are relevant to and a number of which are referenced in the objections set forth in this letter.

(8) **The Payments Resolution would violate the CID Act because it approves payments for an interest in land which is not publicly owned**. We incorporate herein by this reference Section IV.C. of the Opening Brief and Section II.C. of the Reply Brief.

(9) **The Payments Resolution would violate the CID Act because a conservation easement is not "community infrastructure" as defined in the Act, nor is it an interest in land "for community infrastructure."** We incorporate herein by this reference Section IV.F. of the Opening Brief and Section II.E. of the Reply Brief.

(10) **The Payments Resolution would violate the CID Act and the Idaho Constitution because it approves payments substantially in excess of the fair market value of the conservation easement**. We incorporate herein by this reference Section IV.G. of the Opening Brief and Section II.F. of the Reply Brief.

(11) **The Payments Resolution would violate the CID Act because the supposed appraisal submitted by the Developer of the value of the easement (as supplemented and amended, the "Developer Appraisal") is defective**. The appraisal submitted by the Developer is defective and thus does not support the supposed valuation, including without limitation for the following reasons:

a. Almost 4 acres covered by the conservation easement are in a Boise River floodway, therefore could not be developed, and thus are of almost no value;

b. The remaining 6 acres covered by the conservation easement are in a flood plain, and thus could not be developed without significant additional investment;

c. The Developer Appraisal assumes, without sufficient evidence, that the 10-acre parcel could be developed into a mixed use project;

d. The Developer Appraisal values an 86-acre parcel, rather than the 10-acre parcel in question;

e. The Developer Appraisal fails to account for the fact that all or a substantial portion of the potential development on the 10-acre parcel can be transferred to other parcels, resulting in little or no net diminution in value of land to the Developer;

f. The Developer Appraisal fails to employ appropriate valuation methodologies, and uses non-comparable properties for valuation purposes;

g. The Developer Appraisal is not dated as of the effective date of conveyance of the conservation easement;

h. The Developer Appraisal was prepared for purposes of the planned donation of the land for Federal Income Tax purposes, rather than for a sale;

i. The Developer Appraisal failed to take into account the substantial decline in the value of the property resulting from the 2007 financial crisis; and

j. The "Appraisal Review Report" obtained by the City includes only a determination as to whether the Developer Appraisal followed "appropriate principles/standards/appraisal methodology," and does not express an independent professional opinion as to value.

(12) **The Payments Resolution would violate the CID Act because it approves payments for a project undertaken before the Boise CID was even formed**. We incorporate herein by this reference Section IV.E. of the Opening Brief and Section II.D. of the Reply Brief.

(13) **Challenges to the Proposed Resolutions on the ground that the Boise CID was unlawfully formed and the bond election unlawfully held are not barred by Section 50-3119 of the CID Act.** We incorporate herein by this reference Section IV.K. of the Opening Brief and Section II.H. of the Reply Brief.

(14) **Payment of the Boise CID's legal costs pursuant to the Proposed Resolutions is not permitted by the Development Agreement or the CID Act.** Payment of the Boise CID's legal costs from bond proceeds is not permitted by the Development Agreement executed in 2010 among the City, the Boise CID and the Developer, including without limitation Articles II and VII thereof. Payment of District Administrative Expenses is limited to payment from the Administration Tax. Moreover, legal expenses do not constitute part of the Project Price for an Acquisition Project, because they have not been incurred by the Developer. Payment of the Boise CID's legal costs from bond proceeds also is not permitted by the CID Act. Legal and other administrative expenses of the Boise CID are not "community infrastructure" as defined in Section 50-3102(2), the CID Act does not otherwise permit legal expenses to be paid from bond proceeds, and the payment of legal and other administrative expenses of the Boise CID was not authorized by the election held by the District in 2010 to approve the issuance of the bonds (even if that election were otherwise valid). The payment of legal and other administrative expenses of the Boise CID from bond proceeds would be contrary to the purposes of the CID Act, as it would reduce the amount of proceeds available to finance permissible community infrastructure.

(15) **The Proposed Resolutions are an unlawful attempt to circumvent (i) the pending appeal of the Challenged Resolutions, and (ii) the right of aggrieved persons to appeal "final decisions" of the Board.** Section 50-3119 of the CID Act provides "[a]ny person in interest who feels aggrieved by the final decision of … a district board" with a right of judicial review to challenge the "validity,

legality and regularity of any such decision". The Association has exercised that right in the pending Litigation regarding the Challenged Resolutions. The Association has expended considerable time and expense in those efforts. [The Proposed Resolutions would become "valid and uncontestable" if not challenged by the Association within the 60-day statutory limitations period. The Proposed Resolutions, if not challenged, thus could render the pending appeals, and more importantly the Association's right of judicial review, moot, at least in part. If that were permissible, each time an appeal was filed under Section 50-3119, the Board could simply adopt new resolutions authorizing the exact same things. That would force an aggrieved person to file yet another and then another appeal until their resources are exhausted. That would gut the right of appeal and is clearly unlawful.

(16) **Consideration and adoption of the Proposed Resolutions in this manner and timeframe would violate the Due Process Clauses of the Idaho and Federal Constitutions.** We incorporate by this reference ¶¶ 5-7 of Section II.H. of the Reply Brief. Consideration and adoption of the Proposed Resolutions without the use of a process and procedure that includes the safeguards contained within the Idaho Administrative Procedure Act and the Idaho Local Land Use Planning Act or that otherwise provides the Association and homeowners in the Boise CID with an adequate opportunity to: (i) request, receive and review documents from the City and the Boise CID, (ii) to review and analyze those documents and the documents included in the staff report (which has yet to be made available), and (iii) to develop legal analyses, present evidence and testimony, and provide legal briefing, prior to the approval of another $2 million in payments to the Developer which will be funded from special *ad valorem* property taxes on our homes, violates the Association's and homeowners' due process rights.

(17) **The Notice lacks innumerable material documents related to the proposed payments.** The Notice fails to include innumerable material documents, including but not limited to extensive correspondence and documentation by, between and among the City, the Boise CID, Ada County Highway District, the Developer and other parties and their respective representatives regarding Project GO20-7 and the proposed payments to the Developer pursuant to the Proposed Resolutions. All these materials are relevant and/or necessary to analyze and make a determination as to the legality of such proposed payments. It is impossible for the Association to obtain these materials pursuant to a public records request within the time frame and process the City, acting as the Boise CID, has imposed.

The Association also hereby incorporates in this letter its previous letters to the Board, dated August 14, 2021, September 1, 2022, February 16, 2023, and December 18, 2023, and the attachments thereto, which are or may be related to the Proposed Resolutions. Those letters are attached.

The Association also hereby incorporates in this letter its Opening Brief and its Reply Brief in the Litigation now pending before the Idaho Supreme Court, including the arguments therein which correspond to the issues above. Those briefs are also attached.

Conclusion

The consideration and adoption of the Proposed Resolutions would be unlawful for the reasons described above. We therefore request that the Board decline to adopt them. Please note that this letter does not include all our objections to the Proposed Resolutions, in part because we have not been afforded an adequate opportunity to develop them. The Association therefore reserves its rights pursuant to Idaho Rules of Civil Procedure 84(r) and Idaho Appellate Rule 17(f) to present additional issues on appeal in addition to those identified above which are discovered after the date hereof.

Sincerely,

Pp/ Bill Doyle

Executive Committee,
The Harris Ranch CID Taxpayers' Association

Enclosures:

Petitioners' Opening Brief in Case No. CV01-21-18655
Petitioners' Reply Brief in Case No. CV01-21-18655
Appellants' Opening Brief in Supreme Court Docket No. 51175-2023
Appellants' Reply Brief in Supreme Court Docket No. 51175-2023
Boise CID 2020 Bond Transcript of Proceedings
Association August 14, 2021, Objection Letter
Association September 1, 2022, Objection Letter
Association February 16, 2023, Objection Letter
Association December 18, 2023, Objection Letter

Cc: The Honorable Lauren McLean, Mayor
Council Member Colin Nash, President
Council Member Lucy Willits
Council Member Kathy Corless
Council Member Jordan Morales
David Hasegawa, City of Boise
Jaymie Sullivan, City of Boise
Rob Lockward, City of Boise
Amanda Brown, City of Boise

Certification of the List of Enclosures to HRCIDTA Letter to the HRCID No 1 Board of Directors dated October 16, 2024, Filed Electronically with the City Clerk of the City of Boise

Attachment 1

Petitioners' Opening Brief in Case No. CV01-21-18655

Attachment 2

Petitioners' Reply Brief in Case No. CV01-21-18655

Attachment 3

Appellants' Opening Brief in Supreme Court Docket No. 51175-2023

Attachment 4

Appellants' Reply Brief in Supreme Court Docket No. 51175-2023

Attachment 5

Boise CID 2020 Bond Transcript of Proceedings

Attachment 6

Association August 14, 2021, Objection Letter

Attachment 7

Association September 1, 2022, Objection Letter

Attachment 8

Association February 16, 2023, Objection Letter

Attachment 9

Association December 18, 2023, Objection Letter

L A Crowley

Larry Crowley, President
Harris Ranch DID Taxpayers' Association

AA. Exhibit AA – CV01-21-18655 Memo Decision and Order

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM DOYLE, an individual; LAWRENCE CROWLEY, an individual; THE HARRIS RANCH CID TAXPAYERS' ASSOCIATION, an Idaho nonprofit association, Petitioners/Appellants, vs. THE HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1; TJ THOMSON, in his official capacity as Chairperson and Board member of the Harris Ranch Community Infrastructure District No. 1; HOLLI WOODINGS, in her official capacity as Vice-Chairperson and Board Member of the Harris Ranch Community Infrastructure District No. 1; ELAINE CLEGG, in her official capacity as Board member of the Harris Ranch Community Infrastructure District No. 1, Respondents/Appellees, and HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership, Intervenor.	Case No. CV01-21-18655 MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW

In this Petition for Judicial Review, the Harris Ranch Community Infrastructure District Taxpayers' Association (the "Association"), William Doyle, and Lawrence Crowley (collectively

"Petitioners") seek review of final decisions made by TJ Thomson, Holli Woodings, and Elaine Clegg (collectively "Respondents") in their capacity as board members of the Harris Ranch Community Infrastructure District No. 1 (the "District"). *See Petition for Judicial Review.* For the reasons explained below, the Petition is denied and the District's decisions are affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The parties to this proceeding.

The District, located in the southeastern corner of the City of Boise (the "City"), is a special taxing district created in 2010 pursuant to Idaho Code section 50-3101, *et seq.* (the "CID Act"). *See Administrative Record ("A.R.")* at 23. The District is comprised of land that was formerly portions of the Harris Family Ranch, positioned just north of the Boise River and abutting the Boise foothills. *Id.* at 28. The Association is an Idaho non-profit association and community advocacy group whose membership includes real property owners and taxpayers within the District. *Petition for Judicial Review* ¶ 3. Petitioners Doyle and Crowley are officers of the Association and real property owners in the District. *Id.* ¶¶ 1-2. Respondents Thomson, Woodings, and Clegg are current and former members of the City Council for the City of Boise (the "City") and comprise the District's board of directors (the "Board").[1] *Id.* ¶ 5. Accordingly, Respondents Thomson, Woodings, and Clegg are responsible for the management of the affairs of the District. Intervenor Harris Family Limited Partnership develops property within the District and receives reimbursements from the District for the cost of certain projects. *Verified Petition to Intervene* at 1.[2]

[1] Idaho Code section 50-3104(2)(a) requires that the District's Board by comprised of three City Council Members.

[2] Barber Valley Development, Inc. leads the development and construction within the District on behalf of the Harris Family Limited Partnership. The Court refers to these entities collectively as the "Developer." The Developer has developed real property within the District since its inception.

B. Background on the CID Act and Harris Ranch Community Infrastructure District No. 1.

The Idaho Legislature passed the CID Act in 2008. The express purpose of the CID Act is threefold:

> (a) To encourage the funding and construction of regional community infrastructure in advance of actual developmental growth that creates the need for such additional infrastructure;
> (b) To provide a means for the advance payment of development impact fees established in chapter 82, title 67, Idaho Code, and the community infrastructure that may be financed thereby; and
> (c) To create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself.

I.C. § 50-3101. Although community infrastructure districts are political subdivisions of the State of Idaho, they are "special limited purposes district[s]" wielding only the powers prescribed in the CID Act. I.C. § 50-3105. These powers include the power to "[e]nter into contracts and expend moneys for any community infrastructure purposes and/or district operations," to "finance community infrastructure consistent with the general plan," to "[l]evy property taxes on real property located within the district," and to "incur indebtedness and evidence the same by certificates, notes, bonds or debentures." *Id.* In simple terms, CID Act allows CIDs to issue and sell bonds to finance the acquisition of "community infrastructure" already built by a developer and to levy taxes on property owners in a district to pay the debt on the bonds issued. *Id.*[3] The core of this dispute is the Board's practice of allegedly unlawfully issuing bonds and paying the proceeds to the Developer to reimburse the Developer for infrastructure the Developer has already built within the District.

[3] "Community infrastructure," discussed in more detail below, is a statutorily defined term. *See* I.C. § 50-3102(2).

The establishment of the District began when the four managing members of the Harris Family Limited Partnership, the owner of all real property within the District at the time of its inception, filed a petition with the City to create the District pursuant to Idaho Code section 50-3103. *A.R.* at 23, 55. The Harris Family Limited Partnership submitted the petition in the wake of the City's approval of a Land Use Development Plan ("the Harris Ranch Specific Plan") for the undeveloped portions of the greater Harris Ranch area. *Id.* at 906. The Harris Ranch Specific Plan was designed to create a pedestrian friendly community and includes a mixture of land uses for the area, including single-family residential homes, multi-family structures, and commercial spaces. *Id.* While the proposed District encompassed the Harris Ranch Specific Plan area, previously developed land in the greater Harris Ranch area were not included in the proposal. *Id.* Because previously developed areas, including the Harris family's own homes, were carved out from the District's boundaries, there were no homes or homeowners in the District at the time of its formation. *See Id.* at 539-555.

After holding a public hearing, the Boise City Council adopted Resolution No. 20895 on May 11, 2010, formally creating the District. *Id.* at 23, 55. Ten days later, the City expanded the District's boundaries in Resolution No. 20944. *Id.* at 55, 1002 fn. 2. This expansion added land to the east of the District's original boundaries that is non-contiguous with the original boundaries. *Id.* Resolution No. 20944 also approved the execution of a Development Agreement between the City, the District, and the Developer (the "Development Agreement"). *See Id.* at 499-575. The Development Agreement details the process by which certain infrastructure projects are constructed in the District and provides for payments from the District to the Developer to acquire community infrastructure projects from the Developer and reimburse the Developer for their construction. *Id.* at 499-575. The Development Agreement also covers matters related to the bonds

issued by the District to pay for such projects and the *ad valorem* property taxes the District can levy to pay for the bonds. *Id.* The Development Agreement was approved by the Board on June 22, 2010, is dated August 31, 2010, but was not executed by the Developer until October 5, 2010. *Id.* at 534-536.

Soon after the District's formation, the Board held an election (the "2010 General Obligation Bond Election") pursuant to Idaho Code Section 50-3108. *Id.* at 23. That statute provides, in part:

> If two-thirds ($^2/_3$) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without the further vote of the qualified electors . . ..

I.C. § 50-3108.

The 2010 General Obligation Bond Election authorized the District to incur indebtedness and to issue general obligation bonds in the principal amount of up to $50 million, in one or more series, to be repaid over a course of thirty years. *A.R.* 65.[4] On September 20, 2010, notice of the District's authority to issue general obligation bonds in one or more series up to $50 million over 30 years was recorded by the District against all real property located within the District's boundaries as Ada County, Idaho, Instrument No. 110087657. *Id.* at 23, 57. In other words, this election allowed the Board to issue series of bonds throughout the next thirty years to repay the Developer for costs incurred building "community infrastructure" within the District. Over the years, the Board has approved various resolutions authorizing the acquisition of and

[4] Petitioners vigorously dispute the validity of the 2010 General Obligation Bond Election, and several of their issues presented on appeal hinge on its alleged invalidity. *See Petitioners' Brief* at 8-10; *A.R.* at 989-994. For reasons discussed below, the Court will not adjudicate the legitimacy of an election that occurred over a decade ago.

reimbursement for infrastructure projects from the Developer and issuing general obligation bonds. *Id.* at 23-25. Between 2010 and 2020, the Board, through these resolutions, has approved the issuance of approximately $15.3 million in bonds over nine separate series to reimburse the Developer for various projects. *Id.* at 61.

The parties dispute the extent to which prospective homeowners in the District are given notice of the District's existence and the bonds authorized by the 2010 General Obligation Bond Election before purchasing their home. Petitioners maintain purchasers of newly built homes receive only perfunctory notice of the District's existence while purchasers of existing homes receive no notice at all. *Id.* at 969-975. Opponents respond that every title report associated with the District provides multiple disclosures about the District, providing public record notice and the opportunity to review multiple recorded documents, including the Development Agreement and the "CID Tax and Special Assessment Disclosure Notice," both of which are recorded at the Ada County Recorder's office. *Id.* at 976-981. These documents identify the total amount of bonds authorized ($50 million), the District's lifespan (30 years), and purposes for which bonds may be issued. *Id.*

C. The District's 2021 Resolutions.

On October 5, 2021, the Board held a regular meeting ("the October 5th meeting") where it adopted the two resolutions that are the subject of this Petition for Judicial Review. *Id.* at 1525-1534. The first resolution, Resolution No. HRCID-12-2021 (the "Payment Resolution") approved payments from the District to the Developer for three projects the Developer had submitted to the Board for reimbursement. *Id.* at 14-20.[5] In a staff report provided to the Board for guidance on the proposed resolutions (the "Staff Report"), the District staff summarized these projects as follows:

[5] The Court sometimes refers to the Bond Resolution and the Payment Resolution collectively as the "2021 Resolutions."

(1) Project GO21-2 – Dallas Harris Estates Town Homes #9 (the "Town Homes #9 Project"). This project is comprised of roadways, sidewalks, storm drains, sanitary sewers, streetlights, and other related costs within the Dallas Harris Estates Town Homes #9 Subdivision.

(2) Project GO21-3 – Dallas Harris Estates Town Homes #11 (the "Town Homes #11 Project"). This project comprises the construction of roadways, sidewalks, storm drains, sanitary sewers, streetlights, stormwater pond improvements, and other related costs within the Dallas Harris Estates Town Homes #11 Subdivision.

(3) Project GO21-1 – Accrued Interest – Interest Due on Reimbursed Projects (the "Interest Project"). Section 3.2(a) of the Development Agreement No1 allows interest to accrue between the date of dedication, contribution or expenditure and the time at which the project price or segment price is paid. The interest rate is the prime rate plus two percent from day-to day.

This Request would expend general obligation bond proceeds to pay accrued interest on twenty-four previously approved projects....

The District staff have verified that all the Developer's beginning and end dates for interest accrual are in agreement with the District's own records. District staff's calculation of the total interest is slightly less than the Developer's requested amount of $1,396,345.13 by $5,511.96 or 0.40%.

Id. at 28, 36, 41-42.[6] The second resolution, Resolution No. HRCID-13-2021 ("the Bond Resolution"), approved the issuance of a bond in the amount of $5.2 million to finance the Payments Resolution and the levy of *ad valorem* property taxes on homeowners in the District to pay said bond. *Id.* 64-92.

Prior to passing the 2021 Resolutions, the District posted a notice of the October 5th meeting on its website on September 23, 2021. *Id.* at 25, 93-94. The notice set forth the meeting date, time, location, and proposed projects and resolutions to be presented. *Id.* at 25, 93-94.[7]

[6] The Court will not recite the 24 previously approved projects pertaining to the Interest Project. Petitioners do so in their briefing and the District Staff did so in its report. *See Petitioners' Brief* at 10-20; *A.R.* at 23-25.

[7] While the Court notes the adequacy of solely posting a notice on the District's own website for the purpose of alerting the District's homeowners of the public meeting is troubling, any defective notice is cured when the landowners nonetheless participate in a public hearing. *See, e.g., W. Boise 87 v. L&S Dev. Co.*, 108 Idaho 449, 451, 700 P.2d 71, 73 (Ct. App. 1985); *Cowen v. Bd. Of Comm'rs of Fremont Cty.*, 143 Idaho 501, 513 148 P.3d 1247, 1259 (2006) (County did not violate due process where notice was defective, but landowner still participated in hearings);

Although the October 5 meeting transcript is titled "CITY COUNCIL OF THE CITY OF BOISE PUBLIC HEARING," the District staff member presenting at the meeting explained that "[t]his meeting is not a public hearing. The board will not hear oral testimony today, but will instead consider the staff report provided to the board, and the letters that have been sent in by stakeholders of the district, which are all included in the staff report." *Id.* at 1526.

The District's notice invited interested parties to submit written comment by September 28, 2021. *Id.* at 94. Many written comments were submitted by the public and attached to the Staff Report. *Id.* at 95-468. In addition to public comments, the Staff Report includes objection letters the Association sent the District earlier in 2021, as well as the Developer's responses to these letters. *See Id.* at 583-587, 953- 960, 969-975, 982-994, 999-1003, 1407-1420, 1430-1453, 1461-1468; 907-952, 961-968, 976-981, 995-998, 1421-1426, 1454-1460. These letters, which were presented before the Board in their consideration of the 2021 Resolutions, raise a litany of legal arguments regarding the legality of the District's formation and practices. *Id.*

The Staff Report itself, which was provided to the Board before the October 5th meeting, is a detailed report that provides background information on the District, an overview of the projects the Board had previously approved, the format of the October 5th meeting, a summary of the 2021 Resolutions, analysis on whether the 2021 Resolutions comply with the CID Act and the Development Agreement, analysis on the Association's objections, and finally the staff's recommendation that the Board approve the 2021 Resolutions. *Id.* at 21-51. The Board, after considering the Staff Report, the Association's objections, and public comments, unanimously approved the 2021 Resolutions. *Id.* at 1563-1593.

Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 176 P.3d 126, 133-34, N.1 (2007) (Due process was not violated by a defective notice because landowners acknowledged they were made aware of revisions to a previously discussed plan). Here it is undisputed the Petitioners actually filed objections to the 2021 Resolutions.

D. The course of this proceeding.

Petitioners filed their Petition for Judicial Review on December 3, 2021. *See Petition for Judicial Review.* The Petition alleges the District's adoption of the 2021 Resolutions and the actions authorized thereby are unlawful under the CID Act, the United States Constitution and/or the Idaho Constitution for a litany of reasons and requests the Court to find the adoption of the 2021 Resolutions unlawful and void. *Id.* at 6-7. The administrative record was transmitted to the Court on February 11, 2022, and on February 23, 2022, the Harris Family Limited Partnership filed a Petition to Intervene. *See Verified Petition to Intervene.* On March 21, 2022, Petitioners filed a Motion to Compel Completion of Record and Transcript, to Delete Documents From Record, and to Augment Record, as well as an Opposition to the Harris Family Limited Partnership's Petition to Intervene. *See Motion to Compel Completion of Record and Transcript, to Delete Documents From Record, and to Augment Record; Opposition to the Harris Family Limited Partnership Petition to Intervene.* The Court granted the Harris Family Limited Partnership's Petition to Intervene on April 26, 2022. *See Order Granting Verified Petition to Intervene.*

Petitioners filed a Motion for Stay Pending Judicial Review on April 19, 2022, arguing the Court should stay any actions taken pursuant to the 2021 Resolutions until a final resolution in this judicial proceeding. *See Motion for Stay Pending Judicial Review.* The Court denied that motion on August 19, 2022, finding Petitioners would not suffer irreparable harm in the absence of a stay. *See Memorandum Decision and Order on Appellants' Motion for Stay Pending Judicial Review.* On August 24, 2022, the Court issued its decision denying Petitioners' Motion to Compel Completion of Record and Transcript, to Delete Documents From Record, and to Augment

Record. *See Order on Motions to Complete Record, to Delete Documents From Record, and to Augment Record ("Order re: the Record").* In that order, the Court found that the CID Act prohibits Petitioners from retroactively attacking the District's formation or final decisions rendered before the 2021 Resolutions. *Id.* at 5.

Petitioners filed their Opening Brief on October 21, 2022. *See Petitioners' Brief.* Respondents and Intervenor (sometimes referred to collectively as "Opponents") filed their Response Briefs on November 18, 2022, and Petitioners filed a Reply on December 22, 2022. *See Respondents' Brief; Intervenor's Brief; Reply Brief.* Additionally, Petitioners filed a Motion to Strike Portions of Respondents' and Intervenor's Briefs on January 5, 2023, arguing that portions of the Response Briefs should be struck as they included factual allegations not supported by citations to the record. *See Motion to Strike Portions of Respondents' and Intervenor's Briefs.* The Court held oral argument on January 19, 2023, and took the matters under advisement. On January 27, 2023, Intervenor filed a list of supplemental citations pursuant to Idaho Appellate Rule 34(e)(1). *See Intervenor's Supplement of Citations.* Petitioners filed a motion to strike Intervenor's supplemental citations on January 31, 2023. *See Motion to Strike Supplemental Citations.*

II. ISSUES ON APPEAL

Petitioners have presented sixteen issues on appeal to this Court:

1. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily or exclusively serve that development?

2. Is a street or other public facility which is directly in front of a single-family home commonly understood to be "fronting" on that home even if a narrow landscaping strip is interposed so that the lot does not "physically touch" the street or other facility?

3. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities which are privately owned and which are located on land which is privately owned by the Developer?

4. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities the Developer built before the District existed?

5. Does the CID Act permit the District to pay the fair market value of land in exchange for only an easement of access to maintain privately owned facilities on that land, even though the facilities located on those easements are also privately owned and therefore do not constitute community infrastructure?

6. Does the Idaho Constitution permit the District to pay the Developer the full fair market value of privately owned land underneath stormwater ponds in exchange for an easement that only grants a conditional right of access to maintain those ponds?

7. Does the District's prior approval of payments for projects preclude Residents from challenging a new "final decision" to approve additional payments for those projects on the grounds that those projects are unlawful?

8. Do past final decisions of the District preclude new final decisions of the District from being challenged even if a challenge to the new final decision is brought within 60 days of the new decision?

9. Does the CID Act grant Residents standing to challenge the formation of the District in contesting a new final decision of the District?

10. Does the CID Act permit a Court to examine past events in order to determine whether a new final decision being challenged is lawful?

11. Does the Idaho Constitution permit the District to issue debt and levy the related property taxes based on the vote of at most one person who will never pay the taxes?

12. Can the City use a special, limited purpose "district" under its complete control to incur tens of millions of dollars in debt and to levy over $100 million in property taxes without having to comply with the two-thirds voter approval requirement under the Idaho Constitution?

13. Does the Idaho Constitution permit the District to levy tens of millions of dollars of special property taxes on one group of homes while nearly identical neighboring homes pay nothing, even though projects financed by those taxes benefit both groups of homes equally?

14. Does the Idaho Constitution permit the District to issue indebtedness payable from special property taxes to make payments to the Developer for facilities the Developer would otherwise have to pay for themselves as do all other developers in the State?

15. Does the CID Act permit the District to adopt the Challenged Resolutions even though the properties within the District are not contiguous and were not at the time of its formation?

16. Are Residents entitled to attorney fees under the private attorney general doctrine if they prevail in this action? *Petitioners' Brief* at 21-22.

Respondents present no additional issues on appeal beyond a request for an award of costs and fees under Idaho Code section 12-117. *Respondents' Brief* at 7. Intervenor likewise requests attorney fees and costs. *Intervenor's Brief* at 43.

The Court will address the issues on appeal in the order presented to the Court.[8] However, Opponents raise several preliminary arguments that are potentially outcome determinative of

[8] The titles Petitioners have given the issues on appeal do not neatly align with the substance of the arguments presented in the briefing. The Court will attempt to address each argument under the applicable "issue on appeal."

multiple issues on appeal presented by Petitioners. As such, the Court will address these preliminary arguments before addressing each issue in turn.

III. LEGAL STANDARD

Petitioners bring this proceeding pursuant to Idaho Rule of Civil Procedure 84 and the CID Act. *See Petitioners' Brief* at 3. "Judicial review" is "the district court's review pursuant to statute of actions of agencies . . . ." I.R.C.P. 84(a)(3)(C). The CID Act permits "[a]ny person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district" to seek judicial review of the final decision within sixty days. I.C. § 50-3119. "When a district court entertains a petition for judicial review, it does so in an appellate capacity." *Burns Holdings, LLC v. Madison Cty. Bd. of Cty. Comm'rs*, 214 P.3d 646, 648 (Idaho 2009). While most petitions for judicial review in Idaho are subject to the standard of review prescribed in the Idaho Administrative Procedure Act (the "IAPA"), "the language of the IAPA indicates that it is intended to govern the judicial review of decisions made by *state* administrative agencies, and not local governing bodies." *Idaho Historic Pres. Council, Inc. v. City Council of City of Boise*, 134 Idaho 651, 653, 8 P.3d 646, 648 (2000) (emphasis in original). Here, none of the parties have taken the position that this proceeding falls within the purview of the IAPA or its standard of review.

The Court cannot rely on the IAPA's standard of review, and it similarly cannot rely on Idaho Rule of Civil Procedure 84 because "Idaho Rule of Civil Procedure 84, which governs judicial review of administrative and local governing bodies, does not provide a specific standard of review." *Id.* at 654, 8 P.3d 649. The CID Act itself is likewise silent with respect to the

appropriate standard. In such circumstances, "the district court shall review the case upon the record and determine the appeal upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and laws of this state, and the appellate rules of the Supreme Court." *Goodman Oil Co. v. City of Nampa*, No. CV2004-10007C, 2006 WL 6571500 (Idaho Dist. Nov. 07, 2006) (discussing standard in a petition for judicial review where neither the IAPA, Rule 84, nor enabling statute set forth the standard of review). Under this general standard, statutory interpretation is a question of law that receives de novo review. *See, e.g., State v. Schulz*, 151 Idaho 863, 865, 264 P.3d 970, 972 (2011). Findings of fact will not be set aside on appeal unless they are clearly erroneous. *Kornfield v. Kornfield*, 134 Idaho 383, 385, 3 P.3d 61, 63 (Idaho Ct. App. 2000).

IV. ANALYSIS

A. The District's formation, the General Obligation Bond Election, and any District decisions or resolutions adopted prior to the 2021 Resolutions cannot be collaterally challenged in this proceeding.

While this petition ostensibly seeks judicial review of only the 2021 Resolutions, Opponents stress that some of the issues Petitioners raise on appeal require the Court to adjudicate the validity of the District's formation, the 2010 General Obligation Bond Election, and final decisions the Board made prior to 2021. *Intervenor's Brief* at 11-13. As the Court has previously held, Idaho Code section 50-3119 precludes the Court from doing so. *See Order re: the Record.*

Idaho Code section 50-3119 provides the exclusive method for challenging the District's formation and final decisions:

> Any person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district, including, with respect to any tax levy, special assessment or bond, may, within sixty (60) days after such final decision, seek judicial review by filing a written notice of appeal with the clerk of the district and with the clerk of the district court for the judicial

> district in which a majority of the land area of the district is located. After said sixty (60) day period has run, 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 (emphasis added).

Petitioners maintain that if a notice of appeal of a final decision is filed within sixty days, the Court "may examine prior events in order to ascertain whether the District has the legal authority for the new 'final decision' being challenged." *Petitioners' Brief* at 56. In essence, Petitioners argue that any new final decision by the Board opens the door for the Court to consider the legality of the District's formation and prior District actions. Under this theory, the District itself and all the District's prior final decisions would remain "valid and uncontestable," but any new final decision could be subject to attack on the grounds that the District lacked the authority to act because it was formed improperly or because a prior final decision was unlawful. Opponents counter that this argument rests on a tortured reading of Idaho Code section 50-3119 that would render the sixty-day limitation meaningless. *Respondents' Brief* at 10-13. The Court agrees with Opponents.

Petitioners' argument on this issue hinges on the presumption that the statute implicitly authorizes a person who feels aggrieved by a district's final decision to challenge that decision "for any reason whatsoever," even if the reason arises from a district's prior decisions that are now "considered valid and uncontestable" and barred from challenge by the statute's sixty-day limitation. *Petitioners' Brief* at 56. Petitioners arrive at this conclusion by arguing that language in the second sentence of the statute, "[a]fter said sixty (60) day period has run, no one shall have

any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever," necessarily implies that a person *can* challenge a final decision "for any reason whatsoever" if they challenge the decision within sixty days. *Id.*

As Respondents point out, it is the first sentence of the statute, not the second, that grants the actual right of judicial review. The first sentence does not grant the right to appeal "for any reason whatsoever." The language Petitioners rely upon comes from the second sentence, which exists to establish a clear prohibition on actions brought after the sixty-day period. Petitioners make a questionable logical leap in arguing that the "for every reason whatsoever" verbiage in the second sentence should be impliedly read into the first sentence. It does not stand to reason that, because a person is barred from bringing an appeal for any reason whatsoever after missing the sixty-day window, the person was necessarily allowed to bring an appeal for any reason whatsoever during the sixty-day window. The converse of a true statement is not necessarily true. Reading the statute in the manner Petitioners urge would effectively circumvent the sixty-day limitation and render the legitimacy of the District's formation and prior decisions vulnerable to collateral attacks whenever the District made a new final decision. When one reads the second half of the second sentence, which provides "and, thereafter, said decision *shall be considered valid and uncontestable* and the validity, legality and regularity of any such decision shall be conclusively presumed," it becomes clear Petitioners' interpretation is untenable. I.C. § 50-3119 (emphasis added). The statute dictates that the legality of a prior decision cannot be contested after the sixty-day window, whether for the purpose of invalidating that decision or for determining a district's authority to render a subsequent decision. After the sixty-day window closes, a district's decisions are considered valid and uncontestable. As such, a collateral attack on the legality of a

past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision.

Petitioners also continue to argue, as they did previously, that the last sentence of section 50-3119 allows the Court to consider prior District actions which might undermine the District's authority to adopt the 2021 Resolutions. *Petitioners' Brief* at 56. The Court addressed this argument in its prior order:

> When Idaho Code section 50-3119 is read in whole and in context it sets forth: 1) person in interest who feels aggrieved has sixty days to file an appeal of final decision by CID related to the formation or governing of district, including tax levies, special assessments or bond; 2) such appeal seeking judicial review must be filed with the district court where majority of the land in the community infrastructure district is located; 3) after the sixty day appeal period has run, there is no cause of action or right of action to contest "the legality, the formality or regularity" of said decision for any reason and said decision shall be considered valid and uncontestable and the validity, legality and regularity of such decision shall be conclusively presumed; and 4) if the question of the validity of any bonds issued is not raised within the appeal period, the authority to issue the bonds, the legality of the bonds and of the levies or assessments to pay the bonds shall be conclusively presumed and no court shall have the authority to inquire into such matter. The last sentence does not mean the Appellants can wait 11 years after the formation of the CID and then challenge the underlying authority of the CID to issue bonds when such formation and establishment of the authority of the CID was not challenged within sixty days of the creation and formation of the CID in 2010. To read the last sentence as proposed by the Appellants that the district court may expand any appeal record to allow an attack on the original formation and authority of the CID eviscerates the sixty day deadline to appeal that the legislature clearly intended.

Order re: the Record at 4-5. The Court declines to reconsider this portion of its prior ruling and will not consider challenges related to the District's formation or past final decisions.

However, the Court's prior ruling also raised a standing issue, citing to *Clemens v. Pinehurst Water Dist.*, 81 Idaho 213, 339 P.3d 665 (1959) and *Pioneer Irr. Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911) for the proposition that the validity of de facto municipal corporations, municipal corporations, or quasi-municipal corporations authorized by statute can

only be determined in a suit brought for that purpose in the name of the state or by some individual under authority of the state. *Order re: the Record* at 5-6. Petitioners addressed this issue in their Opening Brief, and the Court agrees with Petitioners' analysis. Unlike the statutes at issue in *Clemens* and *Walker*, the CID Act expressly confers standing to "any person in interest who feels aggrieved" to challenge the District's formation or decisions, provided they do so within sixty days. As such, the Court need only rely on the clear language of Idaho Code section 50-3119 in declining to consider Petitioners' arguments relating to the District's formation and prior final decisions.

B. The Court will not consider issues that were not preserved for appeal.

In addition to maintaining that many of Petitioners' arguments are time barred by Idaho Code section 50-3119, Opponents maintain that some issues on appeal were not presented to the Board before the October 5th meeting, rendering them ineligible for consideration by this Court. *See Intervenor's Brief* at 11-12. Petitioners respond that the CID Act does not require them to present any issues to the Board before filing an appeal with a district court to challenge the validity of a Board action. *See Reply Brief* at 9-11. Petitioners also point out that the cases Intervenor relies on all involved prior contested administrative proceedings governed by Idaho's Local Land Use Planning and Administrative Procedure Acts, whereas this case involved only an opportunity for public comment and a Board meeting at which the public was not afforded the opportunity to speak. *Id.* The Court must therefore determine whether Petitioners were required to raise arguments before the Board in order to preserve them for consideration in this appeal.

"When a district court entertains a petition for judicial review, it does so in an appellate capacity." *Burns Holdings, LLC v. Madison Cnty. Bd. of Cnty. Com'rs*, 214 P.3d 646, 648, 147 Idaho 660, 662 (2009) (citing *Lane Ranch P'ship v. City of Sun Valley*, 144 Idaho 584, 588, 166

P.3d 374, 378 (2007); *Ater v. Idaho Bureau of Occupational Licenses*, 144 Idaho 281, 284, 160 P.3d 438, 441 (2007)). Moreover, "[a]ppellate court review is limited to the evidence, theories, and arguments that were presented below." *State v. Castrejon,* 163 Idaho 19, 20, 407 P.3d 606, 607 (Ct. App. 2017) (citing *State v. Johnson*, 148 Idaho 664, 670, 227 P.3d 918, 924 (2010)); *See also In re Idaho Dep't of Water Res. Amended Final Ord. Creating Water Dist. No. 170*, 148 Idaho 200, 206, 220 P.3d 318, 324 (2009) ("...failure to raise an issue before an administrative agency will preclude that issue from being heard upon review by the district court.").

First, the Court acknowledges the CID Act does not in itself expressly require Petitioners to raise any arguments below before bringing them before this Court. The Court also acknowledges the authority cited in Intervenor's Brief on this issue, and much of the authority cited by the Court below, arises in the zoning and IAPA context. Nonetheless, the pertinent fact is that Petitioners brought this matter before the Court as a petition for judicial review pursuant to Idaho Rule of Civil Procedure 84, under which the Court functions in an appellate capacity. Acting in its appellate capacity, the Court is "limited to the evidence, theories, and arguments that were presented below." *Castrejon,* 163 Idaho at 20, 407 P.3d at 607. This foundational principle applies broadly when a court sits in an appellate capacity, regardless of whether the proceeding is governed by the IAPA. "It is well established that in order for an issue to be raised on appeal, the record must reveal an adverse ruling which forms the basis for an assignment of error. Hence, issues not raised below but raised for the first time on appeal will not be considered or reviewed." *Whitted v. Canyon County Board of Com'rs*, 137 Idaho 118, 121-22, 44 P.3d 173, 1176-77 (2002). Indeed, Petitioners' view that an aggrieved party need not raise any issues before the Board puts the District in a prejudicial position by denying the Board the opportunity to hear the party's grievance and

correct course before becoming embroiled in litigation. The Court therefore finds Petitioners were required to raise all arguments before the Board for the Court to consider them here.

The Court acknowledges the October 5th meeting was not a contested hearing at which Petitioners could present public testimony and further legal argument. Nonetheless, the Court does not agree with Petitioners' claim that there was "no opportunity" to present evidence or argument. "Due process of law does not require a hearing in every conceivable case of government impairment of private interest. Rather, procedural due process requires an opportunity to be heard." *Rios-Lopez v. State*, 144 Idaho 340, 343, 160 P.3d 1275, 1278 (Ct. App. 2007) (internal citations omitted). Here, a notice was posted on the District's website on September 23, 2021, indicating the meeting time, date, location, and the proposed projects that would be presented. *A.R.* at 25, 93. The notice included already existing comments, concerns, and objections from the Association, homeowners, and other interested parties, and invited all interested parties to submit additional comments for the Board's consideration. *Id.* at 25. In total, hundreds of pages of comments were submitted along with the Association's twelve objection letters. These letters from the Association—which were provided to and considered by the Board— raise sophisticated legal arguments and include objections to the Town Homes #9 Project, the Town Homes #11 Project, the Interest Project, the General Obligation Bond Election, the District's formation, and other matters. *Id.* at 585-588, 989-994, 999-1003. As such, the Court finds the Board's consideration of the public comments and Petitioners' objections constituted an adequate opportunity to be heard and that all arguments raised in Petitioners' comments and letters are preserved for the purposes of this appeal.

C. First issue on appeal: the Court declines to address whether "the CID Act permits the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily

or exclusively serve that Development" because this issue was not raised before the Board.

Petitioners' first issue on appeal is whether "the CID Act permit[s] the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily or exclusively serve that development." *Petitioners' Brief* at 21. In their briefing, Petitioners couches this question in different terms than it did in its "issues on appeal" section quoted above. The thrust of Petitioners' argument on this issue is that the Payments Resolution violates the CID Act because it approves financing of local projects which are not "system improvements" and therefore not "community infrastructure" – a statutorily defined term and the only thing that can be financed under the CID Act. *See Petitioners' Brief* at 24-32; *Reply Brief* at *5-15.* According to this theory, the District can only finance improvements to regional infrastructure that are eligible for financing under the Idaho Development Impact Fee Act (the "Impact Fee Act") and not "project improvements" which primarily serve a particular development and are not eligible under the Impact Fee Act. *Id.*[9,10] Petitioners' argument rests on the premise that, because the CID Act repeatedly references the Impact Fee Act, the Impact Fee Act is part and parcel of the CID Act and the constraint against financing "project improvements" in the Impact Fee Act likewise applies to the CID Act. *Id.* Put another way, Petitioners argue "community infrastructure" excludes "local" improvements and is therefore limited to facilities

[9] The Court will sometimes refer to Petitioners' argument on this issue for appeal as Petitioners' "Impact Fee Act Argument.

[10] The Impact Fee Act, Idaho Code Section 67-8201, *et seq.*, establishes "uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development." I.C. § 67-8202(2). "Project improvements," defined as "site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project," cannot be paid for under the Impact Fee Act. I.C § 67-8202(22); I.C. § 67-8210(2). "System improvements," eligible for payment under the Impact Fee Act, are defined as "capital improvements to public facilities designed to provide service to a service area including, without limitation, the type of improvements described in Section 50-1703, Idaho Code." I.C § 67-8202(28).

eligible for funding from development impact fees under the Impact Fee Act. Opponents urge the Court to reject this argument because it is raised for the first time in this appeal, is in conflict with what Petitioners argued below, and because it is not supported by the plain language of the CID Act. *See Respondents' Brief* at 17-23; *Intervenor's Brief* at 13-20. As such, the Court must first determine whether Petitioners preserved this argument for appeal by raising it before the Board.

As Petitioners point out, the Idaho Supreme Court has recently held that "[a] party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below and noticing it for hearing *or* a party preserves an issue for appeal if the trial court issues an adverse ruling. Both are not required." *State v. Miramontes*, 517 P.3d 849, 853–54 (Idaho 2022) (emphasis in original). Moreover, "preservation standards are not so exacting as to foreclose an argument on appeal just because it was not the central focus of the appellant's argument below." *Id.* at 855. Here, Petitioners argue their Impact Fee Act Argument was preserved below because (1) the Board's adoption of the Payment Resolution to fund community infrastructure that is not impact fee eligible is an "adverse ruling" with respect to their Impact Fee Act Argument, thus satisfying any preservation requirement, and because (2) they preserved the argument by raising it below. *Reply Brief* at 11-13. The Court disagrees.

First, the Court finds that the Board's adoption of the Payment Resolution was not an "adverse ruling" that preserved Petitioners' Impact Fee Act Argument. Petitioners misconstrue the *Miramontes* holding to mean that a party need not present an issue below to preserve it, so long as the lower court's ruling is in conflict with that party's position on the issue. To the contrary, the Idaho Supreme Court was very clear that while a party need not receive an adverse ruling on an issue to preserve it, they must still present the issue below in order to preserve it:

> We take this occasion to clarify that it is not mandatory for a party-appellant to obtain an adverse ruling from the trial court to preserve an issue for appellate

> review, *so long as the party's position on that issue was presented to the trial court with argument and authority and noticed for hearing.*

Id. at 853 (emphasis added). The reason for this requirement is obvious, as Petitioners' reading of the *Miramontes* holding would open the door for litigants to manufacture entirely new issues and arguments on appeal as long as they were crafted to be adverse or inconsistent with the lower court's ruling. That is not what the *Miramontes* opinion said or intended.

Petitioners also maintain they preserved this argument for appeal by "repeatedly [arguing below] that 'local' improvements, including 'sidewalks, landscaping, neighborhood parks and bike lanes,' as well as 'local access roads, water, sewer and stormwater mains, street lighting, and signage,' cannot be funded through a CID." *Reply Brief* at 12. This argument is also without merit. While true that the Association's letters argued that various local improvements cannot be funded through a CID, those arguments were premised on completely different legal foundations than Petitioners' Impact Fee Act Argument. The Court will not recite the substance of all twelve of the Association's letters, but it notes that none of the letters suggest that improvements must be eligible under the Impact Fee Act, much less even use the terms "project improvement," "system improvement," or "Impact Fee Act." *See, e.g., A.R.* at 583-587, 953-956, 957-960, 969-975, 982-988, 989-994, 999-1003, 1407-1420, 1430-1435, 1436-1443, 1444-1453, 1461-1468. As Opponents note, and Petitioners concede, these terms do not appear in the record at all. Disputing the legality of funding "local" projects for unrelated reasons does not preserve a novel legal argument that was not brought before the Board. The Court acknowledges an argument need not be the "central focus" below, but in this case Petitioners' Impact Fee Act Argument was not raised at all.

Finally, Petitioners make the strained argument that Idaho Rule of Civil Procedure 84(c)(5) allows them to raise this issue for the first time on appeal. *Petitioners' Brief* at 12-13. That rule,

which outlines the required contents of a petition for judicial review, says "... the statement of issues may be filed separately within 14 days after the filing of the petition for judicial review and the statement does not prevent the petitioner from asserting other issues later discovered." I.R.C.P. 84. Petitioners assert that this rule applies here "because Residents did not discover that argument until they obtained the entire legislative history of the CID Act from the Legislative Research Library after they had filed their petition for judicial review." *Petitioners' Brief* at 13. Again, the Court disagrees.

Crafting a new legal argument on appeal that is based on legislative history publicly available prior to the October 5th meeting hardly constitutes an issue "later discovered." No new facts or District actions have come to light. Indeed, the reading of this rule implied by Petitioners would effectively nullify preservation requirements by allowing litigants to raise unlimited novel or new arguments on appeal so long as they discovered the legal authority for the argument after the agency rendered its final decision. That is not the rule's meaning or purpose. As such, the Court will not consider Petitioners' Impact Fee Act Argument in this appeal.

D. Second issue on appeal: whether a street or other public facility which is directly in front of a single-family home is "fronting" on that home even if a narrow landscaping strip is interposed so that the lot does not "physically touch" the street or other facility.

Petitioners next argue the Payments Resolution violates the CID Act because it approves funding for facilities "fronting" single-family lots despite the Idaho Code section 50-3102(2) expressly excluding "public improvements fronting individual single-family residential lots" from the definition of community infrastructure that can be financed under the Act. *See Petitioners' Brief* at 33-42; *Reply Brief* at 16-26.[11] Opponents respond that the projects at issue are not "fronting" single-family lots because the projects do not physically touch single-family lots and,

[11] The Court will sometimes refer to this as the "Fronting Exclusion."

alternatively, that the Payments Resolution would be legal even if the financed projects were "fronting" single-family lots because they front *multiple* single-family lots rather than an *individual* single-family lot. *See Respondents' Brief* at 29-37; *Intervenor's Brief* at 20-25. These arguments were raised below in letters exchanged between the Association and the Developer. *See A.R.* at 583-587; 907-912. The parties do not contest the proximity of the projects to the single-family lots, but rather dispute the meaning of the statutory language "fronting individual single-family residential lots."

An appellate court exercises free review over statutory interpretation because it is a question of law. *State v. Dunlap*, 155 Idaho 345, 361, 313 P.3d 1, 17 (2013). The Idaho Supreme Court has explained:

> The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

Id. at 361–62, 313 P.3d at 17-18 (quoting *State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011)). A statute is ambiguous where the language is capable of more than one reasonable construction. *Porter v. Board of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004) (citing *Jen–Rath Co., Inc. v. Kit Mfg. Co.*, 137 Idaho 330, 335, 48 P.3d 659, 664 (2002)). However, "[a]mbiguity is not established merely because differing interpretations are presented to a court; otherwise, all statutes subject to litigation would be considered ambiguous." *Id.* (internal citation omitted). "[I]f statutory language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *State v. Burnight*, 132

Idaho 654, 659, 978 P.2d 214, 219 (1999). And while words should generally be given their "plain, usual, and ordinary meanings," Idaho Code section 73-113 clarifies that in some circumstances certain terms should be construed according to their technical meaning:

> Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

I.C. § 73-113. Moreover, courts "will not construe a statute in a way which makes mere surplusage of provisions included therein." *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990). "It is the duty of the courts in construing statutes to harmonize and reconcile laws wherever possible and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions." *Id.* (quoting *Sampson v. Layton,* 86 Idaho 453, 387 P.2d 883 (1963)). "Any ambiguity in a statute should be resolved in favor of a reasonable operation of the law." *Id.* (quoting *Lawless v. Davis,* 98 Idaho 175, 560 P.2d 497 (1977)).

Here, the parties devote most of their briefing on the Fronting Exclusion to the definition of the word "fronting" and whether it requires immediate physical contact. *See Petitioners' Brief* at 33-42; *Respondents' Brief* at 31-37; *Intervenor's Brief* at 23-24; *Reply Brief* at 16-23. While the Court appreciates the rationale behind Petitioners' stance that a lot is still "fronting" a street even if a narrow strip of undevelopable land separates the lot from the street, the Court finds it need not reach the definition of "fronting" because the Court agrees with Opponents that the Fronting Exclusion applies only to public improvements fronting *individual* single-family residential lots and not to public improvements fronting *multiple* single-family lots.

Idaho Code section 50-3102(2) provides, in its entirety:

> "Community infrastructure" means improvements that have a substantial nexus to the district and directly or indirectly benefit the district. *Community infrastructure*

excludes public improvements fronting individual single-family residential lots. Community infrastructure includes planning, design, engineering, construction, acquisition or installation of such infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure, and incurring expenses incident to and reasonably necessary to carry out the purposes of this chapter. Community infrastructure includes all public facilities as defined in section 67-8203(24), Idaho Code, and, to the extent not already included within the definition in section 67-8203(24), Idaho Code, the following:

(a) Highways, parkways, expressways, interstates, or other such designations, interchanges, bridges, crossing structures, and related appurtenances;
(b) Public parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;
(c) Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;
(d) Public safety facilities;
e) Acquiring interests in real property for community infrastructure;
(f) Financing costs related to the construction of items listed in this subsection; and
(g) Impact fees.

I.C. § 50-3102(2) (emphasis added).[12]

First, the Court finds the phrase "excludes public improvements fronting individual single-family residential lots" is capable of more than one reasonable construction and is therefore ambiguous. Petitioners maintain that, because the sentence refers to "lots" in the plural, it unambiguously prohibits facilities fronting any number of single-family lots. *Reply Brief* at 24. In their view, the phrase would have been written as "excludes public improvements fronting ***an***

[12] Idaho Code section 67-8203(24) defines "public facilities" as:

(a) Water supply production, treatment, storage and distribution facilities;
(b) Wastewater collection, treatment and disposal facilities;
(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;
(d) Stormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
(e) Parks, open space and recreation areas, and related capital improvements; and
(f) Public safety facilities, including law enforcement, fire stations and apparatus, emergency medical and rescue, and street lighting facilities.

I.C. § 67-8203.

individual single family residential ***lot***" if the Fronting Exclusion was meant to apply only in situations where public improvements front just one single-family lot. *Id.* (emphasis in original). However, this interpretation overlooks the fact that the entire sentence, which concerns "public improvement***s***," is written in the plural and, more importantly, ignores the adjective "individual" and how it modifies the compound adjective "single-family residential" and the noun "lots." Indeed, if the second sentence of Idaho Code section 50-3102(2) were intended to prohibit facilities fronting any number of single-family lots, by far the most sensical way for the Idaho Legislature to have expressed that would be to have simply not included the word "individual" in the sentence: "Community infrastructure excludes public improvements fronting [] single-family residential lots." Instead, the Legislature modified "single-family residential lots" with "individual." Again, "the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Dunlap* at 361–62, 313 P.3d at 17–18.

Here, the adjective "individual," meaning "single; particular; [or] separate," comes before the phrase "single-family residential lots."[13] The phrase "single-family residential" is itself a compound adjective modifying the noun "lots," and the Court agrees with Respondents that "single-family residential" is a common phrase used in zoning and land use to designate lots with residential structures occupied by a single family. *See, e.g.,* Boise City Code § 11-04-01. Thus, the word "individual" is not absorbed or incorporated into the phrase "single-family residential lots," but instead modifies it by specifying that the Fronting Exclusion only applies to single or particular single-family residential lots. The fact that the statute refers to plural "lots" does not negate the fact the Legislature chose to include the modifier "individual," especially when one considers that

[13] "Individual," Dictionary.com, https://www.dictionary.com/browse/individual; Accessed March 1, 2023.

the word "lots" is used only in relation to the word "improvements," which is plural throughout section 50-3102(2).

This interpretation is consistent with the principle that a court must "adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions." *Sweitzer,* 118 Idaho at 572, 798 P.2d at 31. Petitioners protest that this construction is nonsensical as it would "mean that, even if a development consisted entirely of single-family residential homes, the developer nonetheless could use a CID to finance streets, sewers, stormwater ponds, and any and all other facilities directly in front of and even abutting those homes . . .." *Reply Brief* at 24-25. The Court, however, does not find this outcome problematic, provided the infrastructure in question satisfies the definition of "community infrastructure" by having a "substantial nexus to the district and directly or indirectly benefit[ing] the district." I.C. § 50-3102(2).

Moreover, the Court agrees with Opponents in that Petitioners' interpretation of the Fronting Exclusion would result in the exception effectively swallowing the rule. The definition of "community infrastructure" expressly includes "[h]ighways, parkways, expressways, interstates . . . and related appurtenances;" "[t]rails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;" "[s]tormwater . . . facilities, flood control facilities, and bank and shore protection and enhancement improvements;" and "[p]arks, open space and recreation areas, and related capital improvements." I.C.§ 50-3102; I.C. § 67-8203. Petitioners' broad interpretation of the Fronting Exclusion would make it nearly impossible for a district with single-family residential lots to finance any of these types of community infrastructure, especially if the Court were to agree with Petitioners that fronting does not require physical contact. Such a broad interpretation of the Fronting Exclusion is not consistent with the broader purpose of the CID Act, that being "[t]o encourage the funding and construction of

regional community infrastructure in advance of actual developmental growth that creates the need for such additional infrastructure." I.C. § 50-3101.

The Court further agrees with Opponents that the legislative history tends to show that the purpose of the Fronting Exclusion is not to tie a district's hands by preventing it from building community infrastructure whenever that infrastructure abuts single-family lots, but rather to prevent the benefit of CID funding from flowing to an individual lot. For example, when a member of the House Revenue and Taxation Committee asked a sponsor of the CID Act about what was excluded from the definition of "community infrastructure," that sponsor explained:

> A Member of the Committee asked a [sic] for clarification on what is excluded from community infrastructure. Mr. Pisca answered it would be side streets, curbs, gutters, and sewer connections to *individual houses*. Mr. Pisca further stated the intention of the CID is to provide for funds for infrastructure that benefits the whole community.

A.R. at 952 (Minutes of H. Revenue and Taxation Comm., 61st Leg. 2 (March 6, 2008) (emphasis added)). This interpretation is consistent with the CID Act's stated purpose of encouraging the funding and construction of regional community infrastructure while not solely benefiting one homeowner.

Accordingly, the Court finds it does not need to reach the question of whether "fronting" requires physical contact. Even assuming Petitioners' more liberal interpretation of the word is correct, the Fronting Exclusion does not apply here because the projects approved under the Payments Resolution front multiple single-family residential lots.

E. Third issue on appeal: whether the CID Act permits the District to issue bonds and levy special property taxes to make payments to the Developer for facilities which are privately owned and which are located on land which is privately owned by the Developer?

The third issue Petitioners bring on appeal is whether certain stormwater retention ponds and related facilities (the "Stormwater Facilities") financed by the Payments Resolution as part of the Town Homes #11 Project violate the CID Act because the Stormwater Facilities are allegedly privately owned by the Developer. *See Petitioners' Brief* at 42-44. Opponents argue the Stormwater Facilities comply with the CID Act's public ownership requirements because they sit on a permanent easement (the "Easement") in favor of the Ada County Highway District ("ACHD"). *See Respondents' Brief* at 43-44; *Intervenor's Brief* at 25-27. Petitioners respond by clarifying that they are not disputing whether community infrastructure may be located on easements owned by political subdivisions of the state, but rather that "the facilities themselves cannot be privately owned regardless of whether they happen to be located within a publicly owned easement." *Reply Brief* at 26. Put another way, Petitioners argue the CID Act "requires any financed facility to be located on publicly owned lands *in addition to and not as a substitute for* public ownership of those facilities." *Petitioners' Brief* at 42 (emphasis in original).[14]

The CID Act provides that "[o]nly community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter," while also stating that "[c]ommunity infrastructure other than personalty [sic], 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. § 50-3101(2); I.C. § 50-3105(2). Moreover, the CID Act's definition of "community infrastructure" expressly includes "[s]tormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements." I.C. § 67-8203(24)(d). It is well established that an easement constitutes an interest in real property. *See Capstar Radio Operating Co. v. Lawrence*, 152 P.3d 575, 578 (Idaho

[14] This issue was presented to the Board and was adequately preserved for consideration in this appeal. *A.R.* at 1462-1468.

2007) ("An express easement, being an interest in real property, may only be created by a written instrument.").

As an initial matter, the Court finds that the Stormwater Facilities fall squarely within the definition of "community infrastructure" as "[s]tormwater collection, retention, detention, treatment and disposal facilities" are expressly included in the definition under Idaho Code Section 67-8203(24)(d). The Court also finds, and the parties agree, that "community infrastructure" can be located on privately owned land encumbered by an easement in favor of ACHD or another public entity. *See* I.C. § 50-3105(2). Still, that finding does not resolve this issue because the crux of Petitioners' argument is that public ownership of the Stormwater Facilities themselves is a separate requirement from the public ownership of the land on which they sit. *Petitioners' Brief* at 42. Under these circumstances, the Court disagrees. The Easement in favor of ACHD satisfies the public ownership requirement because the Stormwater Facilities are built from the land itself and their ownership cannot be bifurcated from the land encumbered by the Easement.

The Court looks to the language of the Easement itself to determine the rights and obligations it creates. The Easement's second section, titled "Grant of Easement and Authorized Uses," sets forth the basic terms:

> [The Developer] hereby grants to ACHD a permanent exclusive easement ... over and across the Servient Estate for use by the public, including motorists, pedestrians and bicyclists, and the following uses and purposes:
>
> (a) placement of Public Rights-of-Way as (as defined in Idaho Code, section 40-117);
> (b) *construction, reconstruction, operation, maintenance, and placement of a Highway* (as defined in Idaho Code, section 40-109) *and any other facilities or structures incidental to the preservation or improvement of the Highway including storm water facilities located on Exhibit A* (hereafter the "Facilities");
> (c) statutory rights if ACHD, utilities and irrigation districts to use the Highway and/or public Right-of-Way.

A.R. at 1018-1019 (emphasis added). The Easement further clarifies that the "Easement herein granted is appurtenant to the Dominant Estate and a burden on the Servient Estate," and provides the procedures for maintenance of the Stormwater Facilities. *A.R.* at 1017-1020.

There are two categories of easements: easements appurtenant and easements in gross. An easement appurtenant is a right to use a certain parcel, the servient estate, for the benefit of another parcel, the dominant estate. *Abbott v. Nampa School Dist. No. 131,* 119 Idaho 544, 550, 808 P.2d 1289, 1295 (1991). Essentially, an easement appurtenant serves the owner of the dominant estate in a way that cannot be separated from his rights in the land. *Id.* When an appurtenant easement is created, it becomes fixed as an appurtenance to the real property, which is subject to the prescriptive use and may be claimed by a successor in interest. *Marshall v. Blair,* 130 Idaho 675, 680, 946 P.2d 975, 980 (1997). In contrast, an easement in gross benefits the holder of the easement personally, without connection to the ownership or use of a specific parcel of land. *King v. Lang*, 136 Idaho 905, 909, 42 P.3d 698, 702 (2002). Thus, easements in gross do not attach to property and easements appurtenant do. *Id.*

While the Court acknowledges Idaho Code section 50-3101(2) (requiring public ownership of community property) is silent with respect to easements, it does not agree with Petitioners' stance that a permanent and exclusive easement appurtenant granting ACHD the rights to "construction, reconstruction, operation, maintenance, and placement of ... storm water facilities" is insufficient to satisfy the public ownership requirement. In fact, Petitioners argue the developer did not actually "convey an easement for the construction, operation, maintenance and repair of the Stormwater Facilities, which would have provided substantial use rights (although not a possessory interest)." *Reply Brief at 33.* The Court disagrees. While the Easement places the burden of maintaining the Stormwater Facilities on the Developer, it expressly provides for the

"construction, reconstruction, operation, maintenance, and placement of a Highway (as defined in Idaho Code, section 40-109) and any other facilities or structures incidental to the preservation or improvement of the Highway including storm water facilities...." *A.R.* at 1018-1019.

Petitioners' position on this issue is based on a distorted reading of the rights the Easement grants ACHD, on a restrictive interpretation of "public ownership" that is in tension with the rest of the CID Act, and ignores the fact that the Stormwater Facilities, which include water retention areas, slopes, and drainage areas, are physically built into the landscape and are indivisible from the underlying land. *See A.R.* at 1005. It does not stand to reason that an easement can satisfy the publicly owned land requirement found is section 50-3105(2) but not the public ownership requirement set forth in section 50-3101(2) in circumstances where the infrastructure is itself part of the underlying land. Section 50-3105(2), which sets forth a CID's powers and expressly provides that community infrastructure may be located on a publicly owned easement, is more specific than section 50-3101(2) which more generally sets forth the public ownership requirement. "A basic tenet of statutory construction is that the more specific statute or section addressing the issue controls over the statute that is more general. Thus, the more general statute should not be interpreted as encompassing an area already covered by one which is more specific." *Jones v. Lynn*, 169 Idaho 545, 564–65, 498 P.3d 1174, 1193–94 (2021) quoting *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, 289, 429 P.3d 168, 177 (2018)). When Idaho Code sections 50-3101(2) and 50-3105(2) are read together and applied to the facts presented here, it becomes clear that a permanent and exclusive easement appurtenant granting ACHD broad rights satisfies the requirements of both sections.

This conclusion is consistent with related statutes in the Idaho Code that allow local government and state agencies to acquire similar interests in property through easements. For

example, the Easement itself contemplates the placement of a public right-of-way as defined by Idaho Code section 40-117. *A.R.* at 1018. That statute specifies that a "public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, *authorized easement*, eminent domain, by plat, prescriptive use, or abandonment . . ." I.C. § 40-117 (emphasis added).

Petitioners suggest such a holding would grant the Developer and unfair windfall, allowing the Developer to receive CID funds for constructing the Stormwater Facilities while maintaining a valuable ownership interest in them and only conveying an "arguably worthless 'easement' for 'access' to 'maintain' those privately owned facilities." *Reply Brief* at 28. That is not true. It is well established that the owner of a servient estate cannot use their property in any manner inconsistent with, or which interferes with, the dominant estate owner's use of the easement. *See, e.g., Nampa & Meridian Irr. Dist. v. Mussell*, 139 Idaho 28, 33, 72 P.3d 868, 873 (2003) (explaining the owners of a servient estate could only use their property in a "manner not inconsistent with, or which did not materially interfere with" the dominant estate owner's use of an easement).

Under the terms of the Easement, the Developer retains hardly any valuable ownership rights. The Easement grants ACHD a "permanent exclusive" easement over the land, for the purposes of "construction, reconstruction, operation, maintenance, and placement of a Highway . . . and . . . storm water facilities." *A.R.* at 1018-1019. The Easement is an easement appurtenant, meaning the Easement "serves the owner of the dominant estate [ACHD] in a way that cannot be separated from [its] rights in the land." *Abbott,* 119 Idaho at 550, 808 P.2d at 1295. In other words, ACHD's rights under the Easement, including the right "operate" the Stormwater Facilities, run with the land and continue in perpetuity. The Stormwater Facilities are permanently dedicated to

public use. This means the Developer cannot develop or otherwise use the land in a way that interferes with its purpose as a stormwater facility. There is no future private use of these areas that will be allowed as ACHD has permanent control of these area. This is not a "worthless" conveyance, and the Court denies the Petitioners' third issue on appeal.

F. Fourth issue on appeal: whether the CID Act permits the District to issue bonds and levy special property taxes to make payments to the Developer for facilities the Developer built before the District existed?

Petitioners next argue the Payments Resolution violates the CID Act because it includes the approval of payments for projects undertaken by the Developer before the District was formed. *Petitioners' Brief* at 44-46; *Reply Brief* at 29-30. Intervenor responds that this argument, which only applies to the Interest Project (Project GO21-1 – Accrued Interest) as Town Home Projects #9 and #11 were constructed after the District's formation, is an inappropriate collateral attack on the projects underlying the Interest Project which this Court prohibited in its *Order re: the Record. See Intervenor's Brief* at 28. Alternatively, Intervenor argues there is no restriction in the CID Act expressly precluding any payment for otherwise qualifying community infrastructure due to construction or dedication prior to the formation of the District. *Id.* at 28-29.

The Court agrees this is argument is an inappropriate collateral attack on prior final decisions underlying the Interest Project. As the Court held in its *Order re: the Record* and reiterated above, a district's decisions are considered *valid and uncontestable* after the sixty-day window set forth in Idaho Code section 50-3119 closes. As such, a collateral attack on the legality of a past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision. Here, the 24 projects underlying the Interest Project (including the interest payments associated with those projects under the terms of the Development Agreement) were all approved for reimbursement in prior final decisions spanning from 2013 to 2019. *A.R.* at 491-492.

As the Staff Report explains, section 3.2(a) of the Development Agreement allows interest to accrue between the date of dedication, contribution, or expenditure and the time at which the project price or segment price is paid. *Id.* at 41, 509. The time to challenge the interest payable on any of the 24 projects underlying the Interest Project was within sixty days of the Board's resolutions approving reimbursement for those projects. That time has passed, and the Interest Project does not open the door for the Court to adjudicate that legality of the Board's resolutions approving reimbursement for those past projects.

Alternatively, even if such a collateral attack was allowed, the Court finds the challenge to the Interest Project is not supported by the express language of the Development Agreement, which provides for interest to accumulate during the period between the "date of dedication, contribution or expenditure and the time which the Project Price or the Segment Price is paid ...." *A.R.* at 512 (section 4.2(b) of the Development Agreement). These interest payments lawfully compensate the Developer for effectively financing the community infrastructure prior to receiving full reimbursement.

G. Fifth issue on appeal: whether the CID act permits the District to pay the fair market value of land in exchange for only an easement of access to maintain privately owned facilities on that land, even though the facilities located on those easements are also privately owned and therefore do not constitute community infrastructure?

The fifth issue on appeal is resolved by the Court's analysis in Section E. Petitioners' argument here, which again only applies to payments for the Stormwater Facilities financed by the Payments Resolution as part of the Town Homes #11 Project, is dependent upon the Court finding that the Stormwater Facilities are privately owned and thus do not constitute community infrastructure. As discussed above, a permanent and exclusive easement appurtenant granting ACHD the rights to "construction, reconstruction, operation, maintenance, and placement of ... storm water facilities" is sufficient to satisfy Idaho Code section 50-3101(2)'s public ownership

requirement with respect to the Stormwater Facilities. Accordingly, Petitioners' fifth issue on appeal must be dismissed.

H. Sixth issue on appeal: whether the Idaho Constitution permits the District to pay the Developer the full fair market value of privately owned land underneath stormwater ponds in exchange for an easement that only grants a conditional right of access to maintain those ponds?

In their sixth issue on appeal, Petitioners argue the payment of the fair market value for the Stormwater Facilities is substantially more than the value of the easement granted, and thus the payments are essentially a gift to the developer in violation of Article VIII, Section 4 and Article XII, Section 4 of the Idaho Constitution. *Petitioners' Brief* at 48-50.[15] Opponents respond that Petitioners have not presented any evidence to show what the correct value should have been, nor any authority demonstrating that land entirely burdened by a permanent easement in favor of a dominant estate is worth substantially less than the value of the fee simple. *Respondents' Brief* at 50-51; *Intervenor's Brief* at 30-31. In their Reply, Petitioners clarify they are "asking the Court to determine whether payment for a fee interest in land in exchange for an easement for access to conduct maintenance constitutes an unconstitutional gift of public funds." *Reply Brief* at 32. The Court agrees with Opponents that Petitioners have not presented any evidence to show what the fair market value of the land would be without the Easement burdening it, what the correct value for the reimbursement for the Stormwater Facilities should have been, nor any authority demonstrating that land entirely burdened by a permanent easement in favor of a dominant estate is worth less than the amount the Developer received. As such, the existence of a "gift" has not

[15] Article VIII, Section 4 of the Idaho Constitution provides that no city or other local government "shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in the aid of any individual, association or corporation, for any amount or any purpose whatsoever." Article XII, Section 4 of the Idaho Constitution provides that no city or other local government "shall ... raise money for, or make donation or loan its credit to, or in aid of" "any joint stock company, corporation or association".

been established to support Petitioners' challenge and the Court need not render an advisory opinion on the question raised in their Reply Brief.

As discussed above, the Court fundamentally disagrees with Petitioners' characterization of the Stormwater Facility Easement. Under the terms of the Easement, the Developer retains hardly any valuable ownership rights. The Easement grants ACHD a "permanent exclusive" easement over the land, for the purposes of "construction, reconstruction, operation, maintenance, and placement of a Highway . . . and . . . storm water facilities." *A.R.* at 1018-1019. The language in Section 5 of the Easement, relating to the burden of maintaining the Stormwater Facilities, does not curtail this broad grant of rights to ACHD contained in Section 2.

At bottom, the Developer surrendered all meaningful ownership over the Stormwater Facilities, which are now permanently dedicated to public use. Indeed, Petitioners conceded that the conveyance of "an easement for the construction, operation, maintenance and repair of the Stormwater Facilities, [] would have provided substantial use rights (although not a possessory interest)." *Reply Brief* at 33. The Court is left with no basis on which to overturn any prior determinations of the land's value or to determine the value of the substantial interests conveyed to ACHD. Accordingly, the Court will not disturb the Board's decision on this theory, and this issue on appeal is denied.

I. Seventh issue on appeal: does the District's prior approval of payments for projects preclude residents from challenging a new "final decision" to approve additional payments for those projects on the grounds that those projects are unlawful?

The seventh issue on appeal has already been rejected by this Court, once in its prior ruling and again in subsection A above. This issue relates to the Interest Project, which approved interest payments to the Developer for twenty-four prior projects. *A.R.* at 14-20. Petitioners' argument is essentially that the Board's approval of prior interest payments for these projects does not preclude

Petitioners from challenging the 2021 Interest Project. This is because the Interest Project is itself a new "final decision" and all such decisions can be challenged within sixty days. *See Petitioners' Brief* at 50-52. Petitioners stress that they "are not challenging any prior final decisions of the Board–only the Challenged Resolutions." *Id.* at 35.

Petitioners are correct in the basic premise that the Interest Project is a new "final decision" that can be challenged within sixty days, regardless of whether prior interest payments were authorized. However, Petitioners' challenge to the Interest Project fails in that it is underpinned by a challenge to the legality of the twenty-four projects approved long ago. As the Court has repeatedly explained, it cannot adjudicate the legality of the District's prior final decisions. They are presumed to be valid and uncontestable, and the Court does not have the authority to inquire about them. The Idaho Legislature was unequivocal on this point:

> After said sixty (60) day period has run, 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 (emphasis added).

Again, the Court rejects Petitioners' theory that a new final decision opens the door for the Court to consider the legality of prior final decision so that the Court can then, in turn, determine the legality of the new final decision. Petitioners have not challenged the calculation of the accrued interest or argued that the Development Agreement's interest terms reach beyond the scope of the CID Act. Instead, Petitioners attack the Interest Project by way of attacking the legality of the twenty-four projects approved in the past. As, such, Court finds Petitioners' challenge to the

Interest Project fails. This is not because the Board approved prior interest payments similar or identical to the Interest Project, but because this Court cannot review the alleged unlawfulness of the twenty-four prior projects.

J. Eighth issue on appeal: do past final decisions of the District preclude new final decisions of the District from being challenged even if a challenge to the new final decision is brought within 60 days of the new decision?

This is another question that has been answered by the Court in its prior order and in subsections A and I above. The Court has not held that past final decisions preclude a petitioner from properly challenging a CID's new final decision. The Court has held that past final decisions are "considered valid and uncontestable, and the validity, legality and regularity of any such decision shall be conclusively presumed . . . and no court shall thereafter have authority to inquire into such matters." I.C. § 50-3119. As such, a collateral attack on the legality of a past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision.

K. Ninth issue on appeal: does the CID Act grant residents standing to challenge the formation of the District in contesting a new final decision of the District?

In short, the Court's answer to this question is: yes, if the challenge were brought within sixty days of the formation of the District. As discussed above, the Court's prior ruling in this proceeding raised a standing issue, finding the validity of de facto municipal corporations, municipal corporations, or quasi-municipal corporations authorized by statute can only be determined in a suit brought for that purpose in the name of the state or by some individual under authority of the state. *See Order re: the Record* at 5-6. However, the Court also finds that the CID Act expressly confers standing to "any person in interest who feels aggrieved" to challenge the District's formation, provided they do so within sixty days. I.C. § 50-3119. The Court relies on the express language of section 50-3119, not the standing issue raised earlier, in declining to evaluate the District's formation and prior decisions, which are "considered valid and uncontestable" after the

sixty-day appeal window has closed. While Petitioners were not homeowners when the District was formed and when some prior final decisions were made, the CID Act allowed challenges, and none were filed.

L. Tenth issue on appeal: does the CID Act permit a court to examine past events in order to determine whether a new final decision being challenged is lawful?

Petitioners' tenth issue on appeal has, again, already been decided by this Court. It goes without saying that a court can consider certain past events to determine the legality of a new final decision. For example, the CID Act requires that CIDs finance only community infrastructure "consistent with the general plan." I.C.§ 50-3105. In this case, that is the Harris Ranch Specific Plan. If a petitioner were to argue that a new final decision was inconsistent with a district's general plan, then a court would of course be permitted to examine the general plan and its crafter's intent to determine whether the new decision is consistent with the plan.

Again, what a court *cannot* do is examine the legality of a district's formation or prior final decisions after the sixty-day window has closed, even if the new final decision builds upon or arises from that prior decision. This is because prior decisions are

> *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 (emphasis added). Every new final decision does *not* open the door for collateral attacks on a district's formation or prior decisions. Petitioners' references and objections to past events may be relevant context respecting the 2021 Resolutions, but such collateral attacks on prior final decisions are time barred and this issue on appeal is denied.

M. Eleventh issue on appeal: whether the Idaho Constitution permits the District to issue debt and levy the related property taxes based on the vote of at most one person who will never pay the taxes?

Petitioners' next argument is that the Bond Resolution was not approved by two-thirds of the qualified electors within the District in violation of Article VIII, Section 3 of the Idaho Constitution. *Petitioners' Brief* at 61-65. That provision provides:

> No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose....

Idaho Const. art. VIII, § 3. Petitioners contend the 2010 General Obligation Bond Election does not satisfy this requirement because the election was illegitimate and because Article VIII, Section 3 requires "that then-existing voters and taxpayers in a then-existing city, county or school district, are given the constitutional right to vote." *Petitioners' Brief* at 61. Opponents respond that the 2010 General Obligation Bond Election satisfies the requirements of Article VIII, Section 3. *Respondents' Brief* at 51-52; *Intervenor's Brief* at 37-38. On this issue, Petitioners deny they are arguing that a new bond election needed to occur in 2021 or that a bond election cannot approve the issuance of bonds in series. *Reply Brief* at 39. The Court finds, however, that the upshot of their argument is that a new election would be required to issue a bond whenever the "then-existing voters" in the District change. This essentially amounts to a facial challenge of a CID's authority to issue bonds in a series, as the "then-existing voters" in a CID are all but guaranteed to change throughout a year.

First, and as discussed in previous sections, the Court is without authority to consider any of Petitioners' arguments stemming from the legitimacy, legality, or propriety of the 2010 General Obligation Bond Election. The 2010 General Obligation Bond Election authorized the District to

incur indebtedness and to issue general obligation bonds in the principal amount of up to $50 million, in one or more series, to be repaid over a course of thirty years. *See A.R.* 65. That election was a final decision conclusively presumed to be valid and cannot be revisited. Indeed, the record shows the Board held a special election in 2010 in which two-thirds of the current "qualified electors" voted. *Id.* No party raised a challenge to the electors' qualifications or to the election's legitimacy in 2010, and there is no dispute that the CID Act allows a district to approve bonds in series.

Second, the Court does not find that section 50-3108(3) of the CID Act facially violates Article VIII, Section 3 of the Idaho Constitution. Section 50-3108(3) states:

> If two-thirds (2/3) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount *without the further vote of the qualified electors.*

I.C. § 50-3108(3) (emphasis added). Petitioners have expressly disavowed a facial challenge despite it being the obvious extension of their "then-existing voters" argument. For that reason, the Court declines to find that section 50-3108(3) facially violates Article VIII, Section 3 of the Idaho Constitution.

Moreover, Petitioners' argument on that Article VIII, Section 3 facially requires a vote of all "then-existing voters" ignores the fact that prospective homeowners have, at a minimum, constructive notice of the District's existence, the 2010 General Obligation Bond Election, and the $50 million in bonds it authorized. *See A.R.* at 976-981. In Idaho

> "A purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." *W. Wood Invs., Inc.*, 141 Idaho at 86, 106 P.3d at 412. This is a "long-established" principle by which this Court imputes constructive notice of every fact

> shown by the records, and what an examination of the records would have disclosed. *See Kalange v. Rencher*, 136 Idaho 192, 195, 30 P.3d 970, 973 (2001). Recorded conveyances that will impute constructive notice include recorded boundary line adjustments and recorded covenants and restrictions. *See Adams v. Anderson*, 142 Idaho 208, 210, 127 P.3d 111, 113 (2005); *W. Wood Invs., Inc.*, 141 Idaho 75, 86, 106 P.3d 401, 412 (2005).

Davis v. Tuma, 167 Idaho 267, 275, 469 P.3d 595, 603 (2020). Here, the special taxes associated with the bonds were not foisted upon the District's homeowners without notice or consent. The District's homeowners had notice of, and consented to, the taxes associated with the bonds when they chose to purchase property in the District.

Because there is evidence two-thirds of the qualified electors approved up to $50 million in serial bonds to be issued in 2010, no constitutional violation has been established. Buyer's remorse regarding a known obligation on real property is not a violation of the two-thirds voter approval requirement found in Article VIII, Section 3 of the Idaho Constitution. The series of bonds approved in 2010 forecloses the need for additional qualified elector approval of the 2021 Resolutions. Of course, if the District were to issue bonds in excess of the $50 million authorized in the 2010 General Obligation Bond Election, a new vote would be required.

N. Twelfth issue on appeal: can the City use a special, limited purpose "District" under its complete control to incur tens of millions of dollars in debt and to levy over $100 million in property taxes without having to comply with the two-thirds voter approval requirement under the Idaho Constitution?

Petitioners next argue the District is an alter ego of the City and that the Bond Resolution therefore violates Article VIII Section 3 of the Idaho Constitution because it was not approved by a City-wide election. *See Petitioners' Brief* at 57-67; *Reply Brief* at 39-42. Again, Article VIII, Section 3 of the Idaho Constitution provides:

> No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year,

> without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose....

Idaho Const. art. VIII, § 3. Under Petitioners' theory, the District is controlled by the City and, as a result, "[t]he authorization of the 2021 Bonds violates the constitutional voter approval requirement because there has not been a City-wide election to approve its issuance." *Petitioners' Brief* at 57. Opponents respond that the District is not an alter ego of the City and that the Bond Resolution was properly passed as one of the series of bonds authorized by the 2010 General Obligation Bond Election. *Respondents' Brief* at 51-54; *Intervenor's Brief* at 33-38.[16] As such, the Court must decide whether the District is an alter ego of the City.

Petitioners rely on a line of cases in which the Idaho Supreme Court has considered the question of whether an entity created by a local government is merely of a scheme to circumvent the prohibitions of Article VIII, Section 3 of the Idaho Constitution. *See, e.g., O'Bryant v. City of Idaho Falls,* 78 Idaho 313, 303 P.2d 672 (1956); *Wood v. Boise Junior Coll. Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959); *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972); *Urb. Renewal Agency of City of Rexburg v. Hart*, 148 Idaho 299, 222 P.3d 467 (2009).

For example, in *O'Bryant*, the Supreme Court held that an ordinance of the City of Idaho Falls creating a cooperative with the power to issue bonds was unconstitutional because that cooperative was merely an alter ego of the City of Idaho Falls. 78 Idaho at 326, 303 P.2d at 679. There, the City of Idaho Falls passed an ordinance granting an exclusive franchise to a supposedly

[16] Additionally, the parties disagree about whether Petitioners' argument, which is based on the degree of control the City exercises over the District, is a facial challenge to the constitutionality of the CID Act. *Intervenor's Brief* at 35; *Reply Brief* at 40. Petitioners argue they are only challenging the Bond Resolution and not the constitutionality of the CID Act itself. The Court agrees with Intervenor that this alter ego argument would be generally applicable to any CID because of the CID organizational requirements set forth in Idaho Code section 50-3104 require a high degree of interconnectedness between a district and city or county in which it resides.

non-profit cooperative association to construct, maintain, and operate natural gas distribution infrastructure in Idaho Falls. *Id.* at 317, 303 P.2d at 673. The association's express purpose was to "promote the common good and general welfare of the said City and, as gas consumers, the members of this Association, and also the inhabitants and commercial and other enterprises of said City and the surrounding territories. . . ." *Id.* at 321, 303 P.2d at 675. The Idaho Supreme Court found the cooperative association was "an instrumentality of and controlled by the City of Idaho Falls" and part of a "plan and design devised to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes; and to exercise powers not granted to a municipality." *Id.* at 324, 303 P.2d at 677; 327, 303 P.2d at 679.

In *Wood,* the Supreme Court considered whether a junior college housing commission created pursuant to Idaho Code section 33-2122 was an alter ego of the Boise Junior College District and thus subject to the prohibitions of Article VIII Section 3 of the Idaho Constitution. 81 Idaho 379, 342 P.2d 700. The Court focused on the interconnectedness of the commission and the Boise Junior College District and the amount of control the Boise Junior College District exercised over the commission. In finding that the commission was not an alter ego of the Boise Junior College District, the Court noted that "[i]n enacting legislation permitting the creation of the housing commissions, clearly the Legislature intended a high degree of cooperation to exist between the junior college districts and the housing commissions for the purpose of providing students of the district with satisfactory housing." *Id.* at 384, 342 P.2d at 702.

More recently, the Idaho Supreme Court has considered alter ego arguments in the context of the Idaho Urban Renewal Act (the "IURA"). *See Boise Redevelopment Agency v. Yick Kong Corp.,* 94 Idaho 876, 499 P.2d 575; *Urb. Renewal Agency of City of Rexburg v. Hart,* 148 Idaho 299, 222 P.3d 467. The IURA provides for the establishment in each municipality of an "urban

renewal agency," which cannot exercise any powers until the proper findings have been made by the local governing body. I.C. § 50-2006. After such findings are made, an urban renewal agency possesses broad powers allowing it to undertake and carry out urban renewal projects within its area of operation. *See* I.C. § 50-2007.

In *Yick Kong,* the appellants asserted the Boise Redevelopment Agency, created pursuant to the IURA, was merely an alter ego of the City of Boise. *See Boise Redevelopment Agency v. Yick Kong Corp.,* 94 Idaho 876, 499 P.2d 575. There, the appellants based their alter ego theory on the necessity for a finding of deteriorated areas by the City of Boise prior to the Boise Redevelopment Agency being able to exercise any authority, to the appointment of the Boise Redevelopment Agency's commissioners by the Boise Mayor and City Council, and to the ability of the Boise Mayor to remove the Boise Redevelopment Agency's commissioners. The Court found the Boise Redevelopment Agency was not an alter ego of the City of Boise and in doing so noted:

> [The Boise Redevelopment Agency]is an entity of legislative creation and it is the legislature that established its powers, duties and authorities. The legislature, in what we may assume to be an effort to maintain some local voice in the question of whether a particular municipality had a need for urban renewal, required a finding of need by a municipality prior to the time an urban renewal agency could come into existence. While the particular city may trigger the existence of the plaintiff, it cannot control its powers or operations.

Id. at 881, 499 P.2d at 580.

The Idaho Supreme Court revisited the alter ego theory in the IURA context decades later in *Hart.* 148 Idaho at 302, 222 P.3d at 470. There, the appellant argued the Urban Renewal Agency of the City of Rexburg was merely an alter ego of the City of Rexburg. *Id.* The appellant acknowledged the *Yick Kong* holding but argued that amendments to the IURA enacted after the *Yick Kong* decision rendered the holding in that case inapposite. *Id.* at 302, 222 P.3d at 470. The

Court summarized the relevant amendments to the IURA, rejected the appellant's argument, and affirmed *Yick Kong:*

> Four years after our decision in *Yick Kong,* the Legislature amended I.C. § 50–2006(b) to provide that by enactment of an ordinance, the local governing body may initially appoint and designate itself to be the board of commissioners of the urban renewal agency or may terminate the existing board and install itself as the board. 1976 Idaho Sess. Laws, ch. 256, p. 872. Ten years after that, the Legislature amended I.C. § 50–2017 by deleting language that prohibited a "commissioner or other officer of any urban renewal agency ... [from holding] any other public office under the municipality other than his commissionership or office with respect to such urban renewal agency." 1986 Idaho Sess. Laws, ch. 10, p. 52. Hart argues that, as a result of these amendments, there is now no real difference between the municipality and the urban renewal agency, i.e., that the urban renewal agency is the "alter ego" of the municipality. Thus, he argues, when the agency finances urban renewal through revenue allocation financing, its conduct violates the constitutional limitations on municipal conduct found in Article XIII, §§ 3 and 4. The 1976 amendment to I.C. § 50–2006(b)(2), upon which Hart relies, provides that even if the city governing body does appoint itself, the commissioners "shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, *entirely separate and distinct from the municipality,* to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended." 1976 Idaho Sess. Laws, ch. 256, p. 872 (emphasis added). The removal procedures set forth in the Law remain unchanged since our decision in *Yick Kong.* I.C. § 50–2006(b)(1) ("For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearings and have had an opportunity to be heard in person or by counsel.") Even as amended, the Law does not allow a city to usurp the powers and duties of the urban renewal agency. Thus, we conclude that the amendments to I.C. § 50–2006 and 50–2107 do not permit us to distinguish the holding in *Yick Kong.*

Id. at 302–03, 222 P.3d 470–71 (emphasis in original).

Here, Petitioners argue the District is an alter ego of the City because the City has more control over the District than the cities in *Yick Kong* and *Hart* had over the urban renewal agencies. *See Petitioners' Brief* at 57-67*; Reply Brief* at 39-42. The Court concedes there is a high degree of interrelatedness between City officials and the District. The CID Act itself requires that three members of the City Council serve as the District's Board, that the City Treasurer be the District's Treasurer, and that the City Clerk be the Clerk of the District. I.C. § 50- 3104. Indeed, the District

has no full-time staff, instead contracting "with the City of Boise and other publicly-bid contractors to support its operations." *A.R.* at 55. Nonetheless, in light of the Idaho Supreme Court's guidance in *Yick Kong* and *Hart,* the Court finds that the District is not an alter ego of the City.

It is significant that the District, much like a junior college housing commission or an urban renewal agency, "is an entity of legislative creation and it is the legislature that established its powers, duties and authorities." *Yick Kong Corp.*, 94 Idaho at 881, 499 P.2d at 580. The caselaw discussed above demonstrates that Idaho courts are deferential to the presumption of an entity's autonomy when the entity is a creature of statute. *See, e.g., Wood,* 81 Idaho at 383, 342 P.2d at 702 ("The degree of control exercised does not usurp the powers and duties of the housing commissioners. The housing commission is a separate entity from the Boise Junior College District, created pursuant to statutes of this State, and does not impose an obligation upon the taxpayers of the junior college district."). In contrast, the association in *O'Bryant* was an instrumentality created by the City of Idaho Falls without express statutory authority and for the purpose of circumventing constitutional requirements.

Of all the alter ego cases the parties rely on, the Court finds *Hart* to be the most instructive. The amendments to the IURA that preceded *Hart* significantly increased the potential interconnectedness between a city and an urban renewal agency. Those amendments allowed a local governing body to appoint and designate itself to be the board of an urban renewal agency, to terminate an existing board and install itself as the board, and permitted an urban renewal agency's commissioner and other officers to hold public office in the local governing body. *See Hart*, 148 Idaho at 302, 222 P.3d at 470. The CID Act, similarly, requires that a CID board be comprised of city council members. I.C. § 50- 3104. The amendments to the IURA thus made the

IURA much more akin to the CID Act in terms of control potentially exercised by the local governing body.

Nonetheless, the *Hart* Court, aware that a local governing body could now appoint itself as the board of an urban renewal agency, found that the IURA still "does not allow a city to usurp the powers and duties of the urban renewal agency." *Id.* 148 Idaho at 303, 222 P.3d at 471. In reaching its conclusion, the Court noted the amended IURA provides that even if the local governing body does appoint itself, the commissioners "shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended." I.C. § 50-2006(2). The CID Act contains a substantively identical provision:

> The district shall be separate and apart from any county or city. The members of the district board, when serving in their official capacity as members of the district board, shall act on behalf of the district and not as members of a board of county commissioners or as members of a city council.

I.C. § 50-3104(8).

The Idaho Supreme Court's analysis in *Hart* and *Yick Kong* is by and large applicable in the context of the CID Act. The degree of integration between a city and an urban renewal agency with a city council board is comparable to that of a city and a CID. Even in such circumstances, the Supreme Court has rejected alter ego theories, finding "the close association between the two entities at most shows two independent public entities closely cooperating for valid public purposes." *Yick Kong Corp.,* 94 Idaho at 882, 499 P.2d at 581. Moreover, the CID Act and the IURA both expressly provide that the entities created under them are separate and distinct from the local governing bodies, a fact the *Hart* Court found significant. The Idaho Supreme Court has consistently held that "where the public entity created has no power to tax or encumber the assets

of the body creating it, are not violative of the constitutional restrictions of Article 8." *Bd. of Cnty. Comm'rs of Twin Falls Cnty. v. Idaho Health Facilities Auth.*, 96 Idaho 498, 504, 531 P.2d 588, 594 (1974); *See also Wood,* 81 Idaho at 384, 342 P.2d at 702 ("The housing commission is a separate entity from the Boise Junior College District, created pursuant to statutes of this State, and does not impose an obligation upon the taxpayers of the junior college district."). That is the case here, as the District cannot create any obligation on behalf of the City. For these reasons, the Court finds the District is not an alter ego of the City and that the Bond Resolution did not require a City-wide election.

The CID Act's goal is to encourage the funding and construction of regional community infrastructure by allowing developers to front the costs of such infrastructure and to have those costs repaid to the developers over time. The infrastructure constructed pursuant to the CID Act exists for the benefit of the property owners in the District, not for the City of Boise or the Developer. This issue on appeal is denied.

O. Thirteenth issue on appeal: whether the Idaho Constitution permits the District to levy tens of millions of dollars of special property taxes on one group of homes while nearly identical neighboring homes pay nothing, even though projects financed by those taxes benefit both groups of homes equally?

The thirteenth issue on appeal is whether the *ad valorem* property taxes levied pursuant to the Bond Resolution violate Article VII, Section 5 of the Idaho Constitution and the Equal Protection Clauses of the Idaho and Federal Constitutions. *Petitioners' Brief* at 67-71. Petitioners argue the special *ad valorem* property taxes imposed pursuant to the Bond Resolution are not uniform across similar classes of property within the City or within the greater Harris Ranch area. *Id.* at 69. Opponents respond that the relevant question is not whether the *ad valorem* taxes are uniform within the City or the greater Harris Ranch area, but whether the *ad valorem* taxes are uniform within the District. *Respondents' Brief* at 54-55; *Intervenor's Brief* at 38-39. The Court agrees that

the relevant inquiry is whether the *ad valorem* taxes are uniform within the District. Because there is no showing the *ad valorem* property taxes imposed pursuant to the Bond Resolution are not uniform within the District, the Court finds the Bond Resolution does not violate Article VII, Section 5 of the Idaho Constitution or the Equal Protection Clauses of the Idaho and Federal Constitutions.

Article VII, Section 5 of the Idaho Constitution requires that: "All taxes shall be uniform upon the same class of subjects *within the territorial limits of the authority levying the tax* ...." Idaho Const. art. VIII, § 3 (emphasis added). Article I, Section 2 of the Idaho Constitution states: "All political power is inherent in the people. Government is instituted for their equal protection and benefit ...." Idaho Const. art. I, § 2. Amendment XIV, Section 1 of the United States Constitution provides that: "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. Moreover, the Idaho Supreme Court has held that "[b]oth Art. 7, § 5, of the Idaho Constitution, and the federal equal protection clause proscribe unlawful discrimination by taxing authorities. While various standards have been articulated under either provision, there is little practical distinction between the two. A taxing plan offensive to one also violates the other." *Justus v. Bd. of Equalization of Kootenai Cnty.*, 101 Idaho 743, 746, 620 P.2d 777, 780 (1980) (internal citations omitted).

Here, the "authority levying the tax" is the District. As discussed in Section N above, the Court rejects Petitioners' argument that the District is a mere alter ego of the City. As such, the requirement imposed by Article VII, Section 5 of the Idaho Constitution is that all taxes be uniform upon the same class of property within the territorial limits of the District. Idaho law allows for the creation of special taxing districts vested with taxing authority that must be exercised in accordance with the requirements of the Idaho Constitution and such district's enabling statute.

There has been no showing that the special *ad valorem* taxes are not uniform within the District. The same analysis holds true for the Equal Protection Clauses, which "proscribe unlawful discrimination *by taxing authorities*." *Justus,* 101 Idaho at 746, 620 P.2d at 780 (emphasis added). The taxing authority at issue here is the District, and there has been no showing of unlawful discrimination by the District.

Petitioners contend this holding would "eviscerate this Constitutional requirement," hypothetically opening the door for the Legislature to adopt legislation that authorizes a city to establish a special taxing district that includes only those properties whose owners voted in favor of the creation of the district. *Petitioners' Brief* at 70. Under this hypothetical legislation, the special property taxes imposed by such a district would not apply to those properties until after they were later sold, meaning "the only people who would have to pay the taxes would be all the people who, by definition, were deprived of any opportunity to vote on them." *Id.* This argument, however, again ignores that potential homebuyers have notice of a taxing district's existence and are not obliged to purchase property there. Anybody that choses to move into a special taxing district after its formation is likely to pay additional taxes that they did not vote on. Such an arrangement does not violate Article VII, Section 5 of the Idaho Constitution.

P. Fourteenth issue on appeal: whether the Idaho Constitution permits the District to issue indebtedness payable from special property taxes to make payments to the Developer for facilities the Developer would otherwise have to pay for themselves as do all other developers in the State?

The next issue on appeal is whether the 2021 Resolutions amount to an unconstitutional lending of credit to the Developer in violation of Article VIII, Section 4 and Article XII, Section 4 of the Idaho Constitution. *Petitioners' Brief* at 71-74. Petitioners argue:

> The primary if not sole purpose of the District is to allow the City to use the District's credit, including its borrowing and taxing powers, to finance and pay for costs that would otherwise have to be paid and financed by the Developer. That is

> the essence of an unconstitutional lending of credit to — and raising of money for — a private enterprise by a local government. The issuance of the 2021 Bond pursuant to the Bond Resolution and the payments to the Developer pursuant to the Payments Resolution therefore would violate Article VIII, Section 4 and Article XII, Section 6 of the Idaho Constitution.

Id. at 74. Again, Petitioners maintain they are not bringing a facial challenge to the CID Act, alleging it "is the City's and the District's improper utilization of the CID Act that renders their actions unconstitutional, not the language of the CID Act itself." *Reply Brief* at 45. Opponents respond that Petitioners' argument is a facial challenge in that it would be generally applicable to all CIDs and that the CID Act survives this challenge as it has a primarily public purpose. *Respondents' Brief* at 56-58; *Intervenor's Brief* at 39. As an initial matter, the Court agrees with Opponents that Petitioners' argument–essentially that the District's issuance of Bonds to repay the Developer for previously built community infrastructure violates the Idaho Constitution–strikes at the core financing mechanism in the CID Act and is a facial challenge in all but name. In Idaho, there is a "strong presumption of constitutionality to which every legislative enactment is entitled." *Bd. of Cty. Comm'rs of Twin Falls Cty. v. Idaho Health Facilities Auth.*, 531 P.2d 588, 591 (Idaho 1974).

Article VIII, section 4 of the Idaho Constitution provides:

> No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

Idaho Const. Art. VIII, § 4. Petitioners also cite to Article XII, section 4 of the Idaho Constitution, but that provision applies to counties, towns, cities, or other municipal corporations. Opponents argue this section is inapplicable to the District. The Court need not decide the question because the Court's analysis with respect to Article VIII, section also 4 applies to Article XII, section 4.

"The word 'credit' as used in this provision implies the imposition of some new financial liability upon the State which in effect results in the creation of State debt for the benefit of private enterprises." *Hansen v. Kootenai Cnty. Bd. of Cnty. Comm'rs*, 93 Idaho 655, 662, 471 P.2d 42, 49 (1970) (quoting *Engelking v. Inv. Bd.*, 93 Idaho 217, 458 P.2d 213 (1969)). Moreover, "it is obvious that the framers of the Idaho Constitution had no intention of limiting the power of municipalities to *contract* in furtherance of the public interest, but rather of limiting *loans* or *donations* of public credit." *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 954, 703 P.2d 714, 718 (1985) (emphasis in original).

Petitioners rely upon the Idaho Supreme Court's decision in *Village of Moyie Springs, Idaho v. Aurora Manufacturing Co.*, 82 Idaho 337, 353 P.2d 767 (1960). There, the Court struck down an Idaho statute which authorized cities to issue revenue bonds to finance the acquisition of land and construction of buildings which were to be leased or sold to private enterprise. *Id.* The statute's stated purpose was to increase employment and stabilize the economy. The Village of Moyie Springs, pursuant to the statute, enacted an ordinance providing for issuance of revenue bonds, payable from revenues derived from the project, for the acquisition of a site and construction of an industrial plant and authority to enter into a lease of the premises with the defendant Aurora Manufacturing Company. The Court held that the statute and ordinance were unconstitutional as violations of Art. 8 § 4 and Art. 12 § 4 of the Idaho Constitution. *Id.* The Idaho Supreme Court has since explained that *Moyie Springs* "stands for the proposition that a violation of the lending of credit provisions of the Idaho Constitution will occur where the putative public purpose to be served by a pledge of municipal credit is but secondary or incidental to a private purpose." *Utah Power & Light Co. v. Campbell*, 108 Idaho at 955, 703 P.2d at 719. Moreover,

"the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction." *Id.*

In is *Hansen v. Kootenai County Bd. of County Commissioners,* 93 Idaho 655, 471 P.2d 42 (1970), the Idaho Supreme Court revisited *Moyie Springs*. There, the plaintiff argued that Kootenai County's practice of leasing of a portion of the county fairgrounds to a racetrack company, along with expenditures made by the county for insurance premiums, extension of a water line to the track and road work, constituted violations of Article VIII Section 4 and Article XII Section 4 of the Idaho Constitution. *Id.* The Court held that the County's activity violated neither provision and distinguished *Moyie Springs*:

> It is our opinion that *Village of Moyie Springs, Idaho v. Aurora Manufacturing Co.*, supra, is distinguishable from the case at bar. The distinction lies in the fact that in that case the city financed with its own funds the acquisition of land which was admittedly not to be used by the village for public purposes, but rather was at the outset intended to be leased to private business. In the present case, on the other hand, the fairgrounds are utilized by the county for the public purpose of conducting the county fair and a portion thereof is leased to a private concern only when not needed for public purposes. It is readily apparent that the Village of Moyie Springs had no use for the land and industrial site it acquired other than to lease it to the Aurora Manufacturing Company, whereas in the present case Kootenai County does have a public use for the fairgrounds and leases them only when not needed for the public purposes.

Id. at 660–661, 471 P.2d at 47–48.

Here, the Court agrees with Opponents that the CID Act has a primarily public purpose and that the facts of this case align more closely with *Hansen* than *Moyie Springs.* As the *Hansen* Court stressed, the land the village acquired in *Moyie Springs* was not to be used by the village for public purposes but instead was intended to be leased for private business. The primary beneficiary was private business with the only benefits to the village being indirect economic benefits. Here, in contrast, the District, and by extension the public, directly benefit from the construction and acquisition of community infrastructure. The CID Act only serves as a means of repaying

developers for constructing infrastructure that will benefit the District. As discussed above, the CID Act requires community infrastructure to be publicly owned and has an expressly public purpose—to encourage funding and construction of infrastructure ahead of growth and to provide a way for new growth to pay for itself. I.C. § 50-3101(1).

Moreover, Petitioners, in arguing they are not bringing a facial challenge to the CID Act, concede that their argument on this issue is contingent upon the Court's finding that the 2021 Resolutions finance "project improvements" and not "community infrastructure:"

> If the CID Act had been utilized as its provisions require, it would have been used to finance regional community infrastructure, and not "project improvements" within Harris Ranch. Thus, for example, a city and a developer might agree to utilize a CID to finance a portion of the costs of a regional park, or a public safety facility, or regional transportation facilities, in each case that would not otherwise be required as a condition of the development. But, as Residents have explained *supra*, all but one of the 2021 Projects constitute "project improvements" which the Developer would have had to construct and pay for themselves in the absence of the District. See Section A.1., pp. 5-9. It is these projects, not the CID Act, that Residents contend run afoul of Idaho's Constitution.

Reply Brief at 45. As discussed in Section C above, the Court declines to make such a finding because it was not presented to the Board. As such, Petitioners' argument can also be rejected on the basis that it is an extension of an argument not raised below.

Q. Fifteenth issue on appeal: does the CID Act permit the District to adopt the challenged Resolutions even though the properties within the District are not contiguous and were not at the time of its formation?

Finally, Petitioners contend the 2021 Resolutions are unlawful because the District consists of several noncontiguous areas in violation of the CID Act. *Petitioners' Brief* at 74-77. Petitioners argue the addition off the noncontiguous land occurred before the District was formed because the formation of a CID is a process that is not complete until the board of a CID has its first meeting and appoints its officers. *Id.* at 75. According to their theory, by adding noncontiguous land to the District ten days after the City's resolution ordering the District's formation, the City and

Developer, by predesign, did "in two baby steps what the CID Act expressly prohibits them from doing in one." *Reply Brief* at 47.

The Court need not address the merits of Petitioners' fifteenth issue on appeal because the Court agrees with Opponents that the decision to amend the District's boundaries occurred in 2010 and cannot be challenged here. *A.R.* at 55. As the Court has discussed in great detail above, a collateral attack on the legality of a past project, decision, or the formation of a district *cannot* be the basis for a challenge to a new final decision. I.C. § 50-3119.

Moreover, the Court disagrees with Petitioners' position that a CID is not formed until its first board meeting. Idaho Code section 50-3103(2) provides:

> After hearing and considering any and all of the testimony given, the governing body shall thereupon approve a resolution either denying the petition [to form the CID] or granting the same and, if granting the same, shall fix and describe in the resolution the boundaries of the proposed district and order the formation of the same.

I.C. § 50-3103(2). In the Court's view, this language means a CID is formed when the local governing body issues the resolution ordering the CID's formation. While the CID Act requires the District to be contiguous at the time of its formation, it allows noncontiguous land to be added later. I.C. § 50-3102(5). There is no minimum amount of time required to have passed before a CID can add noncontiguous land. *See Id.* Here, the Boise City Council adopted Resolution No. 20895 on May 11, 2010, formally ordering the District's formation. *A.R.* at 23, 55. The City expanded the District's boundaries in Resolution No. 20944, ten days later. *Id.* at 55, 1002 fn. 2. The City was under no obligation to wait for the District's first board meeting before approving Resolution No. 20944. Accordingly, the Court rejects Petitioners' fifteenth issue on appeal.

R. Sixteenth issue on appeal: are residents entitled to attorney fees under the private attorney general doctrine if they prevail in this action?

Petitioners argue that they are entitled to fees under the private attorney general doctrine if they prevail in this appeal. *Petitioners' Brief* at 77-79. In Idaho, costs and fees will not be awarded to a non-prevailing party. *Idaho Indep. Bank v. Frantz*, 162 Idaho 509, 517, 399 P.3d 836, 844 (2017), *reh'g denied* (Aug. 15, 2017) (citing *Cummings v. Stephens*, 157 Idaho 348, 336 P.3d 281, 300 (2014)). As the Court has rejected or declined to consider all sixteen of Petitioners' arguments brought on appeal, the Court finds Petitioners are the non-prevailing party. As such, the Court need not reach the elements of the private attorney general doctrine.

S. Seventeenth issue on appeal: are Opponents entitled to attorney fees?

Opponents have also asked for attorney fees to be awarded. Respondents believe they should be awarded attorney fees if they are the prevailing party pursuant to Idaho Code section 12-117 because "Petitioners' factual and legal contentions have shifted dramatically from prior positions," and "Petitioners' Brief runs through a series of issues and topics that have nothing to do with this proceeding and which the Court has already excluded, in direct disregard of the CID Act text and the Record Decision." *Respondents' Brief* at 59-60. Intervenor acknowledges that it is not eligible for attorney fees under section 12-117, but instead argues attorney fees would be appropriately awarded as a matter of the Court's discretion under the Rule 11 of the Idaho Rules of Civil Procedure. *Intervenor's Brief* at 43.

Idaho Code section 12-117(1) provides that

> in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

I.C. § 12-117(1). The statute also permits a partial award of fees when a party prevails on a portion of a case. I.C. § 12-117(2). The award is mandatory if the Court finds the non-prevailing party acted without a reasonable basis in fact or law. Furthermore, Section 12-117 "is the exclusive means for awarding attorney fees for the entities to which it applies." *City of Osburn v. Randel*, 152 Idaho 906, 910, 277 P.3d 353, 357 (2012) (quoting *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285,* 148 Idaho 630, 635, 226 P.3d 1277, 1282 (2010)).

Here, not all elements of section 12-117 are satisfied. The District is a political subdivision of the State and Petitioners are persons within the meaning of the statute. I.C. § 12-117(6)(c) ("'Person' means any individual, partnership, limited liability partnership, corporation, limited liability company, association or any other private organization"). And the District is the prevailing party based on the Court's above analysis. However, the Court does not find Petitioners' arguments were brought "without a reasonable basis in fact or law."

The Court finds Petitioners have acted in good faith, and while the Court ultimately disagrees with Petitioners, it finds they advanced cogent legal arguments that presented legitimate questions for the Court to address. Indeed, many arguments were close calls for the Court. The Court further agrees with Petitioners that an award of attorney fees under Idaho Code section 12-117 is less meritorious when the non-prevailing party has raised matters of first impression. *See E.g., Newton v. MJK/BJK, LLC*, 167 Idaho 236, 469 P.3d 23 (2020) (declining to award fees under section 12-117 where non-prevailing party raised matters of first impression). This is the first time the CID Act has been litigated, and Petitioners raised many complex matters of first impression challenging the legality of the District's decisions and, by implication, the CID Act itself.

The Court acknowledges Opponents' protest that some of Petitioners' arguments were based on a theory the Court had already expressly rejected in its *Order re: the Record.* The Court

was clear in its *Order re: the Record* that Idaho Code section 50-3119 precludes a court from considering a CID's formation or any final decision not challenged within sixty days. As discuses *ad nauseum*, after the sixty-day window closes, "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." I.C. 50-3119. And there is no doubt Petitioners raised several arguments that would necessarily require the Court to inquire into the legality of long past decisions.

Nonetheless, the Court declines to award attorney fees on these grounds. Petitioners raised debatable, albeit ultimately unpersuasive, reasons the Court should reconsider its *Order re: the Record.* In fact, the Court did reconsider the portion of the *Order re: the Record* relating to Petitioners' standing to bring this proceeding. Moreover, the Court understands Petitioners argued some issues the Court addressed in its *Order re: the Record* to ensure that those issues are preserved for appeal. As such, the Court declines to find Petitioners acted without a reasonable basis in fact or law. Respondents request for attorney fees pursuant to section 12-117 is denied.

Finally, the Court finds Intervenor is not entitled to attorney fees as a matter of the Court's discretion under Rule 11 of the Idaho Rules of Civil Procedure. Rule 11 sanctions "are not granted lightly and are imposed only in the most extreme cases in which the asserted claims have no reasonable chance of success." *Curzon v. Hansen*, 137 Idaho 420, 422, 49 P.3d 1270, 1272 (Ct. App. 2002) (citing *Sun Valley Shopping Center, Inc. v. Idaho Power Co.,* 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)). As Petitioners did not act without a reasonable basis in fact or law, this case clearly does not call for Rule 11 sanctions. While the Court may disagree with Petitioners'

arguments, it finds they were brought in good faith, and many raised interesting and debatable legal questions.

V. CONCLUSION

For the foregoing reasons, the Court denies Petitioners' Petition for Judicial Review. While aggrieved homeowners have standing to challenge a CID's final decisions, they must do so within sixty days as required by Idaho Code section 50-3119. After this window closes, a CID's decisions are considered valid and uncontestable and a collateral attack on the legality of a CID's formation, prior project, or past decision cannot be the basis for a challenge to a new final decision.

Moreover, the Court finds the 2021 Resolutions are not in violation of the CID Act, the District's Development Agreement, the Idaho Constitution, or the United States Constitution. While the Court understands why Petitioners feel aggrieved by the *ad valorem* taxes levied pursuant to the 2021 Resolutions, the Court is also mindful that nobody is obligated to purchase property within the District and that a purchaser of real property "is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." *W. Wood Invs., Inc. v. Acord*, 141 Idaho at 86, 106 P.3d at 412. As such, all claims in the Petition are denied and the Board's adoption of the 2021 Resolutions is affirmed. The Court denies Opponents' request for attorney fees as it finds Petitioners acted with a reasonable basis in fact or law.

IT IS SO ORDERED.

DATED this 25th day of April 2023.

Nancy A. Baskin

NANCY A. BASKIN
District Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on 4/25/23, I caused a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

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Thomas H. Clark Josh J. Leonard filing@clarkwardle.com *Attorney for Intervenor*	

Trent Tripple
Clerk of the District Court

By _____
Deputy Clerk

BB. Exhibit BB – Letter Dated, September 1, 2022, titled "Objection to Additional Reimbursements Requested by the Developer"

September 1, 2022

Members of the Board
Harris Ranch Community Infrastructure District No. 1 ("HRCID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Objection to Additional Reimbursements Requested by the Developer

Members of the Board:

The purpose of this letter is to express our objection to two more payments recently requested by the Harris Ranch developer ("Developer"), totaling more than ***$3.1 million***. The first is a requested payment of **$1.66 million** for the Dallas Harris South Subdivision No. 1 Road and Utility Improvements ("Dallas Harris South Project"). The second is a requested payment of **$1.46 million** for the Haystack Subdivision No. 1 Road and Utility Improvements ("Haystack Project").

Introduction

The Developer is requesting payment for the costs of constructing the following facilities in two relatively small areas in the middle of the Harris Ranch development:

(1) Dallas Harris South Project: three local access roads, related drainage facilities, and local sewer service lines south of Parkcenter Blvd. and north of Warm Springs Avenue, and

(2) Haystack Project: five additional local access roads, related drainage facilities, and local sewer service lines also south of Parkcenter Blvd. and north of Warm Springs Avenue.

The roads provide access to multifamily residences planned and under construction in the Harris Ranch development, and to other facilities that may later be part of the development on nearby blocks.[1] These facilities were needed first and foremost to provide access to adjacent homes and any businesses in the development, and to provide them sewer service.

[1] All the roads in question are classified as "local streets" by the Ada County Highway District. According to the ACHD Policy Manual, Sec. 7207.1, "The primary function of a local street is to serve adjacent property."

We object to these proposed payments primarily because they are impermissible under the Community Infrastructure District Act, Idaho Statutes, Secs. 50-3101 and following ("CID Act"). That is because these facilities do not constitute "system improvements" to regional public infrastructure eligible for financing from proceeds of development impact fees,[2] as required by the CID Act. Rather, the facilities constitute "project improvements" within the Harris Ranch development which do not provide a regional benefit but instead primarily serve only that development, and thus cannot be financed under the CID Act, as we will further explain below.

We also object to the proposed payments because these are facilities which every other real estate developer in the City must pay for out of its own pocket, and not from public moneys and special additional property taxes levied on a relatively small number of homeowners.

We have separately addressed our second objection in our prior letters to you last year. We thus will elaborate here only on our first objection.

Discussion

The HRCID has limited powers.

It is important to emphasize as a preliminary matter that the HRCID has limited powers not only pursuant to the CID Act but also as a matter of law generally. Sec. 50-3105(1) of the CID Act provides in relevant part as follows:

> A district formed pursuant to this chapter … is not a governmental entity of general purposes and powers, *but is a special limited purposes district, with powers only as permitted under this chapter* … [Emphasis added.]

This is consistent with the general common law rule (that is, court-developed rule) pursuant to which local governments generally have limited powers. That common law rule, referred to as "Dillon's Rule" (from an early treatise on municipal law first published more than a century ago), is that local governments, as creatures of state statutes, have only those powers expressly *granted* by state law or necessarily implied. This contrasts with private corporations, which have unlimited powers unless otherwise constrained by their articles of incorporation or expressly *limited* by law. Therefore, in order for the HRCID to do anything, it must first have express statutory authority to do so.

[2] Development impact fees, as you likely know, are one-time charges imposed on new development to pay for additions to and expansions of public infrastructure outside of the development which are needed because of such development. Such facilities, depending on the authorizing legislation, may include highways, roads, and bridges; water supply and distribution facilities; wastewater collection and treatment facilities; police, fire and other public safety facilities; schools; and parks and recreation areas.

CIDs in Other Jurisdictions Can Be Utilized to Finance Both "System Improvements" to Regional Public Infrastructure and "Project Improvements" within a New Development.

We note, by way of additional background, that statutes like the CID Act in other jurisdictions provide generally for the financing of two different types of public infrastructure. The first type of facilities (hereinafter, "Project Improvements") consists of the public infrastructure, typically *within* a new development, that directly and primarily serves new homes and the businesses, if any, in that development. Project Improvements include the construction of local access streets and sidewalks; local water, sewer, and stormwater service lines; landscaping; street signage and lighting; and neighborhood parks.

The second type of facilities (hereinafter, "System Improvements") consist of additions and expansions to public infrastructure, typically *outside* a new development, that primarily serve the broader region rather than the particular development, and which are needed in order to address the demands placed on those regional facilities by such new development. System Improvements include the construction or expansion of highways, expressways, interchanges, and arterial streets; regional water supply, stormwater management, and sewage treatment and disposal facilities; police, fire and other public safety facilities; and regional parks. See, for example, Arizona Community Facilities District Act, Arizona Revised Statutes, Secs. 48-701 and following.[3]

The definition of "public infrastructure" that can be financed under the Arizona statute is broad and includes facilities that constitute both System Improvements and Project Improvements. Arizona Revised Statutes, Sec. 48-701.13. But that definition limits the costs of System Improvements that can be financed by the taxing district to only the proportionate use of those System Improvements by properties within the district. That limitation, among others, was not included in the CID Act.

Idaho CIDs Can Only Finance *System* Improvements, and <u>Not</u> *Project* Improvements.

In our State, by contrast, the CID Act does *not* permit the financing of Project Improvements that primarily serve a particular development. Rather, the CID Act *only* permits the financing of System Improvements which primarily serve the broader region.

The Developer has requested payments for the Dallas Harris South Project and the Haystack Project on the supposed grounds that those facilities constitute "community infrastructure" eligible for financing under the CID Act. But they do not. All those facilities constitute Project Improvements within the Harris Ranch development which primarily serve the many residents and any future businesses in that development and not the broader region. Therefore, the Dallas Harris South and Haystack Projects cannot be financed under the CID Act.

[3] Idaho's CID Act appears to be based to a large extent on the Arizona statute, as many of their respective provisions are identical, although some key provisions were changed in the CID Act.

The CID Act. In the two "Completeness Letters" submitted by counsel to the Developer with respect to the Dallas Harris South and Haystack Projects,[4] counsel states in relevant part:

> All of the items included in the Payment Requests are eligible for reimbursement under the definition of community infrastructure. *Roadways are the first identified category of reimbursement*. The wastewater system and storm water improvements are also eligible under Idaho Code Section 67-8203(24) (internally referenced in Section 50-3102(2)), which includes "[w]astewater collection, treatment and disposal facilities" as well as "[s]tormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements." [Emphasis added.]

But the foregoing is not an accurate description of what the CID Act actually says. The definition of "community infrastructure" in the CID Act instead reads in relevant part as follows:

> Community infrastructure includes all public facilities as defined in section 67-8203(24), Idaho Code, and, to the extent not already included within the definition in section 67-8203(24), Idaho Code, the following:
>
> (a) ***Highways, parkways, expressways, interstates, or other such designations, interchanges, bridges, crossing structures***, and related appurtenances;
>
> (b) ***Public parking facilities***, including all areas for vehicular use for travel, ingress, egress and parking;
>
> (c) ***Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use*** for travel, ingress, egress and parking;
>
> (d) ***Public safety facilities***;
>
> (e) Acquiring interests in real property for community infrastructure;
>
> (f) Financing costs related to the construction of items listed in this subsection; and
>
> (g) ***Impact fees***. [Emphasis added.]

Idaho Statutes, Sec. 50-3102(2). Note that neither "roads" nor "streets" are included in that definition. Rather, the first listing instead is "Highways, parkways, expressways, interstates, or other such designations, interchanges, bridges, crossing structures, and related appurtenances." Those are all facilities for *regional* vehicular transit which primarily benefit the broader region, rather than facilities for local access within a development which primarily benefit its residents and businesses. This language alone suggests that local access roads within the Harris Ranch development cannot be financed under the CID Act.

Another indication that local access roads as well as related drainage facilities and local sewer service lines within the Harris Ranch development cannot be financed under the CID Act is the cross-reference in its definition of "community infrastructure" to the Development Impact Fee Act, Idaho Statutes, Secs. 67-8201 and following ("Development Fee Act"). As noted above, the

[4] We have included the two Completeness Letters and their attachments with this objection letter for your reference. They include maps and extensive detail regarding the two projects.

CID Act first defines "community infrastructure" to include "all public facilities as defined in section 67-8203(24), Idaho Code". That section of the Development Fee Act reads as follows:

> "Public facilities" means:
> (a) ***Water supply production, treatment, storage and distribution facilities***;
> (b) ***Wastewater collection, treatment and disposal facilities***;
> (c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any ***local components of state or federal highways***;
> (d) ***Stormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements***;
> (e) ***Parks, open space and recreation areas***, and related capital improvements; and
> (f) ***Public safety facilities, including law enforcement, fire stations and apparatus, emergency medical and rescue***, and street lighting facilities.
> [Emphasis added.]

The lists of "community infrastructure" that can be financed by a CID in Sec. 50-3102(2) of the CID Act and Sec. 67-8203(24) of the Development Fee Act, incorporated by reference, thus consist primarily of public facilities that by their nature serve the broader region and not just a particular development. Those include such things as highways, parkways, expressways, and interstates; trails; public safety facilities, including police, fire, and emergency medical facilities; water supply production, treatment and storage facilities; wastewater treatment and disposal facilities; stormwater retention, treatment and disposal facilities; and flood control facilities.

The list in the Development Fee Act does include facilities which could serve not only the broader region but also an individual development. Thus, for example, "roads" and "streets" are mentioned in Sec. 67-8203(24), as are "stormwater collection" and "wastewater collection" facilities. But the introductory provisions of the CID Act as well as related provisions of the Development Fee Act, and the legislative history of the CID Act to which they lead, reveal the more limited meaning of those terms.

The first section of the CID Act provides in relevant part as follows:

> (1) The purpose of this chapter is:
> (a) To encourage the funding and construction of ***regional community infrastructure*** in advance of actual developmental growth that creates the need for such additional infrastructure;
> (b) To provide a means for the ***advance payment of development impact fees*** established in chapter 82, title 67, Idaho Code***, and the community infrastructure that may be financed thereby***; and

(c) To create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself. [Emphasis added.][5]

Idaho Statutes, Sec. 50-3101. The stated purpose of the CID Act, therefore, is to provide "additional financial tools and financing mechanisms" for "the funding and construction of *regional* community infrastructure" ***"that may be financed" by "development impact fees"***, as well as the advance payment of development impact fees themselves. The question therefore is what can be financed from development impact fees.

The Development Fee Act. Under the Development Fee Act, only System Improvements which primarily serve the broader region can be financed with development impact fees, and <u>not</u> Project Improvements which primarily serve a particular development. In fact, the Development Fee Act *expressly prohibits* the financing of public facilities which primarily serve a particular development, as further explained below. Those, of course, would include the local access roads, related drainage facilities, and local sewer service lines, among other things, in the Harris Ranch development.

The Development Fee Act distinguishes between "project improvements" and "system improvements". Those terms are defined in the Act, respectively, as follows:

(22) "Project improvements" means ***site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project***. [Emphasis added.] [Sec. 67-8202(22)]

* * *

(28) "System improvements," ***in contrast to project improvements***, means capital improvements to public facilities designed to provide service to a service area … [Emphasis added.] [Sec. 67-8202(28)][6]

The Development Fee Act provides clearly and repeatedly that development impact fees can *only* be used to pay for "system improvements" and *not* for "project improvements". For example, Sec. 67-8210(2) states: "Development impact fees *shall not be used for any purpose other than system improvement costs* to create additional improvements to serve new growth." (Emphasis

[5] We note that subsection (c) is *not* a separate and additional category of improvements that can be financed, as the three subsections are listed in the conjunctive as the single "purpose of this chapter", rather than three separate "purposes".

[6] The term "service area" is separately defined to mean a geographic area identified by a local government authorized to impose impact fees, based on sound planning and/or engineering principles, which is served by the local government's public facilities. Sec. 67-8203(26). The Ada County Highway District defines *all* of Ada County as a *single* service area for purposes of its impact fees for roads, streets, and bridges. Ord. No. 231A, Sec. 77317.1. The City of Boise defines the *entire city* as a single service area for purposes of its impact fees for regional parks, fire and policies facilities, and all of Southeast Boise and Barber Valley for purposes of its local parks impact fees. City of Boise Code, Secs. 9-2-6 to 9-2-9. The City does not have an impact fee for wastewater facilities but does impose connection fees which are uniform across the City. City of Boise Code Sec. 10-2-6.

added.) Sec. 67-8203(9) provides in relevant part: "'Development impact fee' means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of *system improvements* needed to serve development." (Emphasis added.) Sec. 67-8204(5) provides in relevant part: "The decision by the governmental agency on an application for an individual assessment … shall specify the *system improvement(s)* for which the impact fee is intended to be used." (Emphasis added.) Sec. 67-8204(11) provides in relevant part: "A development impact fee ordinance shall provide that development impact fees shall *only* be spent for the category of *system improvements* for which the fees were collected …" (Emphasis added.) And Sec. 67-8209(1) states: "In the calculation of development impact fees for a particular project, … *[c]redit or reimbursement shall not be given for project improvements*." (Emphasis added.)

As the Development Fee Act only permits the use of development impact fees to pay the costs of "system improvements" and not "project improvements", and the CID Act only permits the funding of regional infrastructure eligible for funding from development impact fees, a CID can only be used to finance "system improvements" and not "project improvements". The Dallas Harris South and Haystack Projects consist of local access streets, related drainage facilities, and local sewer service lines. These facilities are all located in the middle of the Harris Ranch Development and are not designed to provide a regional benefit. Rather, those facilities constitute "project improvements" as defined in the Development Fee Act in that they constitute "site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project".

We note that, as we have explained in prior objection letters, the CID Act also expressly prohibits the financing of any public infrastructure "fronting individual single family residential lots." Idaho Statutes, Sec. 50-3102(2). That prohibition, in the definition of "community infrastructure", further emphasizes the Legislature's intention to permit the financing under the CID Act *only* of System Improvements and not Project Improvements.[7]

The Legislative History of the CID Act. If there is any doubt remaining that the CID Act does not permit the financing of facilities such as the Dallas Harris South and Haystack Projects, it is eliminated by the legislative history of the CID Act.[8] **The legislative history of the CID Act repeatedly states that the legislation is intended to provide a source of funding *only* for "*regional community infrastructure*" that "is *impact fee-eligible*".** By our count, the otherwise limited legislative history of the CID Act says so more than 15 times.

[7] We also note that the definition of "community infrastructure" in the CID Act requires that the improvements "have a substantial nexus to the district and directly or indirectly benefit the district". That is a limitation taken from case law in other jurisdictions regarding development impact fees and would only be relevant if the improvements are System Improvements rather than Project Improvements.

[8] Under Idaho law, legislative history can be used to interpret the meaning of a statute in order to resolve any ambiguity that may exist within the statutory language.

The two identical legislative "Statement[s] of Purpose"[9] for the two nearly identical versions of the bill, RS 18009 (H.B. 578) and RS 18135C2 (H.B. 680) (the latter of which was adopted as introduced without amendment),[10] each state in relevant part:

> This legislation creates a financial tool to allow new growth to more expediently pay for itself through the creation of Community Infrastructure Districts (CIDs). A CID allows the formation of a taxing district comprised by the boundaries of a new development. Taxes and assessments applied only to lands within the new development will secure bonds. ***Those bonds can be utilized to fund regional community infrastructure,*** inside and outside the district. [Emphasis added.][11]

The Statements of Purpose go on to emphasize that:

> ***Only infrastructure that is impact fee-eligible*** … ***may be funded with bond proceeds generated by a CID***. [Emphasis added.][12]

and

> Only infrastructure that is publicly-owned by the state, county or city, and ***only impact fee-eligible projects may be constructed with the proceeds of a CID***. [Emphasis added.][13]

The Legislature thus was clear and unambiguous in stating the purpose of the legislation. And they did so *twice*. Similar language recurs throughout the legislative history for the two bills, which totals just 36 pages.[14] Those include the following:

> Mr. Pisca[15] stated … **The CID would be tied to impact fee-eligible projects only**, such as highways, roads, bridges, sewer and water treatment facilities, and police, fire and other public safety facilities.[16]

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[9] We have attached what we believe to be the complete legislative history of the CID Act from the Idaho Legislative Research Library for your reference.

[10] The absence of any amendments to the relevant language in the bills makes the legislative history even more definitive.

[11] *Statement of Purpose – RS 18009*, p. 1; *Statement of Purpose – RS 18135C2*, p. 1.

[12] *Statement of Purpose – RS 18009*, p. 1; *Statement of Purpose – RS 18135C2*, p. 1.

[13] *Statement of Purpose – RS 18009*, p. 1; *Statement of Purpose – RS 18135C2*, p. 1.

[14] Excluding the text of the bills.

[15] Jeremy Pisca, identified in the legislative history as a lobbyist for the Idaho Association of Realtors, the Idaho Building Contractors Association, and the M3 Eagle development, appeared at all the hearings in both the House and Senate which are included in the legislative history. He appears to have been the principal draftsperson of the legislation. He is quoted extensively in the legislative history, and outlines of his presentations are included in the legislative history. The legislative history includes the following: "Jeremy Pisca … presented this legislation to the Committee". Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 2. In his testimony, he "proceeded to go through the bill by page and line numbers to describe exactly what the bill would accomplish." Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 3.

[16] Minutes, House Revenue and Taxation Committee, February 27, 2008, p. 2.

Mr. Pisca stated **only public infrastructure** providing a **regional or community-wide benefit** may be funded through a CID.[17]

A Member of the Committee asked a [sic] for clarification on what is **excluded** from community infrastructure. Mr. Pisca answered it would be **side streets, curbs, gutters, and sewer connections to individual houses**. Mr. Pisca further stated that **the intention of the CID is to provide funds for infrastructure that benefits the whole community**.[18]

Mr. Pisca stated that the intent of this legislation was to find ways **to finance impact [fee]-eligible infrastructure** ahead of development.[19]

A CID can only be used to fund "regional community infrastructure" meaning infrastructure that is impact fee eligible.[20]

Only public infrastructure providing a **regional or community-wide benefit** may be funded through a Community Infrastructure District.[21]

Community infrastructure ***excludes*** **public improvements that only provide a local benefit, such as local roads or sewer connections serving individual residences**.[22]

A Community Infrastructure District (CID) will provide a mechanism that will alleviate these problems by creating **a special taxing district that pays for "regional community infrastructure**."[23]

Infrastructure that can be funded using a Community Infrastructure District include both on-site and off-site infrastructure such as:

- **Highways and interchanges**
- **Public safety facilities**

[17] Minutes, House Revenue and Taxation Committee, March 6, 2008, p. 1.
[18] Minutes, House Revenue and Taxation Committee, March 6, 2008, p. 2.
[19] Minutes, House Revenue and Taxation Committee, March 10, 2008, p. 1.
[20] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 3.
[21] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[22] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[23] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, pp. 2-3.

- Impact fees; and
- **Regional infrastructure specified in sections of the Idaho Code pertaining to development impact fees**.[24]

> Mr. Eaton[25] gave two real-world examples speaking about a development that required a bridge in order to access the development or a city that required a freeway interchange before the development could be built. Both the bridge and the interchange were too expensive for the developer to build. **This legislation would provide a financial tool to pay for the bridge or the interchange**.[26]
>
> What types of public infrastructure can a CID acquire and/or construct?
> House Bill 680 limits the types of infrastructure that can be financed through a CID to infrastructure that is: 1) **regional community infrastructure benefiting an entire region** ... The types of **regional community infrastructure include highways, roads, bridges, interchanges, water and wastewater treatment, parks and public safety facilities such as police and fire stations**. … **Again, the focus of H. 680 is on the construction of infrastructure that benefits the entire *region*.**[27]

(Bold emphasis added; italics and underlining in original.)

The legislative history of the CID Act therefore repeatedly confirms that the CID Act can *only* be used to finance System Improvements to regional infrastructure eligible for financing under the Development Fee Act, and not Project Improvements which primarily serve a particular development.

We note that a prominent Boise real estate development lawyer was present and testified on behalf of Harris Ranch in support of the proposed CID Act at a number of the legislative hearings in 2008. So, if their counsel reported back regarding those hearings, it appears that the Developer has been aware of these limitations from the outset.

Conclusion

The proposed payments to the Developer for local access roads, related drainage facilities and local sewer service lines in the Harris Ranch development are impermissible under the CID Act because those facilities do *not* constitute System Improvements eligible for financing from development impact fees, but rather Project Improvements which primarily serve only the Harris Ranch development.

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[24] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[25] John Eaton signed in at the hearing as a lobbyist for the Idaho Association of Realtors.
[26] Minutes, House Revenue and Taxation Committee, March 7, 2008, p. 2.
[27] Community Infrastructure Districts (CID), House Bill 680, [TALKING POINTS], p. 1.

Please note that this limitation under the CID Act on the financing of public infrastructure which primarily serves a particular development also makes unlawful most of the payments which the HRCID has previously made or proposes to make to the Developer.

Please also note that this letter does not set forth all our objections to requested payments to the Developer for the Dallas Harris South and Haystack Projects, many of which objections we have previously presented to you. We have included with this letter those prior objection letters and the related July 2021 memorandum for your reference (listed in Appendix A hereto), as well as the HRCID's documents we have received on which those letters and memorandum were based (which we will provide separately). The objections in those letters and memorandum, to the extent applicable to these two projects, are incorporated herein by this reference, and are summarized in Appendix B hereto.

We are extremely disappointed that it has been left to a volunteer group of homeowners to convey to you the requirements and limitations under the CID Act, and that you have approved many millions of dollars in payments to the Developer which are unlawful for the above and other reasons. We hope that this limitation in the CID Act has not previously been brought to your attention. Now that it has been, we ask that you comply with it.

Finally, we therefore request that the Board, after due consideration of this objection letter and the enclosures, reject the two requested payments to the Developer, as well as any other requested payments for Project Improvements rather than System Improvements. If the Board elects to nonetheless approve any such payments, we will be compelled again to pursue our statutory right to appeal.

Sincerely,

pp Bill Doyle

Executive Committee,
Harris Ranch CID Taxpayers' Association

Enclosures:
Completeness Letter dated March 23, 2022, re Haystack Sub. No 1
Completeness Letter dated June 7, 2022, re Dallas Harris South Sub. No 1
Legislative History of the CID Act
Appendix A – Prior Objection Letters and Memorandum re Legality of the HRCID
Appendix B – List of Additional Objections to the HRCID

Cc: The Honorable Lauren McLean, Mayor
Council Member Jimmy Hallyburton
Council Member Liza Sanchez
Council Member Lucy Willits
David Hasegawa, City of Boise
Jaymie Sullivan, City of Boise
Ron Lockwood, City of Boise
Amanda Brown, City of Boise
John McDevitt, Skinner Fawcett, LLP (w/o enclosures)
Melodie A. McQuade, Givens Pursley LLP (w/o enclosures)
T. Hethe Clark, Clark Wardle LLP (w/o enclosures)

APPENDIX A

Prior Objection Letters and Memorandum re Legality of the HRCID

1. July 2021 Memorandum

2. July 14, 2021 Letter (Proposed 2022 HRCID Budget)

3. August 7, 2021 Letter (Objection to Additional Developer Reimbursements)

4. August 14, 2021 Letter (Objection regarding Conservation Easement)

5. August 20, 2021 Letter (Objection to Developer Reimbursements)

6. August 27, 2021 (Myth of HRCID "Local Amenities")

7. August 30, 2021 Letter (First Set of Objections to Interest Payments)

8. September 7, 2021 Letter (Myth of Notice to Homeowners)

9. September 9, 2021 Letter (Tax-Exempt Status of Bonds)

10. September 13, 2021 Letter (HRCID Unlawful from Beginning)

11. September 27, 2021 Letter (Response to Developer)

12. September 27, 2021 Letter (Failed Bond Election)

13. September 29, 2021 Letter (Facilities Not Publicly Owned)

APPENDIX B

List of Additional Objections to the HRCID[28]

1. Bonds issued to make the payments would violate Art. VIII, Sec. 3 of the State Constitution.

2. Property taxes imposed to pay the bonds would violate Art. VII, Sec. 5 of the State Constitution.

3. The payments would violate Art. VIII, Sec. 2 and Art. XII, Sec. 6 of the Idaho Constitution.

4. The imposition of the taxes and the issuance of the bonds would violate the Due Process and Equal Protection Clauses of the State and Federal Constitutions.

5. Homeowners in the HRCID were not provided the statutorily required notice of the HRCID prior to purchasing their homes.

6. The HRCID was formed in violation of the CID Act.

7. The HRCID election approving the bonds was fatally flawed.

[28] This list does not purport to be exhaustive.

CC. Exhibit CC – Letter Dated, February 16, 2023, titled “Objections Proposed Resolutions”

February 16, 2023

Members of the Board
Harris Ranch Community Infrastructure District No. 1 ("HRCID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Objections to Proposed Resolutions

Members of the Board:

Late on Friday afternoon, February 10, 2023, the City of Boise ("City"), acting as the HRCID, posted on the City's website notice of, and the agenda for, a meeting of the Board of the HRCID to be held on Tuesday, February 21, 2023. At that meeting, the HRCID Board is apparently going to consider the adoption of two resolutions (collectively, "Proposed Resolutions") which approve: (i) the issuance of additional "general obligation" bonds ("2023 Bonds"), and the levy of additional special *ad valorem* property taxes on homeowners in the HRCID to pay such bonds ("Bond Resolution"); and (ii) additional payments to the Harris Ranch developer (with related entities, generally, "Developer") for three "projects", as well as payment of the HRCID's anticipated legal fees in defending such unlawful payments, all from the proceeds of the 2023 Bonds ("Payments Resolution").

The three projects (collectively, "2022 Projects"), denominated Projects Nos. GO2022-1, GO2022-2, and GO2022-3, each consist of road, sewer, lighting, stormwater drainage and related facilities in three areas in the HRCID generally south of East Haystack Street and north of East Warm Springs Avenue. The 2022 Projects also include authorizations to fund legal expenses from proceeds of the 2023 Bonds. All the streets are classified as "local streets" by the Ada County Highway District ("ACHD"). The 2022 Projects are substantially similar to the Town Homes #9 and #11 Projects for which payments to the Developer were approved by the Board by its Resolution No. HRCID-12-2021 adopted on October 5, 2021. Payments proposed to be approved for the 2022 Projects total approximately $4.25 million, and payments for legal costs total $350,000. The Board, however, proposes to approve a total of $9 million in 2023 Bonds, which is almost twice the amount of the payments proposed to be approved by the Payments Resolution.

The staff report ("Staff Report") included with the agenda for the meeting is ***926 pages long***. The notice of the meeting asks that any comments on the Proposed Resolutions be submitted by Thursday, February 16, 2023. The Staff Report notes that no public comment will

be allowed at the February 21 meeting. The Association and other interested persons thus were provided ***at most four business days*** from the posting of the notice within which to review the voluminous Staff Report, request additional documents from the City pursuant to a public records request (impossible within this time frame), analyze the legal and other issues presented, prepare their responses, and submit them to the HRCID. That is a *grossly* insufficient amount of time for those undertakings, and by itself constitutes a denial of due process under the Idaho and Federal Constitutions. As the Idaho Supreme Court stated in *Allen v. Partners in Healthcare, Inc.*, 170 Idaho 470, 512 P.3d 1093 (2022), *as amended* (July 5, 2022), "The touchstone of due process 'is the opportunity to be heard at a meaningful time and in a meaningful manner.'"

The purpose of this letter is to express our objections, nonetheless, to the adoption of the Proposed Resolutions, to the proposed payments to the Developer for the 2022 Projects, and to the use of bond proceeds to pay the HRCID's legal expenses. The Board obviously knows that there is litigation pending ("Litigation") which challenges nearly identical resolutions adopted by the Board in October 2021 ("2021 Resolutions"). Apparently because of the Litigation, the HRCID has been unable to issue the bonds or to make the payments to the Developer which the Board authorized almost a year and a half ago. Rather than simply wait until the Litigation is fully resolved, the Board is now choosing to advance a new set of resolutions that suffer from legal deficiencies identical to those currently under judicial review. The existence of pending litigation challenging nearly identical Board actions therefore suggests that a motivating factor for the Board to adopt a new set of such resolutions is to deplete the Association's financial resources, and to force the Association to file the statutory appeals to such resolutions provided by the Idaho Community Infrastructure District Act ("CID Act"). Fortunately, we are able to. But we are deeply disappointed, although not surprised, that the Board would even consider doing so.

Finally, we note that the Bond Resolution authorizes the use of proceeds to make payments to the Developer not only for the 2022 Projects but also for projects "described and approved … in prior project resolutions". What the Bond Resolution and Staff Report fail to note is that ***those "prior projects" include the projects currently being challenged by the Association in the Litigation***. The Bond Resolution therefore constitutes an underhanded and unlawful attempt to circumvent the pending Litigation, as well as yet another attempt to constrain the right of homeowners to seek judicial review of Board decisions, by reapproving bonds for the very same projects currently being litigated.

Objections to Proposed Resolutions

Given the timing and procedural limitations which you have arbitrarily imposed, for no apparent purpose other than to make it as difficult as possible for anyone to respond, we are forced to present our objections in summary fashion. They are as follows:

(1) **The powers of the HRCID are strictly limited to only those which are expressly granted by statute or necessarily implied**. We incorporate herein by this reference

Section IV.A. of the Association's Opening Brief filed in the Litigation ("Opening Brief"), which brief is attached hereto and incorporated herein by this reference.[1]

(2) **The authorization of the 2023 Bonds and the imposition of the related taxes pursuant to the Bond Resolution would violate the Idaho Constitution because the 2023 Bonds were not approved by a two-thirds vote of qualified electors**. We incorporate herein by this reference Section IV.L. of the Opening Brief, and Section II.I. of the Association's Reply Brief filed in the Litigation ("Reply Brief"), which brief is attached hereto and incorporated herein by this reference.[2]

(3) **As the *ad valorem* property taxes levied pursuant to the Bond Resolution would not be uniform across all properties of a similar class, the adoption of the Bond Resolution would violate the Idaho and Federal Constitutions**. We incorporate herein by this reference Section IV.M. of the Opening Brief and Section II.J. of the Reply Brief.

(4) **The issuance of the 2023 Bonds pursuant to the Bond Resolution and the payments to the Developer pursuant to the Payments Resolution would violate prohibitions in the Idaho Constitution against local governments lending their credit to, raising money for, or donating money to any private person, association, or corporation**. We incorporate herein by this reference Section IV.N. of the Opening Brief, and Section II.K. of the Reply Brief.

(5) **The Proposed Resolutions would be invalid because the HRCID consists of several noncontiguous sections in violation of the CID Act**. We incorporate herein by this reference Section IV.O. of the Opening Brief, and Section II.L. of the Reply Brief.

(6) **The Payments Resolution would violate the CID Act because it approves financing for "Project Improvements"**. We incorporate herein by this reference Section IV.B. of the Opening Brief, and Section II.A. of the Reply Brief.

(7) **The Payments Resolution would violate the CID Act if it approves payments for facilities "fronting" individual single-family residential lots**. We incorporate herein by this reference Section IV.B. of the Opening Brief, and Section II.B. of the Reply Brief. We lack sufficient time to determine this, but it appears that portions of East Haystack Street which are a part of Project No. GO2022-1 and the drainage culverts and other facilities which are part of Project No. GO2022-2 may extend to East Parkcenter Boulevard which consists of single-family townhomes, the Payments Resolution therefore, may violate this prohibition.

[1] Also incorporated are the documents and websites referenced in footnotes to the Opening Brief and Reply Brief, including without limitation in footnotes 1, 2, 3, and 9 of the Opening Brief, and footnote 63 of the Reply Brief.
[2] We also attach hereto and incorporate by this reference the transcript of the proceedings with respect to the bonds issued by the HRCID in 2020. That transcript, obtained from the City pursuant to a prior public records request, includes certified copies of various documents, including documents related to the formation of the HRCID and to the 2010 bond election, which are relevant to, and many of which are referenced in, the objections set forth in this letter.

(8) **The Payments Resolution would violate the CID Act if it approves payments for facilities which are not publicly owned and located on land which is not publicly owned**. We incorporate herein by this reference Section IV.C. of the Opening Brief, and Section II.C. of the Reply Brief. We lack sufficient time to determine this, and the documents included in the Staff Report do not reveal this, but it appears that Projects Nos. GO2022-2 and/or GO2022-3 may include drainage culverts and other facilities which are not publicly owned. The Payments Resolution may therefore violate this prohibition.

(9) **The Association has standing under the express provisions of the CID Act to contest the lack of authority to adopt the challenged resolutions based on the unlawful formation of the HRCID**. We incorporate herein by this reference Section IV.J. of the Opening Brief.

(10) **Challenges to the Proposed Resolutions on the ground that the HRCID was unlawfully formed are not barred by Section 50-3119 of the CID Act.** We incorporate herein by this reference Section IV.K. of the Opening Brief, and Section II.H. of the Reply Brief.

(11) **Payment of the HRCID's legal costs from proceeds of the 2023 Bonds is not permitted by the Development Agreement or the CID Act.** Payment of the HRCID's legal costs from bond proceeds is not permitted by the Development Agreement executed in 2010 among the City, the HRCID and the Developer, including without limitation Sections 1.2, 3.1, 3.2, and 5.1 and Article VII thereof. Payment of District Administrative Expenses is limited to payment from the Administration Tax. Moreover, legal expenses do not constitute part of the Project Price for an Acquisition Project because they have not been incurred by the Developer. Payment of the HRCID's legal costs from bond proceeds also is not permitted by the CID Act. Legal and other administrative expenses of the HRCID are not "community infrastructure" as defined in Section 50-3102(2), the CID Act does not otherwise permit legal expenses to be paid from bond proceeds, and the payment of legal and other administrative expenses of the HRCID was not authorized by the election held by the District in 2010 to approve the issuance of the bonds (even if that election were otherwise valid). The payment of legal and other administrative expenses of the HRCID from bond proceeds would be contrary to the purposes of the CID Act, as it would reduce the amount of proceeds available to finance permissible community infrastructure.

(12) **The Bond Resolution is an unlawful attempt to circumvent (i) the pending appeal of the 2021 Resolutions, and (ii) the right of aggrieved persons to appeal "final decisions" of the Board.** Section 50-3119 of the CID Act provides "[a]ny person in interest who feels aggrieved by the final decision of … a district board" with a right of judicial review to challenge the "validity, legality and regularity of any such decision". The Association has exercised that right in the pending Litigation which challenges the 2021 Resolutions. The Association has expended considerable time and expense in that effort. The Bond Resolution would constitute a new approval of bonds *for the exact same projects*. Such approval would become "valid and uncontestable" if not challenged

by the Association within the 60-day statutory limitations period. The Bond Resolution, if not challenged, thus would render the pending appeal, and more importantly the Association's right of judicial review, moot. If that were permissible, each time an appeal was filed under Section 50-3119, the Board could simply adopt new resolutions authorizing the exact same things. That would force an aggrieved person to file yet another and then another appeal until their resources are exhausted. That would gut the right of appeal and is clearly unlawful.

(13) **Consideration and adoption of the Proposed Resolutions in this manner and timeframe would violate the Due Process Clauses of the Idaho and Federal Constitutions.** We incorporate by this reference ¶¶ 5-7 of Section II.H. of the Reply Brief. Consideration and adoption of the Proposed Resolutions without the use of a process and procedure that includes the safeguards contained within the Idaho Administrative Procedure Act and the Idaho Local Land Use Planning Act or that otherwise provides the Association and homeowners in the HRCID with an adequate opportunity to: (i) request, receive, and review documents from the City and the HRCID, (ii) to review and analyze those documents and the documents included in the Staff Report, and (iii) to develop legal analyses, present evidence and testimony, and provide legal briefing, prior to the imposition of another $20 million in special *ad valorem* property taxes on our homes, violates the Association's and homeowners' due process rights.

(14) **The Staff Report lacks innumerable material documents related to the proposed payments.** The Staff Report fails to include innumerable material documents, including but not limited to: (i) extensive correspondence by, between and among the City, the HRCID and the Developer and their respective representatives, regarding the 2022 Projects and the proposed payments to the Developer pursuant to the Payments Resolution; and (ii) correspondence and documentation by, between and among the Developer, the City and the Ada County Highway District regarding the 2022 Projects and their conveyance to those public agencies. All of these materials are relevant and/or necessary to analyze and make a determination as to the legality of such proposed payments. Many of the materials have been requested from the City pursuant to prior public records requests, and the City has failed to provide them in violation of applicable State law. It is impossible for the Association to obtain these materials within the constitutionally defective time frame and process the City, acting as the HRCID, has imposed.

The Association also hereby incorporates herein by this reference the contents of its previous letter to the Board, dated September 1, 2022, and the attachments thereto, which objects to the payments requested by the Developer for Projects Nos. GO2022-1 and GO2022-2, and adds to that letter the payments requested by the Developer for Project No. GO2022-3.

Conclusion

The consideration and adoption of the Proposed Resolutions would be unlawful for the reasons described above. We therefore request that the Board decline to adopt them. Please note that this letter does not include all our objections to the Proposed Resolutions, in part because we have not been afforded an adequate opportunity to develop them. The Association therefore reserves its rights pursuant to Idaho Rule of Civil Procedure 84(r) and Idaho Appellate Rule 17(f) to present additional issues on appeal in addition to those identified above which are discovered after the date hereof.

Sincerely,

pp Bill Doyle

Executive Committee,
The Harris Ranch CID Taxpayers' Association

Enclosures:
Petitioners' Opening Brief in the Litigation
Petitioners' Reply Brief in the Litigation
HRCID 2020 Bond Transcript of Proceedings

Cc: The Honorable Lauren McLean, Mayor (w/o Enc.)
Council Member Jimmy Hallyburton (w/o Enc.)
Council Member Lucy Willits (w/o Enc.)
David Hasegawa, City of Boise (w/o Enc.)
Jaymie Sullivan, City of Boise (w/o Enc.)
Rob Lockward, City of Boise (w/o Enc.)
Amanda Brown, City of Boise (w/o Enc.)
John McDevitt, Skinner Fawcett, LLP (w/o Enc.)
Melodie A. McQuade, Givens Pursley LLP (w/o Enc.)
T. Hethe Clark, Clark Wardle LLP (w/o Enc.)

DD. Exhibit DD – Letter Dated December 18, 2023, titled “Objections to Resolutions and Advances”

HARRIS RANCH CID TAXPAYERS' ASSOCIATION

December 18, 2023

Members of the Board
Harris Ranch Community Infrastructure District No. 1 ("Boise CID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Objections to Resolution and Advances

Members of the Board:

Late on Friday afternoon, December 15, 2023, the City of Boise ("City"), acting as the Boise CID, posted on the City's website notice of, and the agenda for, a meeting of the Board of the Boise CID to be held on Tuesday, December 19, 2023. At that meeting, the Boise CID Board is apparently going to consider the adoption of Resolution No. HRCID-17-2023 ("Resolution") which would approve a revised funding agreement with the City.

The revised agreement ("Agreement') provides for an "advance" of an additional $350,000 by the City to the Boise CID to be applied towards its litigation and related expenses ("Advances"). The Advances would be made over a period of up to six years and would be repaid by the Boise CID to the City from the CID's special administrative property tax levy on homeowners over a period of up to 20 years. The Advances are accurately characterized in the Agreement as a "loan".

The problem with the Advances is that they would be unlawful. We explained that in a prior email to David Hasegawa, the City's Deputy Treasurer and the Boise CID administrator, dated July 20, 2022 ("2022 Objection Letter"), which is attached hereto and incorporated herein by this reference.

The agenda for the December 19 meeting does not provide for any public comment. The Association and other interested persons were provided ***less than two business days*** from the posting of the notice within which to review the Resolution and the Agreement, request additional documents from the City pursuant to a public records request (impossible within this time frame), analyze the legal and other issues presented, prepare responses, and submit them to the Boise CID. That is a *grossly* insufficient amount of time for those undertakings, and by itself constitutes a denial of due process under the Idaho and Federal Constitutions. As the Idaho Supreme Court stated in *Allen v. Partners in Healthcare, Inc.*, 170 Idaho 470, 512 P.3d 1093

(2022), *as amended* (July 5, 2022), "The touchstone of due process 'is the opportunity to be heard at a meaningful time and in a meaningful manner'."

The purpose of this letter is to express our objections, nonetheless, to the adoption of the Resolution, to the Agreement, and to the proposed Advances. The Board obviously knows that there is not just one, but two pending lawsuits brought by the Association against the Boise CID, in which the Developer has intervened (collectively, "Litigation"), challenging prior resolutions adopted by the Board. Apparently because of the Litigation, the Boise CID has been unable to issue additional bonds, make the additional payments to the Developer, or fund its litigation expenses from the proceeds of those bonds. So, the Boise CID is instead seeking to borrow money from City in a manner which is clearly unlawful.

Objections to Resolution and Advances

Given the timing limitations which you have arbitrarily imposed, we are forced to present our objections in summary fashion. They are as follows:

(1) **The powers of the Boise CID are strictly limited to only those which are expressly granted by statute or necessarily implied**. We incorporate herein by this reference Section IV.A. of the Association's Opening Brief filed in the original Litigation ("Opening Brief"), which brief was attached to our February 16, 2023 objection letter to the Boise CID ("2023 Objection Letter") and is incorporated herein by this reference.[1] The Boise CID lacks statutory authority to borrow money from the City in this manner, or to repay those loans from the administrative tax levy.

(2) **The authorization of the Advances and the imposition of the related administrative taxes pursuant to the Resolution would violate the Idaho Constitution because the Advances were not approved by a two-thirds vote of qualified electors**. We incorporate herein by this reference Section IV.L. of the Opening Brief, and Section II.I of the Association's Reply Brief filed in the Litigation ("Reply Brief"), which brief was attached to the 2023 Objection Letter and is incorporated herein by this reference.[2]

(3) **As the *ad valorem* special administrative property taxes levied pursuant to the Resolution would not be uniform across all properties of a similar class, the adoption of the Resolution would violate the Idaho and Federal Constitutions**. We incorporate herein by this reference Section IV.M of the Opening Brief and Section II.J. of the Reply Brief.

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[1] Also incorporated are the documents and websites referenced in footnotes to the Opening Brief and Reply Brief, including without limitation in footnotes 1, 2, 3, and 9 of the Opening Brief, and footnote 63 of the Reply Brief.

[2] We also attached to the 2023 Objection Letter and incorporate herein by this reference the transcript of the proceedings with respect to the bonds issued by the Boise CID in 2020. That transcript, obtained from the City pursuant to a prior public records request, includes certified copies of various documents, including documents related to the formation of the HRCID and to the 2010 bond election, which are relevant to and many of which are referenced in the objections set forth in this letter.

(4) **The Resolution and the Advances would be invalid because the Boise CID consists of several noncontiguous sections in violation of the CID Act**. We incorporate herein by this reference Section IV.O. of the Opening Brief, and Section II.L. of the Reply Brief.

(5) **The Association has standing under the express provisions of the CID Act to contest the lack of authority to adopt the Resolution and to make the Advances based on the unlawful formation of the Boise CID**. We incorporate herein by this reference Section IV.J. of the Opening Brief.

(6) **Challenges to the Resolution and the Advances on the ground that the Boise CID was unlawfully formed are not barred by Section 50-3119 of the CID Act.** We incorporate herein by this reference Section IV.K. of the Opening Brief, and Section II.H. of the Reply Brief.

(7) **Consideration and adoption of the Resolution in this manner and timeframe would violate the Due Process Clauses of the Idaho and Federal Constitutions.** We incorporate by this reference ¶¶ 5-7 of Section II.H. of the Reply Brief. Consideration and adoption of the Resolution without the use of a process and procedure that includes the safeguards contained within the Idaho Administrative Procedure Act and the Idaho Local Land Use Planning Act or that otherwise provides the Association and homeowners in the Boise CID with an adequate opportunity to: (i) request, receive and review documents from the City and the Boise CID, (ii) review and analyze those documents, and (iii) develop legal analyses, present evidence and testimony, and provide legal briefing, prior to the adoption of the Resolution, violates the Association's and homeowners' due process rights.

These objections are nearly identical to the corresponding objections at issue in the Litigation.

Conclusion

The consideration and adoption of the Resolution and the making of the Advances would be unlawful for the reasons described above. We therefore request that the Board decline to adopt the Resolution. ***If you proceed with the adoption of the Resolution, we will be forced to file a third appeal in Ada County District Court***. We hope that will not be necessary.

Please note that this letter does not include all our objections to the Resolution and the Advances, in part because we have not been afforded an adequate opportunity to develop them. The Association therefore reserves its rights pursuant to Idaho Rules of Civil Procedure 84(r) and

Idaho Appellate Rules 17(f) to present additional issues on appeal in addition to those identified above which are discovered after the date hereof.

Sincerely,

pp Bill Doyle

Executive Committee,
The Harris Ranch CID Taxpayers' Association

Enclosures:
2022 Objection Letter

Cc: The Honorable Lauren McLean, Mayor (Enc.)
Council Member Jimmy Hallyburton (Enc.)
Council Member Lucy Willits (Enc.)
Council Member Colin Nash (Enc.)
David Hasegawa, City of Boise (Enc.)
Jaymie Sullivan, City of Boise (Enc.)
Rob Lockward, City of Boise (Enc.)
Amanda Brown, City of Boise (Enc.)

Certification of the List of Enclosures to HRCIDTA Letter to the HRCID No 1 Board of Directors dated December 18, 2023, Filed Electronically with the City Clerk of the City of Boise

Attachment 1

1. 2022 Objection Letter dated July 20., 2022.

Attachment 2

2. Appellants Brief dated October 21, 2022 with attachments.

Attachment 3

3. Petitioners Reply Brief dated December 22, 2022.

Attachment 4

4. HRCID GO 2020 Transcript – September 10, 2020.

Attachment 5

5. Association Letter of Objection dated September 1, 2022 with appendices.
   a. Appendix A – Prior Memo and Objection Letters
   b. Additional Objections

3738 S Harris Ranch Ave., Boise, ID 83716 - Mobile: 208.890.1871 – hrcidtaxpayers@gmail.com

EE. Exhibit EE – Petitioners Opening Brief in the Litigation

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Fourth Judicial District, Ada County
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IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM DOYLE, an individual; LAWRENCE CROWLEY, an individual; THE HARRIS RANCH CID TAXPAYERS' ASSOCIATION, an Idaho nonprofit association,

Petitioners/Appellants,

vs.

THE HARRIS RANCH COMMUNITY INFRASTRUCTURE DISTRICT NO. 1; TJ THOMSON, in his official capacity as Chairperson and Board member of the Harris Ranch Community Infrastructure District No. 1; HOLLI WOODINGS, in her official capacity as Vice-Chairperson and Board member of the Harris Ranch Community Infrastructure District No. 1; ELAINE CLEGG, in her official capacity as Board member of the Harris Ranch Community Infrastructure District No. 1,

Respondents/Appellees,

and

HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership,

Intervenor.

Case No. CV01-21-18655

PETITIONERS' OPENING BRIEF

Appeal from the Harris Ranch Community Infrastructure District No. 1
Honorable Nancy A. Baskin, District Judge, Presiding

(Names and addresses of all counsel of record continued on the following page.)

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I. STATEMENT OF THE CASE

A. Nature of the Case

1. Introduction.

In 2010, the City of Boise ("City"), acting in concert with the Harris family, took advantage of recent State legislation, advanced by the real estate development industry, to engineer the extraction of tens of millions of dollars from future homeowners in a new residential development in the City, and to transfer that money to the Harris family and their developer. They did so by creating a special taxing entity on the east side of the City which they named the "Harris Ranch Community Infrastructure District No. 1 (City of Boise), Ada County" ("District"). The District was created from carefully selected portions of what used to be the Harris family's ranch and is now an enormous 2,600-home development. The District is nominally a separate limited purpose local government. But in reality, it is nothing other than the City acting under a different guise.

The City, acting as the District, issues bonds and pays the many millions of dollars in proceeds to the Harris family and their developer. The anticipated $50 million in bonds are payable from special *ad valorem* property taxes levied by the City only on the homeowners within the convoluted boundaries of the District. The City estimated that those special property taxes will total almost $110 million and will be imposed over many decades. The issuance of those bonds and the levy of those taxes, however, were not approved by a vote of the qualified electors of the City, or even by the homeowners and taxpayers within the boundaries of the District. Rather, the bonds were approved by the vote of a single person – a ranch worker for the Harris family who lived on the Harris family's property, who registered to vote solely for the special "election", and who will never pay a dime of those *$110 million* in special additional property taxes.

At the time of the District's formation and the bond "election" immediately thereafter, there was not a single homeowner within the District's boundaries. That is because the boundaries of the

District were manipulated to *exclude* the many hundreds of then-existing homes in the Harris Ranch development. As a result, homes excluded from the District stand across the street and down the block from nearly identical homes which were *included* in the District. The result is an egregious and metastasizing disparity in how homes within the same neighborhood are taxed. Many hundreds of homeowners are forced to pay thousands of dollars in special property taxes levied each year by the District, while their neighbors pay nothing. And that even though their neighbors benefit from the facilities financed by the City, acting through its District, to the exact same extent as the homeowners within the District.

Those many hundreds of homes were not excluded from the boundaries of the District for any legitimate public purpose. Rather, they were excluded for the sole purpose of preventing then-existing homeowners from voting in the bond "election". That is because, as the developer has stated publicly, they undoubtedly would have voted *against* the issuance of *$50 million* in bonds and *$110 million* in resulting property taxes, issued for the primary purpose of enriching the Harris family and their developer. They would have done so because the developer would have had to build out all the public infrastructure in the Harris Ranch development regardless.

To add insult to injury, the Harris family and the City also carved out the Harris family's own homes – two small "islands" in the center of the development – from the boundaries of the District. The Harris family did so, no doubt, to free their homes from *any* of the tens of millions of dollars of special property taxes they imposed on all the other homes in the District. As a result of these abuses, the map of the District looks like a giant jigsaw puzzle from which a third or more of the pieces are missing. But that is not all.

Community infrastructure districts ("CIDs") in Idaho are intended to finance *regional* public infrastructure required by new development. Since its creation, the City, acting through its District, has issued almost $20 million in bonds, and made more than $17 million in payments to

the Harris family and their developer. But almost every one of those payments has been unlawful, often for not just one but several different reasons. Thus, for example, almost all the facilities financed constitute "project improvements" that primarily benefit the Harris Ranch development, rather than "system improvements" that benefit the broader region as required by Idaho law. Moreover, many of the facilities financed, rather than being publicly owned, are still owned by the Harris family and their developer, and many front on single family residential lots, again in clear violation of the requirements of Idaho law.

The actions of the City through its District, and of the Harris family and their developer, have been and continue to be unlawful, unconstitutional and unconscionable. They have honored the constitutional and statutory requirements applicable to Idaho CIDs largely in the breach. And in October 2021, they adopted resolutions which perpetuate and epitomize more than a decade of abuse. It is within that context that this judicial review proceeding is brought.

2. This Proceeding.

This proceeding is brought pursuant to Idaho Code Section 50-3119 and Idaho Rule of Civil Procedure 84 regarding two separate "final decisions" of the Board of Directors ("Board") of the District at their meeting on October 5, 2021, and the approvals included in those final decisions. Those final decisions consist of the adoption of (i) Resolution No. HRCID-12-2021, which approved certain payments by the District to the Developer (defined *infra*) ("Payments Resolution"); and (ii) Resolution No. HRCID-13-2021, which approved (a) the issuance of indebtedness in the amount of $5.2 million by the District ("2021 Bond") and (b) the levy of *ad valorem* property taxes on homeowners in the District ("Property Tax Levies") to pay the bond ("Bond Resolution" and collectively with the Payments Resolution, "Challenged Resolutions").

This proceeding is *not* a challenge to any other final decisions of the Board.

B. Procedural History.

The District's Board adopted the Challenged Resolutions on October 5, 2021. On November 3, 2021, the Developer (now Intervenor) filed a meritless lawsuit against Residents alleging, among other things, defamation, interference with prospective economic advantage, interference with contract, Federal unfair competition, and common law trademark infringement. Ada County District Court, CV-01-21-17077. The allegations were groundless and their assertion was a transparent attempt to intimidate Residents, break the Association, and dissuade Residents from asserting their statutory right to judicial review.

Despite the personal and financial impacts of the Developer's abuse of process, Residents filed their Notice of Appeal and Petition for Judicial Review of the Challenged Resolutions in Ada County District Court on December 3, 2021. Residents then removed the Developer's groundless suit to Federal District Court by notice filed on December 21, 2021. Without explanation and without prior notice to Residents, the Developer dismissed the suit against Residents on December 23, 2021, and in doing so all but conceded the suit's illegitimacy.

As this Court is aware, there have been numerous procedural motions in this proceeding over the intervening ten months prior to the filing of this first brief on the merits. Those included motions by Residents to compel the inclusion of certain documents and transcripts in the record that are material to this proceeding, which Opponents vigorously resisted and this Court ultimately denied.

C. Statement of Relevant Facts.

1. The City Formed the District at the Developer's Request and for Their Benefit.

The District was established by the City of Boise R p. 55), acting in concert with (i) the Harris family, who in turn were acting through the "Harris Family Limited Partnership", an Idaho limited partnership (R p. 55), and (ii) the Harris family's real estate developer, who acts variously

through LeNir, Ltd., an Arizona corporation, and Barber Valley Development, Inc. (R p. 55) (the Harris family and their developer, collectively, "Developer").

The District was created by Resolution No. 20895 of the City adopted on May 11, 2010, pursuant to the Community Infrastructure District Act, Idaho Code, Sections 50-3101, *et seq*. ("CID Act"), in response to a petition for formation filed by the Developer. (R p. 55). Its boundaries were significantly expanded by Resolution No. 20944 of the City, adopted on June 22, 2010. (R p. 55). The CID Act had been passed by the Legislature in 2008. Although in form a separate, special, limited purpose governmental entity, the District is in fact, as explained *infra*, simply an *alter ego* of the City. As the District has no employees of its own, City staff and outside contractors perform all its administrative functions. (R p. 55).

Resolution No. 20944 also approved the execution of a Development Agreement (R pp. 499-575) among the City, the District and the Developer, dated August 31, 2010 ("Development Agreement"). (R pp. 55, 501). The execution of the Development Agreement was approved by the Board of the District on June 22, 2010. (R p. 1410). But it was not executed by the District or the Developer until October 5, 2010. (R pp. 534-536). The Development Agreement provides for payments by the District to the Developer from proceeds of bonds issued by the District. The payments are for the costs of certain supposedly public infrastructure constructed by the Developer in connection with the very large Harris Ranch development on the northeast side of the City ("Harris Ranch"). (R pp. 508-511). The District therefore is being used by the Developer to finance costs which every other developer in the City must finance themselves. (R pp. 583, 909).

2. The Boundaries of the District Were Manipulated to Exclude All Properties Not Owned by the Developer.

At the time of its formation, the District consisted entirely of vacant land. (*See, e.g.,* R pp. 539-555, 574).[1] That is, there was not a single home within its boundaries, and thus not a single homeowner and property taxpayer – despite the fact that there were already many hundreds of homes in Harris Ranch. A map of Harris Ranch (R p. 906) is attached for convenience of reference as **Appendix B**.[2] That is because the boundaries of the District were intentionally manipulated by the City and the Developer to exclude any homes or other property not then owned by the Developer. (R pp. 539-555). As a result, the map of the District looks like a giant jigsaw puzzle with a third of the pieces missing. This guaranteed that the Developer would be the only party entitled to vote in the upcoming bond election. Idaho Code § 50-3112. The City's map of the District is attached as **Appendix C** for convenience of reference.[3]

Six square blocks with 90 homes in the northwest quadrant of Harris Ranch, constituting the Timberside subdivisions, were carved out of its boundaries. *See* Appendices B and C. And *more than 500* existing homes in the southeast quadrant of Harris Ranch, constituting the Mill District and Harris Ranch (now known as Spring Creek) subdivisions, were similarly excluded. *Id*. Also excluded was property later acquired by the Developer consisting of more than 40 of the eventually more than 170 homes in the Harris Ranch North subdivisions. *Id.* And finally, ***the***

[1] Ownership, property type, lot boundaries, subdivision, and related information, including historical data, are from the Ada County Assessor's Office on-line interactive property information map: www.adacountyassessor.org/adamaps/. A screenshot showing Assessor parcels in the part of the City which includes Harris Ranch is attached for convenience of reference as **Appendix A**. The creation and maintenance of this data is part of the Assessor's official government functions and required by law. Residents therefore request that the Court take judicial notice of the authenticity of this interactive map and its contents. Idaho Code § 9-101(2).

[2] The complete map contained in the Harris Ranch Specific Plan (Amend. 7 (2019)) is also attached for ease of reference as **Appendix B** and can be found at: https://www.cityofboise.org/media/9160/chapter-2-land-use-plans-compressed.pdf, p. 2.

[3] https://www.cityofboise.org/departments/finance-and-administration/city-clerk/harris-ranch-cid/. Overlay descriptions have been added for convenience of reference.

Harris family also carved out their own two homes in the middle of the District from its boundaries, thus freeing their homes from tens of millions of dollars in special property taxes and assessments they imposed on others. *Id*.

3. The Properties in the District Are Not Contiguous.

The map reveals a wide strip of land down the middle of the District which has also been excluded from the District's boundaries. Appendix C. That strip is a right-of-way owned by Idaho Power for large transmission lines ("Idaho Power ROW"). *Id*. The District therefore consists of three *non*contiguous sections: (i) the section to the west of the Idaho Power ROW which consists of the dozens of Dallas Harris Estates subdivisions and the Barber Junction subdivision; (ii) the section to the northeast of the Idaho Power ROW which consists of the Harris Ranch North and future Harris Ranch East subdivisions; and (iii) a comparatively smaller section to the southeast of the Idaho Power ROW consisting of the Lucky Harris 13 subdivisions. *See* Appendices B and C.

The formation of the District, consisting initially of the section west of the Idaho Power ROW, was approved by the Boise City Council on May 11, 2010. (R p. 55). ***Ten days later***, on May 21, 2010, the Developer filed a petition with the City to "amend" the boundaries of the District to include the two sections to the east of the Idaho Power ROW. (R p. 55). That was before the Board of the District, consisting of three members of the City Council, had held its first meeting to complete the District's formation. That meeting occurred on June 8, 2010. (R p. 1002, fn. 2). Three months before the original petition for formation of the west side of the District was filed, the Developer had the Ada County Elections office confirm that there were no registered voters living within what would later become the east side of the District. (R pp. 572-573).

4. Appellants Are Homeowners and a Neighborhood Non-Profit in the District.

Appellants, William Doyle and Larry Crowley, are two homeowners and property taxpayers who live in the District. Appellant The Harris Ranch CID Taxpayers' Association is an

Idaho non-profit association and neighborhood advocacy group whose hundreds of members include homeowners in the District. Mssrs. Doyle and Crowley are officers of the Association. There are now almost 1,000 single-family homes in the District, although there are over 1,800 homes in Harris Ranch. *See* Appendices A and B.

5. Issuance of the 2021 Bonds Was Approved at Most by the Single Vote From a Ranch Worker Who Was Employed by the Harris Family and Lived on the Harris Family's Property.

The issuance of the 2021 Bond by the District, as part of a total in $50 million in "general obligation" bonds, was supposedly approved by a vote of three-to-one, or 75% of the votes cast, in what has been characterized as an "election" held by the District on August 3, 2010. (R pp. 990-993, 996-998). $50 million dollars of debt to be paid over decades was at stake and only four votes were cast. Of the four votes cast, only three were cast by "Qualified Electors".[4] The canvas does not reveal which of the voters was ineligible to vote. (R p. 993, Appendix L). That is because ballots are cast in secret. Id. Const., Art. VI, Sec. 1. All four voters executed an affidavit, as required by Section 50-3112(3) of the CID Act and Resolution No. 3-10 of the District's Board calling the special election, in which they solemnly swore that they were a "qualified elector" under the CID Act, and thus that (i) they were qualified to vote in the election by reason of being either a resident of the District or an owner of property in the District, and (ii) in the case of individual resident voters, that they were duly registered to vote in the State of Idaho. Idaho Code § 50-3102(13); (R p. 991, fn. 2).[5]

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[4] A copy of the official canvas and of the minutes of the meeting of the District Board on August 10, 2010, approving the canvas, from the records of the City, are attached as **Appendix L**. The Appendix also includes the official ballot and forms of voter affidavit which are exhibits to Resolution No. 3-10, *infra*, for convenience of reference. These are copies of official records of the City as to which there is no dispute regarding authenticity or relevance. Their creation, their accuracy, and their contents are required by law. Residents therefore request that the Court take judicial notice of the authenticity of these documents and their contents. Idaho Code § 9-101(2).

[5] *See also* Declaration of William Doyle in Support of Motion for Stay Pending Judicial Review, Appendix D, for a complete copy of Resolution No. 3-10, including the forms of the ballot and voter affidavits.

One of the voters, an individual, listed an address which is outside the boundaries of the District. (R pp. 993, 998). The other individual voter was not a qualified elector either at the time of the petition for formation of the District or at the time the District was established by the City. (R pp. 991, 997). Attached to the Development Agreement is a series of email exchanges with an Ada County Elections Specialist confirming that, as of mid-February 2010, there were no registered voters within the proposed boundaries of the District. (R p. 572). In addition, in Resolution No. 3-10, the District Board recites:

> [I]t has previously been represented to both the District Board and the Boise City Council that there are or should be no resident qualified electors, as that term is defined in the Act, currently residing within the boundaries of the District.

(R p. 991, fn. 2). The second individual voter was a ranch worker for the Harris family living on their property. (*See* R p. 997). He registered to vote for the first time immediately prior to the "election", did not own any property in the District, and thus was never going to pay any of the estimated $110 million in taxes over many decades to pay the $50 million in bonds. (*See* R p. 997). The mobile home in which he lived was removed from the Harris' property not long after the supposed "election", to make way for the Harris Ranch North subdivision, and his residence within the District thus ended. (*See* R p. 997). The remaining two voters – the owners of all the property in the District – were not individuals but instead Developer legal entities – Barber Valley Development, Inc. and Harris Family Limited Partnership. (R pp. 991, 997).

A total of approximately $15.3 million of the bonds have been issued to date in separate series in 2010 and 2013-2020. (R p. 61). The District's Board, by adopting the Bond Resolution, approved the issuance of another $5.2 million of such bonds. (R p. 68). The issuance of these general obligation bonds by the City, acting through its District, and the resulting imposition of special *ad valorem* property taxes to pay those bonds (R p. 73) on the more than 1,000

homeowners in the District, however, were never submitted to the qualified electors of the City, or even to the homeowners and property taxpayers in the District.

6. The Payments Resolution Approved Payments for More than Two Dozen Different Projects.

The Payments Resolution consists of approvals by the District's Board for payments to the Developer for the following projects (collectively, "2021 Projects") (R pp. 18-20):

(1) Project No. GO21-1 – Accrued Interest. The Board approved additional payments, totaling $1,390,833, for 24 projects undertaken by the Developer in Harris Ranch over the past 14 years or more. The payments authorized are for interest for the period between the dates those projects had been completed and the dates payment for costs of those projects were made to the Developer. *Id*.

(2) Project No. GO21-2 – Dallas Harris Estates Town Homes #9. The Board approved the payment of $1,670,900 for the construction of several local access streets and related facilities in Harris Ranch ("Town Homes #9 Project").[6] *Id*.

(3) Project No. GO21-3 – Dallas Harris Estates Town Homes #11. The Board approved the payment of: (i) $3,072,455 for the construction of several more local access streets and related facilities in Harris Ranch ("Town Homes #11 Project")[2]; and (ii) $937,036 for the construction of three stormwater retention ponds in Harris Ranch ("South Stormwater Ponds"). *Id*.

The approval of the additional payments for the 24 prior projects was gratuitous, as the total payments approved for the three largest projects ($5.68 million) was substantially more than

[6] The Developer originally also sought payment for sidewalks, water lines, landscaping, pressurized irrigation systems, sewer service to individual properties, and groundwater collection and disposal systems, which facilities were part of those projects. These requested payments, however, were denied by the District and/or withdrawn by the Developer because they did not qualify for financing under the CID Act, apparently because they were not publicly owned, fronted on single-family lots, were on land for private homes, and/or for other reasons. (*See, e.g.,* R pp. 489-490, 1211).

the principal amount of the bond approved ($5.2 million). There was no public hearing of any sort or any opportunity for public comment regarding the Challenged Resolutions. (R pp. 25, 1522-23).

The individual projects for which payments were approved and the amount of each payment are itemized in a table attached hereto as **Appendix D** for ease of the Court's reference.[7,8] The following are summary descriptions of each project.

1. Town Homes #11 Project. This project consists of several local access residential streets immediately south of East Parkcenter Boulevard in the middle of the west side of Harris Ranch (R p. 1004, attached as **Appendix E** for ease of reference), and local sewer service lines, stormwater lines and collectors, street lighting, and signage on and under such streets. (*See, e.g.,* R pp. 36, 1013-1014, 1211). All the streets are classified as "local streets" by Ada County Highway District ("ACHD"). (R p. 905, attached as **Appendix F** for ease of reference).[9] According to the ACHD Policy Manual, Section 7207.1: "The primary function of a local street is to serve adjacent property." All but one of the six streets front on single-family residential lots for townhomes. (*See, e.g.,* R pp. 585, 910-911); Appendices A and B.

2. Town Homes #9 Project. This project also consists of several local access residential streets immediately south of East Parkcenter Boulevard in the middle of the west side of Harris Ranch (R p. 497, attached as **Appendix G** for ease of reference), and local sewer service lines, stormwater lines and collectors, street lighting, and signage on and under such streets. (*See,*

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[7] The Board approved payments of interest for Projects 4 and 6 – 28 ("Accrued Interest Projects"). Section 3.2(a) of the Development Agreement provides that the "Project Price" for community infrastructure projects acquired by the District includes not only design, engineering and construction costs, among other things, but also interest from the original date of expenditure to the time the expenditure is reimbursed.

[8] Summary information for Accrued Interest Projects is taken from R pp. 491-492. Project Descriptions have been abbreviated and conformed to current street names.

[9] https://www.achdidaho.org/Documents/Projects/MasterStreetMap_36X48.pdf. This is ACHD's Master Street Map which shows current classifications for all streets in Ada County. The creation of this map is part of the official functions of ACHD and required by law. Residents therefore request that the Court take judicial notice of the authenticity of this map and its contents. Idaho Code § 9-101(2).

e.g., R pp. 28, 595-904). All the streets are classified as "local streets" by ACHD. *See* Appendix F. All but one of the four streets front on single-family residential lots for townhomes. (*See, e.g.,* R pp. 585, 910-911); Appendices A and B.

3. South Stormwater Ponds. This project consists of the construction of three stormwater retention ponds (*See, e.g.*, R p. 28) on land immediately south of East Warm Springs Avenue and north of the Boise River in Harris Ranch. (*See, e.g.*, R p. 1005, attached as **Appendix H** for ease of reference). The ponds receive run-off only from an area in the center of Harris Ranch, and thus only serve the development. (*See, e.g.,* R pp. 910, 967, and 1406, attached as **Appendix I** for ease of reference). Stormwater ponds and related facilities are essential to prevent flooding when you cover hundreds of acres of former pastureland with streets, sidewalks, driveways, patios, homes, and other hard surfaces, and thus were required as a condition of the development. (R p. 1413).

The South Stormwater Ponds and the approximately 6.4 acres of land on which they are located are owned by the Developer. (R pp. 1018-1030). The Developer granted what is termed a "Permanent Easement" on and over the property to ACHD, dated as of November 12, 2019. (*Id*.) ACHD, however, has almost no substantive rights or obligations under this easement. The obligation to maintain the stormwater ponds and related facilities in perpetuity, which involve minimal responsibilities, instead lies solely with the *Developer* at its sole cost and expense. (R p. 1019 § 5). The *only* substantive right ACHD has under the easement agreement, at its sole option and without any obligation, is to enter and perform maintenance on the stormwater ponds and related facilities, at the cost of the Developer, in the event of the Developer's failure to do so. (R p. 1020 ¶ 1).

4. West Stormwater Ponds – Land Value. This project consists of land on which three stormwater retention ponds are located south of East Warm Springs Avenue and north of East

Parkcenter Boulevard on the west side of Harris Ranch. (R p. 63, attached hereto as **Appendix J)**. The ponds receive run-off only from an area on the northwest side of Harris Ranch, and only serve the development. (R pp. 910, 967); Appendix I. Construction of the stormwater ponds was required as a condition of the development of Harris Ranch, and the stormwater ponds are an essential component of its stormwater control system. (R p. 1413). The West Stormwater Ponds and the approximately 16.6 acres of property on which they are located are owned by the Developer. (R pp. 1463-66). The Developer granted an easement of access for maintenance on and over the property to ACHD. (R pp. 1424, 1463-66). The easement agreement is substantially the same as that described above with respect to the South Stormwater Ponds. (R pp. 1463-66). The property on which the West Stormwater Ponds are located abuts nine single-family homes to the north on East Parsnip Peak Drive. *See* Appendices A and B.

The supposed basis for the prior payment is a 1-1/2 page double-spaced memo prepared by a commercial real estate broker rather than a professional appraisal. (R pp. 1414-15). The broker discounted the supposed "value" of the land by 67% from the land under surrounding homes because it is dedicated in perpetuity to stormwater ponds. *Id.* The payment to the Developer was discounted by an additional 33% because 1/3 of the area on the northwest side of Harris Ranch which the ponds serve was carved out of the boundaries of the District by the City and the Developer. *Id.*

5. East Parkcenter Boulevard Project. This project consists of three roundabouts along East Parkcenter Boulevard, one block of roadway, and related facilities in the middle of the west side of Harris Ranch. Appendix J; (R pp. 1431-1433). The two-lane street is classified as a "residential collector" by ACHD. Appendix F. According to the ACHD Policy Manual, Section 7206.1: "The primary function of a collector is to intercept traffic from the local street system and carry that traffic to the nearest arterial. A secondary function is to service adjacent

property." Thus, it primarily serves properties in Harris Ranch and any visitors to or users of those properties. Two of the East Parkcenter Boulevard Project roundabouts are surrounded on all four sides by single-family townhomes. (R p. 1432); Appendices A and B. The third has single-family townhomes on two sides, and currently vacant land – the ultimate uses of which remain to be seen – on the other two sides. *Id*. The lots on the four corners of each roundabout are curved where they face the roundabout, rather than squared. (R p. 1433 fn. 2). The one block of roadway fronts on land which currently is vacant. (R p. 1433).

6. Deflection Berm. This project consists of a floodwater deflection berm which abuts The Mill District area in Harris Ranch below the Barber Dam and north of the Boise River. *See* Appendix J. It serves only Harris Ranch. (R p. 1422). The property on which the Deflection Berm is located abuts eight single-family homes on East Sawmill Way and East Sawdust Place. *See* Appendices A and B. The land conveyance was completed in November 2008, a year and a half before the District was formed and almost two years before the Development Agreement was executed. (R p. 491).

7. East Warm Springs Avenue Extension 1. This project consists of the extension of East Warm Springs Avenue from a point east of the intersection with Starview Drive to shortly before the intersection with East Barber Drive. *See* Appendices A, B, D. There are single-family residential lots now on both sides of this length of street. *Id*. The street is classified as a "rural arterial" by ACHD. Appendix F.

8. Barber Junction Ponds – Land Value. This project consists of land on which several stormwater ponds are located south of East Warm Springs Avenue, west of South Millbrook Way, and northeast of the Boise River. Appendix J. The ponds receive run-off only from an area in the center of Harris Ranch, and only serve the development. (R pp. 910, 967, 1413). Construction of the stormwater ponds was required as a condition of the development of

Harris Ranch, and the stormwater ponds are an essential component of its stormwater control system. (R p. 1413). The Barber Junction Ponds and the 4.3 acres of land on which they are located are owned by the Developer. (R pp. 1463-66). The Developer granted an easement of access for maintenance on and over the property to ACHD. (R pp. 1424, 1463-66). The easement agreement is substantially the same as that described above with respect to the South Stormwater Ponds. (R pp. 1463-66). The property on which the Barber Junction Ponds are located abuts five single-family homes to the east on South Millbrook Way. *See* Appendices A and B.

The supposed basis for the prior payment was an appraisal submitted by the Developer which assumed that the property could have been developed into a "'Hypothetical' Residential Development". (R pp. 954-55, 1413-24). The appraiser explained:

> For the purposes of this analysis ***the appraisal is based on a "Hypothetical" condition that title to the subject parcel is assumed to be marketable*** and free and clear of all liens and encumbrances ***and is included as vacant residential development land to be developed as part of the Harris Ranch Subdivision***. A "Hypothetical" condition is defined as:
>
> Hypothetical Condition: ***a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results***, but is used for the purpose of the analysis.
>
> Comment: ***Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property***; or about conditions external to the property, such as market conditions or trends; or about the integrity of the data used in an analysis.

Id. (Emphasis added.)

9. East Warm Springs Avenue Extension 3. This project consists of the extension of East Warm Springs Avenue from the west intersection with East Parkcenter Boulevard, around the southwest side of Harris Ranch, where it intersects with five local access streets in Harris Ranch, to the east intersection with East Parkcenter Boulevard. *See* Appendix J. Classified as a two-lane "minor arterial" by ACHD (Appendix F), this street provides the fastest route to and from East

Parkcenter Boulevard, a "major arterial" to the west (*id*.), for the southwest and east sides of Harris Ranch, which include more than 1,300 homes. Appendices A and B. That traffic therefore does not have to pass along the two-lane portion of East Parkcenter Boulevard that runs through the middle of the west side of Harris Ranch, which includes four roundabouts.

10. East Warm Springs Avenue Extension 3. *See* No. 9 above.

11. East Barber Drive Sediment Basins – Construction. This project consists of the construction of sediment basins on land immediately north of East Barber Drive in Harris Ranch. *See* Appendix J. These facilities capture sediment in the run-off from the foothills on the north side of Harris Ranch. (R pp. 966, 1414). The run-off then is directed along the Warm Springs Creek drainage channel to the stormwater ponds south of East Warm Springs Avenue. (R p. 1415). The sediment basins and the 24.7 acres of property on which they are located are owned by the Developer. (R pp. 1416, 1463-66). The Developer granted an easement of access for maintenance on and over the property to the City. (*Id*.) The easement agreement is substantially the same as that described above with respect to the South Stormwater Ponds. (*Id*.) The supposed basis for the prior payment is an appraisal submitted by the Developer which again assumed that the land could instead have been developed into a "'Hypothetical' Low Density Residential Development". (R p. 1414). But neither the Developer nor the appraiser provided any evidence that assumption is true. Moreover, the Harris Ranch Specific Plan does not permit residential development on that property, but instead contemplates a "Destination Spa Resort". Appendix B.

12. East Warm Springs Avenue Extension 3. *See* No. 9 above.

13. Warm Springs Creek Realignment – Land Value. This project consists of land on which a drainage channel runs from the center of Harris Ranch, where it emerges from the Idaho Power ROW, to the stormwater ponds on the south side of Harris Ranch. *See* Appendix J. The channel carries run-off only from Harris Ranch. (R p. 966). Construction of the drainage

channel was required as a condition of the development of Harris Ranch, and it is an essential component of its stormwater control system. (R p. 1414). The channel and the five acres of land on which it sits are owned by the Developer. (R pp. 1463-66). The land on which the channel sits abuts 19 single-family homes to the west on South Hopes Well Way. Appendices A and B. The Developer granted an easement of access for maintenance on and over the property to ACHD. (R pp. 1424, 1463-66). The easement agreement is substantially the same as that described above with respect to the South Stormwater Ponds. The supposed basis for the prior payment is an appraisal submitted by the Developer which again assumes that the property instead could have been developed into "'Hypothetical' Medium/High Residential Development". (R p. 1415). But neither the Developer nor the appraiser provided any evidence in support of that assumption. (*Id*.) The South, West and Barber Junction Stormwater Ponds, the East Barber Drive Sediment Basins, and the Warm Springs Creek Realignment are referred to collectively as the "Stormwater Facilities".

14. East Barber Drive Sediment Basins – Land Value. *See* No. 11 above.

15. Idaho Power – South Wise Way. This project consists of the removal and relocation by Idaho Power of power lines along South Wise Way on the west side of Harris Ranch. (R pp. 1416-17).

16. East Parkcenter Boulevard/East Warm Springs Avenue Roundabout Construction. This project consists of the construction of the East Parkcenter Boulevard/East Warm Springs Avenue Roundabout. *See* Appendix J. The roundabout is the main entry to the west and south sides of Harris Ranch, and redirects traffic destined for the east sides of the development along East Warm Springs Avenue Extension 3. *See* Appendix B. The roundabout has single-family homes and townhomes on one side. Appendices A and B. The lots on the four corners of the roundabout are curved where they face the roundabout, rather than squared. *Id*. The East

Parkcenter Boulevard Project and this project are referred to collectively as the "Parkcenter Projects".

17. Idaho Power – Bury/Relocate East Parkcenter Boulevard Power Lines. This project consists of the relocation and undergrounding of power lines along what used to be East Warm Springs Avenue, through the center of the west side of Harris Ranch, and is now part of East Parkcenter Boulevard. (R p. 1416). The underground lines are owned by Idaho Power and are within an Idaho Power easement. (R p. 1416). East Parkcenter Boulevard is lined on both sides for most of that stretch with single-family townhomes. *See* Appendices A and B.

18. Fuel Remediation. This project consists of the remediation of an old fuel spill at the site of the former Harris family sawmill. (R p. 1417). It was apparently undertaken in connection with the construction of the East Warm Springs Avenue Extension 3.

19. East Warm Springs Avenue Extension 3. *See* No. 9 above.

20. East Warm Springs Avenue Extension 2. This project consists of the extension of East Warm Springs Avenue from the intersection with East Barber Drive on the northwest side of Harris Ranch for a short distance to the intersection with East Parkcenter Boulevard on the west side of Harris Ranch. *See* Appendices A and B. This two-lane street is classified as a residential collector by ACHD. Appendix F. The street fronts for its entire length on a total of 17 single-family homes and one townhome on both sides. Appendices A, B, D. East Warm Springs Avenue Extensions 1, 2 and 3, together with the Fuel Remediation project and the Idaho Power Right-of-Way, are referred to collectively as the "Warm Springs Avenue Extensions".

21. East Parkcenter Boulevard/East Warm Springs Avenue Roundabout Design. *See* No. 16 above.

22. Idaho Power – Connection to Fire Station. This project consists of the addition of an electrical power connection by Idaho Power to serve a new fire station. Appendix J. The

connection is owned by Idaho Power and is located in an Idaho Power easement. (R pp. 1415-16). Projects 15, 17 and 22 are collectively referred to as the "Idaho Power Facilities".

23. East Barber Drive Design and Surveying. This project consists of the construction of East Barber Drive along the north side of Harris Ranch past the intersection with the eastward extension of East Warm Springs Avenue. (R pp. 1417-18). This street now fronts on single-family residential lots on both sides for much of its length. *See* Appendices A, B. The street is classified as a "local street" by ACHD (Appendix F) and is the principal means of access to and from East Warm Springs Avenue, East Boise and downtown for the northern portions of Harris Ranch. Appendices A, B.

24. North ½ East Barber Drive Engineering. *See* No. 23 above.

25. East Parkcenter Boulevard/East Warm Springs Avenue Roundabout Construction. *See* No. 16 above.

26. Idaho Power – East Warm Springs Avenue Extension 3 – Right-of-Way Easement. This project consists of the acquisition of a right-of-way for ACHD across property owned by Idaho Power for a section of the East Warm Springs Avenue Extension 3. *See* Appendix J.

27. Right-of-Way Vacation – East Parkcenter Boulevard. This project consists of the acquisition by ACHD of small sections of land for the East Parkcenter Boulevard Project, described above. *See* Appendix J.

28. Wetland Improvements. This project consists of plantings and related facilities on wetlands north of the Boise River in Harris Ranch. *See* Appendix J. The property is still owned by the Developer. (R pp. 1463-66).

7. Adoption of the Payments Resolution Differed Dramatically from Prior Practice.

For at least the five years from 2016 through 2020, the District Board did not approve *specific* payments to the Developer for *specific* projects.[10] In those years, the practice of the Board instead was to authorize the issuance of that year's bond, and to *generally* describe the purposes for which the bond was being issued, but to delegate *to staff* the final determinations as to: (i) which specific projects of the Developer to reimburse; (ii) how much the Developer should be reimbursed; (iii) whether the specific projects were eligible for funding under the CID Act; (iv) whether the specific projects were eligible for funding under the Development Agreement; and (v) whether the payments otherwise would comply with applicable law. Warden Decl. ¶¶ 4, 5.

The following language in Section 2 of the Board's Resolution No. 9-2020, adopted on August 25, 2020, authorizing the issuance of the District's 2020 bond, is illustrative:

> *The Bond is to be issued to provide financing for certain community infrastructure purposes and projects*, consisting of and associated with payment, reimbursement and/or refinancing of a portion of the fees, charges, and costs related to the acquisition of an interest in certain real property for sediment and storm water collection and control, road design, engineering, construction, and landscaping, utility improvements, *or other related community infrastructure* (collectively, the "Project"); and to fund the Reserve Account and to pay for issuance costs of the Bond, all of which will be paid from the proceeds of the Bond pursuant to this Resolution, the Development Agreement (as defined in Section 3 below) *upon the written concurrence of the Treasurer, and subject to the eligibility requirements set forth in the Act, the Development Agreement (as defined in Section 3 below), and any other applicable federal, state, or local law*.

Id. ¶ 6. (Emphasis added).

[10] Declaration of Nicholas Warden in Support of Motion to Compel Completion of Record and Transcript ("Declaration of Warden") ¶ 4. *See also* Declaration of David Hasegawa in Support of Objection and Response to Surreply in Support of Appellants' Motion to Compel Completion of Record ¶¶ 4-7.

II. ISSUES PRESENTED FOR REVIEW

The following are the issues presented for judicial review:

1. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities located entirely within Harris Ranch, and which primarily or exclusively serve that development?

2. Is a street or other public facility which is directly in front of a single-family home commonly understood to be "fronting" on that home even if a narrow landscaping strip is interposed so that the lot does not "physically touch" the street or other facility?

3. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities which are privately owned and which are located on land which is privately owned by the Developer?

4. Does the CID Act permit the District to issue bonds and levy special property taxes to make payments to the Developer for facilities the Developer built before the District existed?

5. Does the CID Act permit the District to pay the fair market value of land in exchange for only an easement of access to maintain privately owned facilities on that land, even though the facilities located on those easements are also privately owned and therefore do not constitute community infrastructure?

6. Does the Idaho Constitution permit the District to pay the Developer the full fair market value of privately owned land underneath stormwater ponds in exchange for an easement that only grants a conditional right of access to maintain those ponds?

7. Does the District's prior approval of payments for projects preclude Residents from challenging a new "final decision" to approve additional payments for those projects on the grounds that those projects are unlawful?

8. Do past final decisions of the District preclude new final decisions of the District from being challenged even if a challenge to the new final decision is brought within 60 days of the new decision?

9. Does the CID Act grant Residents standing to challenge the formation of the District in contesting a new final decision of the District?

10. Does the CID Act permit a Court to examine past events in order to determine whether a new final decision being challenged is lawful?

11. Does the Idaho Constitution permit the District to issue debt and levy the related property taxes based on the vote of at most one person who will never pay the taxes?

12. Can the City use a special, limited purpose "district" under its complete control to incur tens of millions of dollars in debt and to levy over $100 million in property taxes without having to comply with the two-thirds voter approval requirement under the Idaho Constitution?

13. Does the Idaho Constitution permit the District to levy tens of millions of dollars of special property taxes on one group of homes while nearly identical neighboring homes pay nothing, even though projects financed by those taxes benefit both groups of homes equally?

14. Does the Idaho Constitution permit the District to issue indebtedness payable from special property taxes to make payments to the Developer for facilities the Developer would otherwise have to pay for themselves as do all other developers in the State?

15. Does the CID Act permit the District to adopt the Challenged Resolutions even though the properties within the District are not contiguous and were not at the time of its formation?

16. Are Residents entitled to attorneys' fees under the private attorney general doctrine if they prevail in this action?

III. STANDARD OF REVIEW

Residents seek judicial review of statutory and constitutional violations. Statutory interpretation is a question of law that receives de novo review from a court acting in an appellate capacity. *See, e.g., State v. Schulz,* 151 Idaho 863, 865, 264 P.3d 970, 972 (2011); *see also State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020) (citing *In re Estate of Peterson,* 157 Idaho 827, 830, 340 P.3d 1143, 1146 (2014) ("On appeal of a decision rendered by a district court while acting in its intermediate appellate capacity, this Court directly reviews the district court's decision."); *also State v. Dunlap,* 155 Idaho 345, 361, 313 P.3d 1, 17 (2013) (exercising free review over statutory interpretation because it is a question of law.). Reviewing courts also exercise free review of the application of constitutional principles to established facts. *State v. Pearce*, No. 30502, 2007 WL 1544152, at *9 (Idaho Ct. App. May 30, 2007), *aff'd*, 146 Idaho 241, 192 P.3d 1065 (2008) (citing *State v. Avelar,* 124 Idaho 317, 322, 859 P.2d 353, 358 (Ct.App.1993)).

IV. ARGUMENT

A. The Powers of the District Are Strictly Limited to Only Those Which Are Expressly Granted by Statute or Necessarily Implied.

The powers of the District are limited. Section 50-3105(1) of the CID Act provides:

> A district formed pursuant to this chapter … is not a governmental entity of general purposes and powers, *but is a special limited purposes district, with powers only as permitted under this chapter* … [Emphasis added.]

This is consistent with the common law rule (adopted by Idaho Courts) that local governments have limited powers. That rule, referred to as "Dillon's Rule"[11], is that local governments, as creatures of state statutes, have only those powers expressly granted by state law or necessarily implied. McQuillin, *The Law of Municipal Corporations*, § 4.11 (3rd Ed.); *see also, e.g., City of*

[11] So named by an early treatise on municipal law first published more than a century ago.

Grangeville v. Haskin, 116 Idaho 535, 538, 777 P.2d 1208, 1211 (1989); *Caesar v. State,* 101 Idaho 158, 160, 610 P.2d 517 (1980); *Hendricks v. City of Nampa,* 93 Idaho 95, 98, 456 P.2d 262 (1969).

This rule creates a presumption *against* the existence of municipal authority wherever there is doubt as to its existence. *E.g., Plummer v. City of Fruitland*, 140 Idaho 1, 5, 89 P.3d 841, 845 (2003) *on reh'g*, 139 Idaho 810, 87 P.3d 297 (2004) (If there is a fair, reasonable, substantial doubt as to the existence of a power, the doubt must be resolved against the city.); *City of Grangeville*, 116 Idaho at 538, 777 P.2d at 1211 (same). Therefore, as a matter of law, the District lacks authority to take action absent a clear and unambiguous grant of that authority by the Legislature.

B. The Payments Resolution Violates the CID Act Because It Approves Financing for "Project Improvements".

1. The CID Act Only Permits the Financing of "System Improvements" That Primarily Serve the Broader Region and Not "Project Improvements" That Primarily Serve a Particular Development.

Statutory interpretation "begins with the literal language of the statute . . . ." *State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020) (citing *State v. Schulz,* 151 Idaho 863, 866, 264 P.3d 970, 973 (2011)). "Where the language is unambiguous, [the Court] need not consider the rules of statutory construction." *Id.* Section 50-3101(1) of the CID Act provides:

> (1) The purpose of this chapter is:
>
> (a) To encourage the funding and construction of ***regional community infrastructure*** in advance of actual developmental growth that creates the need for such additional infrastructure;
>
> (b) To provide a means for the ***advance payment of development impact fees*** established in [The Impact Fee Act]***, and the community infrastructure that may be financed thereby***; and

> (c) To create additional financial tools and financing mechanisms that allow new growth to more expediently pay for itself. [Emphasis added.][12]

The CID Act thus is unambiguous in restricting the authority of the District to only funding "***regional community infrastructure***" and only those projects that are "***development impact fee***" eligible under the Impact Fee Act. *Id*.

Statutory provisions are interpreted within the context of the whole statute, not as isolated provisions. *Burke*, 166 Idaho at 623, 462 P.3d at 601 (citing *Schulz,* 151 Idaho at 866, 264 P.3d at 973 (2011)). This includes giving effect "to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Id.* Moreover, "statutes which are *in pari materia* [i.e., the CID Act and Impact Fee Act] are to be taken together and construed as one system, and the object is to carry into effect the intention." *State v. Lantis*, 165 Idaho 427, 429, 447 P.3d 875, 877 (2019) (quoting *City of Idaho Falls v. H-K Contractors, Inc.,* 163 Idaho 579, 583, 416 P.3d 951, 955 (internal citation omitted)). The meaning of the restriction in the CID Act on funding only "impact fee eligible" projects must therefore be interpreted consistent with the Impact Fee Act.

The Impact Fee Act is clear and unambiguous in stating that only "system improvements" which primarily serve the broader region can be financed with development impact fees, and <u>not</u> "project improvements" which primarily serve a particular development. Idaho Code §§ 67-8202(22), 8202(28). In fact, the Impact Fee Act ***expressly prohibits*** the financing of public facilities which primarily serve a particular development. *Id*. The Impact Fee Act separately defines the terms "project improvements" and "system improvements". *Id*.

> (22) "Project improvements" means ***site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project***. [Emphasis added.] [Idaho Code § 67-8202(22).]

[12] Subsection (c) is *not* a separate and additional category of projects that can be financed, as the three subsections are listed in the conjunctive as the single "purpose of this chapter", rather than three separate "purposes", as the legislative history, discussed in Section 50-3101 *infra*, makes clear.

* * *

(28) "System improvements," ***in contrast to project improvements***, means capital improvements to public facilities designed to provide service to a service area … [Emphasis added.] [Idaho Code § 67-8202(28).][13]

The Act expressly and repeatedly provides that development impact fees can *only* be used to pay for "system improvements" and *not* for "project improvements".

For example, Section 67-8210(2) states: "Development impact fees ***shall not be used for any purpose other than system improvement costs*** to create additional improvements to serve new growth." (Emphasis added). Section 67-8203(9) provides: "'Development impact fee' means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of ***system improvements*** needed to serve development." (Emphasis added). Section 67-8204(5) also provides: "The decision by the governmental agency on an application for an individual assessment … shall specify the ***system improvement(s)*** for which the impact fee is intended to be used." (Emphasis added). Section 67-8204(11) states once again that "[a] development impact fee ordinance shall provide that development impact fees shall ***only*** be spent for the category of ***system improvements*** for which the fees were collected …" (Emphasis added). And Section 67-8209(1) repeats the same refrain: "In the calculation of development impact fees for a particular project, … ***[c]redit or reimbursement shall not be given for project improvements***." (Emphasis added).[14]

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[13] The term "service area" is separately defined to mean a geographic area identified by a local government authorized to impose impact fees, based on sound planning and/or engineering principles, which is served by the local government's public facilities. Idaho Code § 67-8203(26). The Ada County Highway District defines *all* of Ada County as a *single* service area for purposes of its impact fees for roads, streets and bridges. Ord. No. 231A § 77317.1. The City of Boise defines the *entire city* as a single service area for purposes of its impact fees for regional parks, for fire and for police facilities, respectively, and all of Southeast Boise and Barber Valley for purposes of its local parks impact fees. City of Boise Code §§ 9-2-6 to 9-2-9. The City does not have an impact fee for wastewater facilities, but does impose connection fees which are uniform across the City. City of Boise Code § 10-2-6.

[14] This limitation in the Impact Fee Act is expressly referenced in Section 50-3120 of the CID Act, which requires that impact fee credits for projects undertaken in a CID be similarly limited.

As the Impact Fee Act unambiguously restricts the use of development impact fees to pay the costs of "system improvements" and not "project improvements", and the CID Act only permits the funding of regional infrastructure eligible for funding from development impact fees, a CID can only be used to finance "system improvements" and not "project improvements".

2. The Legislative History of the CID Act Establishes Clear Intent to Prohibit the Financing of "Project Improvements".

The prohibition against funding project improvements is unambiguous. However, if there is any doubt as to whether the CID Act permits the financing of "project improvements", it is eliminated by the legislative history of the CID Act. *E.g., Fell v. Fat Smitty's L.L.C.,* 167 Idaho 34, 38, 467 P.3d 398, 402 (2020) (Legislative history reflects legislative intent and thus resolves statutory ambiguity); *see also Saint Alphonsus Reg'l Med. Ctr. v. Gooding Cty.,* 159 Idaho 84, 87, 356 P.3d 377, 380 (2015).

The legislative history of the CID Act repeatedly states that the legislation is intended to provide a source of funding ***only*** for "***regional community infrastructure***" that "**is *impact fee-eligible***". In fact, the otherwise limited legislative history of the CID Act says so more than 18 times. The two identical legislative "Statement[s] of Purpose" for the two nearly identical versions of the bill, RS 18009 (H.B. 578) and RS 18135C2 (H.B. 680) (the latter of which was adopted as introduced without amendment),[15] both state:

> This legislation creates a financial tool to allow new growth to more expediently pay for itself through the creation of Community Infrastructure Districts (CIDs). A CID allows the formation of a taxing district comprised by the boundaries of a new development. Taxes and assessments applied only to lands within the new development will secure bonds. ***Those bonds can be utilized to fund regional community infrastructure,*** inside and outside the district. [Emphasis added.][16]

The Statements of Purpose go on to emphasize that:

[15] The absence of any amendments to the relevant language in the bills makes the legislative history even more definitive.

[16] *Statement of Purpose – RS 18009*, p. 1; *Statement of Purpose – RS 18135C2*, p. 1.

> ***Only** infrastructure that is **impact fee-eligible** … may be funded with bond proceeds generated by a CID*. [Emphasis added.][17]

And furthermore that:

> Only infrastructure that is publicly-owned by the state, county or city, and ***only impact fee-eligible projects may be constructed with the proceeds of a CID***. [Emphasis added.][18]

The Legislature was thus clear and unambiguous in stating the purpose of the legislation. And they did so *twice* in the two successive Statements of Purpose. Similar language recurs throughout the legislative history for the two bills. And they go further to also state repeatedly that the purpose of the CID Act is to fund projects that benefit the region or community as a whole. The relevant statements in the legislative history include the following.

> Mr. Pisca[19] stated … **The CID would be tied to impact fee-eligible projects only**, such as highways, roads, bridges, sewer and water treatment facilities, and police, fire and other public safety facilities. [Emphasis added.][20]

> Mr. Pisca stated **only public infrastructure** providing a **regional or community-wide benefit** may be funded through a CID. [Emphasis added.][21]

> A Member of the Committee asked a [sic] for clarification on what is **excluded** from community infrastructure. Mr. Pisca answered it would be **side streets, curbs, gutters, and sewer connections to individual houses**. Mr. Pisca further stated that **the intention of the CID is to provide funds for infrastructure that benefits the whole community**. [Emphasis added.][22]

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[17] *Statement of Purpose – RS 18009*, p. 1; *Statement of Purpose – RS 18135C2*, p. 1.

[18] *Statement of Purpose – RS 18009*, p. 1; *Statement of Purpose – RS 18135C2*, p. 1.

[19] Jeremy Pisca, identified in the legislative history as a lobbyist for the Idaho Association of Realtors, the Idaho Building Contractors Association, and the M3 Eagle development, appeared at almost all the hearings in both the House and Senate which are included in the legislative history. He appears to have been the principal draftsperson of the legislation. He is quoted extensively in the legislative history, and the outlines of some of his presentations are included in the legislative history. The legislative history includes the following: "Jeremy Pisca … presented this legislation to the Committee". Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 2. In his testimony, Mr. Pisca "proceeded to go through the bill by page and line numbers to describe exactly what the bill would accomplish." Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 3.

[20] Minutes, House Revenue and Taxation Committee, February 27, 2008, p. 2.

[21] Minutes, House Revenue and Taxation Committee, March 6, 2008, p. 1.

[22] Minutes, House Revenue and Taxation Committee, March 6, 2008, p. 2.

Mr. Pisca stated that the intent of this legislation was to find ways **to finance impact [fee]-eligible infrastructure** ahead of development. [Emphasis added.][23]

A CID can only be used to fund "regional community infrastructure" meaning infrastructure that is impact fee eligible. [Emphasis added.][24]

Senator Bastion emphasized that this [legislation] is for regional infrastructure. [Emphasis added.][25]

Only public infrastructure providing a **regional or community-wide benefit** may be funded through a Community Infrastructure District. [Emphasis added.][26]

Community infrastructure ***excludes*** **public improvements that only provide a local benefit, such as local roads or sewer connections serving individual residences**. [Emphasis added.][27]

A Community Infrastructure District (CID) will provide a mechanism that will alleviate these problems by creating **a special taxing district that pays for** "**regional community infrastructure**." [Emphasis added.][28]

Infrastructure that can be funded using a Community Infrastructure District include both on-site and off-site infrastructure such as:

- **Highways and interchanges**
- **Public safety facilities**
- Impact fees; and
- **Regional infrastructure specified in sections of the Idaho Code pertaining to development impact fees**. [Emphasis added.][29]

Mr. Eaton[30] gave two real-world examples speaking about a development that required a bridge in order to access the development or a city that required a freeway interchange before the development could be built. Both the bridge and the interchange were too expensive for the developer to build. **This legislation would provide a financial tool to pay for the bridge or the interchange**. [Emphasis added.][31]

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[23] Minutes, House Revenue and Taxation Committee, March 10, 2008, p. 1.
[24] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 3.
[25] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, p. 6.
[26] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[27] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[28] Minutes, Senate Local Government and Taxation Committee, March 28, 2008, pp. 2-3.
[29] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008, p. 1.
[30] John Eaton signed in at the hearing as a lobbyist for the Idaho Association of Realtors.
[31] Minutes, House Revenue and Taxation Committee, March 7, 2008, p. 2.

> What types of public infrastructure can a CID acquire and/or construct?
> House Bill 680 limits the types of infrastructure that can be financed through a CID to infrastructure that is: 1) **regional community infrastructure benefiting an entire region;** 2) publicly owned infrastructure; ***and*** (3) **infrastructure that is impact fee-eligible**. The types of **regional community infrastructure include highways, roads, bridges, interchanges, water and wastewater treatment, parks and public safety facilities such as police and fire stations**. … **Again, the focus of H. 680 is on the construction of infrastructure that benefits the entire *region*.** [Bold emphasis added; italics and underlining in original.][32]

The legislative history of the CID Act therefore repeatedly confirms that the CID Act can *only* be used to finance "system improvements" to regional infrastructure eligible for financing under the Impact Fee Act, and *not* "project improvements" which primarily serve a particular development. The District ignored this limitation when it adopted the Payments Resolution and thereby violated the CID Act.

3. The Payments Resolution Violates the CID Act Because It Approves Payments for "Project Improvements".

All but two of the payments authorized by the Payments Resolution are for "project improvements" which primarily or exclusively serve Harris Ranch and thus violate the CID Act. The ineligible payments comprise more than 99.9% of the total dollar amount of the payments authorized.[33]

All the payments approved by the Payments Resolution are for projects located within the Harris Ranch development. Almost all the projects primarily serve only Harris Ranch, ***and most serve that development exclusively***. Therefore, almost all the 2021 Projects necessarily were "planned and designed to provide services to a particular development project" rather than the broader region. Idaho Code § 67-8202(22). These projects, by their location, nature and functions, "are necessary for the use and convenience of the residents and users of [Harris Ranch]" rather

[32] Community Infrastructure Districts (CID), House Bill 680, [TALKING POINTS], p. 1.
[33] The two exceptions are payments authorized for an Idaho Power connection to a City fire station (which is unlawful for other reasons) and landscaping for Boise River wetlands (which Residents believe is unlawful but for which there is insufficient documentation in the record).

than residents of the Boise community. *Id*. The three principal projects, for example, provide residents and users of Harris Ranch access to their homes, the ability to flush their toilets, and a place for the run-off from their property. And none of the projects (save the two which are unlawful for other reasons) provide a primary benefit to the broader region. Therefore, all but two of the 2021 Projects constitute "project improvements" rather than "system improvements" and cannot be funded under the CID Act.

Town Homes #9 and #11 Projects. The Payments Resolution approves the payment of more than $4.7 million (representing more than 65% of the authorized payments) for the construction of several residential streets immediately south of East Parkcenter Boulevard, as well as related sewer services lines, stormwater lines and collectors, street lighting, and signage on and under those streets. (R. pp. 28, 36, 595-904, 1013-1014, 1121). These facilities are all located in the middle of Harris Ranch. Appendices E, G. The residential streets are classified as "local streets" by Ada County Highway District ("ACHD") (e.g., Appendix F) and thus by definition are streets whose primary function is to serve property within the development rather than the broader Boise region. *See* ACHD Policy Manual, Section 7207.1 ("[T]he primary function of a local street is to serve adjacent property."). The same is true of the sewer service lines, stormwater lines and collectors, street lighting and signage on or under those streets. There is thus no question that these facilities are "project improvements" rather than "system improvements" and are ineligible for financing under the CID Act.

Stormwater Facilities. The Payments Resolution approves the payment of almost $1.7 million (representing 23% of the authorized payments) for various stormwater facilities for Harris Ranch. *E.g.*, Appendix D. The Stormwater Facilities exclusively serve Harris Ranch. As the lawyers for the Developer insisted in their August 27, 2021, letter to the District: "These stormwater ponds collect drainage *only from areas within the CID*. … [T]hese ponds do *not* collect

stormwater from areas outside the CID." (R p. 910); **Appendix H**. (Emphasis added). The authorized payments for the Stormwater Facilities are therefore also unlawful under the CID Act because they do not constitute "system improvements", but rather "project improvements" which serve only Harris Ranch.

Parkcenter Projects. The Payments Resolution approves the payment of almost $230,000 for construction of East Parkcenter Boulevard within the development. *E.g.*, Appendix J. East Parkcenter Boulevard is a two-lane street located in the middle of Harris Ranch. *E.g.*, Appendix F. The two-lane street is classified as a "collector" by ACHD, and feeds traffic to and from the local access roads which intersect it. *Id*. Its primary function is thus to provide access to and from properties within Harris Ranch by owners, visitors, and users of those properties. *See, e.g*., ACHD Policy Manual, Section 7206.1 ("The primary function of a collector is to intercept traffic from the local street system and carry that traffic to the nearest arterial. A secondary function is to service adjacent property."). The East Parkcenter Boulevard/East Warm Springs Avenue roundabout is the main entry to the west side of Harris Ranch, and routes traffic destined for the south and east sides of the development along East Warm Springs Avenue, Extension 3. *E.g.*, Appendix F. The location, nature, and function of these facilities primarily benefits the Harris Ranch development and not the Boise community as a whole or the broader region. These facilities thus constitute "project improvements" ineligible for financing under the CID Act.

Deflection Berm. The Payments Resolution approves the payment of $150,000 for a deflection berm. *E.g.*, Appendix J. The function of the Deflection Berm, as the term suggests, is to deflect any Boise River floodwaters away from the south side of Harris Ranch. The Deflection Berm abuts the Mill District within Harris Ranch and is located immediately below the Barber Dam on the Boise River. *Id*. The Deflection Berm only serves the development. (R p. 1422). It is thus also a "project improvement" ineligible for financing under the CID Act.

East Warm Springs Avenue Extensions. The Payments Resolution approves the payment of $400,000 for the construction of the East Warm Springs Avenue extensions from east of Starview Drive to East Barber Drive, down to the west intersection with East Parkcenter Boulevard, on around the southwest side of Harris Ranch, to the east intersection with East Parkcenter Boulevard. *E.g.*, Appendices D, J. These roadway extensions wrap around the west and southwest parts of Harris Ranch and function primarily to provide access to and from more than 1,800 homes located within Harris Ranch. *E.g.*, Appendices A, F. The roadways also serve to route traffic around rather than through East Parkcenter Boulevard in order to reduce the amount of traffic through the middle of the west side of Harris Ranch, and thus directly benefit the homeowners who live there. *Id*. The primary function of the roadway extensions is thus to serve the Harris Ranch development rather than the broader community or region. The extensions are thus "project improvements" ineligible for financing under the CID Act.

Additional "Project Improvements". Projects Nos. 15, 17, 23 and 24 are also all "project improvements" that by virtue of location, nature, and function primarily serve Harris Ranch, and are thus also ineligible for funding under the CID Act. These projects represent less than 1% of the authorized payments. Therefore, in the interest of brevity, Residents hereby incorporate the relevant facts set forth above in support of this challenge. *See, supra,* Section I.C., ¶¶ 15, 17, 23, 24.

C. The Payments Resolution Violates the CID Act Because It Approves Payments for Facilities "Fronting" Individual Single-Family Residential Lots.

1. The Word "Fronting" as Used in the CID Act Refers to Public Facilities "Facing" or "In Front Of" Single-Family Residential Lots and Not Only to Facilities Which "Physically Touch" Those Lots.

The Legislature included the following *express prohibition* in the CID Act: ***"Community infrastructure excludes public improvements fronting individual single-family residential lots."***

Idaho Code § 50-3102(2). (Emphasis added). Under general rules of statutory construction, words used in statutes are to be given their plain, ordinary, generally understood meaning. *E.g.*, *Edwards v. Idaho Transportation Dep't,* 165 Idaho 592, 596, 448 P.3d 1020, 1024 (2019).[34] Opponents argued that the word "fronting" means only those projects that "physically touch" single-family residential lots. (R pp. 581, 910-11). This restrictive interpretation, however, is inconsistent with the generally understood meaning of the word.

Courts use the dictionary as a tool to ascertain the ordinarily understood meaning of a word in a statute. *E.g., Arnold v. City of Stanley*, 158 Idaho 218, 221, 345 P.3d 1008, 1011 (2015). A review of numerous authoritative dictionary definitions establishes that the word "fronting" is generally understood to mean facing or in front of and although it may include physical touching it does not require it.[35] Dictionary.com includes a compilation of dictionary definitions from numerous sources across the internet and does not define "fronting" as requiring physical touch, or as excluding things in front of or facing an object that do not physically touch. It instead defines "fronting" as that which is facing or in front of something else and does so even in the context of property.

> **Front**
> ***Verb (used with object)***
>
> To have the front toward; face:
> *Our house fronts the lake.*
> To meet face to face; confront
> To face in opposition, hostility, or defiance.
> To furnish or supply a front to:

[34] *See also* Idaho Code § 73-113. ("Construction of words and phrases. (1) The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent. (2) If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored.").

[35] "Fronting," Dictionary.com, https://www.dictionary.com/browse/fronting, Accessed 13 Sep. 2022.

To front a building with sandstone.
To serve as a front to:
A long, sloping lawn fronted their house.[36]

The Merriam-Webster on-line dictionary defines "fronting" in the same manner.

Front (2 of 4) verb
fronted; fronting; fronts
intransitive verb
1 : to have the front or principal side adjacent to something
also **:** to have frontage on something
// a ten-acre plot *fronting* on a lake
* * *
transitive verb
* * *
2 a: to be in front of
// a lawn *fronting* the house
* * *
3 : to face toward or have frontage on
// the house *fronts* the street[37]

The Online Etymology Dictionary defines the origins of the word consistent with this interpretation.

front (v.)
1520s, "have the face toward," from French *fronter*, from Old French *front* (see **front** (n.)). Meaning "meet face-to-face" is from 1580s. Meaning "serve as a public facade for" is from 1932. Related: *Fronted*; *fronting*.[38]

The dictionary definitions and etymology of the word "fronting" thus establish that the plain, ordinary, generally understood meaning of the word does ***not*** require physical touching. The CID Act therefore must be read to prohibit funding of public facilities facing or directly in front of individual single-family residential lots whether or not they physically touch.

Courts have also employed "corpus linguistics" as a tool to ascertain the generally understood meaning of words in statute. The Idaho Supreme Court has utilized and expressed interest in this trend in legal analysis. *E.g.*, *Lantis*, 165 Idaho at 432, 447 P.3d at 880; *see also, id.*

[36] "Fronting," Dictionary.com, https://www.dictionary.com/browse/fronting, Accessed 13 Sep. 2022.
[37] "Fronting," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/front. Accessed 13 Sep. 2022.
[38] "Fronting." *Online Etymology Dictionary*, https://www.etymonline.com/search?q=front. Accessed 13 Sep. 2022.

(special concurrence by Justices Brody and Burdick); *State v. Burke*, 166 Idaho 621, 462 P.3d 599 (2020) (dissent by Justice Bevan). Corpus linguistics is defined as "a linguistic methodology that analyzes language function and use by means of an electronic database called a corpus." *Lantis*, 165 Idaho at 432, 447 P.3d at 880 (quoting Stephen C. Mouritsen, *The Dictionary Is Not A Fortress: Definitional Fallacies and A Corpus-Based Approach to Plain Meaning,* 2010 B.Y.U. L. Rev. 1915, 1954 (2010)). The benefit of this methodology to reviewing courts is that it provides an empirical, data-driven approach "to analyze the particular meaning of words in the context of their linguistic usage patterns." *Id*. Courts can thereby ascertain the "generally understood meaning" of words from information outside the often-limited confines of dictionary definitions. *Id*. (citing Stephen C. Mouritsen, *Hard Cases and Hard Data: Assessing Corpus Linguistics as an Empirical Path to Plain Meaning,* 13 Colum. Sci. & Tech. L. Rev. 156, 160-61 (2012) (When terms are to "be interpreted according to their ordinary meaning, they implicate a set of empirical questions, many of which are amenable to different types of linguistic analysis. ... [I]n the field of corpus linguistics, scholars ... determine ... those meanings that are consistent with common usage," or "the term's ordinary or most frequent meaning" based on empirical data rather than personal intuition.); *see also People v. Harris*, 499 Mich. 332, 347, 885 N.W.2d 832, 839 (2016) (using the Corpus of Contemporary American English to interpret the meaning of the word "information."); *State v. Rasabout*, 356 P.3d 1258, 1269 (Utah 2015) (Durrant, C.J., Concurring).

The CID Act was passed in 2008. Given the modern context, the Corpus of Contemporary American English ("COCA") is the language database best suited to ascertain the meaning of the word "fronting" as the Legislature intended.[39] A search of that database for the word "fronting"

[39] COCA contains more than one billion words of text (25+ million words each year from 1990 to 2019 from eight genres: spoken, fiction, popular magazines, newspapers, academic texts, and other web pages. https://www.english-corpora.org/coca/. It is thus generally characterized as the most comprehensive "representative" corpus of contemporary American English. *Id*.

yields 555 results.[40] **Appendix K** (Complete search results in list format). Setting aside instances of usage in unrelated contexts (such as putting someone forward in the case of a political candidate or pretending or showing off as the word is often used in modern parlance), the results establish a clear linguistic usage pattern that again establishes that the word "fronting" is commonly understood to mean facing or in front of.[41] *Id*. A search of the database provides no indication that the generally understood meaning of the word "fronting" is necessarily and exclusively limited to that which is physically touching. Most relevant examples from the database search use the word "fronting" to describe things that have ***no direct physical contact***. *Id*. (relevant examples highlighted for the Court's convenience). The data instead show a clear linguistic usage pattern in contemporary American English which indicates that the word "fronting" is generally understood to mean that which a thing is facing or a thing that is directly in front of another thing. *Id*. While that may include things that physically touch, the objects or things referenced are not necessarily yet alone exclusively in direct physical contact.

The CID Act therefore clearly and unambiguously prohibits the financing of public facilities that face or are in front of single-family residential lots for homes and townhomes regardless of whether those facilities are physically touching those lots. But many of the payments authorized are for facilities which do just that.

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[40] "Fronting." Corpus of Contemporary American English (COCA), https://www.english-corpora.org/coca/. Accessed 10 Oct. 2022.

[41] Illustrative examples include: 2012 pbs.org "Part of the Sphinx Temple can be seen here fronting the Sphinx."; 2012 vanityfair.com "to redesign its misbegotten clump of 1960's buildings fronting on Wilshire Boulevard."; 2012 bangordailynews.com "Downeast Coastal Conservancy included 532 oceanfront properties in 12 communities, most fronting Cobscook Bay."; 2018 cleveland.com "Bogan said plans also call for 10,000 square feet of commercial space fronting Cedar Road."; 2017 Cold Morning "I pointed toward the small windows fronting Main Street."; 2016 Human Organization "There is a historic Main Street, a stately courthouse with white pillars fronting a trim green lawn[.]"; 2015 Quadrant Magazine "640 acres on the Darling Downs, seventy kilometers from Toowoomba. This was land fronting the Condamine River[.]"

2. The Developer's Argument That "Fronting" Requires Physical Touching Would Render the Prohibition in Section 50-3102(2) Meaningless and Lead to Absurd Results.

Statutory "[p]rovisions should not be read in isolation, but rather within the context of the entire document." *State v. Smalley,* 164 Idaho 780, 784, 435 P.3d 1100, 1104 (2019). Reviewing courts must give effect to all the words in the statute so that none will be void or superfluous. *Id.* A determination that the prohibition in Section 50-3102(2) applies only to facilities that physically touch individual single-family residential lots would effectively render the provision meaningless.

If this interpretation were adopted, it would mean that even though a local access street or a sewer line is directly in front of, facing, and exclusively benefitting single-family residential lots, the facility nonetheless could be financed if — as the Developer argued and the District endorsed — the developer interposed a narrow landscaping strip, perhaps six feet wide, between the single-family residential lots and those streets, which the developer conveyed to a homeowners' association.[42]

Their interpretation would mean that the statutory prohibition against financing facilities fronting on single-family residential lots could be circumvented simply by interposing a city-owned sidewalk between the streets and the residential lots. A developer could even convey a one-inch strip of land next to the curb to a homeowners' association.

Opponents' interpretation would also mean that the public water, sewer and stormwater lines running *under* the streets would be outside the scope of the prohibition, as those facilities do not "touch" the single-family residential lots. Thus, a requirement of direct physical contact for the prohibition to apply would be so easy to circumvent that the statutory provision would be rendered meaningless.

[42] In support of this argument, the Developer's lawyers referenced Boise City Code and Harris Ranch Comprehensive Plan provisions regarding "frontage". Those provisions, however, arise in an entirely different context, are irrelevant in construing a State statute, and in any event do not require touching.

Opponents' interpretation also lacks common sense and would lead to absurd results. Consider the example of lakeside property. If one is fortunate enough to own a home on Payette Lake, no-one would suggest that, because the land below the lake's high-water mark on your property is owned by the State, your home is not "fronting" the lake. It therefore simply cannot be the case that when the Legislature chose the word "fronting" it intended the word to be applied as the Opponents have argued.

3. The Payments Resolution Violates the CID Act Because It Approves Payments for Facilities Fronting Single-Family Residential Lots.

More than half of the 2021 Projects, representing more than 80% of the payments ($6.1 million), are fronting on single-family residential lots, in whole or in part. This includes four of the five largest payments.

Town Homes #9 and #11 Projects. As explained above, 65% of the payments approved by the Payments Resolution are for the construction of local access residential streets immediately south of East Parkcenter Boulevard, as well as related sewer service lines, stormwater lines and collectors, street lighting, and signage on and under those streets. (*E.g.*, R pp. 28, 36, 595-904, 1013-1014, 1211); Appendix E). The residential streets are classified as "local streets" by Ada County Highway District ("ACHD").[43] *See* ACHD Policy Manual, Section 7207.1 ("[T]he primary function of a local street is to serve adjacent property."). As the names of these subdivisions demonstrate, the streets consist primarily of single-family residential townhomes on individual lots on both sides of the streets. (*E.g.*, R pp. 585, 910-911); Appendices A, B. Therefore, those streets and the sewer service lines, stormwater lines and collectors, street lighting and signage on or under

[43] R p. 905, attached as Appendix F.

those streets are "fronting individual single-family residential lots" and the approval of their funding by the District was unlawful.[44]

West Stormwater Ponds. The property on which the three West Stormwater Ponds are located abuts nine lots with single-family homes to the north on East Parsnip Peak Drive. Appendices A, B. The Ponds are therefore facilities fronting on single-family homes and cannot be financed under the CID Act.

Parkcenter Projects. Two of the East Parkcenter Boulevard Project roundabouts are surrounded *on all four sides* by single-family townhomes. The third has single-family townhomes on two sides, and currently vacant land on the other two sides. And the East Parkcenter Boulevard/East Warm Springs Avenue roundabout has single-family homes and townhomes on one side. Thus, *all* those roundabouts are directly and immediately "in front of" individual single-family residential lots. Therefore, the payments authorized for those projects are prohibited by the CID Act.

Opponents have argued that roundabouts, as they occur at the intersection of crossing streets, do not "front" on *any* property. As stated, *supra*, the purpose of statutory construction is to ascertain the intent of the Legislature and to give plain and ordinary meaning to all words within a statute. *Smalley,* 164 Idaho at 784, 435 P.3d at 1104. The review of both the generally understood meaning of the word "fronting" combined with a review of the legislative history of the CID Act, demonstrates unequivocally that the intent of the Legislature was to *prohibit* the financing, through a CID, of facilities that are directly in front of and primarily serve single-family homes, including townhomes. It would be unreasonable to suggest that, if a new development consisted *entirely* of

[44] The parcels at the end of each of these blocks, which run along East Haystack Street, consist of planned, pending and completed multi-family rather than single-family residences. Appendix B. It thus appears that East Haystack Street does not front on single-family residential lots. *Id*.

single-family homes and townhomes, the Legislature intended to allow a CID to finance that portion of public streets, water lines, sewer lines, storm water lines and collectors, lighting and signage located *within* intersections, while prohibiting that everywhere else in the development. Intersections are a necessary part of the streets which they connect. Thus, if even one of those streets fronts on single-family homes, then the intersection itself does, as well.

Moreover, due to the circular nature of a roundabout, the lots at the end of each street as it enters the roundabout often do not have a squared corner, but instead are continuously curved, from one cross-street to the other. So, at every point along that curve, the roundabout is immediately in front of the lots facing it. That is the case with these four roundabouts. Therefore, as all four East Parkcenter roundabouts front on single-family homes or townhomes, the CID Act prohibits them from being financed.

Deflection Berm. The Deflection Berm is not only immediately in front of single-family homes on East Sawmill Way and East Sawdust Place, but it also abuts the lots on which those homes are built. It therefore fronts on or faces single-family residential lots and cannot be financed under the CID Act.

East Warm Springs Avenue Extensions 1 and 2. These two street segments are lined on both sides by single-family residential lots. Appendices A, B. The streets are thus plainly fronting those lots and cannot be financed under the CID Act.

Barber Junction Stormwater Ponds. The property on which the Barber Junction Stormwater Ponds are located abuts 5 single-family homes to the east on South Millbrook Way. Appendices A, B. The property thus fronts on or faces single-family homes and cannot be financed under the CID Act.

Warm Springs Creek Realignment. The property on which the Warm Springs Creek Realignment is located abuts 19 single-family homes to the west on South Millbrook Way.

Appendices A, B. The property thus fronts on single-family homes and cannot be financed under the CID Act.

East Barber Drive. East Barber Drive now has single-family residential homes and lots on both sides of the street. *Id*. Thus, payments for those two projects are prohibited by the CID Act.

Idaho Power – Bury/Relocate East Parkcenter Boulevard Power Lines. Any payment for the undergrounding and relocation of Idaho Power lines along East Parkcenter Boulevard is also prohibited by the CID Act, as those facilities run along a street which consists almost entirely of single-family townhomes on both sides, are therefore immediately in front of those homes, and thus fall within the prohibition set forth in Section 50-3102(2).

D. The Payments Resolution Violates the CID Act Because It Approves Payments for Facilities Which Are Not Publicly Owned and Located on Land Which Is Not Publicly Owned.

1. The CID Act Prohibits the Financing of Facilities That Are Not (i) Publicly Owned *and* (ii) Located on Publicly Owned Land.

The CID Act expressly requires that: "***Only*** community infrastructure ***to be publicly owned by this state or a political subdivision thereof*** may be financed pursuant to this chapter." Idaho Code § 50-3101(2). (Emphasis added.)[45] The CID Act <u>also and separately</u> requires that the "public facilities" financed by a CID "may be located ***only in or on lands***, easements or rights-of-way ***publicly owned by this state or a political subdivision thereof***." Idaho Code § 50-3105(2). (Emphasis added.)

This language is unambiguous. *E.g., Burke*, 166 Idaho at 623, 462 P.3d at 601 ("Where the language is unambiguous, [the Court] need not consider the rules of statutory construction."). The CID Act thus requires any financed facility to be located on publicly owned lands *in addition to and not as a substitute for* public ownership of those facilities. Idaho Code § 50-3105(2). These

[45] To emphasize this requirement, the same language is repeated in Section 50-3107(1).

two requirements therefore constitute a prohibition against the funding of *privately*-owned facilities located on *privately*-owned land. Because many of the payments approved pursuant to the Payments Resolution are for projects which are not publicly owned located on land which is not publicly owned, its authorization violates this prohibition of the CID Act.

2. The Payments Approved By the Payments Resolution for Facilities Which Are Privately Owned and Which Are Located On Land Which Is Privately Owned Violate the CID Act.

Nine of the projects approved for funding by the Payments Resolution are privately owned and are located on land that is privately owned, in each case by the Developer. The payments approved for these nine projects total $1.8 million. Payments for these projects are therefore prohibited by the CID Act.

Stormwater Facilities. All the Stormwater Facilities are owned by the Developer and are located on land owned by the Developer. (*E.g.*, R pp. 1462-65); Appendix J. Payments for those facilities, totaling $1.68 million, are thus prohibited by the CID Act. Those payments are not saved by the fact that the Developer has granted easements of access for maintenance over such land to, variously, ACHD and the City. (Sec. VI.F., *infra*). That is because the Stormwater Facilities themselves are not publicly owned and thus do not constitute "community infrastructure" as defined by the CID Act, and because the easements themselves were not acquired "for community infrastructure" as required by Sections 50-3102(2)(e) and 50-3105(1)(d) of the CID Act. Lastly, an easement for access for maintenance of a privately owned facility does not by itself constitute "community infrastructure" as defined in the CID Act. *Id*.

Idaho Power Facilities. These facilities are all owned by Idaho Power, a private utility company, and are located on easements owned by Idaho Power. (R p. 1416). These payments are therefore also prohibited by the CID Act.[46]

E. Payments Pursuant to the Payments Resolution for Projects Undertaken Before the Formation of the District Violate the CID Act.

1. The CID Act Does Not Permit the Financing of Public Facilities Constructed Before the District Was Formed.

As stated above, statutory interpretation begins with the "literal language of the statute, giving words their plain, usual, and ordinary meanings." *E.g., Burke*, 166 Idaho at 623, 462 P.3d at 601 (citing *Schulz*, 151 Idaho at 865, 264 P.3d at 972.). "Where the language is unambiguous, [the Court] need not consider the rules of statutory construction." *Id.* The CID Act clearly and repeatedly states that it will be used *only* to finance projects undertaken *after* the formation of a CID, and *not* past projects undertaken before its formation.

In the very first section of the CID Act, the Legislature states: "The purpose of this chapter is … [t]o encourage the funding and construction of regional community infrastructure ***in advance of actual development growth*** …." Idaho Code § 50-3101(1). (Emphasis added). One cannot "encourage the funding and construction of regional community infrastructure in advance of actual development" if that infrastructure has already been funded and constructed. In the next subsection, the Legislature states: "Only community infrastructure ***to be*** publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter." Idaho Code § 50-3101(2). (Emphasis added.)[47] The words "to be publicly owned" are an unambiguous reference *to the future*.

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[46] These payments are also unlawful because the installation, relocation or undergrounding of electric facilities are not included in the definition of "community infrastructure" that may be financed under the CID Act. Idaho Code § 50-3102(2).

[47] The identical language is repeated in Section 50-3107.

The CID Act further provides that "Community infrastructure ***to be financed or acquired, or publicly or privately constructed*** pursuant to this chapter shall be subject to the required bidding procedure for any Idaho public agency." Idaho Code § 50-3107. (Emphasis added). Yet again, these are references to actions to be taken *in the future.* One cannot competitively bid a construction project if it has already been built. In fact, there is not any language in the CID Act which explicitly states that it can applied retroactively to fund projects that were completed before a CID was even formed. That may explain why the corresponding provisions of the Development Agreement are also forward-looking.[48]

Moreover, if it were permissible under the CID Act to finance past projects, then there would be nothing to prevent a developer from being reimbursed for a road that they constructed 50 years prior to formation of a CID and dedicated to the public, plus interest on the original construction costs over the intervening 50 years. That cannot be what the Legislature intended. Given the absence of clear and unequivocal statutory language granting such authority, the CID Act must be construed to prohibit such an absurd outcome.

2. Payments Pursuant to the Payments Resolution for Projects Undertaken Before the Formation of the District Violate the CID Act.

The formation of the District was approved by the City in May 2010. (R p. 55). The execution of the Development Agreement was approved by the Board of the District on June 22, 2010. (R p. 1410). The Development Agreement has a stated effective date of August 31, 2010, but

[48] For example, Section 1.5(a) provides that "Any District Financed Infrastructure ***shall be*** publicly bid and awarded …." Section 1.5(d) provides that "Each agreement or contract for construction or acquisition relating to community infrastructure improvements … ***shall*** provide that the respective contractors … shall not have recourse, directly or indirectly, from or against the Municipality [the City]." Section 2.1(a) provides in relevant part that "[The Developer] may … cause ***to be*** constructed the community infrastructure improvements … in accordance with plans and specifications approved by [the City]." (Emphasis added). Section 2.1(b) adds that "The Acquisition Projects ***shall be*** constructed in a good and workmanlike manner …" (Emphasis added). And Section 2.2 provides that "The Acquisition Projects shall be bid in one or more parts pursuant to the Public Bid Requirements …." Similar forward-looking usage continues throughout the Development Agreement.

it was not executed by the District and the Developer, and thus was not a binding contract, until October 5, 2010. (R pp. 55, 501, 534-536). The Payments Resolution includes the approval of payments totaling more than $800,000 for projects undertaken before the District was even formed, and which therefore exceed the District's authority under the CID Act. (R pp. 18-20).

West Stormwater Ponds. This payment is for more than $500,000. Appendix D. The easement on which this payment is purportedly based was conveyed on or before July 30, 2010. Id. This is prior to the effective date of the Development Agreement, and long prior to its final execution date. (R pp. 55, 501, 534-536). The payment is therefore unlawful under the CID Act.

Deflection Berm. This project, the authorized payment for which is more than $150,000, was completed in November 2008, a year and a half before the District was formed. Appendix D. This payment is therefore also unlawful under the CID Act.

East Warm Springs Avenue Extensions 1 and 2. These projects, authorized payments for which total almost $140,000, were completed in November 2009. Appendix D. They necessarily were begun months or even years before that. These payments therefore are unlawful under the CID Act.

East Barber Drive Projects. These projects were completed in November 2009 before the District was formed. Appendix D. These payments therefore are also unlawful under the CID Act.

F. The Payments Resolution Approves Financing for the Purchase of Interests in Land That Do Not Constitute "Community Infrastructure" In Violation of the CID Act.

The CID Act authorizes a CID to "[a]cquire interests in real property … ***for community infrastructure*** …". Idaho Code §§ 50-3105(1)(d), 50-3102(2)(e). (Emphasis added). The Act's express authorization of the acquisition of interests in real property "for community infrastructure" necessarily implies a prohibition against the acquisition of interests in real property that is *not* for community infrastructure.

Four of the authorized payments, totaling almost $700,000, are for the supposed fair market value of land under Stormwater Facilities. (*E.g.*, R pp. 954-55, 1413-16). The fair market value of land, by definition, is what one would pay in exchange for fee simple title to that land. But the District did not receive fee simple title to that land in exchange for those payments – all that land continues to be owned by the Developer. (*E.g.*, R pp. 1463-66). Instead, the Developer only granted an "easement" for "access" over their *privately-owned* land for "maintenance" of their *privately-owned* stormwater facilities. (*E.g.*, R pp. 1424, 1463-1466). That access for maintenance is only upon the failure of the Developer to maintain them, and only if the governmental grantee chooses at its option to do so. (*E.g.*, R p. 1020 ¶ 1).

The District thus approved payments for an amount commensurate with the acquisition of interests in real property that have not been acquired. Moreover, the Stormwater Facilities located on those easements do not constitute "community infrastructure," as they are not publicly owned. Idaho Code § 50-3102(2). Therefore, the acquisition of those easements was not otherwise "for community infrastructure". The payments approved pursuant to the Payments Resolution therefore would be unlawful under the CID Act for two reasons: (i) the District has not acquired title to the land it paid for, and (ii) there is no community infrastructure located on the interests in land which were acquired.

If this were permissible, the Developer could build a *private* road on *private* land owned by, in this case, the Harris family in the foothills above Harris Ranch, to which the public had no access, and nonetheless be paid by the District for the cost of the road ***and the fair market value of the land under it*** if the Harris family simply provided an easement for access to ACHD to maintain the road, at ACHD's sole option, upon the failure of the Harris family to do so. There would be a publicly owned easement for access for maintenance. But there would be no public ownership of the land or the road, and no public use, and therefore no public facilities.

What the CID Act requires, as a condition of any payment to the Developer for the fair market value of the land on which the Stormwater Facilities are located, is that the Stormwater Facilities be *owned* by ACHD or another local government, and that the land on which they are located be *owned* by ACHD or another local government, as well. As neither the Stormwater Facilities in question nor the land on which they sit are owned by the State or a local government, the payment to the Developer by the District for the fair market value of such land is prohibited by the CID Act.

G. The Authorization of Payments for the Acquisition of Interests in Land Substantially in Excess of Their Value Violates Prohibitions in the Idaho Constitution Against the Gift of Public Funds to Private Enterprise.

1. Article VIII, Section 4 and Article XII, Section 4 of the Idaho Constitution Prohibit Local Governments from Lending Their Credit or Donating Money to any Private Person, Association or Corporation.

Article VIII, Section 4 of the Idaho Constitution provides that no city or other local government "shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in the aid of any individual, association or corporation, for any amount or any purpose whatsoever." (Emphasis added). In addition, Article XII, Section 4 of the Idaho Constitution provides that no city or other local government "shall … raise money for, or make donation or loan its credit to, or in aid of" "any joint stock company, corporation or association". (Emphasis added.)

In *Idaho Falls Consolidated Hospitals, Inc. v. Bingham County Board of Commissioners*, 102 Idaho 838, 642 P.2d 553 (1982), the Idaho Supreme Court upheld a statute authorizing public hospitals to provide aid to the indigent and rejected a challenge that doing so violated Article VIII, Section 4. The Court explained that the framers of the Idaho Constitution "were primarily concerned about private interests gaining advantage at the expense of the taxpayer."

The Court in *Boise Redevelopment Agency v. Yick Kong Corp*., 94 Idaho 876, 885, 499 P.3d 575, 583 (1972), said much the same thing:

> The proceedings and debates of the Idaho Constitutional Convention indicate a consistent theme running through the consideration of the constitutional sections in question. *It was feared that private interests would gain advantages at the expense of the taxpayers*. [Emphasis added.]

Courts in other jurisdictions have held that a payment to a private party for property that is substantially in excess of the value of that property constitutes an unconstitutional gift of public funds. *E.g., Turken v. Gordon*, 223 Ariz. 342, 348, 224 P.3d 158, 164 (2010) ("When government payment is grossly disproportionate to what is received in return, the payment violates the Gift Clause [of the Arizona Constitution]."); *accord*, *Schires v. Carlat*, 250 Ariz. 371, 378, 480 P.3d 639, 646 (2021); *See also*, *Peterson v. State*, 195 Wash.2d 513, 460 P.3d 1080, 1083 (2020); *CLEAN v. City of Spokane*, 130 Wash.2d 782, 797-984, 1054 P.2d 1169 (1997).

2. Payments Pursuant to the Payments Resolution for the Fair Market Value of Land Over Which Only an Easement for Access to Maintain Private Facilities Has Been Acquired Constitutes an Unconstitutional Gift of Public Funds to the Developer.

As explained in the section above, the Developer granted easements on and over the land on which the Stormwater Facilities are located which provide access to the City or ACHD, respectively (each, "Grantee"), to maintain those facilities, at its option, if the Developer fails to do so. Under the easement agreements, the Developer has the obligation, at their sole cost and expense, to maintain the Stormwater Facilities. (*E.g.*, R p. 1019 ¶ 5). The only substantive right each Grantee has is to enter the *privately*-owned property to maintain the *privately*-owned stormwater facilities at the failure of the *private* owner to do so. Neither Grantee has the right to sell the property or the stormwater facilities, to lease the property to third parties, to build government offices or other facilities on the property, or to otherwise convert the property or facilities to other uses. (*Id*.)

The "fair market value" of property has been defined by the Idaho Supreme Court in the context of eminent domain as "the amount of money that a reasonably prudent purchaser would

normally pay". *E.g., State ex rel. Moore v. Bastion*, 97 Idaho 444, 448, 546 P.2d 399, 403 (1976) ("[T]he 'fair market value' of the lessee's interest in the property is the amount of money that a reasonably prudent purchaser would normally pay …".). This definition is consistent with the definition of "fair market value" under U.S. Treasury Regulations. 26 CFR § 1.170A-1(c) ("the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.").

The right to enter someone else's private property to maintain a private stormwater pond that the private owner is otherwise obligated to maintain ***is not*** something for which a reasonably prudent person would pay much (if anything) for. And it is beyond dispute that no one would pay anything close to the amount they would instead pay for fee simple title to the property and the freedom to use it at its highest and best use or to sell it to someone who would. In fact, there is no evidence in the record that the easements have any value whatsoever.[49] They instead create the *burden* of possibly needing to maintain the stormwater facilities at the default of the private owner. The payment of the fair market value of the property at its supposed highest and best use thus is substantially more than the value of the easement granted, and therefore constitutes an unconstitutional gift of public funds to the Developer.

H. Section 50-3119 Provides for Judicial Review of the Authorization of Payments for the Accrued Interest Projects Even Though Prior Payments for the Same Projects May Have Been Authorized by the District in the Past.

1. Section 50-3119 Provides for Judicial Review of Final Decisions that Approve Actions Identical to Those Previously Approved by a District Board.

[49] The valuations of the land on which the Stormwater Facilities are located were based on unsubstantiated and in any event fundamentally and necessarily false assumptions. The valuations assumed, without any evidence whatsoever, that the land instead could have been developed with private homes (*E.g.*, R pp. 954-55, 1413-24) even though by law those properties are dedicated in perpetuity to stormwater control. (*E.g.*, R p. 1019 ¶ 3).

Section 50-3119 of the CID Act provides:

> Any person who feels aggrieved by the final decision of … a district board in the … governing of a district … may, within sixty (60) days after such final decision, seek judicial review … After said sixty (60) day period has run, no one shall have 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 incontestable and the validity, legality and regularity of any *such decision* shall be conclusively presumed. [Emphasis added.]

The cited language provides an affirmative right of judicial review of any and all "final decisions" of a district board. *Id*.

By its plain and unambiguous terms, Section 50-3119 only bars a challenge to the validity of a particular "final decision" if the challenge to "said decision" is not brought within the designated limitations period. It does *not* bar a challenge to any subsequent "final decision" of the district board, even if that decision approves an action identical to that previously approved.

2. Section 50-3119 Permits This Challenge to the Payment of Interest with Respect to the Accrued Interest Projects.

Under Section 50-3119, prior "final decisions" of the Board do not have some sort of preclusive effect with respect to subsequent "final decisions" of the Board. That is, if a prior "final decision" approved a given action, a future "final decision" approving the same or similar action is still subject to challenge under the plain language of the statute.

Section 50-3119 is both a remedial statute and a statute of limitation. That is, it grants any person "aggrieved" by a final decision of a district board with an affirmative and exclusive right of judicial review. But it then imposes a very short limitations period within which such right must be exercised. The Idaho Supreme Court has repeatedly held that remedial statutes must be *liberally* construed to give effect to their purpose. *E.g., Eller v. Idaho State Police*, 165 Idaho 147, 156, 443 P.3d 161, 170 (2019); *Hill v. American Family Mut. Ins. Co*., 150 Idaho 619, 625, 249 P.3d 812, 818 (2011).

Conversely, Courts in Idaho and elsewhere have held that statutes of limitation prescribing a relatively short period of time within which to commence an action should be narrowly construed to provide parties a fair opportunity to present their claims. *E.g., Latham v. Haney Seed Co*., 119 Idaho 427, 429, 807 P.2d 645, 648 (Ct. of App. 1990), rev'd on other gnds., *Latham v. Haney Seed Co.*,119 Idaho 412,807 P.2d 630 (1991); *Goodman v. Fairbanks North Star Borough School Dist*., 39 P.3d 1118, 1120 (Alaska, 2001); *Safeco Ins. Co. of America v. Honeywell, Inc*., 639 P.2d 996, 1001 (Alaska, 1981); *also Renner v. Edwards*, 93 Idaho 836, 838, 475 P.2d 530, 532 (1969); *Bowcutt v. Delta North Star Corp*., 95 Wash. App. 311, 319, 976 P.2d 643, 647 (1999), *St. Michelle v. Robinson*, 52 Wash.App. 309, 311, 759 P.2d 467, 468 (1988). Therefore, the limitation in Section 50-3119 must be narrowly construed, and the affirmative grant of a remedy in Section 50-3119 must be liberally construed in order to preserve the right of aggrieved persons to contest any and all final decisions of a district board.

A contrary interpretation would ignore the plain meaning of the statutory language and lead to absurd results. *E.g., Idaho Dept. of Health & Welfare v. Doe*, 151 Idaho 300, 256 P.3d 708 (2010) (Interpretations that would lead to absurd results are to be avoided.). Assume, hypothetically, that the Board, at its first meeting in June 2010, adopted a short, simple resolution that authorized the payment to the Developer of a total of $50 million to do with as they pleased. The adoption of that resolution would unquestionably violate numerous constitutional and statutory provisions. But, as there were no homes and thus no homeowners in the District until years later, there would have been no one to challenge that "final decision" within the 60-day appeal period under Section 50-3119. If prior "final decisions" had some sort of preclusive effect, all subsequent resolutions of the Board approving payments to the Developer would be immune from challenge, even if clearly and undeniably unlawful. There is simply no authority in Idaho (or anywhere else) for any such thing. What Section 50-3119 does instead is protect the prior "final decision" from

challenge after the 60-day limitations period has passed, and provide an affirmative right to challenge any and all *future* "final decisions" within that limitations period.

I. This Proceeding Constitutes a Timely Challenge to the Approval by the District's Board *Pursuant to the Payments Resolution* of the Prior Payments for the Accrued Interest Projects Which Were Not Previously Approved by Final Decisions of the Board.

1. Most of The Prior Payments for the Accrued Interest Projects Were Not Previously Approved by the Board.

2. The Payments Resolution Approved Prior Payments Made by the District for the Accrued Interest Projects.

3. This Proceeding Constitutes a Timely Challenge to the Approval by the District Board Pursuant to the Payments Resolution of the Prior Payments for the Accrued Interest Projects Approved Only by District Staff.

Argument in support of the propositions within this subsection were fully briefed and presented to this Court in prior briefing. Surreply in Support of Appellants' Motion to Compel Completion of Record and Transcript. In the interest of brevity and to preserve those arguments for appeal, Residents hereby incorporate and restate them as if fully set forth herein. Residents respectfully request that this Court review that briefing and reconsider its prior determinations.

J. Residents Have Standing Under the Express Provisions of the CID Act to Contest the Lack of Authority to Adopt the Challenged Resolutions Based on the Unlawful Formation of the District.

The CID Act explicitly grants Residents standing to challenge any "final decision" of the District Board or the City Council in the ***formation*** or ***governing*** of the District. Idaho Code § 50-3119. This grant is unambiguous and all-encompassing. The express statutory grant of standing to "any person" "aggrieved" by a final decision relating to the formation of the District distinguishes this proceeding from the two cases cited by this Court in its earlier procedural ruling. As the Idaho Supreme Court explained over 120 years ago in *Wright v. Kelly*:

> [A]ll reasonable presumptions must be entertained, and all reasonable construction of the statute must be resorted to, in order to sustain the acts of a co-ordinate branch

> of the state government; remembering at the same time that the legislative power extends to all proper subjects of legislation, and are therefore unlimited, except as they are restricted by the constitution, and that the power of the legislature over municipal corporations is supreme and transcendent. It may erect, change, divide, and even abolish them at pleasure, as it deems the public good to require, unless such action is expressly forbidden by the provisions of the constitution[.]

4 Idaho 624, 43 P. 565, 568 (1895) (citing Dill. Mun. Corp. § 54; *Los Angeles Co. v. Orange Co.*, 97 Cal. 329, 333, 32 Pac. 316, 317 (1893)).

In its "Order on Motions to Complete Record, to Delete Documents from Record and to Augment Record", the Court cited *Clemens v. Pinehurst Water Dist.*, 81 Idaho 213, 339 P.3d 665 (1959), and *Pioneer Irr. Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911), in denying Appellants' motion to complete the record by including District and City documents related to the formation of the District. The Court did so on the grounds that Appellants "lack standing to challenge the creation and formation of the CID in this proceeding." Order at 5. The Court's conclusion, however, is contrary to the express grant of standing in the CID Act to Appellants to challenge the formation of the CID. Moreover, neither of the cases cited is controlling.

Pioneer Irr. Dist. does not address standing to challenge the formation of a municipal corporation. It concerns the applicability and constitutionality of a statute governing elections held by an irrigation district. *Pioneer Irr. Dist.,* 20 Idaho at 606, 119 P. at 305. That case is therefore inapposite.

Clemens is also inapposite. 81 Idaho 213, 339 P.2d 665. That case arose under a different Act related to the formation of water and sewer districts. *Id*. (discussing Idaho Code, Title 42, Chapter 32). Section 42-3207 of that Act explicitly conferred standing only to the Idaho Attorney General to challenge that district's formation. That section provides:

> If an order be entered [by the court] establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons ***except the state of Idaho, in an action in the nature of a writ of quo warranto, commenced by the attorney general*** within thirty (30) days

> after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.[50]

I.C. § 42-3207. (Emphasis added).

Unlike the CID Act, this provision expressly and exclusively grants standing only to the state of Idaho in a special proceeding brought by the Idaho Attorney General to challenge the water or sewer district's formation. *Id*. This is in stark contrast to Section 50-3119, which grants standing to "[a]ny person in interest" to challenge any final decision, including those related to the District's "formation", by way of a judicial review proceeding. The *Clemens* case stands for the proposition that the language of a statute must be applied as written. 81 Idaho 213, 339 P.2d 665. The language in Section 50-3119 must also be applied as written.

Unlike the statute at issue in *Clemens*, the CID Act expressly confers standing to Residents to not only challenge the District's formation, but also to contest the Challenged Resolutions "for any reason whatsoever", including the lack of "authority to issue the bonds, the legality thereof and of the levies … necessary to pay the same" based on the defective formation of the District. Idaho Code § 50-3119.

K. Judicial Review of the Challenged Resolutions on the Ground That the District Was Unlawfully Formed Are Not Barred by Section 50-3119.

Section 50-3119 provides any person who feels aggrieved by the final decision of a district board in the governing of a district, "including with respect to ***any tax levy or … bond***," with an affirmative and ***unqualified*** right to seek judicial review within 60 days of such decision. The statute goes on to provide in relevant part that:

[50] Under the Act at issue in *Clemens* (unlike the one at issue here), formation of the district also required judicial review including a petition to the district court, a hearing on the petition conducted by the court, an election ordered by the court, and a judicial determination by the court of the results of the election. Idaho Code §§ 42-3203 – 3207.

> After said sixty (60) day period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said decision *for any reason whatsoever* …

Id. (Emphasis added). In other words, ***if*** a notice of appeal ***is not*** filed within 60 days, the legality of that decision cannot be challenged. Conversely, what that language necessarily means is that, ***if*** a notice of appeal ***is*** filed within such 60-day period, an aggrieved person ***can*** "contest the legality, formality or regularity of *said decision* ***for any reason whatsoever***". Idaho Code § 50-3119. There is no reason for the Legislature to expressly deny an aggrieved person the ability to bring a challenge ***after*** 60 days has passed unless it had contemplated and authorized an aggrieved person to bring such a challenge ***within*** that 60-day period. Section 50-3119 goes on to state that:

> 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 … shall be conclusively presumed ….

Once again, the presumption of the existence of authority to issue bonds only exists if a challenge to that authority ***is not*** brought within 60 days. But, ***if*** a notice of appeal ***is*** filed within the 60-day period, the authority to issue a bond **can be challenged**.

In other words, the statute explicitly provides that while a court, for example, cannot invalidate the District due to its improper formation, the court may examine prior events in order to ascertain whether the District has the legal authority for the new "final decision" being challenged. Statutory interpretation requires giving effect "to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Smalley,* 164 Idaho at 784, 435 P.3d at 1104. This reading gives full effect to both the presumption of validity of prior events and the express grant of the right to timely challenge district actions on any basis whatsoever. *Id*.

L. The Authorization of the 2021 Bond and the Imposition of the Related Taxes Pursuant to the Bond Resolution Violates the Idaho Constitution Because the 2021 Bond Was Not Approved by a Two-Thirds Vote of Qualified Electors.

1. The Issuance of a Bond or Other Indebtedness by a Local Government Without the Approval of Two-Thirds of the Qualified Electors at an Election Violates Article VIII, Section 3 of the Idaho Constitution.

Article VIII, Section 3 of the Idaho Constitution states:

> No county, city … or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose … . Any indebtedness or liability incurred contrary to this provision shall be void … . [Emphasis added.]

The issuance of a bond by a local government therefore requires the prior approval of two-thirds of the qualified electors in an election held for that purpose.

There is a long line of cases in Idaho which have struck down various attempts to circumvent these limitations. *See, e.g., City of Challis v. Consent Caucus*, 159 Idaho 398, 361 P.3d 485 (2015) (city water distribution system); *City of Idaho Falls v. Fuhriman*, 149 Idaho 574, 237 P.3d 1200 (2010) (city long-term power purchase agreement); *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006) (city airport parking facilities); *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983) (contracts by cities to purchase "capability" of planned nuclear power plants); *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956) (city natural gas utility); *Straughan v. City of Coeur D'Alene*, 53 Idaho 494, 24 P.2d 321 (1932) (city lighting and waterworks systems); *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931) (city sprinkling and flushing system); *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843 (1930) (city purchase of electric generating plant); and *Feil v. City of Coeur D'Alene*, 23 Idaho 32, 129 P. 643 (1912) (city electric utility). As the Supreme Court stated in *Williams*, *supra*:

> The Idaho Constitution is imbued with the spirit of economy, and in so far as possible it imposes upon the political subdivisions of the state a pay-as-you-go system of finance. The rule is that, without the express assent of the qualified

> electors, municipal officers are not to incur debts for which they have not the funds to pay. * * * County officers must use the means they have for making fair and equitable assessments until they are able to pay for something more efficient, or obtain the consent of those in whose interests they are supposed to act.

51 Idaho at 500 (quoting *Dexter Horton T. Sav. Bank v. Clearwater County*, 235 Fed. 743 (1916)).

Efforts by State legislators and local officials to circumvent the constitutional voter approval requirement have at times involved the creation or use by the State or local governments of separate entities to incur indebtedness or other long-term liabilities on behalf of the State or local government without obtaining voter approval.[51] But the Idaho Supreme Court has also repeatedly struck down those attempts. *See, e.g., O'Bryant*, *supra* (use of cooperative gas association); *State Water Conservation Board v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936) (use of State-created water "board"); *Williams*, *supra* (use of private company as lessor under a rental agreement); *Miller*, *supra* (use of private company as seller under an installment purchase agreement); *see also Hollingsworth v. Thompson*, 168 Idaho 113, 480 P.3d 150 (2020) (use of non-profit corporation created by county); and *Koch v. Canyon County*, 145 Idaho 158, 177 P.3d 372 (2008) (use of Idaho Association of Counties shell corporation).

2. The Issuance of the 2021 Bond and the Imposition of the Related Taxes Violates the Idaho Constitution Because the Bond Was Not Approved by a Two-Thirds Vote of the Qualified Electors in the City.

The authorization of the 2021 Bonds violates the constitutional voter approval requirement because there has not been a City-wide election to approve its issuance. (R p. 23). Opponents will likely argue that the District is an entity separate from the City, and thus that the supposed "election" held by the District to approve the issuance of bonds, including the 2021 Bonds, is sufficient. But the District, although in form is its own "district", is in fact simply an *alter ego* of the City and cannot be used to circumvent the constitutional requirement.

[51] There is a similar constitutional limitation on the State imposed by Article VIII, Section 1.

Under the CID Act, three members of the City Council, chosen by the City Council, serve as the "Board" of the District, the Mayor is the "Manager" of the District, the City Treasurer is the "Treasurer" of the District, and the City Clerk is the "Clerk" of the District. Idaho Code § 50-3104.[52] In addition, the City Attorney is the Attorney for the District[53], and City staff perform those administrative functions of the District that are not contracted for with private third parties. *Id*. The District does not have a single official or employee of its own. The City effectively exercises complete control over the District. As the three members of the District Board are chosen by the City Council and can be removed at any time (Idaho Code § 50-3104(2)), if the District Board were to do or propose something with which the City Council disagrees, the City Council could simply replace those Board members with others more amenable. So, the District as a practical matter cannot exercise any judgment or authority independent from the City. The legislative history of the CID Act confirms this by stating that "the governing body of the local jurisdiction that establishes a district maintains control of it through the district board."[54]

The District in fact has no powers or purposes separate from or in addition to those of the City, with two notable exceptions. The District is given the power under the CID Act: (1) to issue debt *without* a vote of all the qualified electors in the City, and (2) to thereby impose separate and additional *ad valorem* property taxes on a small fraction of the property owners within the City. Idaho Code § 50-3108. It thus appears that the primary if not sole reason for the existence of the District is to circumvent State constitutional limitations on indebtedness and taxation that apply to the City.

[52] The mayor is the chief administrative official of a city. Idaho Code § 50-602.
[53] Given that the City Attorney represents both the City and its District, it would appear that there is such a unity of identity and interests that no conflict of interest is presented by such representation.
[54] Community Infrastructure Districts (CID), House Bill 578, TALKING POINTS, DRAFT 3/4/2008.

The Idaho Supreme Court in *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 882, 499 P.2d 575, 581 (1972), held that the Boise Redevelopment Agency did not constitute an *alter ego* of the City of Boise. Their holding was based primarily on the fact that, although the Mayor and City Council appointed the members of the Agency's commission, the commissioners could only be removed "[f]or inefficiency or neglect of duty or misconduct in office" and only after a hearing. *Id.*; *accord*, *Urban Renewal Agency v. Hart*, 148 Idaho at 302, 222 P.3d at 470. The District's Board, by contrast, consists of members of the City Council whom the Council can remove and replace at any time for any reason and without any hearing.

Similarly, in *Wood v. Boise Junior College Dormitory Housing Commission*, in holding that the housing commission was not the *alter ego* of the junior college district, the Supreme Court concluded that the degree of control exercised by the junior college district over the actions and activities of the housing commission and its separate commissioners, appointed and subject to removal only by the Governor rather than by the trustees of the junior college district, "does not usurp the powers and duties of the housing commissioners." 81 Idaho at 384, 342 P.2d at 702. The Supreme Court emphasized that "[t]he housing commission… does not impose an obligation upon the taxpayers of the junior college district". *Id*. The District, by contrast, can impose special taxes on taxpayers within the City, and has in fact done so repeatedly.

In *O'Bryant*, the Supreme Court held that a city could not use a supposedly separate cooperative association to establish a natural gas utility and evade the constitutional voter approval requirement. 78 Idaho at 326, 303 P.2d at 679. The Supreme Court stated that "[c]ourts will pierce the corporate veil and look behind the form of organization to determine the true character of an organization and will disregard corporate form and consider substance rather than form" when determining whether an organization is the *alter ego* of a local government created for the purpose of circumventing constitutional requirements. *Id*. at 325. The Court concluded that "the

Cooperative is not a true non-profit cooperative association, but is an instrumentality of and controlled by the City of Idaho Falls". *Id*. The focus of the Court's analysis was again on the degree of control exercised by the city over the association.

Thus, under the principals applied by the Idaho Supreme Court, as the City of Boise effectively exercises complete control over the District, the District is simply a part of the City. Because the City did not hold a City-wide election to approve the issuance of the 2021 Bond, the authorization of the issuance of the 2021 Bond and the levy of related taxes pursuant to the Bond Resolution is unconstitutional under Article VIII, Section 3 of the Idaho Constitution.

3. The Authorization of the 2021 Bond and the Imposition of the Related Taxes Violates the Idaho Constitution Because the Bond Was Not Approved by a Two-Thirds Vote of the Qualified Electors in the District.

The approval of the District's 2021 Bond is fatally flawed even if examined at the District level. That is because Article VIII, Section 3 of the Idaho Constitution must be interpreted to require that the qualified electors within a jurisdiction ***who will have to pay the indebtedness from their property taxes*** are the ones entitled to vote.

What the framers of Idaho's Constitution contemplated, and what the language of Idaho's Constitution requires, is that ***then-existing*** voters and taxpayers in a ***then-existing*** city, county or school district, are given the constitutional right to vote. And that the purpose of this right to vote on behalf of themselves and future such voters and taxpayers, is to approve the issuance of any indebtedness and the resulting imposition of *ad valorem* property taxes on ***those voters who pay the indebtedness***. There are repeated references in the colloquies during the Idaho Constitutional Convention to a "vote of the people", to the "voters", and to votes and elections, all by *existing* counties, cities, towns and school districts. *See* Proceedings and Debates of the Constitutional Convention of Idaho, 1889, pp. 588, 589, 592, 595, 596, 1671, and 1686.

The boundaries of the District, however, were rigged by the City and the Developer to exclude *any* properties the Developer did not then own, even though they benefit from the public facilities financed by the District *to the exact same extent* as properties within the District. Thus, for example, six square blocks with 90 homes in the northwest quadrant of Harris Ranch were carved out of its boundaries. Appendices B and C. And ***more than 500*** existing homes in the southeast quadrant of Harris Ranch constituting the Mill District and Harris Ranch (now known as Spring Creek) subdivisions were similarly excluded. *Id*. That was done *solely* because, if such properties had been included, the owners undoubtedly would have voted *against* the issuance of the bonds and the resulting levy of special *ad valorem* property taxes to pay those bonds. They would have done so because the developer would have had to build out all the public infrastructure in Harris Ranch regardless.

If such a scheme were permissible, it would gut the Constitutional voter approval requirement. For example, the Legislature could adopt legislation that authorized a city to establish a "special taxing district" authorized to issue bonds payable from special *ad valorem* property taxes. That district would consist only of those properties whose owners voted in favor of its creation and its issuance of the bonds. But the special property taxes would not apply to those properties until after they were later sold. So, everyone could vote for the bonds knowing they would never have to pay any of the related property taxes. The only people who would have to pay the taxes would be the people who later moved there and who therefore by definition, were deprived of any opportunity to vote on them.

And that is precisely what happened here. That is why the constitutional requirement must be read to require that those who are to pay the special tax are the ones entitled to vote.[55] As the

[55] The court does not need to decide in this case how many of the more than 1,000 homeowners now residing in the District would have had to approve the issuance of the 2021 Bond. Just that it had to be more than none.

issuance of the 2021 Bond was not approved by two-thirds of homeowners in Harris Ranch **who will pay the tax**, the authorization of the Bond Resolution violates Article VIII, Section 3 of the Idaho Constitution.

4. The Authorization of the 2021 Bond and the Levy of the Related Taxes Violates the Idaho Constitution Because the Bond Was Not Approved by the Vote of Even One Person Who Would Actually Pay the Resulting Property Taxes.

Counsel for Intervenor, in their letter to the Board dated September 28, 2021, adopted the patently absurd position that it was entirely appropriate for the District to issue $50 million in bonds and to impose $110,000,000 in special *ad valorem* property taxes over many decades by the vote of a single person. (R. pp. 1455-57). What is more, counsel was not concerned by the fact that the individual who supposedly cast that vote was a ranch worker who worked for the Harris family, who lived on their property, who registered to vote just for the bond "election", and who thus would pay none of those taxes. *Id*.

The Idaho Constitution's requirement that bonds be approved by a two-thirds vote of the qualified electors cannot possibly be satisfied where: (1) only one person voted to approve the issuance of tens of millions of dollars of debt and the imposition of almost $110 million in taxes over many decades, and (2) where NONE of the many thousands of homeowners and taxpayers who will actually pay those taxes are allowed to vote. The Constitutional prohibition references a vote of the "qualified elector**s**" of the "county, city, board of education, or school district, or other subdivision of the state". Idaho Const. Art. VIII, § 3. The drafters of the Idaho Constitution could have never imagined that the vote of a single tenant living in a yet-to-be built housing development could vote to approve $50 million in bonds and $110 million of taxes which he would never pay.[56]

[56] There is no suggestion in the almost 2,000 pages of the proceedings of the Idaho Constitutional Convention of 1889 that the Convention contemplated anything other than a vote by all those eligible to vote who are then residing in an existing city, county or special district.

As the issuance of the 2021 Bond was not approved by the vote of even one person who would pay the resulting special taxes, the authorization of the Bond Resolution violates Article VIII, Section 3 of the Idaho Constitution.

5. The Authorization to Issue the 2021 Bond and the Imposition of the Related Taxes Violates the Idaho Constitution Because the Official Canvas for the Supposed Election Does Not Show that the Measure Was Actually Approved by Even One Vote.

The issuance of the 2021 Bond by the District, as part of a total of $50 million in "general obligation" bonds, was supposedly approved by a "vote" of three-to-one, or 75% of the votes cast, in an election held by the District on August 3, 2010. (R pp. 990-993, 996-998); Appendix L. But of the four votes cast, only three were cast by qualified electors. (R. pp. 991-992); Appendix L. And the official canvas does not reveal which of the voters was not eligible to vote. (R p. 993); Appendix L. One of the voters, an individual, apparently listed an address which is outside the boundaries of the District. (R. pp. 993, 998). So, it is possible that this is the voter who was not a qualified elector. The other individual voter was not a qualified elector either at the time of the petition for formation of the District or at the time the District was established by the City. (R pp. 991, 997). The District's Board recited in Section 3 of the Resolution No. 3-10 as follows:

> ***[I]t has previously been represented to both the District Board and the Boise City Council that there are or should be no resident qualified electors*****,** as that term is defined in the Act, currently residing within the boundaries of the District." [Emphasis added.]

In addition, attached to the Development Agreement is a series of email exchanges with an Ada County Clerk's Office Elections Specialist confirming that, at least as of mid-February, 2010, there were *no registered voters within the proposed boundaries of the District*. (R p. 572).

The CID Act requires only that a "resident qualified elector" be "registered to vote in Idaho," but *not* that they be registered to vote in Ada County. Idaho Code §§ 50-3102(13), 34-402. This voter therefore certified only that he was registered to vote in the State, but not in Ada

County. *See* Appendix L. The Idaho Constitution, however, provides that only natural persons who are residents of, *and registered to vote in*, the county are permitted to vote. Id. Const., Art. VI, § 2; *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 Pac. 304, 307 (1911). So, it is possible that this is the voter whom the District Clerk identified as being not a qualified elector.

The remaining two voters – owners of property in the District – were not individuals but instead legal entities – one a corporation and one a limited partnership. (R pp. 991, 997). But legal entities are not qualified electors under both the State Constitution and applicable State statutes. *See* Idaho Code § 50-3102(13) (A qualified elector "means a person who possesses all of the qualifications required of electors under the general laws of the State of Idaho …."); *see also* Id. Const., Art. VI, Section 2 (limiting electors to, among other things, "*male or female citizens*") (Emphasis added); *see also* Idaho Code § 34-402 (same). Thus, both votes by the two legal entities are invalid *as a matter of law*. So, it is possible that one of those entities is the voter which the District Clerk identified as not a qualified elector.[57,58]

Because the ballots cast were secret ballots (Idaho Constitution, Article VI, Section 1), there is no way of knowing from the official canvas which voters cast which ballots. We *do* know that the two ballots cast by legal entities rather than natural persons are void as unconstitutional and thus cannot be counted. There is evidence, although contradictory, that the vote cast by the

[57] The official canvas was approved by the District's Board by motion at its meeting on August 10, 2010, which is within the ten-day period following the election as required by Section 50-3112(6) of the CID Act. Appendix L. That election is subject generally to Idaho Code, Title 34, Chapter 20 regarding election contests. It is *not* subject, however, to Section 34-2001A(2), which otherwise prohibits any bond election challenge if not brought within 40 days of the election, as that section does not apply to bond elections by CIDs. Idaho Code § 34-2001A(1). Thus, the District's bond election remains subject to challenge under Idaho Code § 34-2001, including subsections (5) (regarding illegal votes) and (6) (regarding errors in counting votes).

[58] The District's Board approved the official canvas of the election only by motion. In doing so, they failed to declare the results of the election as required by Section 50-3112(6). In any event, official actions of the Board of the District must be by resolution, not motion. *See* Idaho Code § 50-3104(3)(b) and (4). Thus, the motion does not constitute a "final decision" within the meaning of Section 50-3119. But even if it were, Residents in any event are timely contesting the validity of the Bond Resolution in this proceeding, and not any prior "final decisions" of the Board.

individual who appears to have lived near but outside the District may have been invalid for that reason. There is also evidence, although again contradictory, that the vote cast by the individual who lived on the Harris family's property may have been invalid, if he was registered to vote in the State but not within Ada County.

What is impossible to determine from the official record is which voter cast the "no" vote. There are four possibilities:

(1) The "no" vote was cast by one of the legal entities whose votes are invalid as a matter of law, and thus the two individual voters both cast "yes" votes. So, even if one of them was the voter disqualified by District Clerk, the vote was either two-to-zero, or one-to-zero, and the bond measure thus passed; or

(2) The "no" vote was cast by one of the individual voters, and neither individual voter was disqualified by the District Clerk, so the vote was one-to-one, and the bond measure thus failed for lack of a 2/3s majority; or

(3) The "no" vote was cast by one of the individual voters, and that voter was the one disqualified by the District Clerk, so the vote was one-to-zero, and the bond measure thus passed; or

(4) The "no" vote was cast by one of the individual voters, and that voter was not the one disqualified by the District Clerk, so the vote was zero-to-one, and the bond measure thus failed.

It is therefore possible that the bond election passed, and it is also possible that the bond election failed, based on the official canvas. Whether the issuance of $50 million in bonds and the imposition of the related tax levies was approved by two-thirds of the qualified electors, however, cannot be based on surmise, or on evidence extraneous to the official canvas. Thus, as a matter of law, Article VIII, Section 3 is unsatisfied. The authorization of the 2021 Bond pursuant to the Bond Resolution therefore violates the voter approval requirement under Article VIII, Section 3, as it has not been approved by a vote of the qualified electors in the City, by the qualified electors in Harris Ranch, by anyone who would actually pay the resulting taxes (or possibly by anyone at all).

M. As the *Ad Valorem* Property Taxes Levied Pursuant to the Bond Resolution Are Not Uniform Across All Properties of a Similar Class, the Adoption of the Bond Resolution Violates the Idaho and Federal Constitutions.

1. The Levy of Property Taxes Which Are Not Uniform Across All Properties of a Similar Class Violates Article VII, Section 5 of the Idaho Constitution and the Equal Protection Clauses of the Idaho and Federal Constitutions.

Article VII, Section 5 of the Idaho Constitution ("Uniformity Clause") mandates that: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax …." Article I, Section 2 of the Idaho Constitution states: "All political power is inherent in the people. Government is instituted for their equal protection and benefit …." And Amendment XIV, Section 1 of the United States Constitution provides that: "No state shall … deny to any person within its jurisdiction the equal protection of the laws."

The Idaho Supreme Court has not looked kindly on unequal *ad valorem* property taxation. *See, e.g., County of Ada v. Red Steer Drive-Ins of Nevada, Inc*., 101 Idaho 94, 97-8, 609 P.2d 161, 164-5 (1980) (Taxes based upon differing rates of valuation as between residential and commercial properties unconstitutional); *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138 (1980) (The Court rejected the County Assessor's refusal to reduce its personal property tax rolls for property removed from the county during the tax year, even though the Assessor increased its rolls for property brought into the county during that tax year.); *Merris v. Ada County*, 100 Idaho 59 (1979) (The Court struck down a method of valuation which overstated the value of certain personal property.); *Idaho Telephone Co. v. Baird*, 91 Idaho 425,141, 609 P.2d 1129, 1132 (1967) (The Court struck down differing rates of valuation of utility versus other properties.); *Boise Community Hotel, Inc. v. Board of Equalization, Ada County*, 87 Idaho 152,160, 391 P.2d 840, 844 (1964) (The Court rejected as arbitrary a method of valuing the properties of certain hotels relative to other properties in the county.); *Chastain's, Inc. v. State Tax Commission*, 72 Idaho 344, 348, 241 P.2d 167,169 (1952) (The Court struck down differing rates of valuation of personal property as

between certain retailers and others within a county.); *Anderson's Red White Store v. Kootenai County*, 70 Idaho 260, 263, 215 P.2d 815, 817 (1950) (The Court struck down differing rates of valuation of personal property of certain merchants versus others in the county.); *C.M. St. P.R.R. v. Shoshone Co*., 63 Idaho 46, 116 P.2d 225, 227 (1941) (The Court struck down differing rates of taxation for school purposes of properties within a county.); *Idaho County v. Fenn Highway Dist*., 43 Idaho 233, 253 P.377, 379 (1926) (The Court struck down an attempted property tax levy where the result was unequal taxation of otherwise identical classes of property within the county which were inside versus outside the boundaries of the highway district.)

Unequal taxation constitutes a violation of not only the Uniformity Clause, but also of the Equal Protection Clauses of the Federal and State Constitutions. *See, e.g., Viking Construction v. Hayden Lake*, 149 Idaho 187, 198, 233 P.3d, 118, 129 (2010) (water system connection fees); *Justus v. Board of Equalization*, 101 Idaho 743, 746, 620 P.2d 777, 780 (1980) (county real property tax revaluation plan); *Leonardson v. Moon*, 92 Idaho 796, 807, 451 P.2d 542, 553 (1969) (inventory tax exemption); *Geo. B. Wallace, Inc., v. Pfost*, 57 Idaho 279, 65 P.2d 725, 726 (1937) (motor vehicle excise tax); and *J. C. Penney Co. v. Diefendorf,* 54 Idaho 374, 32 P.2d 784, 786 (1934) (retail license fees). As the Court stated in *Justus*:

> Both Article 7, § 5, of the Idaho Constitution, and the federal equal protection clause proscribe unlawful discrimination by taxing authorities. While various standards have been articulated under either provision, there is little practical distinction between the two. A taxing plan offensive to one also violates the other.

101 Idaho 743 (1980) (citations in text omitted). The Idaho and Federal Constitutions prohibit the imposition of property taxes that are not uniform across similar classes of property. Yet, if allowed to stand, the Bond Resolution would further exacerbate the already egregious disparity of taxation among nearly identical properties within the same neighborhood.

2. The *Ad Valorem* Property Taxes Levied by the Board Pursuant to the Bond Resolution Violate the Idaho and Federal Constitutions Because They Are Not Uniform Across All Properties of a Similar Class Within the City or Even Within the Development.

The special *ad valorem* property taxes imposed pursuant to the Bond Resolution are not uniform across similar classes of property within the City. Given the 0.003 special additional levy rate imposed on properties in the District (R p. 68), a $500,000 single-family home in the District pays more than $1,500 in additional *ad valorem* property taxes every year as compared to a similar single-family home of the same value anywhere else in the City. And that disparity will only increase over time with increases in the assessed values of homes in the District.

Moreover, the special *ad valorem* property taxes imposed are not even be uniform within Harris Ranch. That is because the boundaries of the District were contrived by the Developer and the City to exclude any properties not then owned by the Developer (and to carve out the two homes owned by the Harris family in the middle of the District). Appendices B and C. Those properties bear none of the attendant tax burden, even though they are across the street and down the block from homes within the District, and thus necessarily benefit equally from the facilities financed by the District. In addition to excluding many hundreds of then-existing homes from the boundaries of the District, the City also excluded property later acquired by the Developer which had been included in the Specific Plan for the development. *Id*. Those consist of more than 40 of the eventually more than 170 homes in "Harris Ranch North" subdivision. Those homes necessarily benefit from the facilities financed by the District ***to the exact same extent*** as their neighbors next door who are within the District.

What the City has done with its District is very similar to the situation in *Idaho County v. Fenn Highway District,* which the Idaho Supreme Court held to be unconstitutional. 43 Idaho 233, 253 P.3 at 379. The City has imposed substantially different *ad valorem* property taxes on otherwise identical classes of property within the City which are inside versus outside the

boundaries of its smaller District. They have done so, in concert with the Developer, for no legitimate public purpose, but instead solely to circumvent the voter approval requirements of Idaho's Constitution. That is, the fragmented boundaries of the District were determined ***for no other reason*** than to exclude those properties whose owners might have voted against the issuance of the bonds and the resulting imposition of *ad valorem* property taxes to pay those bonds. The resulting taxes are therefore by definition not uniform across those properties which would have and should have been included if the boundaries had been drawn on any rational basis.

If this were permissible, it would eviscerate this Constitutional requirement as well. To use the example from the prior section, the Legislature could adopt legislation that authorized a city to establish a "special taxing district" authorized to issue bonds payable from special *ad valorem* property taxes. That district would consist only of those properties whose owners voted in favor of the creation of the district and its issuance of the bonds. But, under the terms of the legislation, the special property taxes would *not* apply to those properties until *after* they were later sold. So, everyone could vote for the bonds knowing they would never have to pay any of the related property taxes. The only people who would have to pay the taxes would be all the people who, by definition, were deprived of any opportunity to vote on them. This would result just as it has in this case in *identical* properties in the *same neighborhood* in the city, *literally next door to each other*, paying substantially unequal property taxes for many decades. That is why the Constitutional requirement must be read to apply to an entire then-existing city, county or other district. And if it is to be read to permit the formation of special smaller taxing districts to finance public infrastructure in a new development, then the boundaries of such districts must be drawn so they include all the properties in that development reasonably determined to benefit from such facilities.

As the *ad valorem* property taxes levied by the District Board pursuant to the Bond Resolution are not uniform across properties of a similar class within the City or even within Harris

Ranch, the levy of those taxes pursuant to the Bond Resolution violates Article VII, Section 5 of the Idaho Constitution and the Equal Protection Clauses of the Idaho and Federal Constitutions.

N. The Issuance of the 2021 Bond Pursuant to the Bond Resolution and the Payments to the Developer Pursuant to the Payments Resolution Would Violate Prohibitions in the Idaho Constitution Against Local Governments Lending Their Credit to, Raising Money for, or Donating Money to any Private Person, Association or Corporation.

1. Article VIII, Section 4 and Article XII, Section 4 of the Idaho Constitution Prohibit Local Governments from Lending Their Credit to, Raising Money for, or Donating Money to any Private Person, Association or Corporation.

Article VIII, Section 4 of the Idaho Constitution provides that no city or other local government "shall lend, or pledge the credit or faith thereof ***directly or indirectly***, in ***any*** manner, to, or in the aid of ***any*** individual, association or corporation, for ***any*** amount or ***any*** purpose whatsoever." (Emphasis added). In addition, Article XII, Section 4 of the Idaho Constitution provides that no city or other local government "shall … *raise money for, or make donation or loan its credit to, or in aid of*" "any joint stock company, corporation or association".[59] (Emphasis added).

The Idaho Supreme Court has highlighted the primacy of the framers' concern when adopting Article VIII, Section 4, regarding private interests gaining advantage at the expense of the taxpayer. *See Idaho Falls Consolidated Hospitals, Inc.*, 102 Idaho 838 (1982). Consistent with that intention, in *Village of Moyie Springs v. Aurora Manufacturing Co*., the Court struck down as unconstitutional a statute which authorized cities to issue revenue bonds to finance the acquisition of land and the construction of facilities that were to be leased to and used by private enterprises. 82 Idaho 337, 346-47, 353 P.2d 767, 773 (1960). The Court found that the primary purpose of those laws was to benefit private enterprise. *Id*. at 347. The Court therefore held that the statutory

[59] There is a corresponding provision applicable to the State in Article VIII, Section 1.

scheme was an unconstitutional lending of credit even though the bonds to be issued were not payable or secured from city monies, let alone from city taxes. *Id*. at 350.

In *Board of County Commissioners of Twin Falls County v. Idaho Health Facilities Authority*, on the other hand, the Supreme Court rejected a challenge to the Idaho Health Facilities Authority under Article VIII, Section 1. 96 Idaho 498, 531 P.2d 588 (1974). The Authority was authorized to issue indebtedness and loan the proceeds to private hospitals. *Id*. at 500. The Court held that the indebtedness and loans did not violate the Constitutional prohibition, as "neither the state of Idaho as such, nor any local governmental unit, nor any other state-created agency or subdivision, has been obligated to meet the obligations of the bonds and notes issued by the Authority". *Id*. at 504. The Court stated that "the obligations of the kind involved in this case, where the public entity created has no power to tax or encumber the assets of the body creating it, are not violative of the constitutional restrictions of Article 8". *Id*.

Similarly, the Supreme Court in *Hansen v. Independent School Dist. No. 1 in Nez Perce County* stated:

> [t]o constitute a violation of said [lending of credit] provisions it is essential that there be an imposition of liability, directly or indirectly, on the political body. Unless the credit or faith of respondent is obligated there is no constitutional inhibition.

61 Idaho 109, 98 P.2d 959, 961 (1939). And in *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939), the Court stated that: "[t]he extension of credit prohibited is credit extended to private sources to promote private schemes". 60 Idaho 292, 91 P.2d 362, 368 (1939). The Idaho Constitution thus prohibits local governments from lending their credit to, raising money for, or donating money to a private enterprise where (as here), the local government itself is liable for the indebtedness, and especially where (as here), the indebtedness is payable from taxes levied by the local government on its citizens.

2. The Issuance of the 2021 Bond Pursuant to the Bond Resolution and the Payments to the Developer Pursuant to the Payments Resolution Would Constitute an Unconstitutional Lending of Credit to, Raising of Money for, and Donation of Money to the Developer.

In the absence of the District, the Developer would have to finance, construct and dedicate to public use all the public infrastructure required by the Harris Ranch development, as does every other developer in the State. Other developers, however, are not paid or reimbursed by local governments for those public facilities or for the land under them. Rather, they recover those costs from the sale to private purchasers of the developed land. In addition, developers are required to pay substantial "development impact fees" to local jurisdictions to compensate those jurisdictions for the additional regional infrastructure, defined as "system improvements", necessitated by such development. Idaho Code, Title 67, Ch. 82.

The CID Act recites that its purposes are to provide funding for the public infrastructure needed due to new development, and for the advance payment of development impact fees otherwise due from developers. Idaho Code § 50-3101(1). It does so by authorizing the issuance of bonds by CIDs, the levy of special *ad valorem* property taxes to pay such bonds, and the payment of the proceeds of the bonds to the developer. *Id*. That is, the District uses its borrowing and taxing powers to make tens of millions of dollars in payments to the Developer for facilities the Developer would otherwise have to pay for itself, and to relieve the Developer of the payment of development impact fees that otherwise would be due.

The payments by the District to the Developer for infrastructure it was required to construct in Harris Ranch are an even more egregious abuse than the scheme the Idaho Supreme Court held to be unconstitutional in *Village of Moyie Springs.* There, the facilities financed were publicly owned, as they are required to be with CIDs. 82 Idaho at 346-7, 353 P.2d at 773. But in *Village of Moyie Springs* the bonds were payable solely from payments made by private enterprises. *Id*. Here,

the District's 2021 Bond would instead be payable from special *ad valorem* property taxes levied on homeowners in the District.

The primary if not sole purpose of the District is to allow the City to use the District's credit, including its borrowing and taxing powers, to finance and pay for costs that would otherwise have to be paid and financed by the Developer. That is the essence of an unconstitutional lending of credit to — and raising of money for — a private enterprise by a local government. The issuance of the 2021 Bond pursuant to the Bond Resolution and the payments to the Developer pursuant to the Payments Resolution therefore would violate Article VIII, Section 4 and Article XII, Section 6 of the Idaho Constitution.

O. The Challenged Resolutions Are Invalid Because the District Consists of Several Noncontiguous Sections in Violation of the CID Act.

1. Section 50-3102(5) of the CID Act Requires That a District Only Include Contiguous Property at the Time of Its Formation.

Section 50-3102(5) provides in relevant part that "[a] district shall only include contiguous property at the time of formation". The word "contiguous" is defined by Merriam-Webster to mean "being in actual contact: touching along a boundary or at a point".[60] The meaning of the term "at the time of" is ambiguous. In common usage, it can mean either a moment in time, as in "at the time of the accident", or it can mean during a period of time, as in "at the time of the French Revolution".[61]

Given that the formation of a district involves a "process" (Idaho Code § 50-3103(1)) which extends over many weeks or even months, including a petition for creation (Idaho Code § 50-3103(1), a public hearing (Idaho Code § 50-3103(2)), a resolution granting the petition (Idaho

[60] Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/contiguous. Accessed 7 Oct. 2022.

[61] *See, e.g.*, "at the time" (n.d.) *Farlex Dictionary of Idioms*. (2015). Retrieved October 18, 2022: https://idioms .thefreedictionary.com/at+the+time

Code § 50-3103(2)), an order of formation (Idaho Code § 50-3103(2)), certain filings and recordings (Idaho Code § 5031-4(1)), appointment by the governing body of the city of the three members of the district's board (Idaho Code § 50-3104(2)), and the election of a chairman and vice chairman of the board within 30 days of the order of formation (Idaho Code § 3104(3)), the term "at the time of formation" as used is properly read to refer to a period of time, rather than a moment in time.

When the Legislature intended to refer to a specific date in the CID Act, it instead used the term "as of the date of". *See, e.g.,* Idaho Code §§ 50-3102(11), 50-3103(2), 50-3109(2), 50-3112(1). Thus, the statutory requirement of contiguity at the time of formation should be read to mean that all property in a CID must be contiguous during the period of time during which the district was formed. As the resolution of the city only grants the petition for formation and orders the formation of the District (Idaho Code § 50-3103(3)), formation is not completed until the board of the district, following its appointment by the city (Idaho Code § 50-3104(2)), has its first meeting and appoints its officers so that it can conduct its business. Idaho Code § 50-3104(3).

2. The Challenged Resolutions Are Invalid Because the Property in the District Was Not Contiguous at the Time of Its Formation.

Even a cursory glance at the map of the District makes clear that it is not contiguous. Appendix C. The District instead consists of three ***non***-contiguous sections: (i) the section to the west of the Idaho Power ROW; (ii) the section to the northeast of the Idaho Power ROW which includes Harris Ranch North and the future Harris Ranch East subdivisions; and (iii) a comparatively smaller section to the southeast of the Idaho Power ROW consisting of the Harris Crossing subdivision.

The District consists of three non-contiguous areas because the City and the Developer did in two steps, by pre-design, what the law expressly forbids them from doing in one step. That is,

the City ordered the formation of the District with the section to the *west* of the Idaho Power ROW pursuant to the resolution adopted on May 11, 2010. (R p. 55). Ten days later, on May 21, 2010, the Developer filed a petition with the City to amend the boundaries of the District to include the two large sections to the east of the Idaho Power ROW. *Id.* That was before the Board of the District had held its first meeting or appointed its officers, which took place on June 8, 2010. (R p. 1002, fn. 2).

The petition to add non-contiguous property to the District thus occurred before the formation of the District had been completed. Therefore, as of the time of formation of the District, its boundaries were non-contiguous. Moreover, even if the term "as of the time of" is read to mean as of a moment in time, the amendment to add non-contiguous areas within 10 days of the City ordering the formation of the District is not permitted by the CID Act, as it was a transparent subterfuge to avoid the clear and express requirement imposed by the Legislature in the CID Act that *all* properties in a CID be "contiguous".[62]

The Developer's lawyers argued the amendment to include non-contiguous sections is permissible, as Section 50-3102(5), in the definition of "District," and Section 50-3106(2) allow the boundaries of a CID to be amended to include non-contiguous property. (R p. 1460). But the purpose of that language is to allow *future* developments undertaken by *different* developers of property that also benefits from the facilities financed by a CID to participate in the costs of those facilities. As stated in the legislative history:

> CIDs may be established in such a manner to allow smaller projects and larger to benefit. For instance, a municipality may establish a CID for the purpose of

[62] The Developer and the City could have complied with the CID Act by including the Idaho Power ROW within the District's boundaries. That property would have been exempt from the District's taxes. Idaho Code § 50-3117(1). But that would have prevented the Developer from proceeding with its petition to form the District unless Idaho Power joined in the petition, as the petition must be signed by the owners of *all* the property in the proposed district. Idaho Code § 50-3103(1).

> prefunding development impact fees. ***To the extent that other contiguous or non-contiguous property owners want to annex into the CID and prefund their development impact fees, they would be allowed to do so. This not only benefits the smaller landowner/home builder but the jurisdiction as well.*** [Emphasis added.][63]

If cities and developers were allowed, especially by pre-design, to include non-contiguous properties in a CID in this manner, it would make the contiguity limitation in the CID Act meaningless. *See Brown v. Caldwell School Dist. No. 132,* 127 Idaho 112, 898 P.2d 43 (1995) (Statutes are construed so that material provisions are *not* rendered meaningless). A developer could include a single lot within the boundaries of a new CID and then, by pre-design, add ten, or twenty, or a hundred more *non*-contiguous lots by an amendment adopted the following week. The Challenged Resolutions therefore are invalid because all the property in the District was not contiguous at the time of its formation.[64]

V. ATTORNEY FEES

A. Residents Are Entitled to an Award of Attorneys' Fees Under the Private Attorney General Doctrine Should They Prevail in this Proceeding.

Residents seek attorneys' fees from Opponents pursuant to Idaho Appellate Rules 41, Idaho Code of Civil Procedure 54(e), and Idaho's private attorney general doctrine. In determining whether to award attorneys' fees under Idaho's private attorney general doctrine, the court considers three factors: (1) the strength or societal importance of the public policy indicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, and (3) the number of Idahoans standing to benefit. *Reclaim Idaho v. Denney*, 169 Idaho 406, 440, 497 P.3d 160, 194 (2021); *Smith v. Idaho Commission on Redistricting*, 136 Idaho

[63] Community Infrastructure Districts (CID), House Bill 680, p. 2, "How is a CID established?", ¶ 2.
[64] This argument regarding the Challenged Resolutions is not barred by Section 50-3319 of the CID Act, as explained, *supra*.

542, 546, 38 P.3d 121, 125 (2001); *Hellar v. Cenarrusa*, 106 Idaho 571, 578, 682, P.2d 524, 531 (1984).

This proceeding satisfies all three criteria. First, as in *Reclaim Idaho*, this is exactly the kind of case for which the doctrine was created: one pursued to protect the public and uphold the Idaho Constitution and Idaho statutes. This is the first challenge of its kind brought pursuant to the CID Act. Thus, the issues presented are all matters of first impression and all present questions of constitutional and statutory interpretation and application. Residents – two homeowners and a neighborhood advocacy group representing hundreds more homeowners in the District – are not seeking to vindicate some private contractual breach between two parties. Rather, they seek to uphold, among other things, the constitutional rights of homeowners and taxpayers to vote and to equal protection of the laws. The public policies implicated by this litigation are therefore many and substantial.

Second, private enforcement was necessary because City officials have failed for twelve years to protect the constitutional and statutory rights of thousands of homeowners and taxpayers at stake in this case. In fact, Idaho's capitol city – Boise – acting through its District, is the opposing party, and is funding the District's legal fees. Residents have spent more than two years, thousands of volunteer hours, and many tens of thousands of dollars in donations investigating and seeking to redress the many abuses by the Developer, and to uphold the constitutional and statutory protections afforded homeowners and taxpayers under Idaho law, including by this proceeding.

Finally, the City of Boise and the State of Idaho continue to grow exponentially. Development projects will continue to increase in number and size to keep pace with that growth, as will the use of CIDs to finance them. This litigation stands to benefit the tens of thousands of current and future homeowners in Harris Ranch, in the two other existing CIDs in Idaho – Spring

Valley and Avimor[65], and in all future Idaho CIDs, over many decades, and to save them hundreds of millions if not billions of dollars in unlawful special *ad valorem* property taxes.

Residents are therefore entitled to an award of attorneys' fees should they prevail.

VI. CONCLUSION

For the foregoing reasons, Residents respectfully request an order from this Court finding the adoption of the Challenged Resolutions and the payments authorized thereby unlawful, invalid and void, and awarding reasonable attorney fees and costs to Residents under the private attorney general doctrine.

DATED this 21st day of October, 2022.

Respectfully submitted,

BAILEY & GLASSER LLP

/s/ *Nicholas A. Warden*
Nicholas A. Warden
Attorneys for Petitioners

[65] https://boisedev.com/news/2022/03/24/spring-valley-cid/; https://boisedev.com/news/2021/04/26/boise-county-approves-avimor-to-eventually-add-1700-homes-along-highway-55/;https://www.ktvb.com/article/news/local/growing-idaho/growing-idaho-avimor-community-finally-coming-fruition/277-bd469970-77be-4d66-a633-dac6f8b114af

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October 2022, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

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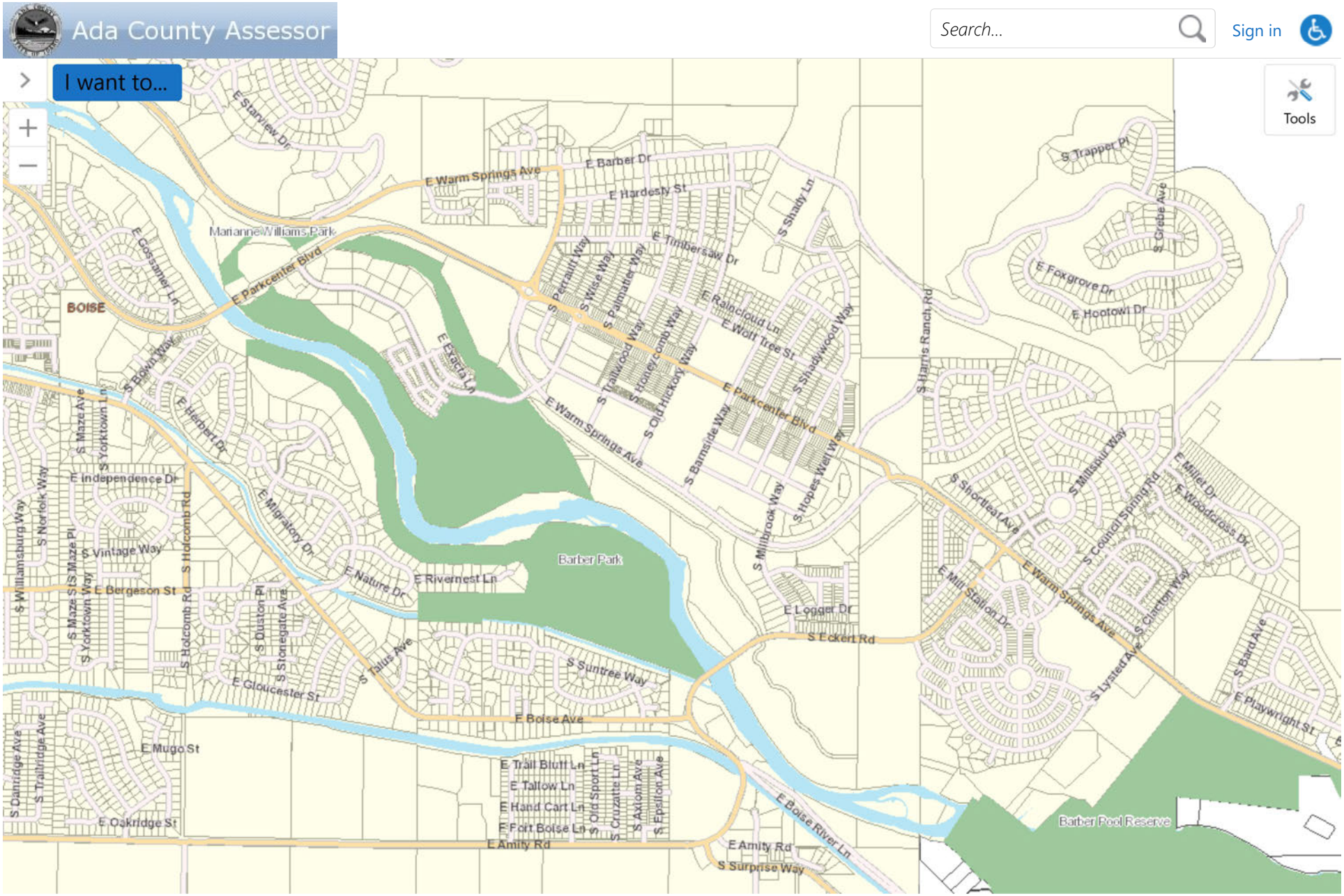
/s/ *Nicholas A. Warden*
Nicholas A. Warden

APPENDIX A


Ada County Assessor
Search...
Sign in
I want to...
Tools
Marianne Williams Park
BOISE
Barber Park
Barber Pool Reserve
E Warm Springs Ave
E Parkcenter Blvd
E Barber Dr
E Hardesty St
E Timbersaw Dr
E Raincloud Ln
E Wolf Tree St
S Shadywood Way
S Harris Ranch Rd
S Trapper Pl
E Foxgrove Dr
E Hootowl Dr
S Grebe Ave
S Shady Ln
S Millspur Way
E Miller Dr
E Woodcross Dr
S Council Spring Rd
S Clarion Way
S Lysted Ave
S Bard Ave
E Playwright St
S Shortleaf Ave
E Mill Station Dr
E Logger Dr
S Eckert Rd
S Millbrook Way
S Hopes Well Way
S Barnside Way
S Old Hickory Way
S Honeycomb Way
S Talltwood Way
S Palmatier Way
S Wise Way
S Perrault Way
E Starview Dr
E Glossamer Ln
S Brown Way
E Exacta Ln
E Herbert Dr
E Migratory Dr
E Nature Dr
E Rivernest Ln
E Independence Dr
S Maze Ave
S Yorktown Ln
S Norfolk Way
S Williamsburg Way
S Vintage Way
S Maze St
S Maze Pl
E Bergeson St
S Holcomb Rd
S Duston Pl
S Stonegate Ave
E Gloucester St
S Tallus Ave
S Suntree Way
E Boise Ave
E Mugo St
S Daintridge Ave
S Trailridge Ave
E Oakridge St
E Trail Bluff Ln
E Tallow Ln
E Hand Cart Ln
E Fort Boise Ln
E Amity Rd
S Old Sport Ln
S Cruzatte Ln
S Axiom Ave
S Epsilon Ave
E Boise River Ln
S Surprise Way
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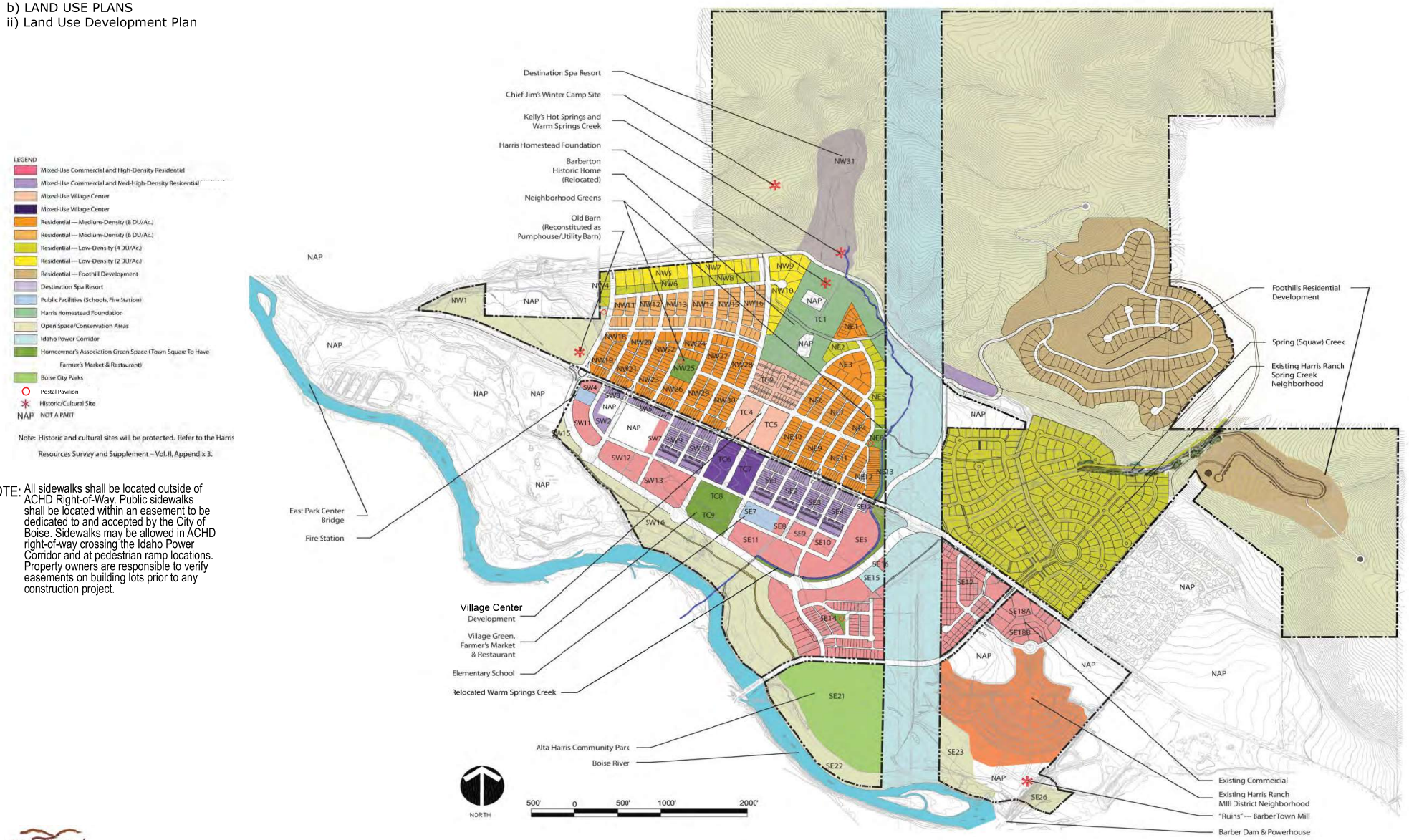
0.1
0.2mi

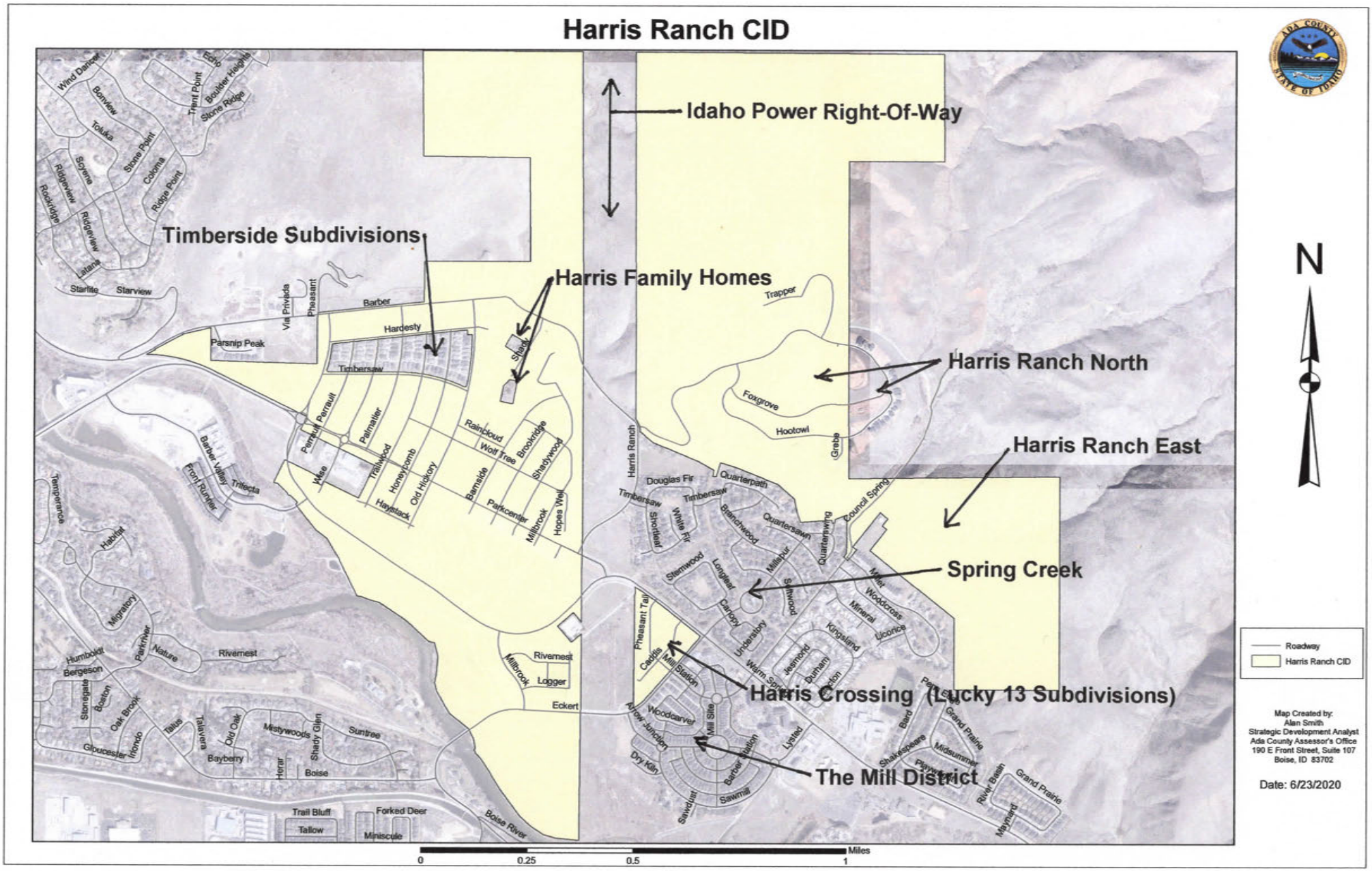
APPENDIX B



NOTE: All sidewalks shall be located outside of ACHD Right-of-Way. Public sidewalks shall be located within an easement to be dedicated to and accepted by the City of Boise. Sidewalks may be allowed in ACHD right-of-way crossing the Idaho Power Corridor and at pedestrian ramp locations. Property owners are responsible to verify easements on building lots prior to any construction project.

APPENDIX C

Harris Ranch CID



APPENDIX D

Appendix D

Individual Projects for Which Payments Were Approved Through the Adoption of the Challenged Resolutions[1]

No.	Project Description	City ID No.	Completion Date	Prior Payment	Payment Approved
1	Town Homes #11 Project	GO21-3	5/24/2021		$3,072,455
2	Town Homes #9 Project	GO21-2	2/11/2021		$1,670,901
3	South Stormwater Ponds	GO21-3	5/24/2021		$937,036
4	West Stormwater Ponds – Land Value	GO19-1	7/30/2010	$958,979	$503,070
5	E. Parkcenter Blvd. Project[2]	GO20-6	6/1/2018	$1,208,674[3]	$197,027
6	Deflection Berm	GO15B-5	11/4/2008	$420,800	$151,125
7	E. Warm Springs Ave. Extension 1[4]	GO16-4	11/2/2009	$345,839	$124,727
8	Barber Junction Ponds – Land Value	GO19-1	4/1/2017	$654,000	$111,471
9	E. Warm Springs Ave. Extension 3[5]	GO17A-2	1/12/2016	$1,088,081	$110,068
10	E. Warm Springs Ave. Extension 3	GO19-2	1/12/2016	$328,510	$78,197
11	E. Barber Dr. Sediment Basins – Construction	GO19-2	7/6/2017	$366,025	$56,619
12	E. Warm Springs Ave. Extension 3	GO18-2	1/12/2016	$289,713	$47,372
13	Warm Springs Creek Realignment – Land Value	GO19-1	4/15/2019	$1,230,000	$42,309
14	E. Barber Dr. Sediment Basins – Land Value	GO19-1	7/6/2017	$194,000	$30,008
15	Idaho Power – S. Wise Way	GO19-2	9/19/2013	$60,444	$21,736
16	E. Parkcenter Blvd./E. Warm Springs Ave. Roundabout Construction	GO16-2	8/18/2015	$308,145	$17,391
17	Idaho Power – Bury/Relocate E. Parkcenter Blvd. Power Lines	GO15-9	11/3/2014	$375,976	$16,440
18	E. Warm Springs Ave. Extension 3 – Fuel Remediation	GO15B-8	1/5/2012	$70,492	$13,556

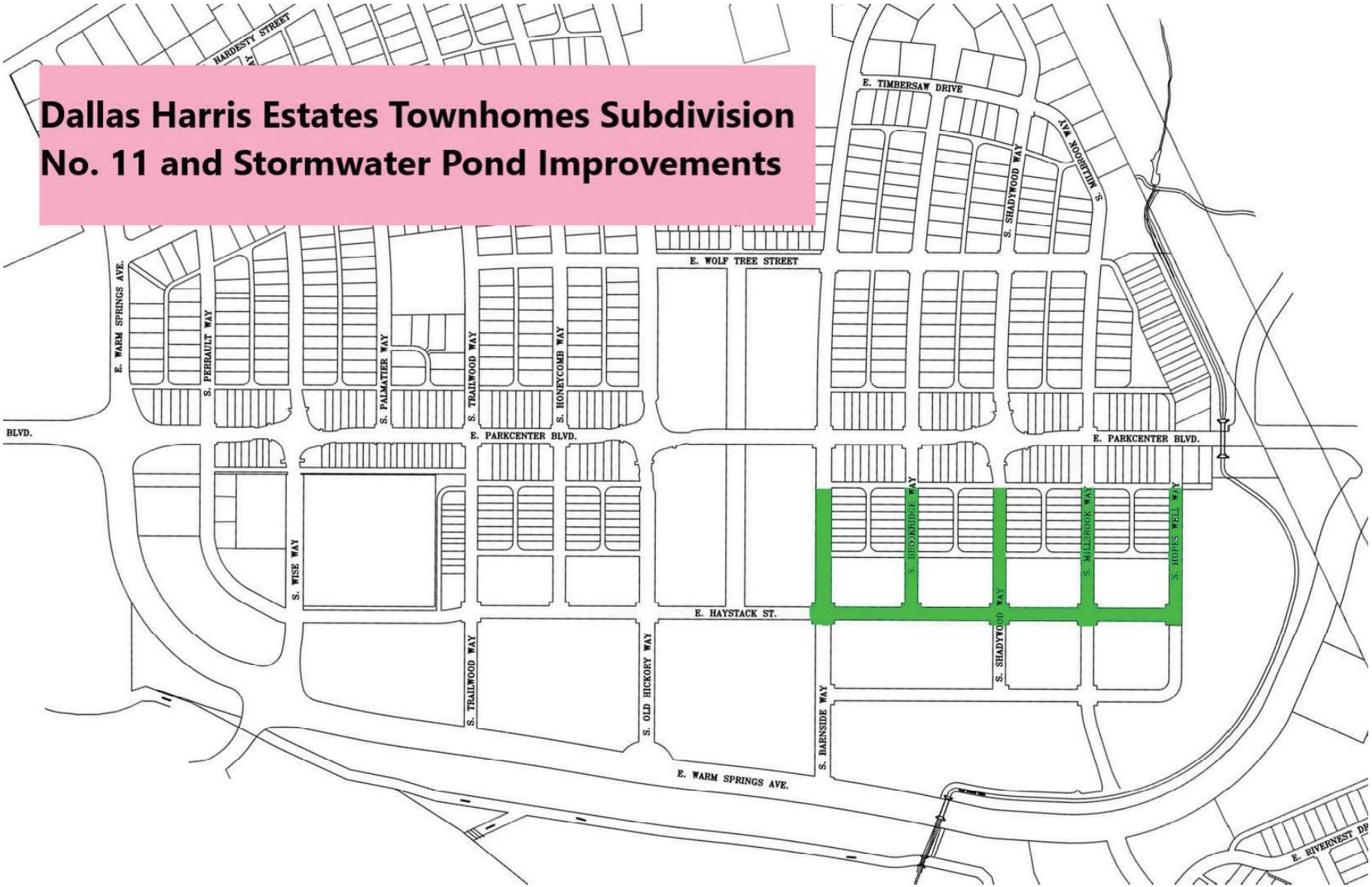
[1] Street names have been revised to conform to their current designations for ease of reference.
[2] (R p. 27).
[3] This partial payment was made from proceeds of the District's 2020 bond. (R p. 27).
[4] This was formerly E. Barber Dr. (now E. Warm Springs Ave.) from east of Starview Dr. to the intersection with what is now the end of E. Barber Dr., and was referred to as "Barber Road Segment B".
[5] This has been referred to colloquially as the "Warm Springs Bypass".

19	E. Warm Springs Ave. Extension 3	GO16-5	1/12/2016	$347,781	$12,263
20	E. Warm Springs Ave. Extension 2[6]	GO15B-1	11/2/2009	$39,972	$12,252
21	E. Parkcenter Blvd./E. Warm Springs Ave. Roundabout Design	GO16-3	8/18/2015	$186,818	$10,544
22	Idaho Power – Connection to Fire Station	GO16-1	8/26/2010	$29,266	$9,292
23	E. Barber Dr. Design and Surveying	GO13-7	11/30/2009	$37,107	$8,454
24	North ½ E. Barber Dr. Engineering	GO13-8	11/30/2009	$25,034	$5,704
25	E. Parkcenter Blvd./E. Warm Springs Ave. Roundabout Construction	GO15B-7	8/18/2015	$999,628	$2,301
26	E. Warm Springs Ave. Extension 3 – Idaho Power ROW Easement	GO13-5	7/13/2012	$33,000	$2,297
27	Right-of-Way Vacation – E. Parkcenter Blvd.	GO19-2	4/13/17	$12,980	$2,187
28	Wetland Improvements	GO15B-6	1/9/2015	$42,578	$1,451
	TOTALS			**$9,653,842**	**$7,268,253**

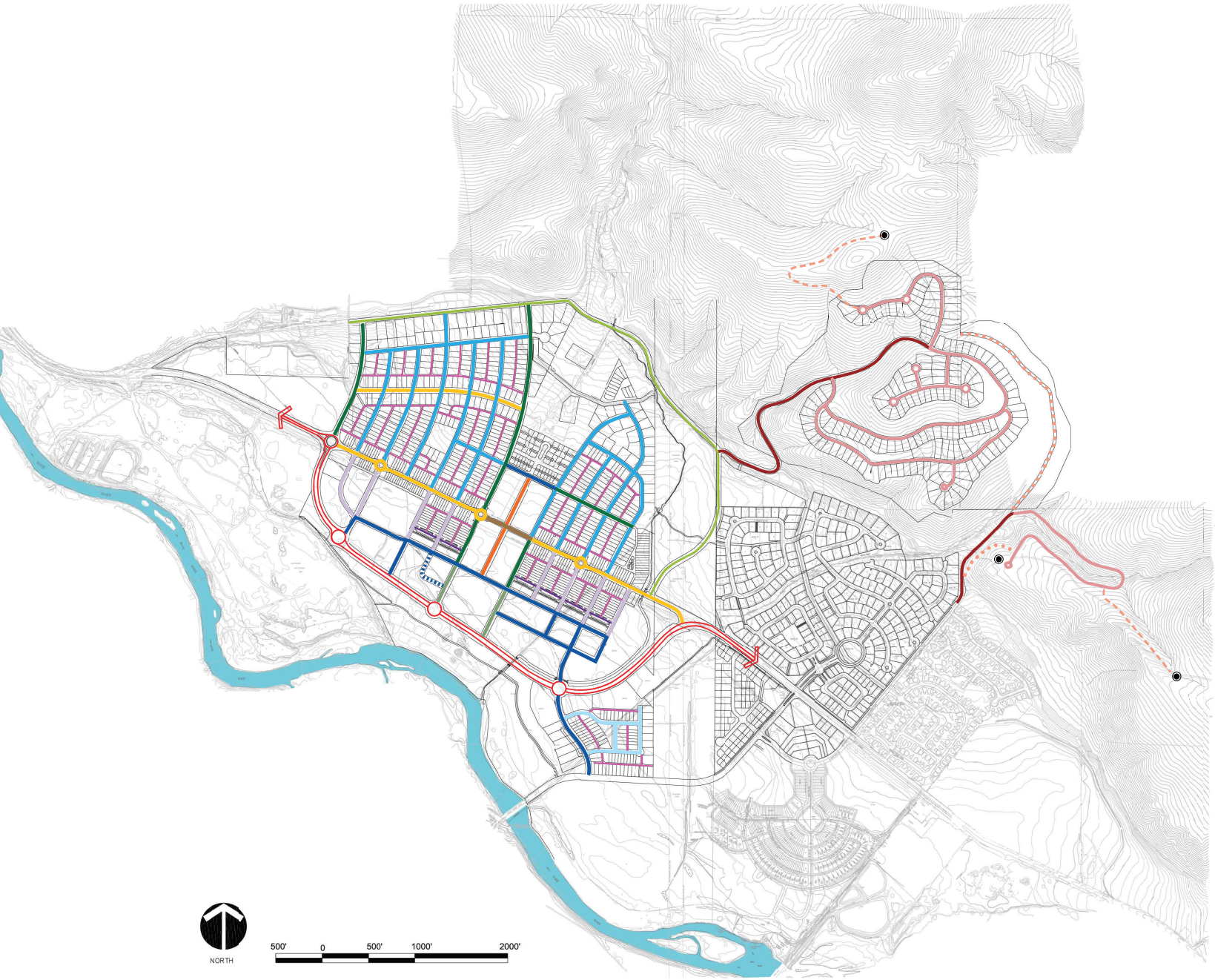
[6] This has been referred to as "Warm Springs Segment C", and consists of a new segment of E. Warm Springs Ave. from the intersection with E. Barber Dr. down to the intersection with E. Parkcenter Blvd.

APPENDIX E

AA. Exhibit AA – Detailed Map for DHE TH #11 – Street Improvements



APPENDIX F



LEGEND

1	Two-lane Parkway with Roundabouts (4-lane R.O.W.)
2	Two-lane Street with Diagnal Parki
3	Two-lane Collector with Green Med and Roundabouts
3A	Two-lane Collector with Green Med
4	Two-lane Collector with Green Median and Urban Sidewalk
5	Two-lane Collector
5A	Two-lane Collector with Urban Side
6	Two-lane Rural Road Preserve
7	Two-lane Residential Local Street
7A	Two-lane Residential Local Street with One Side Ribbon Curb
8	Two-lane Mixed Use Local Street with Urban Sidewalk
8A	Two-lane Mixed Use Local Street
9	Foothills Two-lane Collector
10	Foothills Two-lane Local Street
11	Two-lane Commercial Alley
12	Two-lane Residential Alley
	Potental Roundabout
	Easement Access For United Water
	Secondary Emergency Access

Notes :

1. A traffic impact study may be required if there is a change in the current land use plan.

2. A turn lane warrant analysis may be required on case basis depending on the proposed land use. Cont to determine if a turn lane analysis is required prior to su development application.

3. When parcels abutting Warm Springs Avenue are p platted provide current roadway segment traffic co intersection counts (raw data) for the segment of Warm Avenue abutting the site and the nearest intersection Way/Warm Springs, Old Hickory Way/Warm Springs, or Way /Warm Springs). ACHD will analyze the data to de roadway or intersection improvements are needed to m development.

4. Requests for modifications of ACHD policy will be r preliminary plat applications.

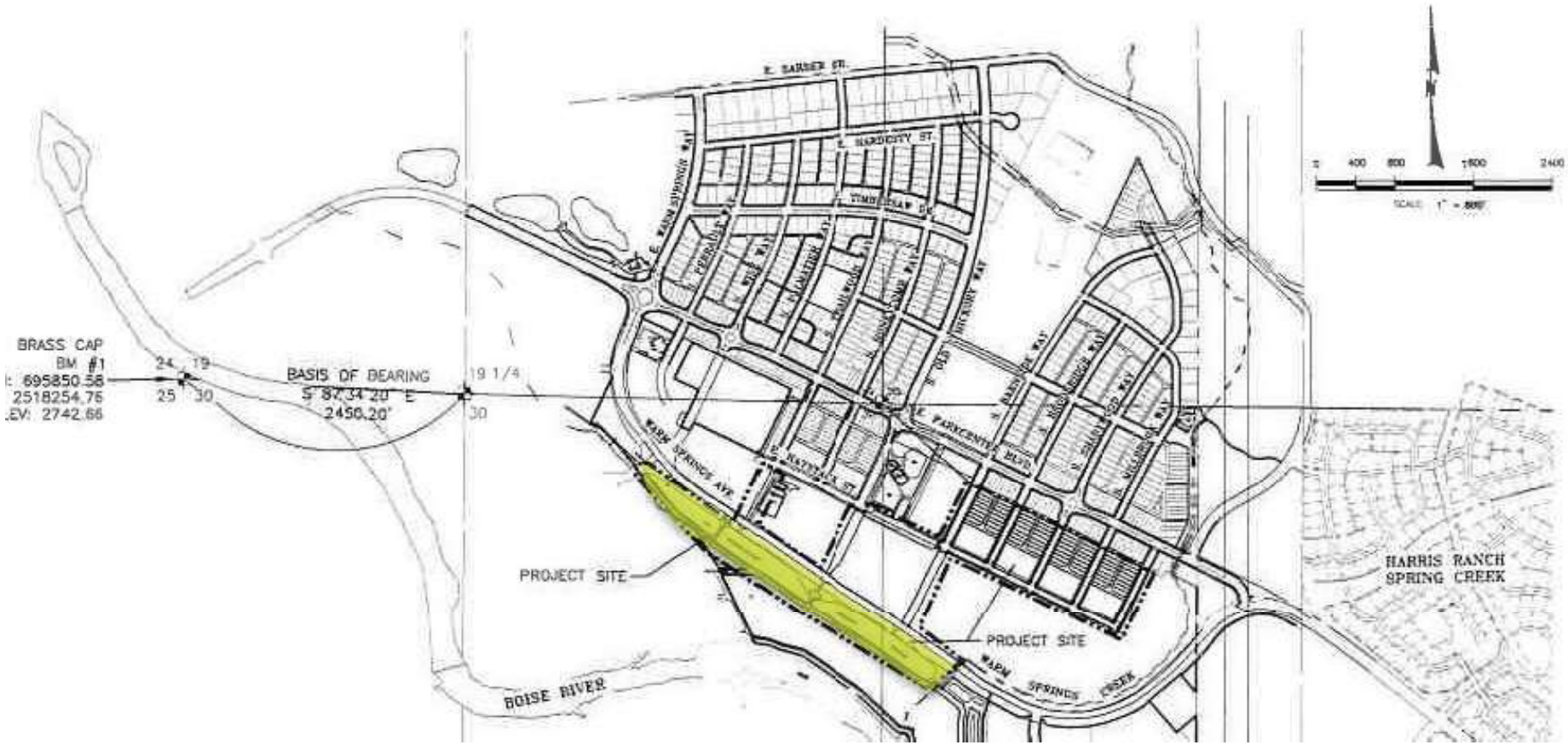
5. All sidewalks shall be located outside of ACHD Way. Public sidewalks shall be located within an easem dedicated to and accepted by the City of Boise. Sidewal allowed in ACHD right-of-way crossing the Idaho Powe and at pedestrian ramp locations.

APPENDIX G

J. Exhibit J – Detailed Map for DHE TH #9

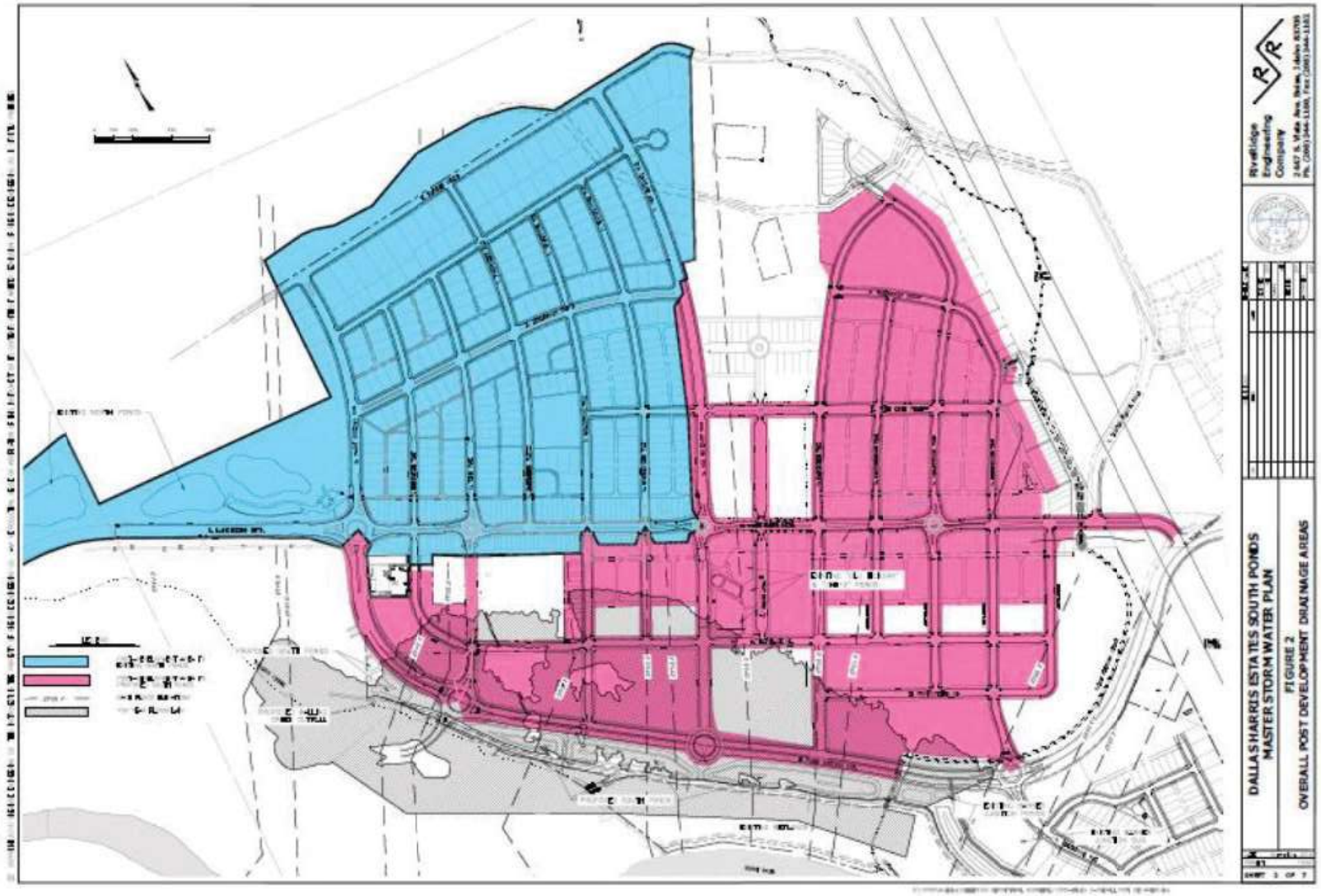
APPENDIX H

BB. Exhibit BB – Detailed Map for DHE TH #11 - Storm Water Improvements



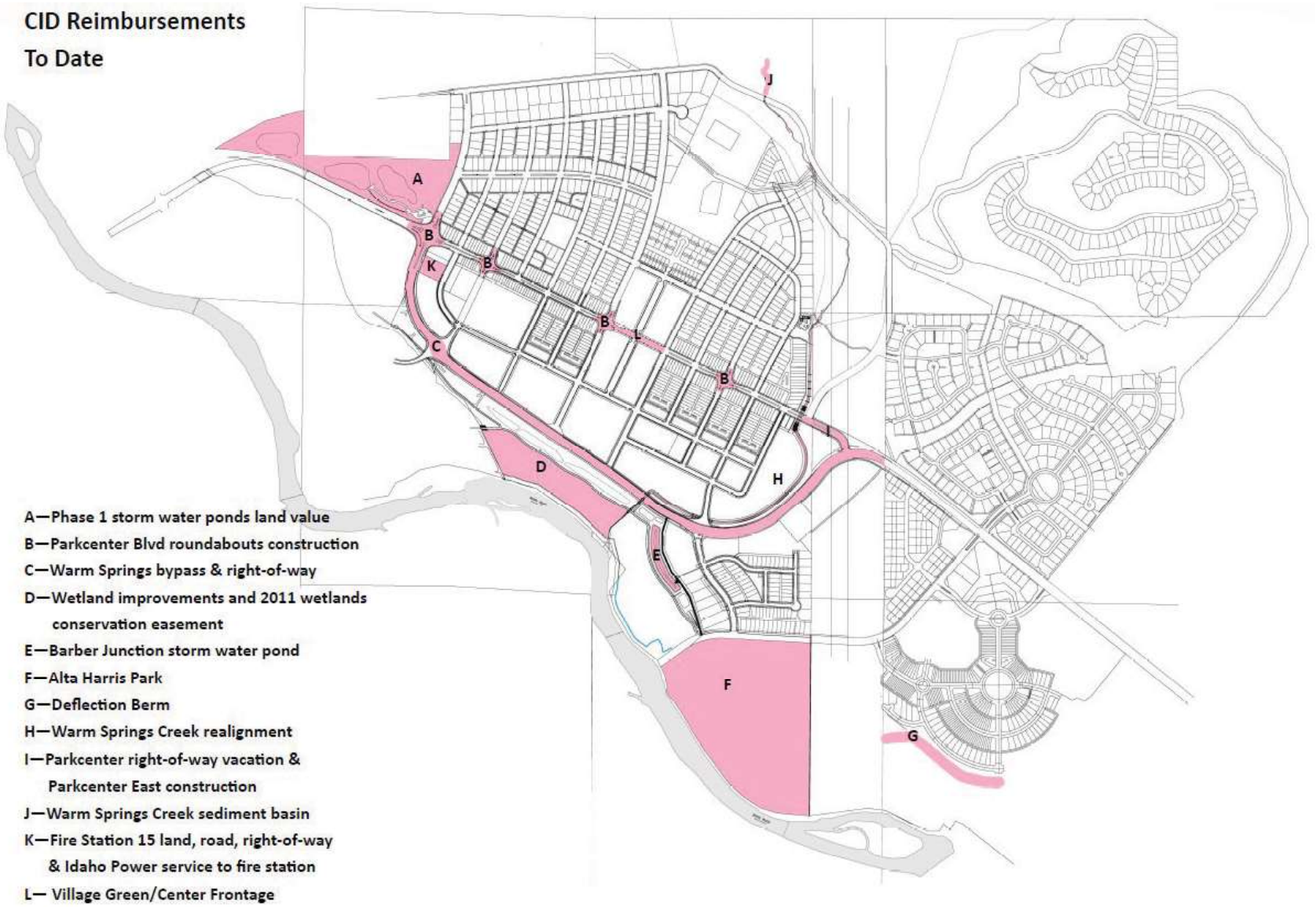
APPENDIX I

DD. Exhibit DD – DHE TH #11 – South Ponds Master Storm Water Plan

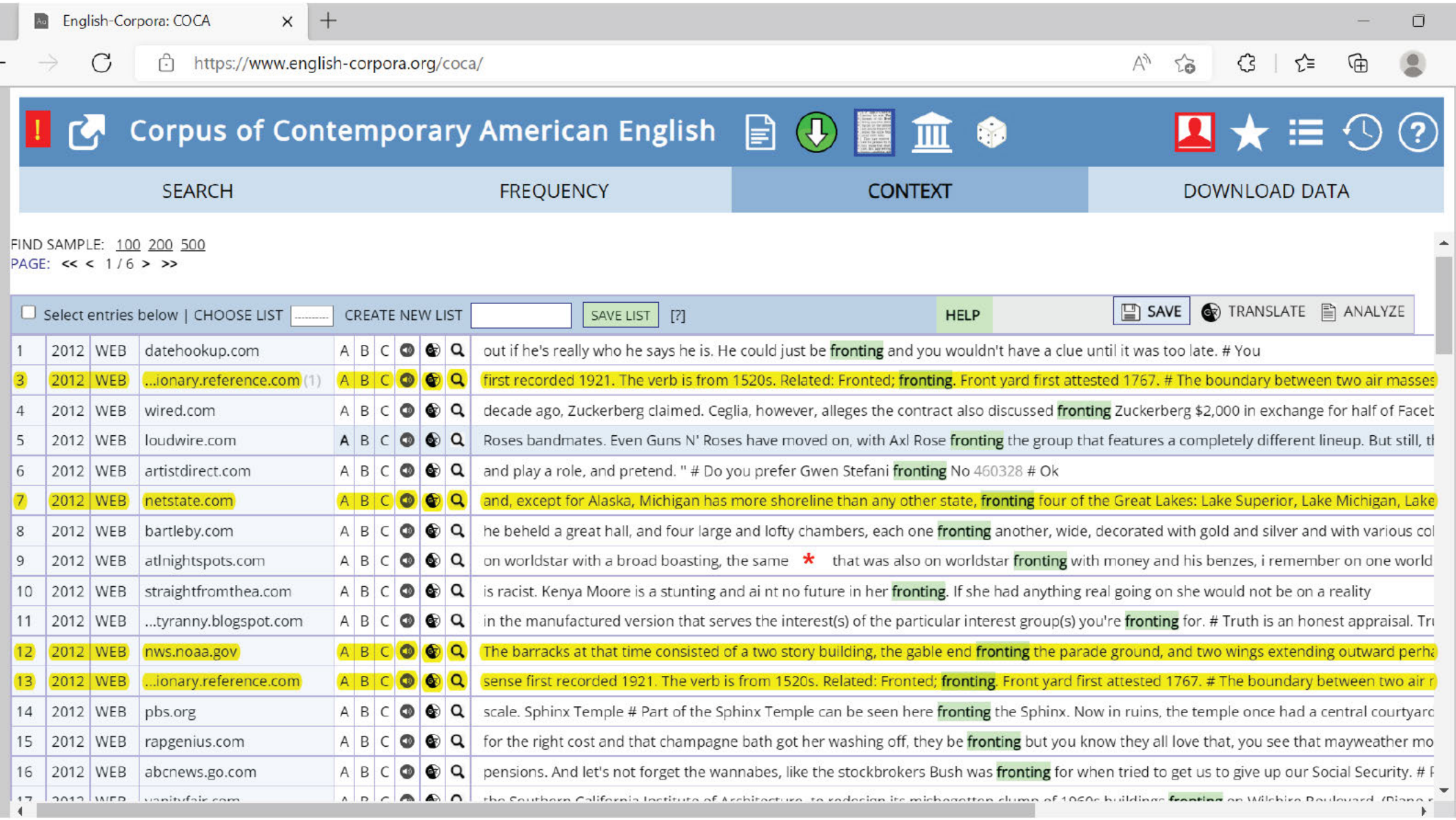


APPENDIX J

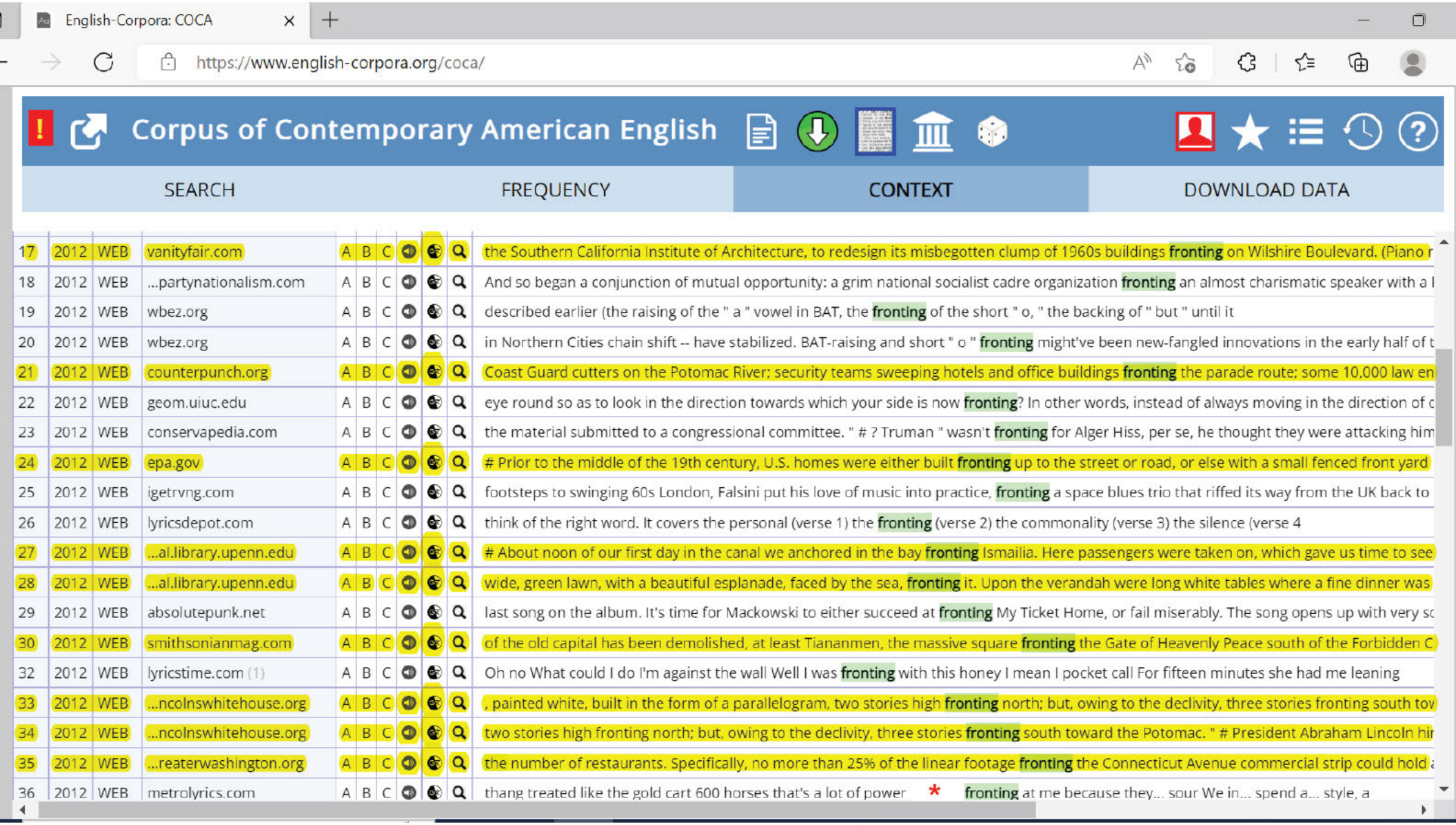
B. Exhibit B– Map of Purchases to Date



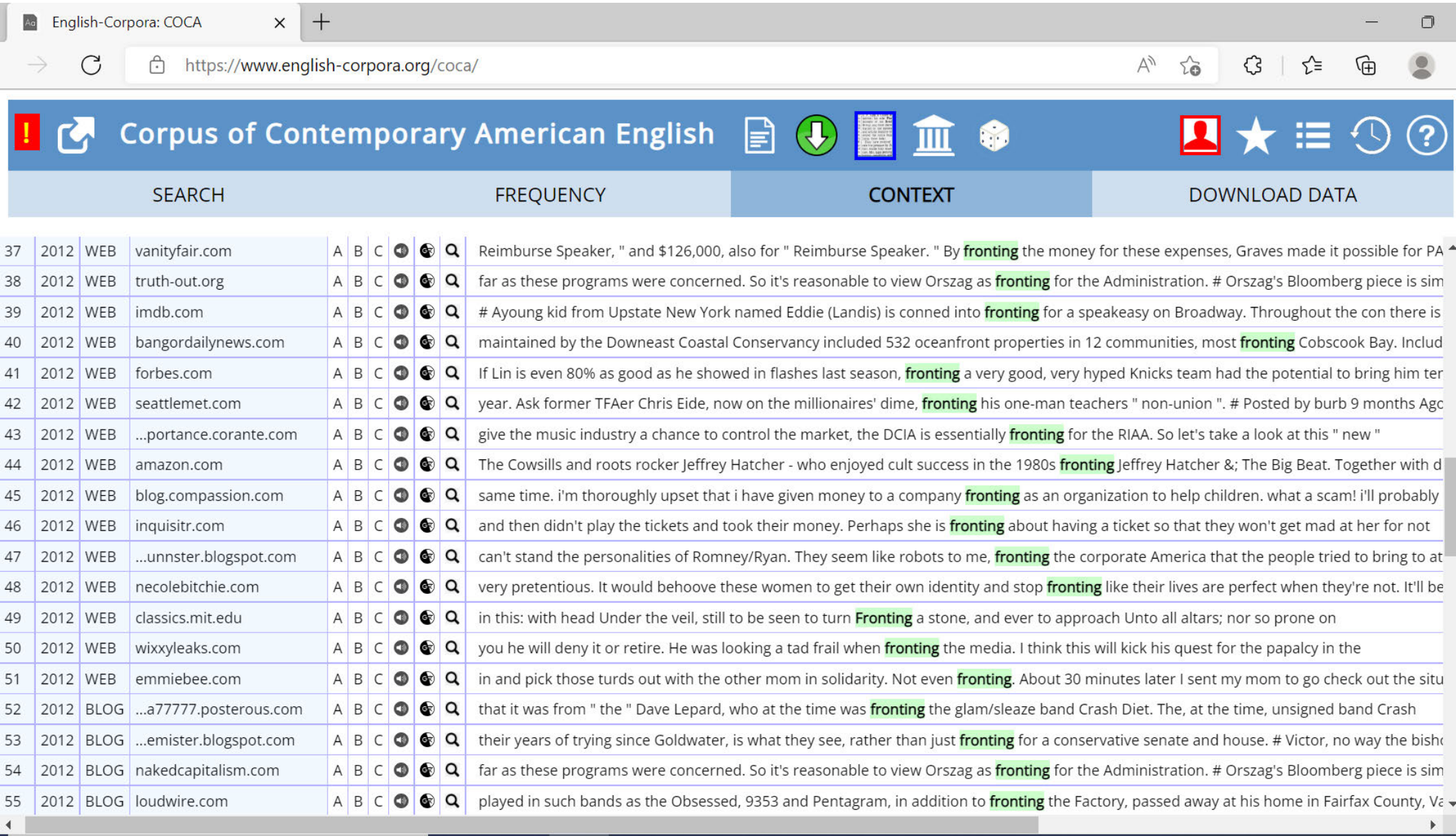
APPENDIX K



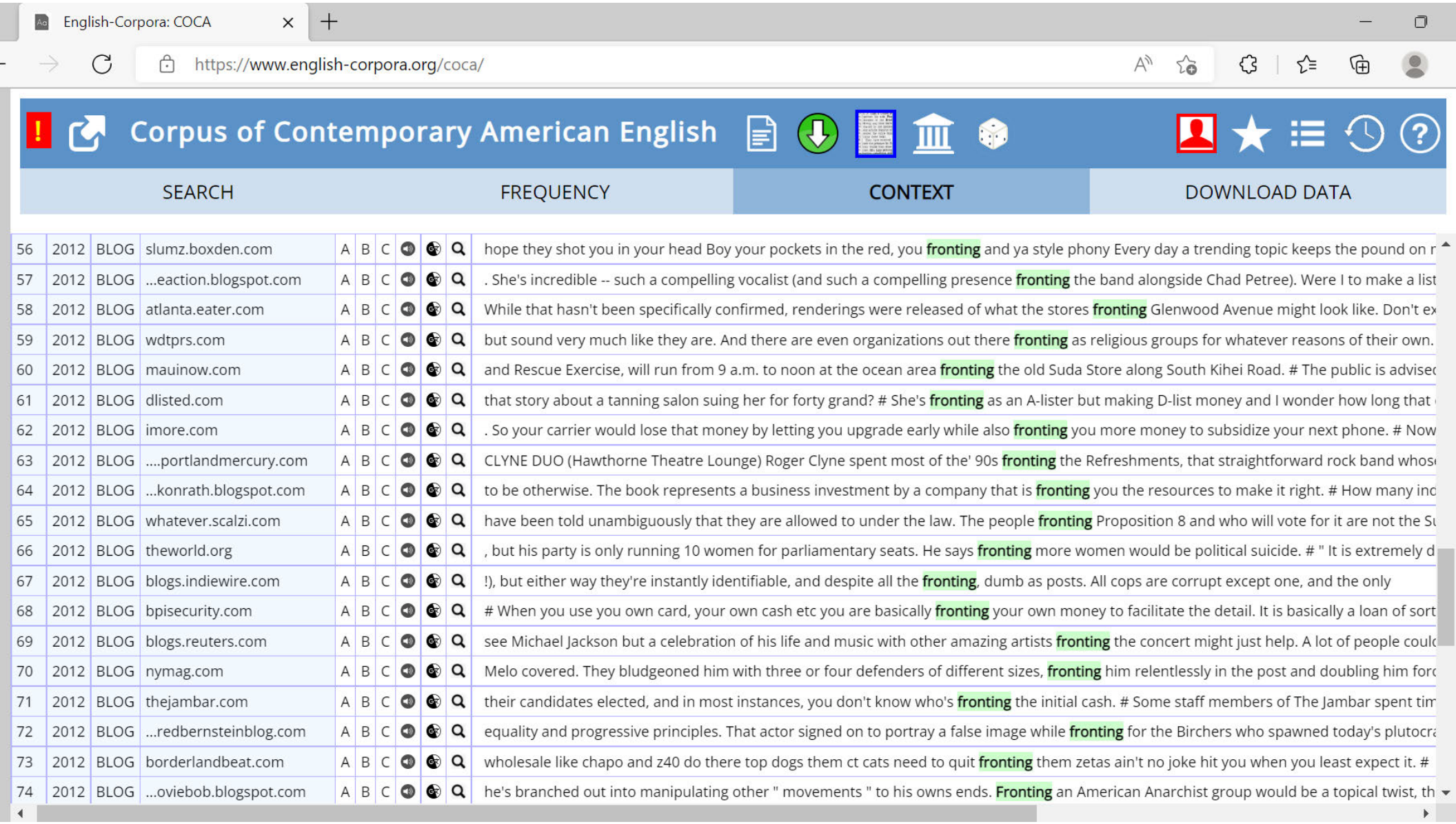
*** All redactions are for purposes of keeping inappropriate language and/or racial slurs from the court record.**



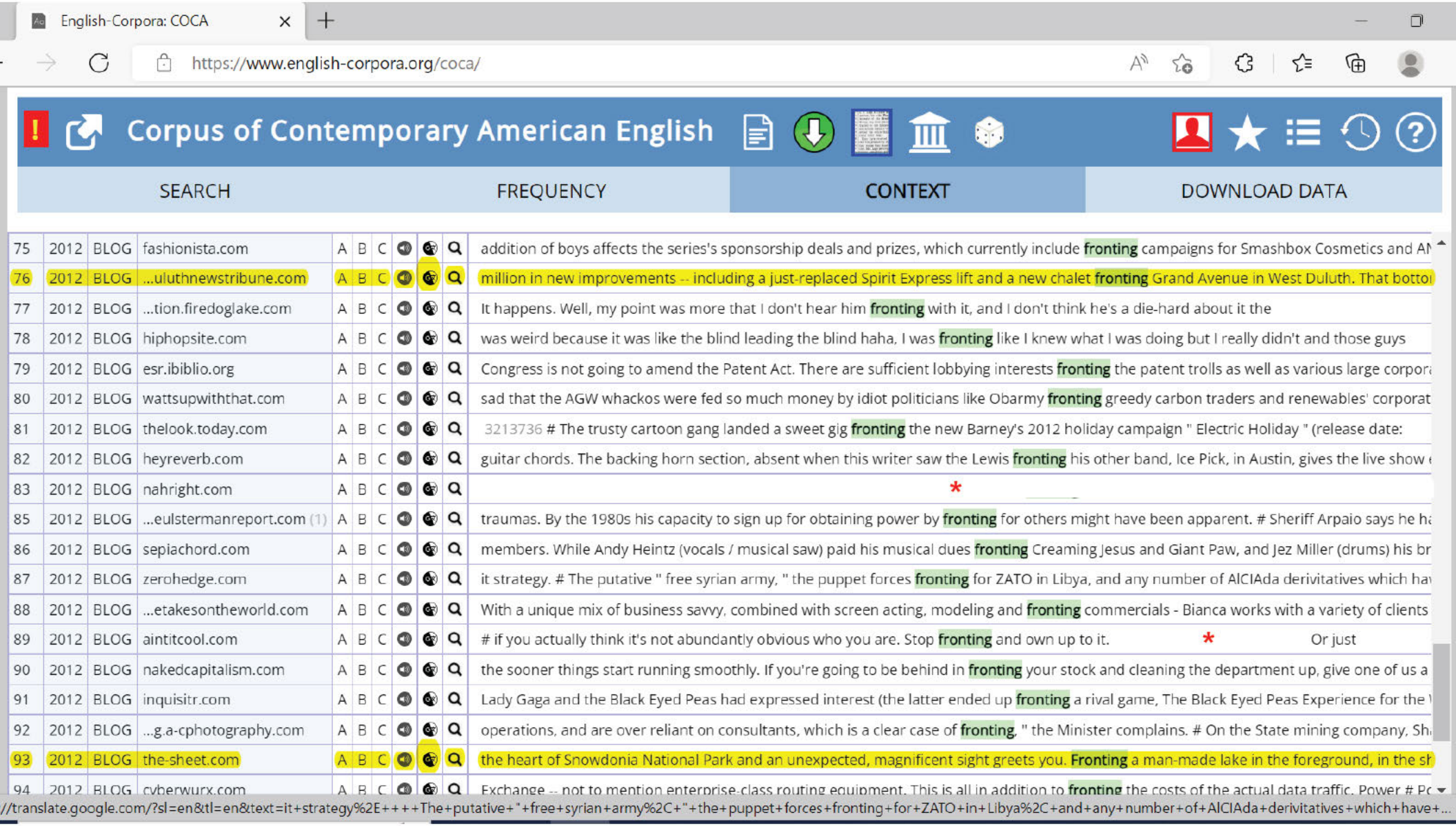
17	2012	WEB	vanityfair.com	A	B	C			the Southern California Institute of Architecture, to redesign its misbegotten clump of 1960s buildings **fronting** on Wilshire Boulevard. (Piano r
18	2012	WEB	...partynationalism.com	A	B	C			And so began a conjunction of mutual opportunity: a grim national socialist cadre organization **fronting** an almost charismatic speaker with a l
19	2012	WEB	wbez.org	A	B	C			described earlier (the raising of the " a " vowel in BAT, the **fronting** of the short " o, " the backing of " but " until it
20	2012	WEB	wbez.org	A	B	C			in Northern Cities chain shift -- have stabilized. BAT-raising and short " o " **fronting** might've been new-fangled innovations in the early half of t
21	2012	WEB	counterpunch.org	A	B	C			Coast Guard cutters on the Potomac River; security teams sweeping hotels and office buildings **fronting** the parade route; some 10,000 law en
22	2012	WEB	geom.uiuc.edu	A	B	C			eye round so as to look in the direction towards which your side is now **fronting**? In other words, instead of always moving in the direction of c
23	2012	WEB	conservapedia.com	A	B	C			the material submitted to a congressional committee. " # ? Truman " wasn't **fronting** for Alger Hiss, per se, he thought they were attacking him
24	2012	WEB	epa.gov	A	B	C			# Prior to the middle of the 19th century, U.S. homes were either built **fronting** up to the street or road, or else with a small fenced front yard
25	2012	WEB	igetrvng.com	A	B	C			footsteps to swinging 60s London, Falsini put his love of music into practice, **fronting** a space blues trio that riffed its way from the UK back to
26	2012	WEB	lyricsdepot.com	A	B	C			think of the right word. It covers the personal (verse 1) the **fronting** (verse 2) the commonality (verse 3) the silence (verse 4
27	2012	WEB	...al.library.upenn.edu	A	B	C			# About noon of our first day in the canal we anchored in the bay **fronting** Ismailia. Here passengers were taken on, which gave us time to see
28	2012	WEB	...al.library.upenn.edu	A	B	C			wide, green lawn, with a beautiful esplanade, faced by the sea, **fronting** it. Upon the verandah were long white tables where a fine dinner was
29	2012	WEB	absolutepunk.net	A	B	C			last song on the album. It's time for Mackowski to either succeed at **fronting** My Ticket Home, or fail miserably. The song opens up with very so
30	2012	WEB	smithsonianmag.com	A	B	C			of the old capital has been demolished, at least Tiananmen, the massive square **fronting** the Gate of Heavenly Peace south of the Forbidden C
32	2012	WEB	lyricstime.com (1)	A	B	C			Oh no What could I do I'm against the wall Well I was **fronting** with this honey I mean I pocket call For fifteen minutes she had me leaning
33	2012	WEB	...ncolnswhitehouse.org	A	B	C			, painted white, built in the form of a parallelogram, two stories high **fronting** north; but, owing to the declivity, three stories fronting south tov
34	2012	WEB	...ncolnswhitehouse.org	A	B	C			two stories high fronting north; but, owing to the declivity, three stories **fronting** south toward the Potomac. " # President Abraham Lincoln hir
35	2012	WEB	...reaterwashington.org	A	B	C			the number of restaurants. Specifically, no more than 25% of the linear footage **fronting** the Connecticut Avenue commercial strip could hold a
36	2012	WEB	metrolyrics.com	A	B	C			thang treated like the gold cart 600 horses that's a lot of power * **fronting** at me because they... sour We in... spend a... style, a



37	2012	WEB	vanityfair.com	A	B	C			Reimburse Speaker, " and $126,000, also for " Reimburse Speaker. " By **fronting** the money for these expenses, Graves made it possible for PA
38	2012	WEB	truth-out.org	A	B	C			far as these programs were concerned. So it's reasonable to view Orszag as **fronting** for the Administration. # Orszag's Bloomberg piece is sim
39	2012	WEB	imdb.com	A	B	C			# Ayoung kid from Upstate New York named Eddie (Landis) is conned into **fronting** for a speakeasy on Broadway. Throughout the con there is
40	2012	WEB	bangordailynews.com	A	B	C			maintained by the Downeast Coastal Conservancy included 532 oceanfront properties in 12 communities, most **fronting** Cobscook Bay. Includ
41	2012	WEB	forbes.com	A	B	C			If Lin is even 80% as good as he showed in flashes last season, **fronting** a very good, very hyped Knicks team had the potential to bring him ter
42	2012	WEB	seattlemet.com	A	B	C			year. Ask former TFAer Chris Eide, now on the millionaires' dime, **fronting** his one-man teachers " non-union ". # Posted by burb 9 months Ago
43	2012	WEB	...portance.corante.com	A	B	C			give the music industry a chance to control the market, the DCIA is essentially **fronting** for the RIAA. So let's take a look at this " new "
44	2012	WEB	amazon.com	A	B	C			The Cowsills and roots rocker Jeffrey Hatcher - who enjoyed cult success in the 1980s **fronting** Jeffrey Hatcher &; The Big Beat. Together with d
45	2012	WEB	blog.compassion.com	A	B	C			same time. i'm thoroughly upset that i have given money to a company **fronting** as an organization to help children. what a scam! i'll probably
46	2012	WEB	inquisitr.com	A	B	C			and then didn't play the tickets and took their money. Perhaps she is **fronting** about having a ticket so that they won't get mad at her for not
47	2012	WEB	...unnster.blogspot.com	A	B	C			can't stand the personalities of Romney/Ryan. They seem like robots to me, **fronting** the corporate America that the people tried to bring to at
48	2012	WEB	necolebitchie.com	A	B	C			very pretentious. It would behoove these women to get their own identity and stop **fronting** like their lives are perfect when they're not. It'll be
49	2012	WEB	classics.mit.edu	A	B	C			in this: with head Under the veil, still to be seen to turn **Fronting** a stone, and ever to approach Unto all altars; nor so prone on
50	2012	WEB	wixxyleaks.com	A	B	C			you he will deny it or retire. He was looking a tad frail when **fronting** the media. I think this will kick his quest for the papalcy in the
51	2012	WEB	emmiebee.com	A	B	C			in and pick those turds out with the other mom in solidarity. Not even **fronting**. About 30 minutes later I sent my mom to go check out the situ
52	2012	BLOG	...a77777.posterous.com	A	B	C			that it was from " the " Dave Lepard, who at the time was **fronting** the glam/sleaze band Crash Diet. The, at the time, unsigned band Crash
53	2012	BLOG	...emister.blogspot.com	A	B	C			their years of trying since Goldwater, is what they see, rather than just **fronting** for a conservative senate and house. # Victor, no way the bisho
54	2012	BLOG	nakedcapitalism.com	A	B	C			far as these programs were concerned. So it's reasonable to view Orszag as **fronting** for the Administration. # Orszag's Bloomberg piece is sim
55	2012	BLOG	loudwire.com	A	B	C			played in such bands as the Obsessed, 9353 and Pentagram, in addition to **fronting** the Factory, passed away at his home in Fairfax County, Va



56	2012	BLOG	slumz.boxden.com	A	B	C				hope they shot you in your head Boy your pockets in the red, you **fronting** and ya style phony Every day a trending topic keeps the pound on r
57	2012	BLOG	...eaction.blogspot.com	A	B	C				. She's incredible -- such a compelling vocalist (and such a compelling presence **fronting** the band alongside Chad Petree). Were I to make a list
58	2012	BLOG	atlanta.eater.com	A	B	C				While that hasn't been specifically confirmed, renderings were released of what the stores **fronting** Glenwood Avenue might look like. Don't ex
59	2012	BLOG	wdtprs.com	A	B	C				but sound very much like they are. And there are even organizations out there **fronting** as religious groups for whatever reasons of their own.
60	2012	BLOG	mauinow.com	A	B	C				and Rescue Exercise, will run from 9 a.m. to noon at the ocean area **fronting** the old Suda Store along South Kihei Road. # The public is advise
61	2012	BLOG	dlisted.com	A	B	C				that story about a tanning salon suing her for forty grand? # She's **fronting** as an A-lister but making D-list money and I wonder how long that
62	2012	BLOG	imore.com	A	B	C				. So your carrier would lose that money by letting you upgrade early while also **fronting** you more money to subsidize your next phone. # Now
63	2012	BLOG	....portlandmercury.com	A	B	C				CLYNE DUO (Hawthorne Theatre Lounge) Roger Clyne spent most of the' 90s **fronting** the Refreshments, that straightforward rock band whos
64	2012	BLOG	...konrath.blogspot.com	A	B	C				to be otherwise. The book represents a business investment by a company that is **fronting** you the resources to make it right. # How many inc
65	2012	BLOG	whatever.scalzi.com	A	B	C				have been told unambiguously that they are allowed to under the law. The people **fronting** Proposition 8 and who will vote for it are not the S
66	2012	BLOG	theworld.org	A	B	C				, but his party is only running 10 women for parliamentary seats. He says **fronting** more women would be political suicide. # " It is extremely d
67	2012	BLOG	blogs.indiewire.com	A	B	C				!), but either way they're instantly identifiable, and despite all the **fronting**, dumb as posts. All cops are corrupt except one, and the only
68	2012	BLOG	bpisecurity.com	A	B	C				# When you use you own card, your own cash etc you are basically **fronting** your own money to facilitate the detail. It is basically a loan of sort
69	2012	BLOG	blogs.reuters.com	A	B	C				see Michael Jackson but a celebration of his life and music with other amazing artists **fronting** the concert might just help. A lot of people coul
70	2012	BLOG	nymag.com	A	B	C				Melo covered. They bludgeoned him with three or four defenders of different sizes, **fronting** him relentlessly in the post and doubling him forc
71	2012	BLOG	thejambar.com	A	B	C				their candidates elected, and in most instances, you don't know who's **fronting** the initial cash. # Some staff members of The Jambar spent tim
72	2012	BLOG	...redbernsteinblog.com	A	B	C				equality and progressive principles. That actor signed on to portray a false image while **fronting** for the Birchers who spawned today's plutocra
73	2012	BLOG	borderlandbeat.com	A	B	C				wholesale like chapo and z40 do there top dogs them ct cats need to quit **fronting** them zetas ain't no joke hit you when you least expect it. #
74	2012	BLOG	...oviebob.blogspot.com	A	B	C				he's branched out into manipulating other " movements " to his owns ends. **Fronting** an American Anarchist group would be a topical twist, th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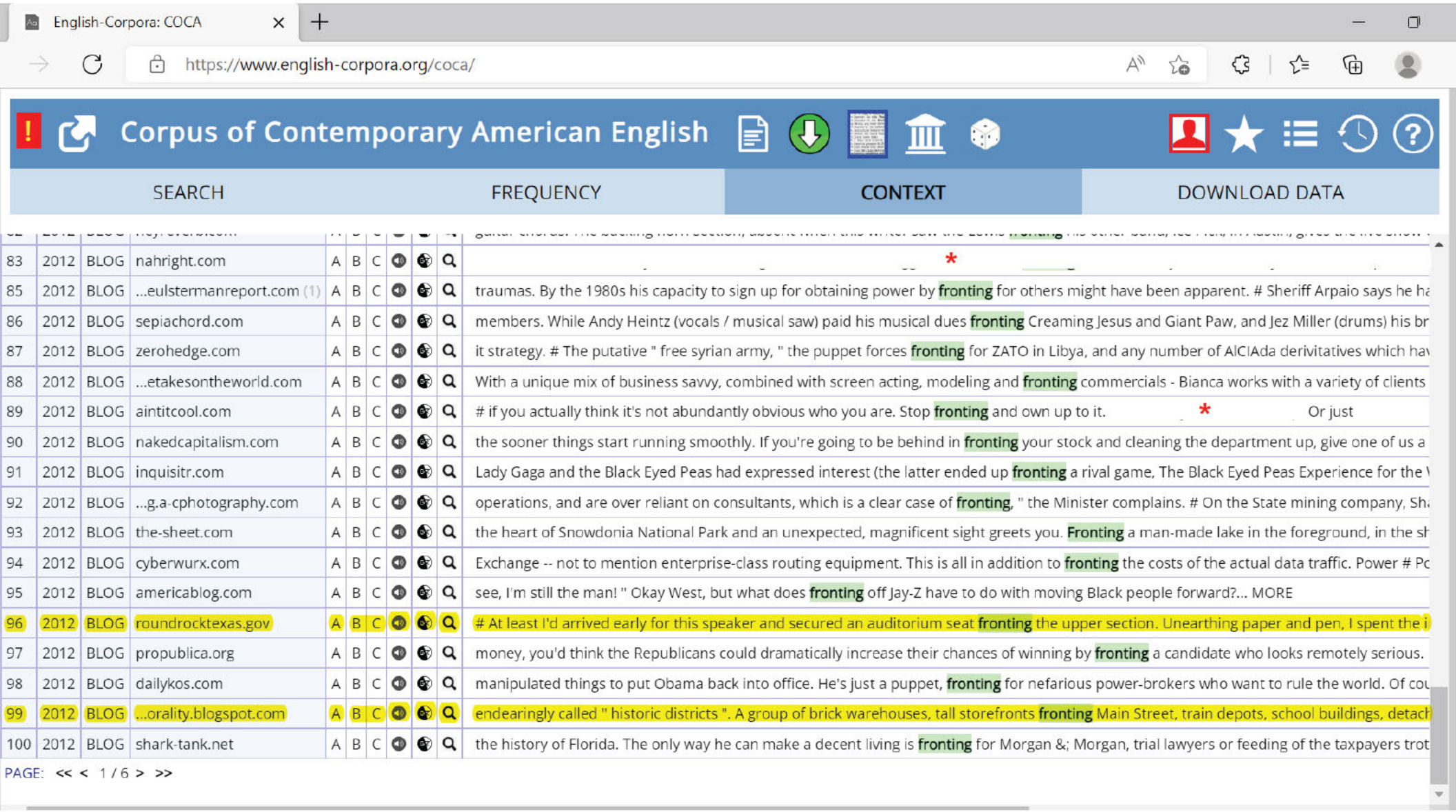
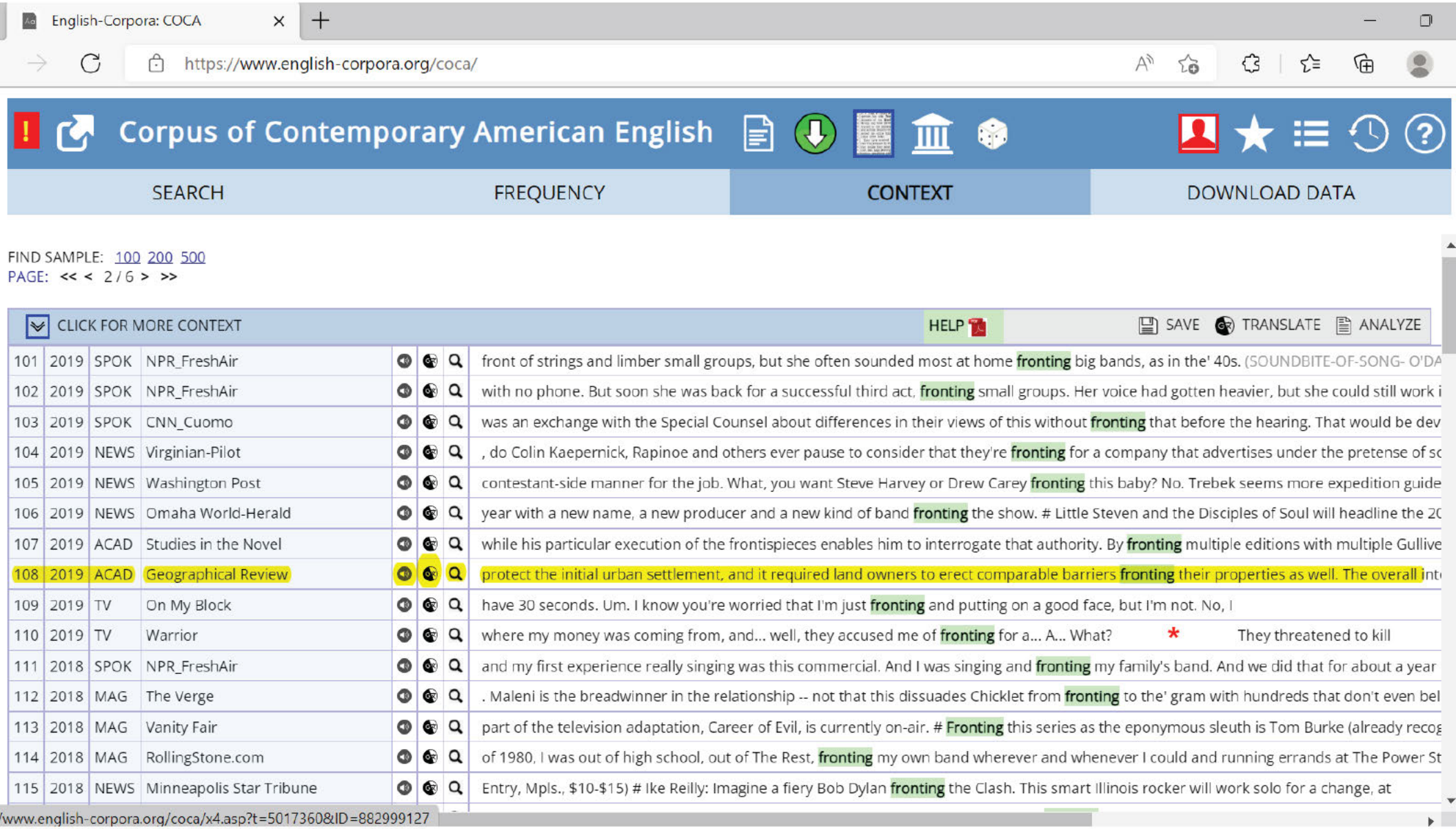
75 2012 BLOG fashionista.com addition of boys affects the series's sponsorship deals and prizes, which currently include fronting campaigns for Smashbox Cosmetics and AM
76 2012 BLOG ...uluthnewstribune.com million in new improvements -- including a just-replaced Spirit Express lift and a new chalet fronting Grand Avenue in West Duluth. That botto
77 2012 BLOG ...tion.firedoglake.com It happens. Well, my point was more that I don't hear him fronting with it, and I don't think he's a die-hard about it the
78 2012 BLOG hiphopsite.com was weird because it was like the blind leading the blind haha, I was fronting like I knew what I was doing but I really didn't and those guys
79 2012 BLOG esr.ibiblio.org Congress is not going to amend the Patent Act. There are sufficient lobbying interests fronting the patent trolls as well as various large corpora
80 2012 BLOG wattsupwiththat.com sad that the AGW whackos were fed so much money by idiot politicians like Obarmy fronting greedy carbon traders and renewables' corporat
81 2012 BLOG thelook.today.com 3213736 # The trusty cartoon gang landed a sweet gig fronting the new Barney's 2012 holiday campaign " Electric Holiday " (release date:
82 2012 BLOG heyreverb.com guitar chords. The backing horn section, absent when this writer saw the Lewis fronting his other band, Ice Pick, in Austin, gives the live show
83 2012 BLOG nahright.com *
85 2012 BLOG ...eulstermanreport.com (1) traumas. By the 1980s his capacity to sign up for obtaining power by fronting for others might have been apparent. # Sheriff Arpaio says he ha
86 2012 BLOG sepiachord.com members. While Andy Heintz (vocals / musical saw) paid his musical dues fronting Creaming Jesus and Giant Paw, and Jez Miller (drums) his br
87 2012 BLOG zerohedge.com it strategy. # The putative " free syrian army, " the puppet forces fronting for ZATO in Libya, and any number of AlCIAda derivitatives which hav
88 2012 BLOG ...etakesontheworld.com With a unique mix of business savvy, combined with screen acting, modeling and fronting commercials - Bianca works with a variety of clients
89 2012 BLOG aintitcool.com # if you actually think it's not abundantly obvious who you are. Stop fronting and own up to it. * Or just
90 2012 BLOG nakedcapitalism.com the sooner things start running smoothly. If you're going to be behind in fronting your stock and cleaning the department up, give one of us a
91 2012 BLOG inquisitr.com Lady Gaga and the Black Eyed Peas had expressed interest (the latter ended up fronting a rival game, The Black Eyed Peas Experience for the
92 2012 BLOG ...g.a-cphotography.com operations, and are over reliant on consultants, which is a clear case of fronting, " the Minister complains. # On the State mining company, Sh
93 2012 BLOG the-sheet.com the heart of Snowdonia National Park and an unexpected, magnificent sight greets you. Fronting a man-made lake in the foreground, in the sh
94 2012 BLOG cyberwurx.com Exchange -- not to mention enterprise-class routing equipment. This is all in addition to fronting the costs of the actual data traffic. Power # Pc
//translate.google.com/?sl=en&tl=en&text=it+strategy%2E++++The+putative+"+free+syrian+army%2C+"+the+puppet+forces+fronting+for+ZATO+in+Libya%2C+and+any+number+of+AlCIAda+derivitatives+which+have+...



83	2012	BLOG	nahright.com	A	B	C			*
85	2012	BLOG	...eulstermanreport.com (1)	A	B	C			traumas. By the 1980s his capacity to sign up for obtaining power by **fronting** for others might have been apparent. # Sheriff Arpaio says he ha
86	2012	BLOG	sepiachord.com	A	B	C			members. While Andy Heintz (vocals / musical saw) paid his musical dues **fronting** Creaming Jesus and Giant Paw, and Jez Miller (drums) his br
87	2012	BLOG	zerohedge.com	A	B	C			it strategy. # The putative " free syrian army, " the puppet forces **fronting** for ZATO in Libya, and any number of AlCIAda derivitatives which hav
88	2012	BLOG	...etakesontheworld.com	A	B	C			With a unique mix of business savvy, combined with screen acting, modeling and **fronting** commercials - Bianca works with a variety of clients
89	2012	BLOG	aintitcool.com	A	B	C			# if you actually think it's not abundantly obvious who you are. Stop **fronting** and own up to it. * Or just
90	2012	BLOG	nakedcapitalism.com	A	B	C			the sooner things start running smoothly. If you're going to be behind in **fronting** your stock and cleaning the department up, give one of us a
91	2012	BLOG	inquisitr.com	A	B	C			Lady Gaga and the Black Eyed Peas had expressed interest (the latter ended up **fronting** a rival game, The Black Eyed Peas Experience for the V
92	2012	BLOG	...g.a-cphotography.com	A	B	C			operations, and are over reliant on consultants, which is a clear case of **fronting**, " the Minister complains. # On the State mining company, Sh
93	2012	BLOG	the-sheet.com	A	B	C			the heart of Snowdonia National Park and an unexpected, magnificent sight greets you. **Fronting** a man-made lake in the foreground, in the sh
94	2012	BLOG	cyberwurx.com	A	B	C			Exchange -- not to mention enterprise-class routing equipment. This is all in addition to **fronting** the costs of the actual data traffic. Power # Pc
95	2012	BLOG	americablog.com	A	B	C			see, I'm still the man! " Okay West, but what does **fronting** off Jay-Z have to do with moving Black people forward?... MORE
96	2012	BLOG	roundrocktexas.gov	A	B	C			# At least I'd arrived early for this speaker and secured an auditorium seat **fronting** the upper section. Unearthing paper and pen, I spent the i
97	2012	BLOG	propublica.org	A	B	C			money, you'd think the Republicans could dramatically increase their chances of winning by **fronting** a candidate who looks remotely serious.
98	2012	BLOG	dailykos.com	A	B	C			manipulated things to put Obama back into office. He's just a puppet, **fronting** for nefarious power-brokers who want to rule the world. Of cou
99	2012	BLOG	...orality.blogspot.com	A	B	C			endearingly called " historic districts ". A group of brick warehouses, tall storefronts **fronting** Main Street, train depots, school buildings, detach
100	2012	BLOG	shark-tank.net	A	B	C			the history of Florida. The only way he can make a decent living is **fronting** for Morgan &; Morgan, trial lawyers or feeding of the taxpayers trot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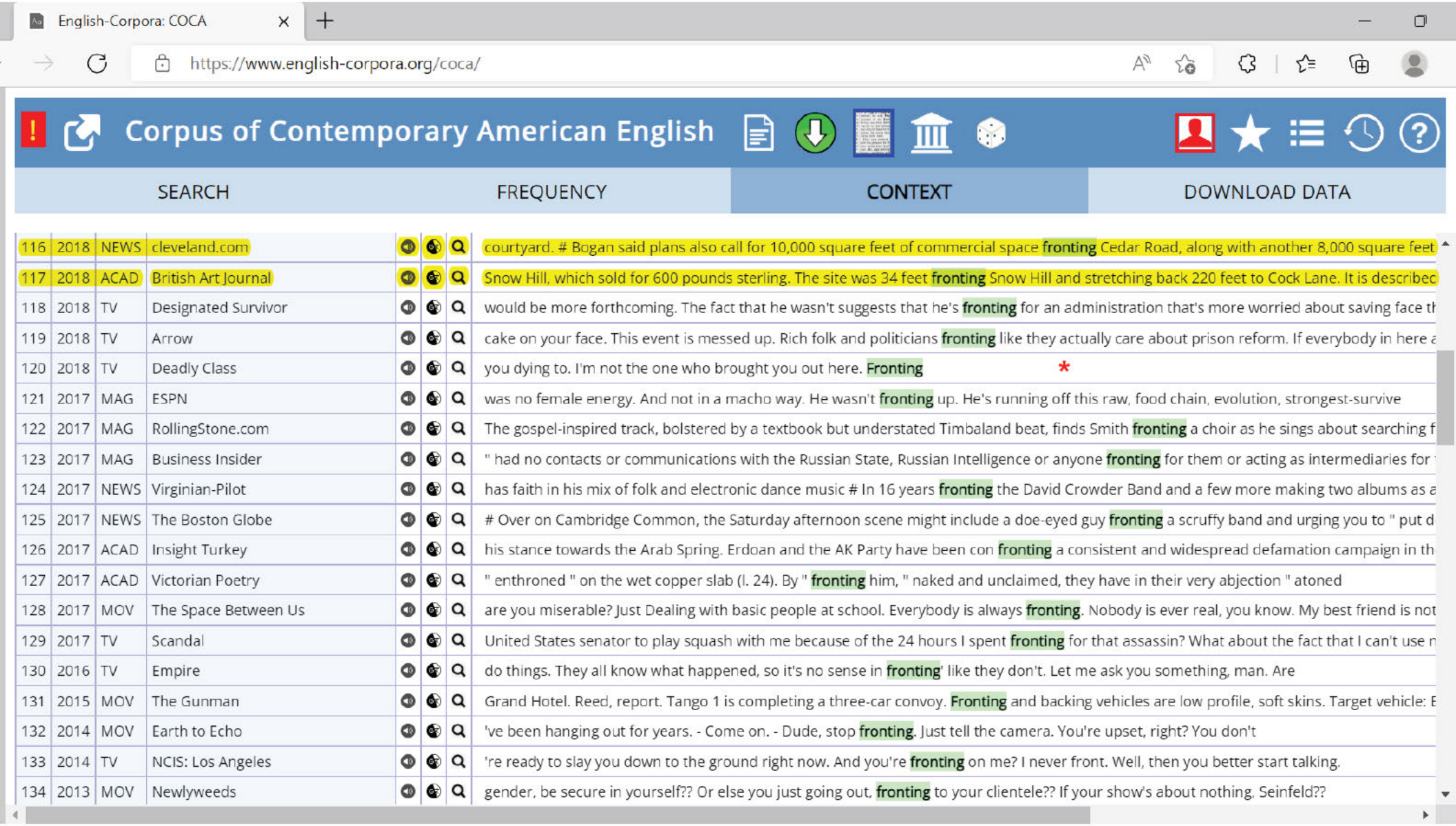
101 2019 SPOK NPR_FreshAir front of strings and limber small groups, but she often sounded most at home fronting big bands, as in the' 40s. (SOUNDBITE-OF-SONG- O'DA
102 2019 SPOK NPR_FreshAir with no phone. But soon she was back for a successful third act, fronting small groups. Her voice had gotten heavier, but she could still work i
103 2019 SPOK CNN_Cuomo was an exchange with the Special Counsel about differences in their views of this without fronting that before the hearing. That would be dev
104 2019 NEWS Virginian-Pilot , do Colin Kaepernick, Rapinoe and others ever pause to consider that they're fronting for a company that advertises under the pretense of sc
105 2019 NEWS Washington Post contestant-side manner for the job. What, you want Steve Harvey or Drew Carey fronting this baby? No. Trebek seems more expedition guide
106 2019 NEWS Omaha World-Herald year with a new name, a new producer and a new kind of band fronting the show. # Little Steven and the Disciples of Soul will headline the 20
107 2019 ACAD Studies in the Novel while his particular execution of the frontispieces enables him to interrogate that authority. By fronting multiple editions with multiple Gullive
108 2019 ACAD Geographical Review protect the initial urban settlement, and it required land owners to erect comparable barriers fronting their properties as well. The overall int
109 2019 TV On My Block have 30 seconds. Um. I know you're worried that I'm just fronting and putting on a good face, but I'm not. No, I
110 2019 TV Warrior where my money was coming from, and... well, they accused me of fronting for a... A... What? * They threatened to kill
111 2018 SPOK NPR_FreshAir and my first experience really singing was this commercial. And I was singing and fronting my family's band. And we did that for about a year
112 2018 MAG The Verge . Maleni is the breadwinner in the relationship -- not that this dissuades Chicklet from fronting to the' gram with hundreds that don't even bel
113 2018 MAG Vanity Fair part of the television adaptation, Career of Evil, is currently on-air. # Fronting this series as the eponymous sleuth is Tom Burke (already recog
114 2018 MAG RollingStone.com of 1980, I was out of high school, out of The Rest, fronting my own band wherever and whenever I could and running errands at The Power St
115 2018 NEWS Minneapolis Star Tribune Entry, Mpls., $10-$15) # Ike Reilly: Imagine a fiery Bob Dylan fronting the Clash. This smart Illinois rocker will work solo for a change, at
www.english-corpora.org/coca/x4.asp?t=5017360&ID=882999127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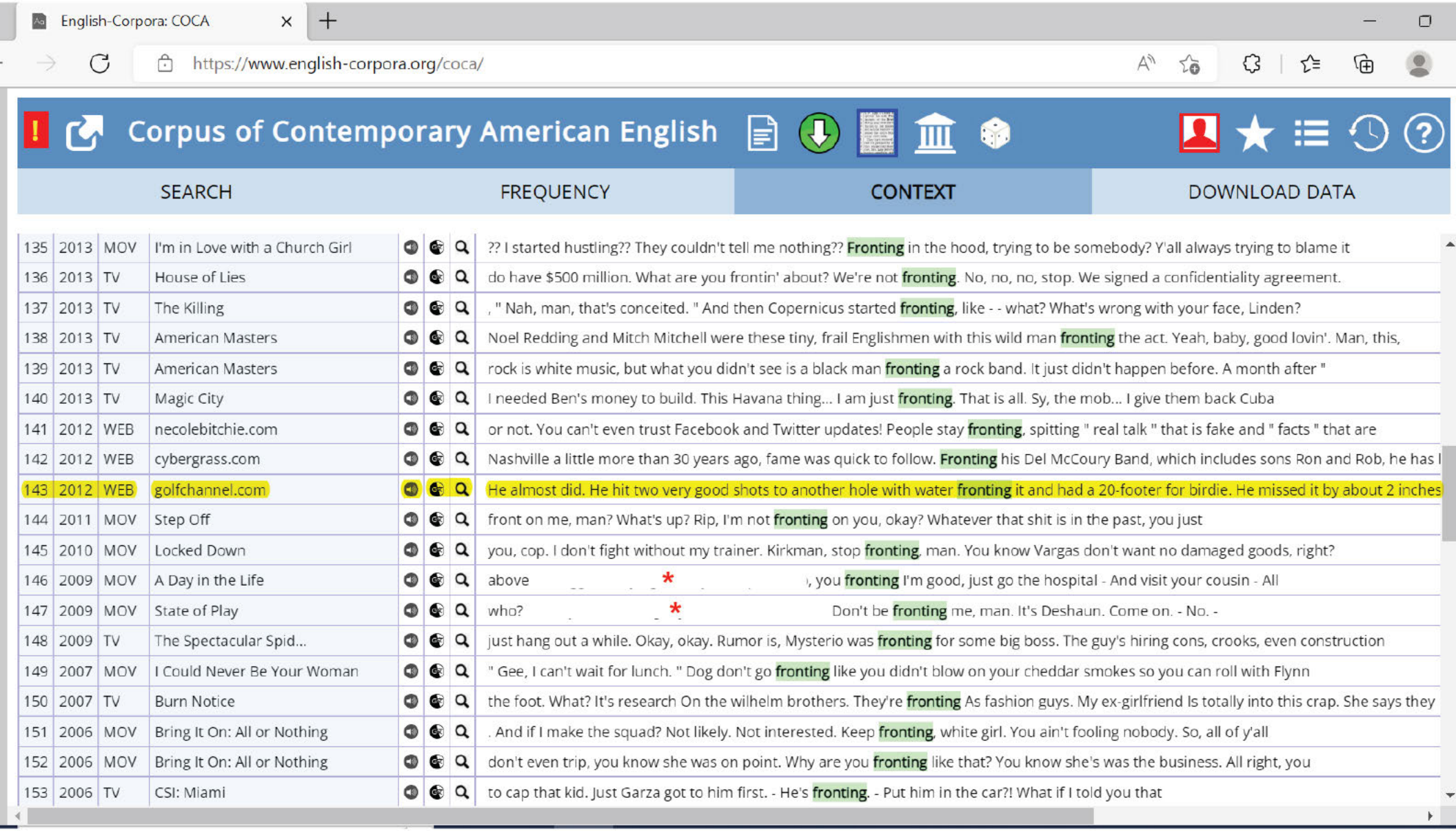
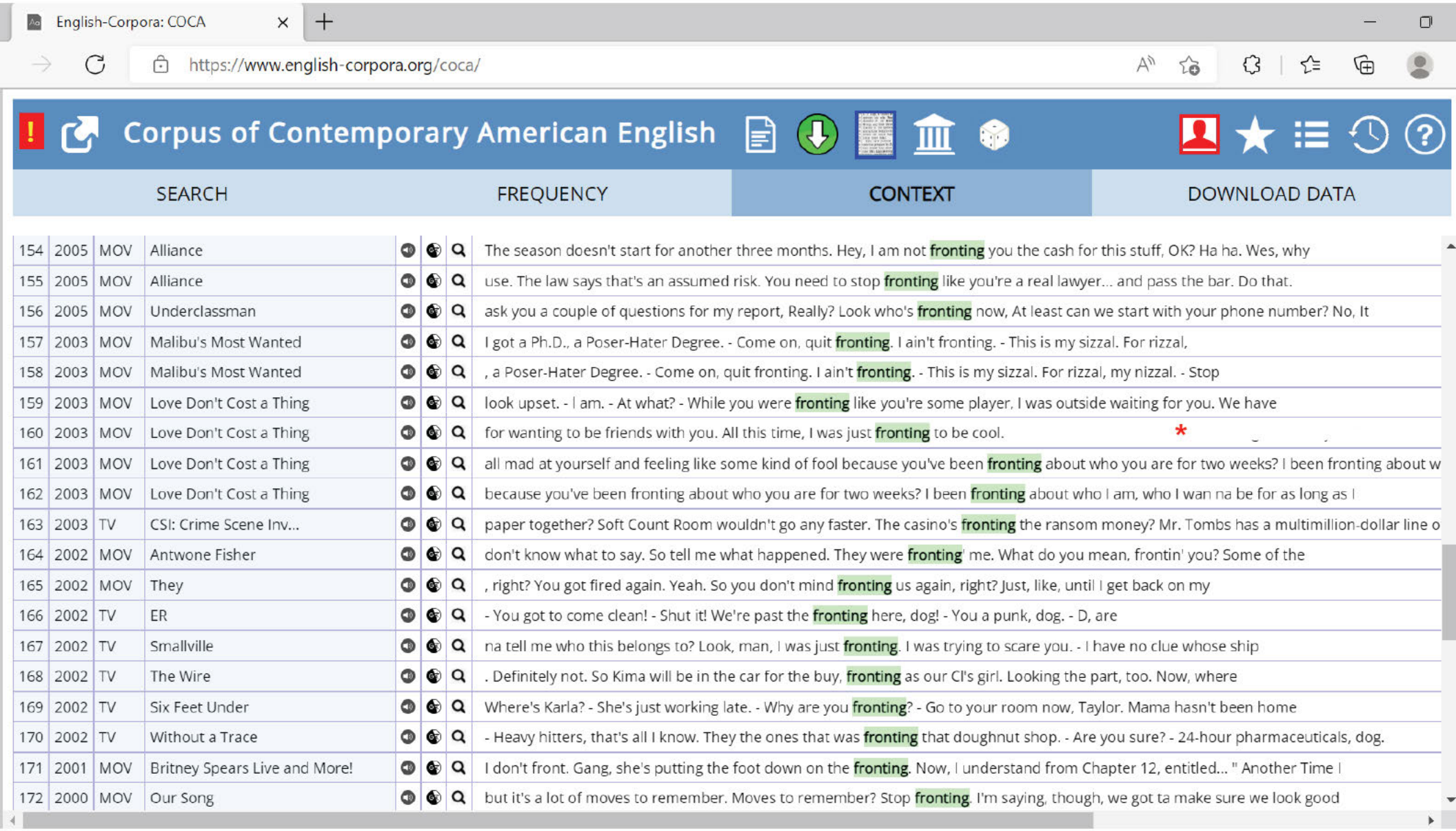
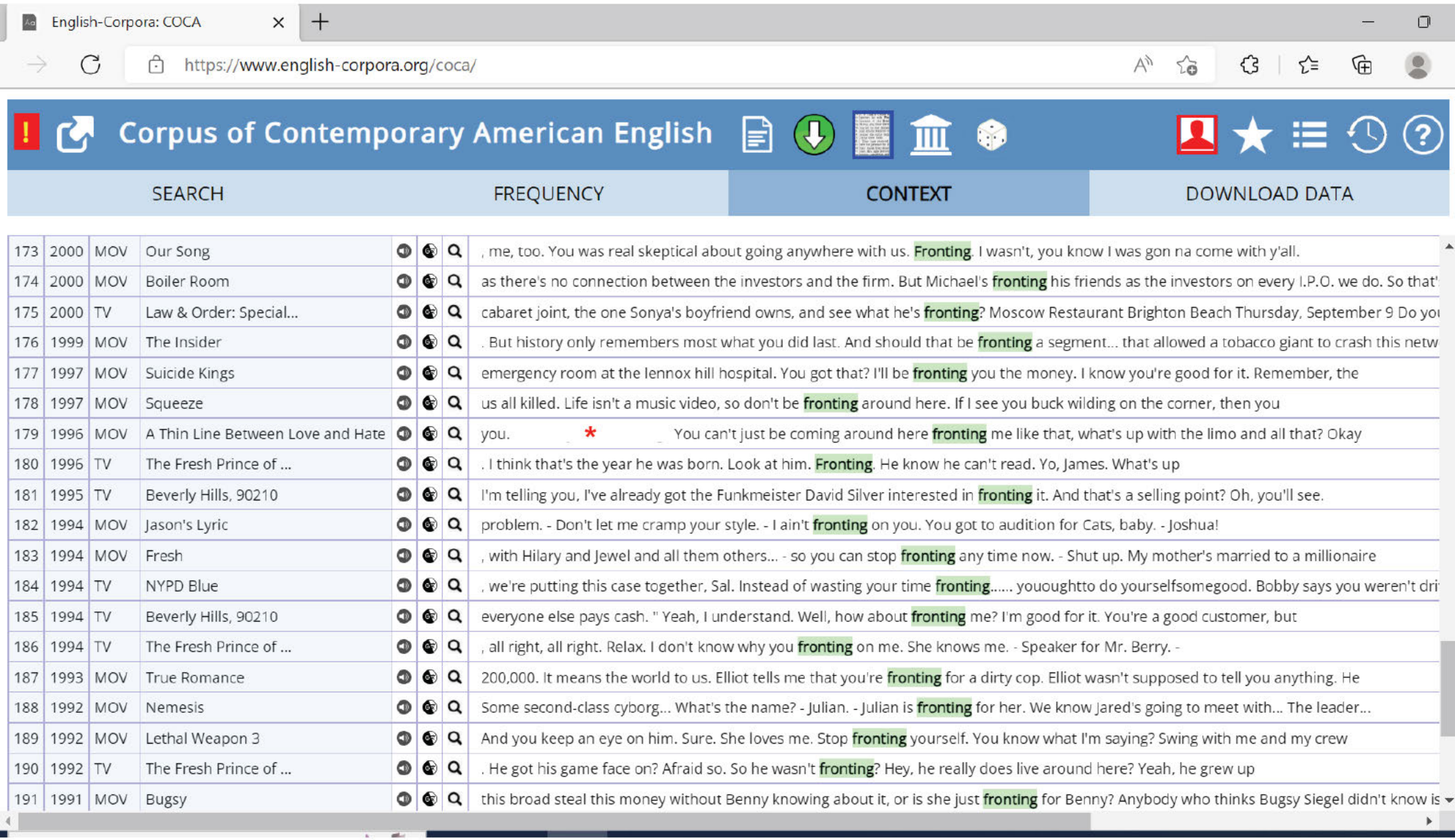
116 2018 NEWS cleveland.com courtyard. # Bogan said plans also call for 10,000 square feet of commercial space fronting Cedar Road, along with another 8,000 square feet
117 2018 ACAD British Art Journal Snow Hill, which sold for 600 pounds sterling. The site was 34 feet fronting Snow Hill and stretching back 220 feet to Cock Lane. It is describec
118 2018 TV Designated Survivor would be more forthcoming. The fact that he wasn't suggests that he's fronting for an administration that's more worried about saving face th
119 2018 TV Arrow cake on your face. This event is messed up. Rich folk and politicians fronting like they actually care about prison reform. If everybody in here a
120 2018 TV Deadly Class you dying to. I'm not the one who brought you out here. Fronting *
121 2017 MAG ESPN was no female energy. And not in a macho way. He wasn't fronting up. He's running off this raw, food chain, evolution, strongest-survive
122 2017 MAG RollingStone.com The gospel-inspired track, bolstered by a textbook but understated Timbaland beat, finds Smith fronting a choir as he sings about searching f
123 2017 MAG Business Insider " had no contacts or communications with the Russian State, Russian Intelligence or anyone fronting for them or acting as intermediaries for
124 2017 NEWS Virginian-Pilot has faith in his mix of folk and electronic dance music # In 16 years fronting the David Crowder Band and a few more making two albums as a
125 2017 NEWS The Boston Globe # Over on Cambridge Common, the Saturday afternoon scene might include a doe-eyed guy fronting a scruffy band and urging you to " put d
126 2017 ACAD Insight Turkey his stance towards the Arab Spring. Erdoan and the AK Party have been con fronting a consistent and widespread defamation campaign in th
127 2017 ACAD Victorian Poetry " enthroned " on the wet copper slab (l. 24). By " fronting him, " naked and unclaimed, they have in their very abjection " atoned
128 2017 MOV The Space Between Us are you miserable? Just Dealing with basic people at school. Everybody is always fronting. Nobody is ever real, you know. My best friend is not
129 2017 TV Scandal United States senator to play squash with me because of the 24 hours I spent fronting for that assassin? What about the fact that I can't use n
130 2016 TV Empire do things. They all know what happened, so it's no sense in fronting' like they don't. Let me ask you something, man. Are
131 2015 MOV The Gunman Grand Hotel. Reed, report. Tango 1 is completing a three-car convoy. Fronting and backing vehicles are low profile, soft skins. Target vehicle: E
132 2014 MOV Earth to Echo 've been hanging out for years. - Come on. - Dude, stop fronting. Just tell the camera. You're upset, right? You don't
133 2014 TV NCIS: Los Angeles 're ready to slay you down to the ground right now. And you're fronting on me? I never front. Well, then you better start talking.
134 2013 MOV Newlyweeds gender, be secure in yourself?? Or else you just going out, fronting to your clientele?? If your show's about nothing, Seinfeld??



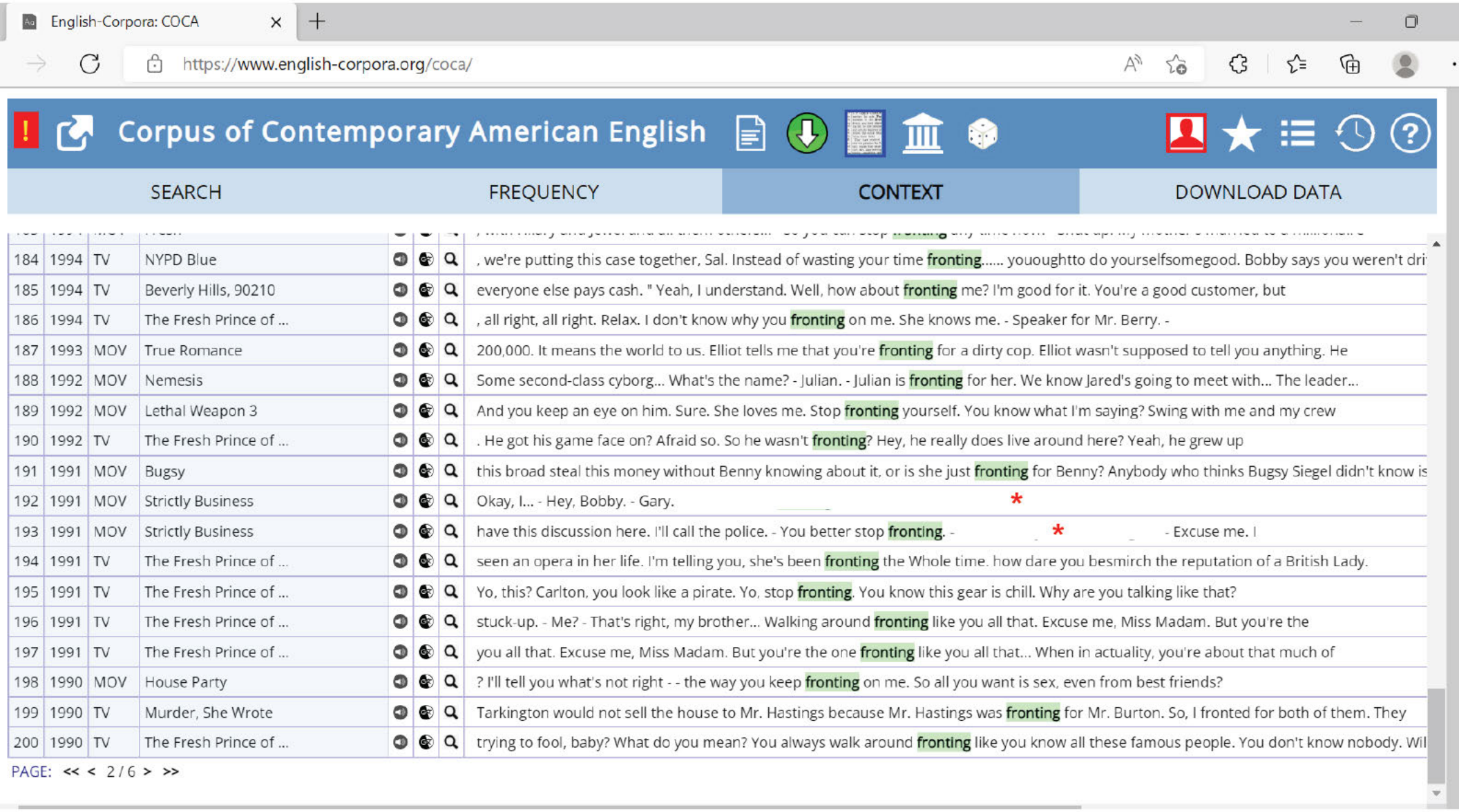
135	2013	MOV	I'm in Love with a Church Girl		?? I started hustling?? They couldn't tell me nothing?? **Fronting** in the hood, trying to be somebody? Y'all always trying to blame it
136	2013	TV	House of Lies		do have $500 million. What are you frontin' about? We're not **fronting**. No, no, no, stop. We signed a confidentiality agreement.
137	2013	TV	The Killing		, " Nah, man, that's conceited. " And then Copernicus started **fronting**, like - - what? What's wrong with your face, Linden?
138	2013	TV	American Masters		Noel Redding and Mitch Mitchell were these tiny, frail Englishmen with this wild man **fronting** the act. Yeah, baby, good lovin'. Man, this,
139	2013	TV	American Masters		rock is white music, but what you didn't see is a black man **fronting** a rock band. It just didn't happen before. A month after "
140	2013	TV	Magic City		I needed Ben's money to build. This Havana thing... I am just **fronting**. That is all. Sy, the mob... I give them back Cuba
141	2012	WEB	necolebitchie.com		or not. You can't even trust Facebook and Twitter updates! People stay **fronting**, spitting " real talk " that is fake and " facts " that are
142	2012	WEB	cybergrass.com		Nashville a little more than 30 years ago, fame was quick to follow. **Fronting** his Del McCoury Band, which includes sons Ron and Rob, he has
143	2012	WEB	golfchannel.com		He almost did. He hit two very good shots to another hole with water **fronting** it and had a 20-footer for birdie. He missed it by about 2 inches
144	2011	MOV	Step Off		front on me, man? What's up? Rip, I'm not **fronting** on you, okay? Whatever that shit is in the past, you just
145	2010	MOV	Locked Down		you, cop. I don't fight without my trainer. Kirkman, stop **fronting**, man. You know Vargas don't want no damaged goods, right?
146	2009	MOV	A Day in the Life		above * , you **fronting** I'm good, just go the hospital - And visit your cousin - All
147	2009	MOV	State of Play		who? * Don't be **fronting** me, man. It's Deshaun. Come on. - No. -
148	2009	TV	The Spectacular Spid...		just hang out a while. Okay, okay. Rumor is, Mysterio was **fronting** for some big boss. The guy's hiring cons, crooks, even construction
149	2007	MOV	I Could Never Be Your Woman		" Gee, I can't wait for lunch. " Dog don't go **fronting** like you didn't blow on your cheddar smokes so you can roll with Flynn
150	2007	TV	Burn Notice		the foot. What? It's research On the wilhelm brothers. They're **fronting** As fashion guys. My ex-girlfriend Is totally into this crap. She says they
151	2006	MOV	Bring It On: All or Nothing		. And if I make the squad? Not likely. Not interested. Keep **fronting**, white girl. You ain't fooling nobody. So, all of y'all
152	2006	MOV	Bring It On: All or Nothing		don't even trip, you know she was on point. Why are you **fronting** like that? You know she's was the business. All right, you
153	2006	TV	CSI: Miami		to cap that kid. Just Garza got to him first. - He's **fronting**. - Put him in the car?! What if I told you that



154	2005	MOV	Alliance		The season doesn't start for another three months. Hey, I am not **fronting** you the cash for this stuff, OK? Ha ha. Wes, why
155	2005	MOV	Alliance		use. The law says that's an assumed risk. You need to stop **fronting** like you're a real lawyer... and pass the bar. Do that.
156	2005	MOV	Underclassman		ask you a couple of questions for my report, Really? Look who's **fronting** now, At least can we start with your phone number? No, It
157	2003	MOV	Malibu's Most Wanted		I got a Ph.D., a Poser-Hater Degree. - Come on, quit **fronting**. I ain't fronting. - This is my sizzal. For rizzal,
158	2003	MOV	Malibu's Most Wanted		, a Poser-Hater Degree. - Come on, quit fronting. I ain't **fronting**. - This is my sizzal. For rizzal, my nizzal. - Stop
159	2003	MOV	Love Don't Cost a Thing		look upset. - I am. - At what? - While you were **fronting** like you're some player. I was outside waiting for you. We have
160	2003	MOV	Love Don't Cost a Thing		for wanting to be friends with you. All this time, I was just **fronting** to be cool. *
161	2003	MOV	Love Don't Cost a Thing		all mad at yourself and feeling like some kind of fool because you've been **fronting** about who you are for two weeks? I been fronting about w
162	2003	MOV	Love Don't Cost a Thing		because you've been fronting about who you are for two weeks? I been **fronting** about who I am, who I wan na be for as long as I
163	2003	TV	CSI: Crime Scene Inv...		paper together? Soft Count Room wouldn't go any faster. The casino's **fronting** the ransom money? Mr. Tombs has a multimillion-dollar line o
164	2002	MOV	Antwone Fisher		don't know what to say. So tell me what happened. They were **fronting**' me. What do you mean, frontin' you? Some of the
165	2002	MOV	They		, right? You got fired again. Yeah. So you don't mind **fronting** us again, right? Just, like, until I get back on my
166	2002	TV	ER		- You got to come clean! - Shut it! We're past the **fronting** here, dog! - You a punk, dog. - D, are
167	2002	TV	Smallville		na tell me who this belongs to? Look, man, I was just **fronting**. I was trying to scare you. - I have no clue whose ship
168	2002	TV	The Wire		. Definitely not. So Kima will be in the car for the buy, **fronting** as our CI's girl. Looking the part, too. Now, where
169	2002	TV	Six Feet Under		Where's Karla? - She's just working late. - Why are you **fronting**? - Go to your room now, Taylor. Mama hasn't been home
170	2002	TV	Without a Trace		- Heavy hitters, that's all I know. They the ones that was **fronting** that doughnut shop. - Are you sure? - 24-hour pharmaceuticals, dog.
171	2001	MOV	Britney Spears Live and More!		I don't front. Gang, she's putting the foot down on the **fronting**. Now, I understand from Chapter 12, entitled... " Another Time I
172	2000	MOV	Our Song		but it's a lot of moves to remember. Moves to remember? Stop **fronting**. I'm saying, though, we got ta make sure we look good



173	2000	MOV	Our Song			, me, too. You was real skeptical about going anywhere with us. Fronting. I wasn't, you know I was gon na come with y'all.
174	2000	MOV	Boiler Room			as there's no connection between the investors and the firm. But Michael's fronting his friends as the investors on every I.P.O. we do. So that'
175	2000	TV	Law & Order: Special...			cabaret joint, the one Sonya's boyfriend owns, and see what he's fronting? Moscow Restaurant Brighton Beach Thursday, September 9 Do yo
176	1999	MOV	The Insider			. But history only remembers most what you did last. And should that be fronting a segment... that allowed a tobacco giant to crash this netw
177	1997	MOV	Suicide Kings			emergency room at the lennox hill hospital. You got that? I'll be fronting you the money. I know you're good for it. Remember, the
178	1997	MOV	Squeeze			us all killed. Life isn't a music video, so don't be fronting around here. If I see you buck wilding on the corner, then you
179	1996	MOV	A Thin Line Between Love and Hate			you. * You can't just be coming around here fronting me like that, what's up with the limo and all that? Okay
180	1996	TV	The Fresh Prince of ...			. I think that's the year he was born. Look at him. Fronting. He know he can't read. Yo, James. What's up
181	1995	TV	Beverly Hills, 90210			I'm telling you, I've already got the Funkmeister David Silver interested in fronting it. And that's a selling point? Oh, you'll see.
182	1994	MOV	Jason's Lyric			problem. - Don't let me cramp your style. - I ain't fronting on you. You got to audition for Cats, baby. - Joshua!
183	1994	MOV	Fresh			, with Hilary and Jewel and all them others... - so you can stop fronting any time now. - Shut up. My mother's married to a millionaire
184	1994	TV	NYPD Blue			, we're putting this case together, Sal. Instead of wasting your time fronting..... yououghtto do yourselfsomegood. Bobby says you weren't dri
185	1994	TV	Beverly Hills, 90210			everyone else pays cash. " Yeah, I understand. Well, how about fronting me? I'm good for it. You're a good customer, but
186	1994	TV	The Fresh Prince of ...			, all right, all right. Relax. I don't know why you fronting on me. She knows me. - Speaker for Mr. Berry. -
187	1993	MOV	True Romance			200,000. It means the world to us. Elliot tells me that you're fronting for a dirty cop. Elliot wasn't supposed to tell you anything. He
188	1992	MOV	Nemesis			Some second-class cyborg... What's the name? - Julian. - Julian is fronting for her. We know Jared's going to meet with... The leader...
189	1992	MOV	Lethal Weapon 3			And you keep an eye on him. Sure. She loves me. Stop fronting yourself. You know what I'm saying? Swing with me and my crew
190	1992	TV	The Fresh Prince of ...			. He got his game face on? Afraid so. So he wasn't fronting? Hey, he really does live around here? Yeah, he grew up
191	1991	MOV	Bugsy			this broad steal this money without Benny knowing about it, or is she just fronting for Benny? Anybody who thinks Bugsy Siegel didn't know is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184 1994 TV NYPD Blue , we're putting this case together, Sal. Instead of wasting your time fronting..... yououghtto do yourselfsomegood. Bobby says you weren't dri
185 1994 TV Beverly Hills, 90210 everyone else pays cash. " Yeah, I understand. Well, how about fronting me? I'm good for it. You're a good customer, but
186 1994 TV The Fresh Prince of ... , all right, all right. Relax. I don't know why you fronting on me. She knows me. - Speaker for Mr. Berry. -
187 1993 MOV True Romance 200,000. It means the world to us. Elliot tells me that you're fronting for a dirty cop. Elliot wasn't supposed to tell you anything. He
188 1992 MOV Nemesis Some second-class cyborg... What's the name? - Julian. - Julian is fronting for her. We know Jared's going to meet with... The leader...
189 1992 MOV Lethal Weapon 3 And you keep an eye on him. Sure. She loves me. Stop fronting yourself. You know what I'm saying? Swing with me and my crew
190 1992 TV The Fresh Prince of ... . He got his game face on? Afraid so. So he wasn't fronting? Hey, he really does live around here? Yeah, he grew up
191 1991 MOV Bugsy this broad steal this money without Benny knowing about it, or is she just fronting for Benny? Anybody who thinks Bugsy Siegel didn't know is
192 1991 MOV Strictly Business Okay, I... - Hey, Bobby. - Gary.
193 1991 MOV Strictly Business have this discussion here. I'll call the police. - You better stop fronting. - - Excuse me. I
194 1991 TV The Fresh Prince of ... seen an opera in her life. I'm telling you, she's been fronting the Whole time. how dare you besmirch the reputation of a British Lady.
195 1991 TV The Fresh Prince of ... Yo, this? Carlton, you look like a pirate. Yo, stop fronting. You know this gear is chill. Why are you talking like that?
196 1991 TV The Fresh Prince of ... stuck-up. - Me? - That's right, my brother... Walking around fronting like you all that. Excuse me, Miss Madam. But you're the
197 1991 TV The Fresh Prince of ... you all that. Excuse me, Miss Madam. But you're the one fronting like you all that... When in actuality, you're about that much of
198 1990 MOV House Party ? I'll tell you what's not right - - the way you keep fronting on me. So all you want is sex, even from best friends?
199 1990 TV Murder, She Wrote Tarkington would not sell the house to Mr. Hastings because Mr. Hastings was fronting for Mr. Burton. So, I fronted for both of them. They
200 1990 TV The Fresh Prince of ... trying to fool, baby? What do you mean? You always walk around fronting like you know all these famous people. You don't know nobody. Wil
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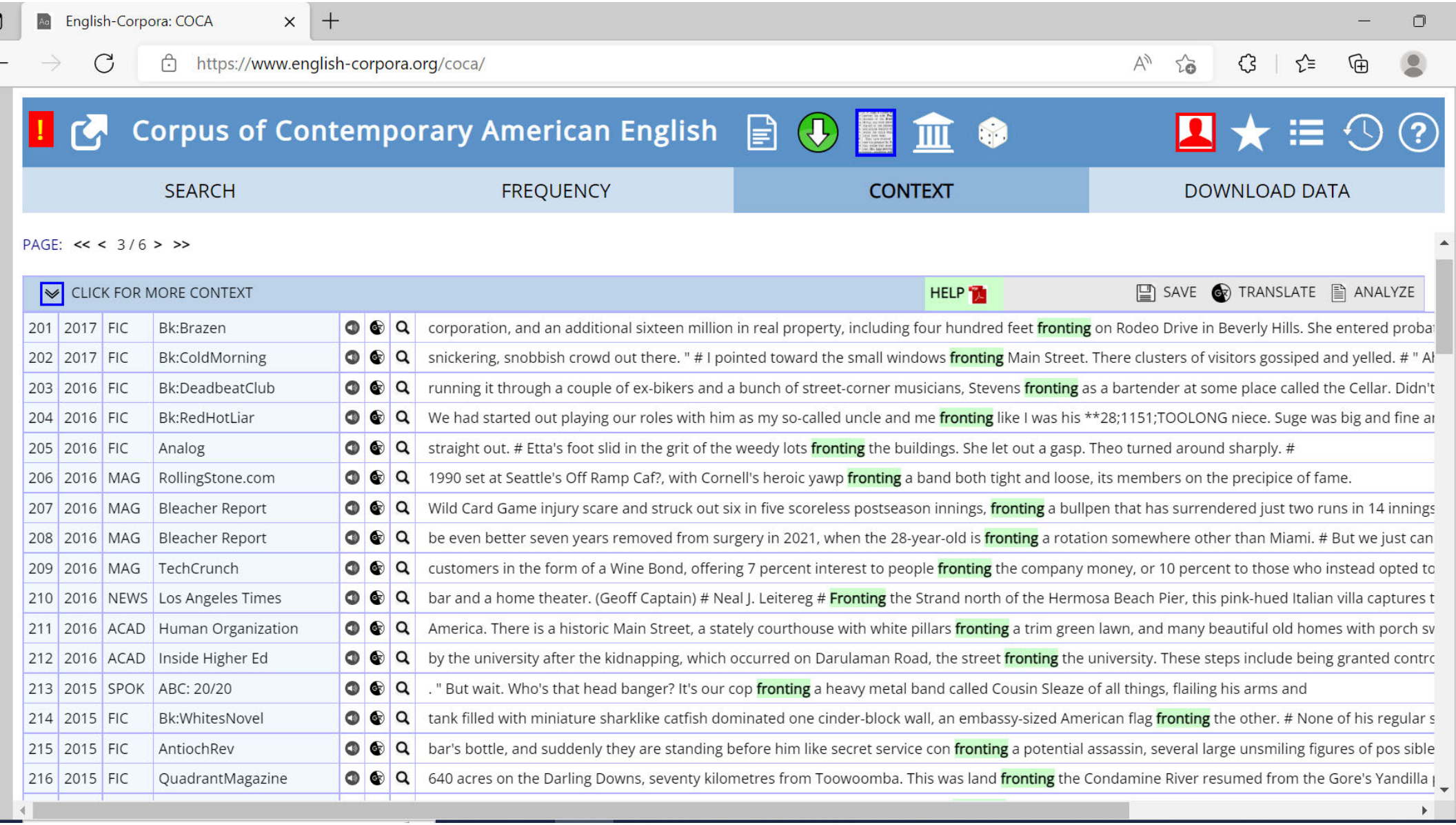
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201 2017 FIC Bk:Brazen corporation, and an additional sixteen million in real property, including four hundred feet fronting on Rodeo Drive in Beverly Hills. She entered proba
202 2017 FIC Bk:ColdMorning snickering, snobbish crowd out there. " # I pointed toward the small windows fronting Main Street. There clusters of visitors gossiped and yelled. # " Al
203 2016 FIC Bk:DeadbeatClub running it through a couple of ex-bikers and a bunch of street-corner musicians, Stevens fronting as a bartender at some place called the Cellar. Didn't
204 2016 FIC Bk:RedHotLiar We had started out playing our roles with him as my so-called uncle and me fronting like I was his **28;1151;TOOLONG niece. Suge was big and fine ar
205 2016 FIC Analog straight out. # Etta's foot slid in the grit of the weedy lots fronting the buildings. She let out a gasp. Theo turned around sharply. #
206 2016 MAG RollingStone.com 1990 set at Seattle's Off Ramp Caf?, with Cornell's heroic yawp fronting a band both tight and loose, its members on the precipice of fame.
207 2016 MAG Bleacher Report Wild Card Game injury scare and struck out six in five scoreless postseason innings, fronting a bullpen that has surrendered just two runs in 14 innings
208 2016 MAG Bleacher Report be even better seven years removed from surgery in 2021, when the 28-year-old is fronting a rotation somewhere other than Miami. # But we just can
209 2016 MAG TechCrunch customers in the form of a Wine Bond, offering 7 percent interest to people fronting the company money, or 10 percent to those who instead opted to
210 2016 NEWS Los Angeles Times bar and a home theater. (Geoff Captain) # Neal J. Leitereg # Fronting the Strand north of the Hermosa Beach Pier, this pink-hued Italian villa captures t
211 2016 ACAD Human Organization America. There is a historic Main Street, a stately courthouse with white pillars fronting a trim green lawn, and many beautiful old homes with porch sv
212 2016 ACAD Inside Higher Ed by the university after the kidnapping, which occurred on Darulaman Road, the street fronting the university. These steps include being granted contro
213 2015 SPOK ABC: 20/20 . " But wait. Who's that head banger? It's our cop fronting a heavy metal band called Cousin Sleaze of all things, flailing his arms and
214 2015 FIC Bk:WhitesNovel tank filled with miniature sharklike catfish dominated one cinder-block wall, an embassy-sized American flag fronting the other. # None of his regular s
215 2015 FIC AntiochRev bar's bottle, and suddenly they are standing before him like secret service con fronting a potential assassin, several large unsmiling figures of pos sible
216 2015 FIC QuadrantMagazine 640 acres on the Darling Downs, seventy kilometres from Toowoomba. This was land fronting the Condamine River resumed from the Gore's Yandilla