

NOV 17 2010
A.M. P.M.

NOV 17 2010

J. DAVID NAWA, SRO. CL.
By E. HOLMES
CLERK

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Attorneys for Plaintiff Citizens for an Open Greenbelt

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITIZENS FOR AN OPEN GREENBELT, an
unincorporated, non-profit
association,

Plaintiff,

vs.

STATE OF IDAHO, IDAHO STATE BOARD
OF LAND COMMISSIONERS; and the
IDAHO DEPARTMENT OF LANDS; and
CITY OF GARDEN CITY, IDAHO,

Defendants.

Case No. **CV 00 1022465**

SUMMONS

COPY

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: STATE OF IDAHO, IDAHO STATE BOARD OF LAND COMMISSIONERS

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 10 day of November, 2010.

J. DAVID NAVARRO, Clerk

By _____
Deputy

E. HOLMES
11/10/10

NOV 1 2007
By E. HOLMES
DEPUTY

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Attorneys for Plaintiff Citizens for an Open Greenbelt

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITIZENS FOR AN OPEN GREENBELT, an
unincorporated, non-profit
association,

Plaintiff,

vs.

STATE OF IDAHO, IDAHO STATE BOARD
OF LAND COMMISSIONERS; and the
IDAHO DEPARTMENT OF LANDS; and
CITY OF GARDEN CITY, IDAHO,

Defendants.

Case No. **CV 00 1022465**

SUMMONS

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TO: IDAHO DEPARTMENT OF LANDS

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

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3. Your signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 12 day of November, 2010.

J. DAVID NAVARRO, Clerk

E. HOLMES 

By _____

Deputy

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NOV 1 2009
J. DAVID NAVARRO, Clerk
By E. HOLMES
F.C. 09

CHEP C. COPSEY

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Attorneys for Plaintiff Citizens for an Open Greenbelt

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITIZENS FOR AN OPEN GREENBELT, an
unincorporated, non-profit
association,

Plaintiff,

vs.

STATE OF IDAHO, IDAHO STATE BOARD
OF LAND COMMISSIONERS; and the
IDAHO DEPARTMENT OF LANDS; and
CITY OF GARDEN CITY, IDAHO,

Defendants.

Case No. **CV 00 1022465**

SUMMONS



NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: CITY OF GARDEN CITY, IDAHO

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

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3. Your signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 10 day of November, 2010.

J. DAVID NAVARRO, Clerk
E. HOLMES

By _____
Deputy

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NOV 17 2010
J. DAVID NORTON, Clerk
DISTRICT COURT

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Attorneys for Plaintiff Citizens for an Open Greenbelt

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITIZENS FOR AN OPEN)
GREENBELT, an unincorporated, non-)
profit association)
)
Plaintiff,)
)
vs.)
)
STATE OF IDAHO; IDAHO STATE)
BOARD OF LAND COMMISSIONERS;)

Case No. **CV 00 1022465**
COMPLAINT
Schedule: A
Fee: \$88.00

COPY

and the IDAHO DEPARTMENT OF)
LANDS; and)
))
CITY OF GARDEN CITY, IDAHO)
))
Defendants.)
_____)

COMES NOW Citizens for an Open Greenbelt, by and through its counsel of record, David Hammerquist, J. Kahle Becker, Gregory M. Adams, and for causes of action against the Defendants, complains and alleges as follows:

PARTIES

1. Plaintiff Citizens for an Open Greenbelt (“COG”) is an unincorporated, nonprofit association formed under the laws of the State of Idaho, with its principle place of business in Garden City, Idaho. Plaintiff COG’s organizational purpose is to protect access to public lands and protect access to public bicycle pathways.

2. Plaintiff is informed and believes that at all times pertinent hereto, Defendant State of Idaho is a sovereign state of the United States.

3. Plaintiff is informed and believes that at all times pertinent hereto, Defendant State Board of Land Commissioners (“Defendant Land Board”) is an agency of the State of Idaho and was established by the Idaho Constitution, Article IX, § 7, to direct, control and dispose of the public lands of the state, including public trust lands. Pursuant to Idaho Code § 58-104, Defendant Land Board has the power to regulate and to control the use or disposition of lands in the beds of navigable rivers for commercial, navigational, recreational or other public use.

4. Plaintiff is informed and believes that at all times pertinent hereto, Defendant Idaho Department of Lands (“Defendant Department of Lands”), is an agency of the State of Idaho, created and existing under the authority of Idaho Code § 58-101 *et seq.*, which has responsibility of managing, under Defendant Land Board's direction, the public lands of Idaho, including public trust lands.

5. Plaintiff is informed and believes that at all times pertinent hereto, Defendant City of Garden City (“Defendant Garden City”) is a city within Ada County, Idaho, incorporated under Idaho Constitution, Article XII, § 1, and Idaho Code § 50-101 *et seq.*

JURISDICTION AND VENUE

6. The Fourth Judicial District in the State of Idaho, in and for the County of Ada, has subject matter jurisdiction over the counts in this action pursuant to and by virtue of Idaho’s Declaratory Judgment Act, I.C. § 10-1201 *et seq.*

7. The Fourth Judicial District in the State of Idaho, in and for the County of Ada, has personal jurisdiction over the above named Defendants pursuant to and by virtue of I.C. § 5-514 and other applicable laws and rules.

8. Venue is proper in Ada County pursuant to and by virtue of I.C. § 5-404 and other applicable laws and rules because the Defendants are located in Ada County, the agreements that are the subject of this dispute were entered into in Ada County, the ordinance that is a subject of this dispute was passed in Ada County, and the land that is the subject of this dispute is in Ada County.

BACKGROUND

9. In or around 1974, Jack and Elaine Hoke contacted Defendant Department of Lands to clear title to riparian lands adjacent to, and along the north bank of, the Boise River north of the Glenwood Street.

10. The lands were undeveloped and consisted of sloughs and small channels of the Boise River.

11. The State and the Hokes exchanged quitclaim deeds so that the Hokes acquired most of the old river areas, and the State acquired approximately 18 acres contiguous to the Boise River.

12. The State also obtained sportsman's easements to the old river channel area owned by the Hokes.

13. The Boise River is a navigable river.

14. The Hokes subsequently decided to develop a subdivision on the property.

15. On or about November 10, 1980, Defendant Land Board and the Riverside Group, through Niles Latta, President, City Corporation, and Jack Hoke (hereinafter the "developers") executed an Agreement (hereinafter referred to as the "1980 Agreement") concerning development of the State and privately-owned lands adjacent to the Boise River known as "Riverside Village." A true and correct copy of the 1980 Agreement is attached as Exhibit A and incorporated herein by reference.

16. In the 1980 Agreement, the developers agreed to construct certain improvements on State land, including, *inter alia*, lakes, continuous linkage of the greenbelt next to the Boise River for the length of the Riverside Village project.

17. The 1980 Agreement required the developers to construct a bike path.

18. The developers also agreed to provide Defendant Land Board a legal description of the most southerly line of the property owned by the developer adjacent to state land.

19. The 1980 Agreement required that once construction was complete, the State would convey that portion of State land to be improved to Defendant Garden City or another public or quasi-public entity.

20. The 1980 Agreement required that once the State made such conveyance, the developers would convey to the same entity that land owned by the developers necessary for the greenbelt and parks.

21. The developers were conveyed certain State lands in partial consideration for the public access and improvements required in the 1980 Agreement.

22. The State terminated the sportsman's easements it had obtained from the Hokes in 1974 to the old river areas formerly owned by the State in partial consideration for the public access and improvements required in the 1980 Agreement.

23. The State did not reacquire fee title, or easements to access, the old river areas it had quitclaimed to the Hokes in 1974.

24. The State land pertinent to the 1980 Agreement included submerged or formerly submerged beds of the Boise River.

25. The parties to the 1980 Agreement specifically agreed the State land at issue was submerged or formerly submerged beds of the Boise River.

26. Title to said lands were owned by the State under the equal footing doctrine and administered by Defendant Land Board.

27. The submerged lands and formerly submerged lands pertinent to the 1980 Agreement were subject to the public trust doctrine.

28. Garden City approved the Developer's proposal subject to the provisions of the 1980 Agreement.

29. The Department of Fish and Game and the Department of Water Resources for and on behalf of the State of Idaho approved the Developer's proposal subject to the provisions of the 1980 Agreement.

30. Sometime after 1985, Idaho Forest Industries, Inc. ("IFI") acquired title and interest to the Riverside Village subdivision development.

31. The 1980 Agreement was binding on IFI as successors in interest to the original parties to the 1980 Agreement.

32. Evans Brothers Construction, Inc. ("Evans Brothers") was IFI's development manager for Riverside Village.

33. On or about May 28, 1994, Defendant Land Board and Defendant Department of Lands filed a lawsuit against IFI and Evans Brothers in Fourth Judicial District Court of the State of Idaho, in and for the County of Ada (Case No. 97796). A true and correct copy of the 1994 complaint is attached as Exhibit B and incorporated herein by reference.

34. Defendant Land Board and Defendant Department of Lands alleged that IFI and Evans Brothers had failed to complete the necessary bridges as required by the 1980 Agreement.

35. Defendant Land Board and Defendant Department of Lands alleged IFI and Evans Brothers had not provided Defendant Land Board a legal description of the southerly boundary of the property owned by IFI.

36. Defendant Land Board and Defendant Department of Lands alleged that IFI and Evans Brothers had posted the eastern entry to the bicycle path area with a sign that stated: “Private Property. No Trespassing. This is not part of the Boise Greenbelt. Violators will be prosecuted.”

37. Defendant Land Board and Defendant Department of Lands alleged that IFI and Evans Brothers and their predecessors in interest had “excluded the public from the public bicycle path, and have obtained substantial benefit from exclusive possession of state land bordering the Boise River.”

38. Defendant Land Board and Defendant Department of Lands alleged, “A fundamental basis for the Board to execute the [1980] Agreement was the express representation by the defendants’ predecessors in interest that the bicycle path and bridges would be constructed by the developers”

39. Defendant Land Board’s and Defendant Department of Lands’ complaint requested specific performance of the 1980 Agreement, including reconstruction of “approximately 3700 feet of bike path . . . according to construction standards approved by the Board in 1981.”

40. The complaint requested damages for breach of contract.

41. The complaint requested preliminary and permanent injunctive relief ordering IFI and Evans Brothers to “remove the ‘No Trespassing’ sign placed at the eastern entrance to the bike path where it enters Riverside Village, and to refrain from

any action that will in any way limit or restrict public access to the bike path and the state land adjacent to Riverside Village.”

42. Defendant Land Board and Defendant Department of Lands subsequently entered into settlement negotiations with IFI and Evans Brothers regarding Case No. 97796.

43. Those negotiations also included Defendant Garden City.

44. On or about July 29, 1996, Defendant Land Board reviewed a proposed settlement agreement regarding Case No. 97796.

45. A memorandum dated July 29, 1996, from Defendant Department of Lands to Defendant Land Board indicated that, in the proposed settlement, “the Department has agreed to allow replacement of the paved portion with 3/4’ angular bedding chips on a six-foot wide pathway.” A true and correct copy of the July 29, 1996 memorandum is attached as Exhibit C and incorporated herein by reference.

46. That memorandum stated, “The Department feels that this is acceptable for public access . . . ; bicycles can still use a surface of this type.”

47. That memorandum stated that the parties to the lawsuit and Defendant Garden City agreed the Defendant Garden City “should be made a signatory to the Settlement given the City’s role in accepting title to the property after completion of the pathway.”

48. The memorandum stated, “The Land Board and the Department have treated the State lands involved in the greenbelt as public trust lands since these lands were obtained as part of a settlement of title to riparian lands and river channels that are now part of the subdivision.”

49. The memorandum stated, “these lands can be alienated by the State only if the public’s interest in the lands is protected.”

50. The memorandum recommended that Defendant Land Board approve the proposed settlement of Case No. 97796.

51. On or about July 29, 1996, Defendant Land Board approved the settlement agreement described in the Defendant Department of Lands’ memorandum.

52. On or about December 11, 1996, Defendant Land Board, Defendant Department of Lands, IFI and Evans Brothers, as well as Defendant Garden City executed the settlement agreement regarding Case No. 97796 (hereinafter the “1996 Agreement”). The 1996 Agreement is attached as Exhibit D.

53. The 1996 Agreement incorporated by reference the 1980 Agreement.

54. The 1996 Agreement required, *inter alia*, IFI and Evans Brothers to remove deteriorated asphalt on the greenbelt, and replace it with 3/4” angular bedding chips to a width of six feet.

55. The 1996 Agreement required, *inter alia*, IFI and Evans Brothers reconstruct one bridge such that it was six feet wide, and construct hand rails on another bridge.

56. The 1996 Agreement stated, “The conveyance of State Land, and land owned by IFI, to Garden City, as contemplated in the 1980 Agreement, will be effected upon completion of construction. Said conveyance shall contain a condition that the lands conveyed shall be used only for public purposes related to a public greenbelt pathway, and that if such public use shall be terminated . . . title to said lands shall

automatically revert to the State and IFI according to the respective portions conveyed by them.”

57. The District Court approved the 1996 Agreement in Case No. 97796.

58. IFI and/or Evans Brothers completed the greenbelt construction required in the 1996 Agreement.

59. Subsequently, on or about March 13, 1998, Defendant Garden City requested in a letter to Defendant Land Board and Defendant Department of Lands for the transfer of the “State lands described in the 1980 agreement to the City of Garden City, Idaho.”

60. Defendant Garden City was on actual notice of the 1980 and 1996 agreements.

61. Defendant Garden City’s letter dated March 13, 1998, stated that “transfer of the applicable State lands to Garden City will be the final step in implementation of the 1980 agreement.”

62. On or about May 12, 1998, Defendant Land Board approved transfer of the subject State lands to Defendant Garden City, subject to the condition that the lands be used only for greenbelt and park purposes.

63. In or around May or June 1998, the State conveyed to Defendant Garden City the State lands between the Boise River and the Riverside Village subdivision, as approved by Defendant Land Board.

64. In or around April 1998, IFI conveyed to Defendant Garden City the private lands related to the 1980 Agreement between the Boise River and the Riverside Village subdivision.

65. Subsequently, IFI purportedly conveyed certain parcels of those private lands to the Riverside Village Homeowners Association and certain parcels to the “The Woods Homeowners Association, Inc.”

66. None of the deeds conveying the private lands from IFI to Defendant Garden City or the homeowners associations contained any condition on their face requiring the lands be used only for greenbelt purposes.

67. The deeds from IFI conveying the private lands to Defendant Garden City were recorded after the deeds conveying the private lands to the two homeowners associations.

68. On or about May 27, 2007, Defendant Garden City enacted Ordinance 868-07, which purports to prohibit bicycle riding on portions of the Garden City greenbelt system officially designated and signed by the City as pedestrian only sections.

69. The portion of the greenbelt between Riverside Village and the Boise River, related to the 1980 Agreement, was designated and signed as a pedestrian only section pursuant to Ordinance 868-07.

70. At the time of enactment of Ordinance 868-07, Defendant Garden City’s Code, Title 10, Chapter 1, Section 9, designated violations of the ordinance as a misdemeanor crime, punishable by up to a \$300 fine, or six months imprisonment.

71. On or about August 19, 2008, Defendant Land Board held a regularly scheduled meeting where it was presented with a request that Defendant Land Board take action to assure that the greenbelt section between Riverside Village and the Boise River, related to the 1980 Agreement, be open to bicycle riding.

72. On or about October 10, 2008, a deputy attorney general with the Defendant Department of Lands sent a letter to Defendant Garden City (hereinafter the “October 2008 letter”) regarding the greenbelt section between Riverside Village and the Boise River, related to the 1980 Agreement.

73. The October 2008 letter concluded, *inter alia*, that IFI had conveyed conflicting deeds to Riverside Village greenbelt land and a deed with an erroneous legal description in 1998.

74. The October 2008 letter requested that Defendant Garden City takes steps to cure these clouds to the title.

75. The 2008 letter stated, “If these violations of the 1980 Agreement are not remedied within a reasonable time, the State will have no choice but to bring an action to enforce the reversionary clause in the 1998 deed to Garden City and to seek to quiet title to the subject greenbelt and reassert its easement arising from the 1974 deed.”

76. At no time after the August 19, 2008, meeting of the Defendant Land Board has the Defendant Department of Lands or Defendant Land Board ordered or requested that Defendant Garden City comply with the 1996 Agreement or the 1980 Agreement by making the Riverside Village greenbelt open to bicycle riding.

77. On or about June 8, 2009, Defendant Garden City enacted Ordinance 914-09, which provided that violations of the traffic provisions for public parks, including Ordinance 868-07, are infractions punishable by a fine of \$74, plus court costs.

78. The section of the greenbelt between the Boise River and the Riverside Village subdivision is posted closed to bicycle riding, or otherwise subject to the prohibition against bicycle riding in Ordinance 868-07.

STANDING TO BRING

THIS DECLARATORY JUDGMENT ACTION

79. Plaintiff COG restates and re-alleges the preceding paragraphs and incorporates them herein by reference as though fully set forth.

80. Plaintiff COG's organizational purpose is to promote public access to public lands and public bicycle paths.

81. Individual members of Plaintiff COG bicycle along sections of the Greenbelt along the Boise River in Ada County for recreational enjoyment and for utilitarian, transportation purposes.

82. Individual members of Plaintiff COG live in or near Garden City.

83. Individual members of Plaintiff COG desire to and would bicycle along the greenbelt pathway between the Boise River and the Riverside Village subdivision if they could do so without violating applicable laws, codes, and ordinances.

84. Defendant Garden City's application of Ordinance 868-07 to that Riverside Village greenbelt section deprives individual members of Plaintiff COG of the recreational enjoyment and utilitarian use of that greenbelt section.

85. If this Court were to order Defendant Garden City to make the RiversideVillage greenbelt section open to bicycle use, Individual members of Plaintiff COG would use and enjoy that greenbelt section.

COUNT I

**VIOLATION OF THE PUBLIC TRUST DOCTRINE BY DEFENDANT STATE
OF IDAHO, DEFENDANT LAND BOARD, AND DEFENDANT DEPARTMENT
OF LANDS**

86. Plaintiff COG restates and re-alleges the preceding paragraphs and incorporates them herein by reference as though fully set forth.

87. Defendant State of Idaho, Defendant Land Board, and/or Defendant Department of Lands alienated public trust lands in the 1974 exchange with the Hokes and in the 1980 Agreement.

88. In exchange for alienation of those public trust lands, the Defendant State of Idaho, Defendant Land Board, and/or Defendant Department of Lands bargained for construction of a greenbelt pathway available for public bicycle riding.

89. Defendant State of Idaho, Defendant Land Board, and/or Defendant Department of Lands are in violation the Public Trust Doctrine by permitting a prohibition of bicycle riding on the Riverside Village greenbelt section after alienating public trust lands in exchange for a bicycle path on that greenbelt section.

COUNT II

VIOLATION OF THE 1996 SETTLEMENT

AGREEMENT BY GARDEN CITY

90. Plaintiff COG restates and re-alleges the preceding paragraphs and incorporates them herein by reference as though fully set forth.

91. The 1996 Settlement Agreement was an agreement to settle a dispute involving formerly submerged beds of the Boise River subject to the Public Trust Doctrine.

92. The State held and managed those lands in trust for the benefit of the public.

93. Plaintiff COG's individual members would use and enjoy the bicycle pathway exchanged for those public trust lands, if a bicycle pathway were open and available for reasonable bicycle riding as described in the 1980 Agreement.

94. Plaintiff COG's individual members are third party beneficiaries of the 1980 Agreement and the 1996 Agreement.

95. Defendant Garden City is in violation the 1996 Agreement by posting or otherwise rendering the Riverside Village greenbelt section subject to the prohibition against bicycle riding in Ordinance 868-07.

COUNT III

VIOLATION OF THE IDAHO CONSITUTION,

ART. 12, SEC. 2 BY DEFENDANT GARDEN CITY

96. Plaintiff COG restates and re-alleges the preceding paragraphs and incorporates them herein by reference as though fully set forth.

97. Defendant Garden City's actions of posting or otherwise rendering the Riverside Village greenbelt section subject to the prohibition against bicycle riding in Ordinance 868-07 is in conflict with the general laws of Idaho, including the Public Trust Doctrine, and general laws requiring adherence to contracts such as the 1996 Agreement.

98. Defendant Garden City's actions of posting or otherwise rendering the Riverside Village greenbelt section subject to the prohibition against bicycle use in Ordinance 868-07 is unreasonable or otherwise arbitrary.

99. Defendant Garden City is thereby in violation of the Idaho Constitution, Article 12, § 2, by posting or otherwise rendering the Riverside Village greenbelt section subject to the prohibition against bicycle riding in Ordinance 868-07.

ATTORNEY'S FEES AND COSTS

100. Plaintiff COG has been required to retain the services of counsel to assist it in the preparation and prosecution of this action and counsel has agreed to provide *pro bono* legal services. Plaintiff COG must pay its own costs. Pursuant to Rule 54, Idaho Rules of Civil Procedure, the private attorney general doctrine, and Idaho Code § 12-117, § 12-120, and § 12-121, Plaintiff COG respectfully request an award of reasonable attorney fees and costs incurred in bringing this action.

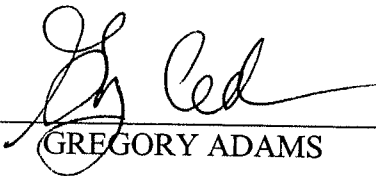
PRAYER

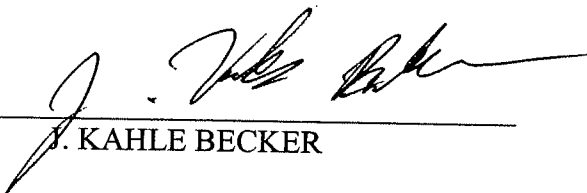
WHEREFORE, Plaintiff prays that the Court enter judgment against the Defendants as follows:

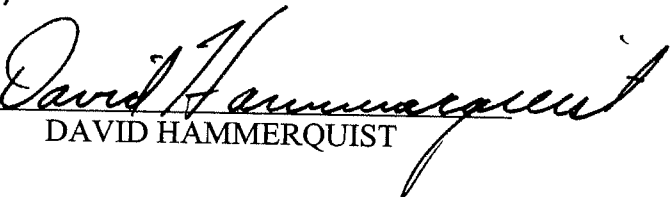
1. Declaring Defendant State of Idaho, Defendant Land Board, and/or Defendant Department of Lands in violation of the Public Trust Doctrine.
2. Ordering that Defendant State of Idaho, Defendant Land Board, and/or Defendant Department of Lands officially acknowledge Defendant Garden City's obligation to make the Riverside Village greenbelt open and available for reasonable bicycle riding and not subject to the prohibition on bicycle use in Ordinance 868-07.
3. Declaring Defendant Garden City in violation of the 1996 Agreement.
4. Declaring Defendant Garden City in violation of the Idaho Constitution, Article 12, § 2.
5. Ordering the Defendant Garden City make the Riverside Village greenbelt open and available for reasonable bicycle riding.

6. Permanently Enjoining Defendant Garden City from enacting any ordinance in violation of the 1996 Agreement.
7. Awarding Plaintiff COG its costs and attorney's fees incurred in this proceeding to the extent allowed by law.
8. Any other such relief deemed necessary by the Court.

DATED this 9th day of November, 2010.

By: 
GREGORY ADAMS

By: 
J. KAHLE BECKER

By: 
DAVID HAMMERQUIST

VERIFICATION

STATE OF IDAHO)
 :SS
County of Ada)

Gary Segers, after being duly sworn, deposes and says as follows:

That he the executive director of the Citizens for an Open Greenbelt, Plaintiff in the foregoing COMPLAINT, that he has read the foregoing, and that he believes the facts stated therein are true.

IN WITNESS WHEREOF, said executive director for Plaintiff has set his hand and seal the day and year first above written.

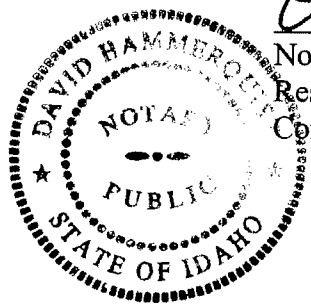
Gary Segers

GARY SEGERS
FOR AND ON BEHALF OF,
CITIZENS FOR AN OPEN GREENBELT

SUBSCRIBED AND SWORN to before me this 9 day of November, 2010.

David Hammerquist

Notary Public for Idaho
Residing at: Boise
Commission expires August 24, 2011



AGREEMENT

THIS AGREEMENT made this 10th day of November, 1980, by and between the STATE OF IDAHO, by and through the State Board of Land Commissioners ("STATE OF IDAHO") and RIVERSIDE GROUP, an Idaho General Partnership, and JACK HOKE, of Boise, Ada County, Idaho (collectively "DEVELOPER");

WITNESSETH:

WHEREAS, the DEVELOPER is undertaking a residential housing project located in Garden City, Idaho, west of Glenwood Street, on the north side of the Boise River known as "Riverside Village" and the development of commercial property fronting on Glenwood Street;

WHEREAS, the real property owned by the DEVELOPER is contiguous to certain parcels of land owned by the STATE OF IDAHO, which latter parcels lie between the high water mark of the Boise River and the property owned and being subdivided and/or developed by the DEVELOPER (which land owned by the STATE OF IDAHO is hereafter called "State land");

WHEREAS, as an integral part of the development of the project by the DEVELOPER, Garden City has required and the DEVELOPER has agreed to improve a greenbelt and park area on the north side of the Boise River commencing at the west side of the intersection of Glenwood Street and the Boise River and continuing westerly along the Boise River the full length of the project which greenbelt and park areas will be located on land owned by the DEVELOPER and the STATE OF IDAHO;

WHEREAS, the DEVELOPER has submitted to the State Board of Land Commissioners a letter from Robert J. Ennis, dated

Exhibit A

September 15, 1980, a copy of which is attached hereto as "Exhibit A" and made a part hereof, which letter outlines the scope of the approvals requested from the STATE OF IDAHO, for the development of a greenbelt and public ways in connection with this project as the same are proposed to be improved and provided along the Boise River;

WHEREAS, the cities of Garden City, Idaho, and Boise City, Idaho, the Department of Fish and Game of the State of Idaho and the Department of Water Resources of the State of Idaho have approved the proposal of the DEVELOPER, subject to the requirements contained in this Agreement, and the State Board of Land Commissioners has determined that the development of the State land in the manner proposed by the DEVELOPER and the future conveyance by the STATE OF IDAHO of said State land to Garden City, or if said municipal entity declines said conveyance, to another public or quasi-public entity to assure perpetual public access and maintenance, is in the best interest of the public.

NOW, THEREFORE, IN CONSIDERATION OF the agreements herein contained and the mutual obligations of the parties hereafter provided, IT IS AGREED:

1. State Owned Land. The land owned by the STATE OF IDAHO subject to this Agreement consists of approximately 18+ acres in several distinct and separate strips and parcels located adjacent to the north bank of the Boise River west of Glenwood Street and generally shown as that property shaded in red on the Riverside Village Plan, Sheet A dated March 8, 1980, attached hereto marked "Exhibit B" and made a part hereof.

It is understood and agreed that the DEVELOPER shall provide the STATE OF IDAHO with a description of the most southerly boundary line of the property owned by the DEVELOPER prior to the time the State land is to be conveyed as hereafter provided and that conveyance by the State of Idaho shall be by quitclaim deed from the STATE OF IDAHO of all right, title and interest of the State of Idaho in and to the land between said southerly boundary line and the Boise River.

2. Compensation. The compensation to be paid to the STATE OF IDAHO by the entity to which said State land is to be conveyed shall be determined in accordance with the procedures established by the State Board of Land Commissioners, but said value shall not include the cost or other value of the improvements to be constructed thereon by the DEVELOPER. Said compensation shall be paid to the STATE OF IDAHO at the time of conveyance, as hereafter provided.

3. Conveyance of State Land. That portion of the State land to be improved for greenbelt and park purposes shall be conveyed by the STATE OF IDAHO to the City of Garden City, Idaho, upon application therefor by said municipality. If, however, Garden City does not elect to accept said conveyance within one (1) year following the completion of all improvements to be constructed thereon by the DEVELOPER, the STATE OF IDAHO reserves the right to convey said land to such other public or quasi-public entity it shall determine to assure that said land, together with additional parcels of land to be dedicated to the public by the DEVELOPER, shall be perpetually maintained for the use by and the benefit of the public. That portion of the State land to be

improved as a public right-of-way (Riverside Drive) as shown on Exhibit B, shall be conveyed by the State of Idaho to Ada County Highway District after completion of the required improvements.

* 4. Construction of Improvements. The DEVELOPER agrees that in connection with the construction of the project known as Riverside Village and the development of the commercial property fronting on Glenwood Street, they shall construct certain improvements on the State land consisting generally of a bike path, lakes, pedestrian bridges (where the latter are required to assure a continuous linkage of greenbelt next to the Boise River for the length of the Riverside Village project), the parking lot in the most easterly park area, and, on a portion thereof, the extension of Riverside Drive, as the same is to be located on State land as shown on Exhibit B. In connection with the said construction, the DEVELOPER shall have the right to utilize for fill or other purposes on property owned by it, all material resulting from the excavation of the lakes to be constructed.

It is agreed that the DEVELOPER shall maintain all natural vegetation where possible, it being understood that certain of said vegetation must be pruned, trimmed and/or removed in connection with the construction of the greenbelt and public access thereto and to improve the view of the greenbelt and the River from the residential subdivision.

The lakes to be constructed shall be in accordance with requirements of the Idaho Fish and Game Commission to assure that said lakes will be appropriate for fishery purposes.

The greenbelt and public ways to be constructed by the DEVELOPER shall be in accordance with more detailed plans to be prepared by the DEVELOPER and approved by the staff of the STATE OF IDAHO, Department of Public Lands, provided, however, the DEVELOPER shall not be required to provide improvements of a type or in accordance with specifications which exceed standards and specifications of existing Boise River greenbelt areas throughout Boise City.

Prior to commencing any construction within the channel of the Boise River, the DEVELOPER shall obtain a stream alteration permit from and otherwise comply with the regulations of the Department of Water Resources of the State of Idaho.

The public right-of-way (Riverside Drive) to be constructed by the DEVELOPER on the State land shall be constructed in accordance with the specifications of the Ada County Highway District.

5. Conveyance By Developer. The parties acknowledge that certain real property owned by the DEVELOPER adjacent to the north bank of the Boise River must be conveyed by the DEVELOPER to a public or quasi-public entity to assure a continuous greenbelt and public way along said river. The DEVELOPER agrees that at such time as the transferee of the State land has been identified, and the STATE OF IDAHO conveys the State land to such entity, the DEVELOPER shall dedicate and convey the land owned by it necessary for the greenbelt and parks to the same entity. Said conveyance shall be made by the DEVELOPER without cost or charge but may be made subject to reasonable conditions to assure perpetual maintenance thereof and to protect abutting privately owned property.

6. Insurance--Indemnity. Prior to commencing any construction on the State land, the DEVELOPER shall purchase and keep in force a policy of public liability insurance, in standard form, insuring both the DEVELOPER and the STATE OF IDAHO. Said policy shall have minimum limits for property damage of \$100,000.00 and for bodily injury of \$500,000.00 for a single occurrence. Said insurance shall be kept in force during the full period of construction by the DEVELOPER on said State land.

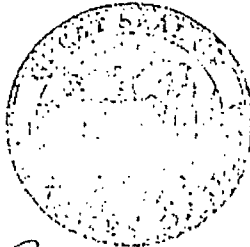
The DEVELOPER shall indemnify, save and hold the STATE OF IDAHO harmless, from and against any claim, loss, damage, cost or expense incurred by the STATE OF IDAHO in connection with any property damage or bodily injury caused by the construction activities of the DEVELOPER on the State land.

7. Right of Access and Use. The STATE OF IDAHO herewith grants to the DEVELOPER, its contractors and other designees, the right to enter upon and to use the State land for the purpose of constructing the greenbelt and park improvements as provided herein. The right herein granted, to the extent necessary, shall be exclusive in the DEVELOPER, to the exclusion of the public so long as the exclusion of the public is deemed by the DEVELOPER to be necessary to perform said construction and to protect the public against damage or injury on said State land. The exclusive right of the DEVELOPER as herein provided, shall terminate at the time the same is no longer necessary in connection with said construction.

8. Termination of Sportsman Access Easements. In consideration of the obligations of the DEVELOPER as provided in this Agreement and the performance of the DEVELOPER

of the same, the STATE OF IDAHO agrees that the river access easements contained in that certain Quitclaim Deed dated January 2, 1974, between Jack and Elaine Hoke (Grantors) and the State of Idaho, by and through the State Board of Land Commissioners (Grantee) recorded January 29, 1974, as Instrument No. 873144, records of Ada County, Idaho, and that certain corrected Quitclaim Deed dated August 27, 1975, by and between the same Grantor and the same Grantee recorded September 5, 1975, as Instrument No. 7526377, records of Ada County, Idaho, shall be terminated, it having been determined by the STATE OF IDAHO that said river access easements are no longer necessary or proper in view of the public access to be provided as described in this Agreement and, further, that said river access easements will be incompatible with the residential uses to be developed on the property adjacent thereto.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date and year first above written.



STATE BOARD OF LAND COMMISSIONERS
[Signature]
Governor of the State of Idaho
and President of the State
Board of Land Commissioners

Countersigned:
[Signature]
Secretary of State

[Signature]
Director, Department of Lands
I.M.R.

RIVERSIDE GROUP
BY: CITY CORPORATION
[Signature]
President
JACK HOKE

STATE OF IDAHO)
) ss.
County of Ada)

On this 29th day of October, 1980, before me, the undersigned, a Notary Public in and for said State, personally appeared NILE G. LATTA, known to me to be the President of CITY CORPORATION, an Idaho Corporation, the Corporation that executed the foregoing instrument or the person who executed the instrument on behalf of said Corporation, and acknowledged to me that such Corporation executed the same as the managing partner of RIVERSIDE GROUP, an Idaho General Partnership.

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

Patricia A. Hall
Notary Public for Idaho
Residing at Boise, Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 29th day of October, 1980, before me, the undersigned, a Notary Public in and for said State, personally appeared JACK HOKS, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

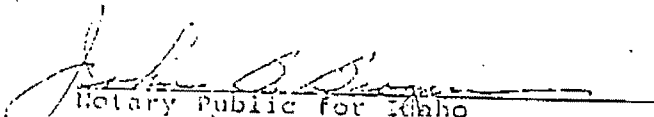
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Patricia A. Hall
Notary Public for Idaho
Residing at Boise, Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 5 day of September, 1980, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN V. EVANS, known to me to be the President of the State Board of Land Commissioners and the Governor of the State of Idaho, PETE T. CHARRUSA, known to me to be the Secretary of the State of Idaho, and GORDON C. TROMBLEY, known to me to be the Director of the Department of Lands of the State of Idaho, the persons who executed the instrument on behalf of the State Board of Land Commissioners and the State of Idaho, and acknowledged to me that said State Board of Land Commissioners and the State of Idaho executed the same.

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


Notary Public for Idaho
Residing at Boise, Idaho

September 15, 1980

State Land Board
Department of Lands
Room 121, Statehouse
Boise, Idaho 83720

Dear Members of the Board:

In December of 1979 the City Council of Garden City, Idaho approved a total development concept plan for Riverside Village in Garden City, Idaho. That project involves the development of property adjacent to the north bank of the Boise River between Glenwood Street and a point west of Arnie Lane. Integral to the project is the construction by the developers of greenbelt and public ways to permit public use, enjoyment and access of and to the Boise River for the full length of the project.

In order to allow the developers to undertake the construction of the greenbelt and public ways, it is necessary to obtain from the State of Idaho through this Board the following approvals:

1. The agreement by the State of Idaho to convey to Garden City those areas of public land improved by the developer for greenbelt and public way purposes. This conveyance would be made only after all agreed improvements have been constructed by the developer and the City of Garden City has applied for and obtained a grant from the federal government for open space improvements.

2. The agreement by the State of Idaho to convey to Ada County Highway District a portion of the right-of-way to be improved by the developers as Riverside Drive which is to be located on public land.

EXHIBIT A

3. The agreement to convey to the city of Garden City a small park located near the intersection of Glenwood Street and Riverside Drive after the same has been improved by the developers and Garden City has applied for and obtained a federal open space grant.

4. The State of Idaho shall terminate the existing sportsman access easements as the same presently exist adjacent to Riverside Creek.

The improvements to be constructed shall be paid for in total by the developers prior to conveyance of the greenbelt and other public ways by the State of Idaho to the City of Garden City consist of berming, a paved bicycle path, five bridges interconnecting the greenbelt along the Boise River, construction of two lakes, and landscaping of the park site including the construction of a parking area.

It is the intent of the developers to retain as much of the natural growth and landscaping in connection with the greenbelt and other public ways adjacent to the Boise River as they can provide improvements which will allow public use and enjoyment of this unique amenity.

We ask that you favorably act on this request.

Sincerely yours,



ROBERT J. ENNIS

JE:pah

EXHIBIT A



SCALE
 DATE: 3-8-80

RIVERSIDE VILLAGE PLAN

MARSDEN & ASSOCIATES
 PLANNING CONSULTANT
 P.O. BOX 771, BOX 344 4342
 BOZEMAN, MONTANA 59701

SHEET **A**

EXHIBIT B

STATE STREET

EDGART LANE

T.H.

SHOPPING CENTER

CHURCH

APTS.

TOWNHOUSING PATIO

RIVERSIDE DRIVE

RIVERSIDE DRIVE

BOISE RIVER



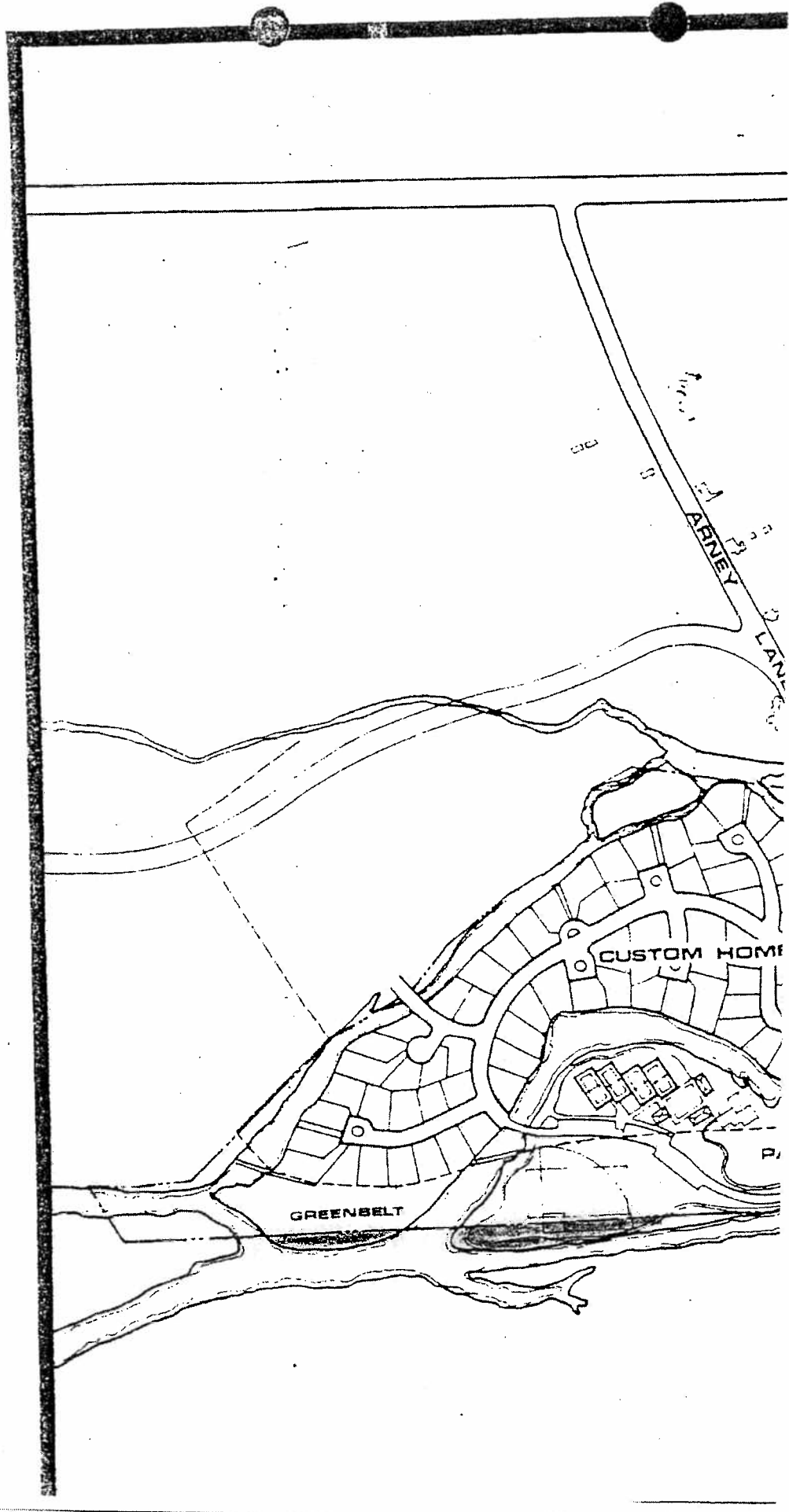


Fig. 1

200

ARNEY LANE

CUSTOM HOME

GREENBELT

LARRY ECHOHAWK
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

STEVEN J. SCHUSTER
Deputy Attorney General
Idaho Department of Lands
1215 W. State Street
Boise, Idaho 83720-7000
Telephone: (208) 334-0200

Attorneys for the State of Idaho

FILED 330
MAY 20 1994
J. D. WILLIAMS, CO. CLERK
CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

97798

STATE OF IDAHO, by and through)
CECIL D. ANDRUS, Governor; PETE T.)
CENARRUSA, Secretary of State;)
LARRY ECHOHAWK, Attorney General;)
J.D. WILLIAMS, State Auditor; and)
JERRY L. EVANS, Superintendent of)
Public Instruction; as the State)
Board of Land Commissioners; and)
STANLEY F. HAMILTON, Director,)
Department of Lands,)

Plaintiff,

v.

IDAHO FOREST INDUSTRIES, INC., an)
Idaho Corporation, and)

EVANS BROTHERS CONSTRUCTION INC.,)
an Idaho Corporation)

Defendants.

Case No. _____

COMPLAINT

Fee Category: Exempt

The State of Idaho, by and through the State Board of Land Commissioners and Stanley F. Hamilton, Director, Idaho Department of Lands (hereinafter collectively referred to as "Board"),

Exhibit B

complains and alleges as follows:

NATURE OF THE ACTION

1.1 This is a contract action seeking specific performance to compel the construction of a portion of a bicycle path in the Riverside Village subdivision adjacent to the Boise River, as required pursuant to the terms of a 1980 contract between the Board and the predecessors in interest to the defendants. In the alternative, the Board seeks damages from the defendants for the costs of construction of the bicycle path. The Board also seeks a preliminary and permanent injunction to order the defendants to remove a "No Trespassing" sign from the bicycle path area, and to prohibit the defendants from placing any signs or barricades prohibiting members of the public from using portions of the Riverside Village bicycle path as provided by the 1980 contract.

PARTIES

1.2 The Board is established by art. 9, sec. 7 of the Idaho Constitution, and is responsible for the direction, control and disposition of the public lands of the state. Pursuant to Idaho Code § 58-104 (9), the Board has the power to regulate and to control the use or disposition of lands in the beds of navigable rivers to provide for commercial, navigational, recreational or other public use. The Idaho Department of Lands is the administrative instrumentality of the Board. Idaho Code § 58-119.

1.3 The defendant Idaho Forest Industries, Inc. (hereinafter referred to as "IFI"), is an Idaho corporation.

1.4 The defendant Evans Brothers Construction, Inc. (hereinafter referred to as "Evans Brothers") is an Idaho corporation.

VENUE

1.5 Venue for this action is in Ada County, Idaho because 1) it is the official location of the Board, 2) the contract that is the subject of this dispute was entered into in Ada County, and 3) the property which is the subject matter of the contract is located in Ada County.

FIRST CLAIM FOR RELIEF: SPECIFIC PERFORMANCE

1.6 On or about November 10, 1980 the Board and the Riverside Group through Nile Latta, President, City Corporation, and Jack Hoke (the Riverside Group and Jack Hoke hereinafter referred to as "the developers") executed an "Agreement" (hereinafter referred to as "the Agreement") concerning development of certain state and privately-owned lands adjacent to the Boise River known as "Riverside Village." A true and accurate copy of said agreement is attached hereto as Exhibit A and incorporated herein by reference.

1.7 In the Agreement, the developers agreed to construct certain improvements on state land, including, inter alia, lakes, a bike path, and pedestrian bridges in order to assure a continuous linkage of the greenbelt next to the Boise River for the length of the Riverside Village project. The developers also agreed to provide to the Board a legal description of the most southerly line of the property owned by the developer adjacent to

state land.

1.8 The developers were conveyed certain state lands in partial consideration for the public access and improvements referred to in paragraph 1.7, supra.

1.9 The Boise River is a navigable river.

1.10 The state land pertinent to the Agreement is submerged or formerly submerged bed of the Boise River. Title to said lands are owned by the state of Idaho under the equal footing doctrine and administered by the Board. Submerged lands and formerly submerged lands are subject to the public trust doctrine.

1.11 Sometime after 1985, the defendant IFI acquired all right, title and interest to the "Riverside Village" subdivision development. The Agreement is binding on the defendants as successors in interest to the original parties to the Agreement.

1.12 The defendant Evans Brothers is IFI's development manager for Riverside Village.

1.13 The Board has duly performed all of its obligations under the Agreement.

1.14 The defendants have failed and refused, and still fail and refuse, to perform all of their obligations under the Agreement. Specifically, the defendants have failed and refused to complete construction of the eastern approximately 3700 feet of the bicycle path according to acceptable standards as set forth in the Agreement.

1.15 The defendants have failed and refused to adequately

complete the necessary pedestrian bridges as required by the Agreement. Specifically, the bridge on the west end of the pond is too narrow for greenbelt purposes, and the bridge on the west end of the defendant's property does not have handrails for safety.

1.16 The defendants have not provided to the Board a legal description of the southerly boundary of the property owned by IFI.

1.17 In the Agreement, the Board granted the developers the right to enter upon and use the subject state land for construction of the greenbelt and park improvements. Said right of entry was to be exclusive to the developer to the exclusion of the public so long as the exclusion was deemed by the developer necessary to perform the construction and to protect members of the public from damage or injury on state land.

1.18 All construction on state land was completed by 1985, and all construction on the riverside portion of Riverside Village has been completed.

1.19 Although there is currently no construction activity which could damage or injure members of the public or state land, the defendants have posted the eastern entry to the bicycle path area with a sign that states: "Private Property. No Trespassing. This is not part of the Boise Greenbelt. Violators will be prosecuted."

1.20 The Board has no plain, speedy and adequate legal remedy because:

A. The defendants, and their predecessors in interest have excluded the public from the public bicycle path, and have obtained substantial benefit from exclusive possession of state land bordering the Boise River.

B. A fundamental basis for the Board to execute the Agreement was the express representation by the defendants' predecessors in interest that the bicycle path and bridges would be constructed by the developers, who are in the construction business. In the circumstances of this case, it would be unjust to allow the defendants to avoid their obligations pursuant to the Agreement.

C. A portion of the bicycle path to be constructed is located on land owned by the defendant IFI, and the Board has no authorization to enter such land for construction purposes.

SECOND CLAIM FOR RELIEF: DAMAGES FOR BREACH OF CONTRACT

1.21 The allegations set forth in paragraphs 1.1 through 1.20 of the first claim for relief are incorporated in this claim for relief as if set forth fully herein.

1.22 In the alternative to the first claim for relief, the Board alleges that it has been damaged in an amount that has not yet been determined, but to be proven at time of trial.

THIRD CLAIM FOR RELIEF: INJUNCTIVE RELIEF

1.23 The allegations set forth in paragraphs 1.1 through 1.22 of the first and second claims for relief are incorporated in this claim for relief as if set forth fully herein.

1.24 The Board is entitled to a preliminary and permanent

injunction, ordering the defendants to remove the "No Trespassing" sign placed at the eastern entrance to the bike path where it enters Riverside Village, and to refrain from any action that will in any way limit or restrict public access to the bike path and the state land adjacent to Riverside Village.

WHEREFORE, the Board prays:

RELIEF SOUGHT BY THE BOARD UNDER THE FIRST CLAIM FOR RELIEF

1. That the defendants be ordered to do the following acts in accordance with the terms of the contract:

A. Reconstruct approximately 3700 feet of bike path from the eastern boundary of the Riverside Village subdivision to the west according to construction standards approved by the Board in 1981;

B. Construct additional improvements to two pedestrian bridges along the bicycle path so that the western bridge has side rails for safety, and the bridge west of the pond is as wide as the bike path.

C. Provide to the Board a legal description of the most southerly boundary line of the property owned by IFI in Riverside Village.

2. That pursuant to I.R.C.P. Rules 54(d) and (e) and Idaho Code § 12-121, the Board be awarded its costs and attorneys fees in preparing and litigating this action in the amount of three thousand dollars (\$3,000) in the event of a default judgment, or, in the event of a summary judgment or trial, in a further sum to be proven.

3. For such other relief as the court deems just and proper.

RELIEF SOUGHT BY THE BOARD UNDER THE SECOND CLAIM FOR RELIEF

1. For the costs to replace the easterly portion of bike path according to approved construction specifications, for the cost of making the necessary improvement in the two substandard bridges on the bike path, for the cost of a survey of the legal description of the most southerly boundary line of the property owned by IFI in Riverside Village, and for the reasonable value of the exclusive possession of state-owned riverfront property adjacent to Riverside Village since 1985, in an amount to be determined at trial.

2. That pursuant to I.R.C.P. Rules 54(d) and (e) and Idaho Code § 12-121, the Board be awarded its costs and attorneys fees in preparing and litigating this action in the amount of three thousand dollars (\$3,000) in the event of a default judgment, or, in the event of a summary judgment or trial, in a further sum to be proven.

3. For such other relief as the court deems just and proper.

RELIEF SOUGHT BY THE BOARD UNDER THE THIRD CLAIM FOR RELIEF

1. For a preliminary mandatory injunction ordering the defendants to remove the sign at the easterly entrance to the bike path at Riverside Village.


2. For a permanent injunction ordering the defendants to refrain from any action that will in any way limit or restrict

public access to the bike path and state land adjacent to Riverside Village.

3. That pursuant to I.R.C.P. Rules 54(d) and (e) and Idaho Code § 12-121, the Board be awarded its costs and attorneys fees in preparing and litigating this action in the amount of three thousand dollars (\$3,000) in the event of a default judgment, or, in the event of a summary judgment or trial, in a further sum to be proven.

4. For such other relief as the court deems just and proper.

DATED this 26th day of May, 1994.



STEVEN J. SCHUSTER
Deputy Attorney General
Idaho Department of Lands

VERIFICATION

STATE OF IDAHO)
) SS.
COUNTY OF ADA)

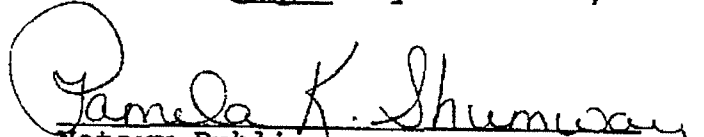
Jay G. Biladeau, Assistant Director for Lands, Range and Minerals, Idaho Department of Lands, being first duly sworn upon, deposes and says:

That he has read the foregoing COMPLAINT of the state of Idaho by and through the state Board of Land Commissioners, that he knows the contents thereof, and that the same are true to the best of his knowledge.



JAY G. BILADEAU
Assistant Director
Idaho Department of Lands

SUBSCRIBED and sworn to before me this 26th day of March, 1994.



Notary Public
Residing at: Boise
Commission Expires: 3-26-96

STATE BOARD OF LAND COMMISSIONERS
July 29, 1996
Regular Agenda

SUBJECT

Approval of Settlement Agreement, State v. Idaho Forest Industries, Inc. and Evans Brothers Construction, Inc., Ada County Case No. 97796.

BACKGROUND

The Department is seeking Land Board approval of a Settlement Agreement to resolve the above litigation.

The case concerns completion of construction of a greenbelt and bicycle pathway adjacent to the Boise River and the Riverside Village Subdivision. The area in question is located on the north bank of the river and extends about one mile downstream from the Glenwood Bridge, the length of the Riverside Village Subdivision. The Land Board is involved because the greenbelt involves public lands quitclaimed to the State as part of the resolution of land title questions on what is now Riverside Village.

In 1974, Jack and Elaine Hoke contacted the Department to clear title to riparian lands adjacent to the Boise River. At the time, the Hokes planned to develop a small airport on the property. The lands were undeveloped and consisted of sloughs and small channels of the Boise River. The State and the Hokes exchanged quitclaim deeds so that Hoke acquired most of the old river areas, and the State acquired approximately 18 acres contiguous to the river. The State also obtained sportsmen's easements to the old river channel area owned by the Hokes.

Eventually, the Hokes abandoned the airport plan and decided to develop a subdivision on the property. The Land Board was again approached, and an agreement between the Hokes and the Board was reached in 1980; a copy is attached as Attachment A. Attachment A includes two Exhibits, a letter from Robert Ennis concerning the developer's intent in entering the agreement, and a map of the proposed greenbelt and subdivision (State land is shown in red on the map).

In summary, the 1980 Agreement involves the following:

1. The developers would build at their expense a public greenbelt and park area on State and private land adjacent to the Boise River from the Glenwood Bridge along the length of the development. The developer agreed to build a bike path, lakes, pedestrian bridges and a parking lot in the east part of the area. Some of the land was to be part of a public road.

Exhibit C

2. Upon completion of the improvements, the State and the developers agreed to convey the land upon which the improvements were constructed to the City of Garden City, or some other public or quasi-public entity if Garden City declined to accept the greenbelt. The road areas were to be transferred to the Ada County Highway District. It is contemplated that Garden City would maintain the area as a public amenity.

3. The State agreed to terminate the sportsmen's easements when the greenbelt was completed in view of the fact that public access to the river would be provided by the greenbelt, and public access would be inconsistent with the proposed residential development. The developers were also granted the exclusive use of the greenbelt area while they were making improvements in the area, and the use of fill material from the lakes that were excavated on State land adjacent to the river.

Most of the development contemplated by the 1980 Agreement, such as the park area and parking lot, was completed in the mid-80's and is not in dispute in the case.

The dispute centers on the eastern portion of the greenbelt that was paved in the early 1980's. The pavement deteriorated rapidly due primarily to buckling from tree roots adjacent to the river, was not useable by bicycle and was difficult even for walking. The Department had also determined that the buckled pathway was unacceptable and not built to proper standards. The Department and Evans Brothers Construction¹ discussed resolution of the problem for several years to no avail. The lawsuit under discussion was finally filed in May 1994.

In addition to the pathway buckling, there were deficiencies with two pedestrian bridges that needed correction. Also, a sign has been posted at the eastern entrance to the pathway that stated the greenbelt was private property and no entry was allowed to the public, despite the 1980 Agreement and the fact that the State owned significant portions of the greenbelt.

At present, the pathway dead-ends at the downstream end of the Riverside Village development.

After the lawsuit was filed, the "No Trespassing" sign was removed by the defendants. The parties also commenced negotiation of a resolution of the case, resulting in the proposed settlement

¹The subdivision was purchased by Idaho Forest Industries in about 1986, and Evans Brothers Construction was the local manager for IFI.

agreement attached as Attachment B. Additionally, attached as Attachment C is a copy of an agreement between Garden City and Idaho Forest Industries concerning completion of the pathway.

DISCUSSION

The primary issue of concern to satisfy the 1980 Agreement is completion of the deteriorated pathway. In the proposed Settlement, the Department has agreed to allow replacement of the paved portion with 3/4" angular bedding chips on a six-foot wide pathway. The Department feels that this is acceptable for public access, and probably preferable given the problem with tree roots in the area; bicycles can still use a surface of this type.

Although the City of Garden City is not a party to the lawsuit, the Department, IFI and Evans agree that they should be made a signatory to the Settlement given the City's role in accepting title to the property after completion of the pathway.

The Department and IFI have communicated with the Riverside Village Homeowner's Association during the course of negotiations and development of the proposed Settlement. The Homeowners have declined to intervene in the lawsuit or actively participate in the negotiations, although they have expressed some of their concerns to the Department's legal counsel. Concerns about maintenance and security must be addressed to Garden City as the entity that will manage the greenbelt.

The Land Board and the Department have treated the State lands involved in the greenbelt as public trust lands since these lands were obtained as part of a settlement of title to riparian lands and river channels that are now part of the subdivision. Pursuant to the public trust doctrine, these lands can be alienated by the State only if the public's interest in the lands is protected.² The proposed Settlement stipulates that the deed from the State to Garden City will contain a restriction that provides automatic reversion of title of the lands to the State if public use of the area should be terminated. This is a real concern of the Department's because there have been attempts in the past to restrict public access to the area. Also, the Riverside Village Homeowners are attempting to obtain title to whatever "excess" lands may remain that are not needed for the greenbelt. The Department does

²The 1980 Agreement predated the Idaho Supreme Court's modern articulation of the public trust doctrine in Kootenai Environmental Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983), wherein the restriction of alienation of public trust lands was established in Idaho. Nevertheless, it appears that the 1980 Agreement is in conformity with this case because the transfer of State land will be to a public entity for public purposes consistent with the public trust doctrine.

not believe these public lands should be granted to a private entity since they represent a replacement for river channel to the Hokes in 1974.

If the Board determines to approve the Settlement, legal counsel plans to file the Settlement with the district court for approval and dismissal of the lawsuit.

RECOMMENDATION

The Department recommends that the Board approve the Settlement Agreement.

BOARD ACTION

APPROVED JUL 29 1996

COPY JAN 07 1997

SETTLEMENT AGREEMENT

This agreement entered into as of this 17th day of SEPTEMBER 1996, between the STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS, its members and the Director of the IDAHO DEPARTMENT OF LANDS, by and through the Idaho Attorney General, hereinafter referred to as "State," IDAHO FOREST INDUSTRIES, INC., an Idaho Corporation ("IFI"), EVANS BROTHERS CONSTRUCTION INC., an Idaho Corporation ("EBCI"), and the City of Garden City, Idaho ("Garden City").

WITNESSETH


WHEREAS, on November 10, 1980, Plaintiffs and THE RIVERSIDE GROUP, an Idaho General Partnership and JACK HOKE, entered into an "Agreement" concerning development of a greenbelt on certain riparian lands located generally in the East 1/2 of Section 23, Township 4 North, Range 1 East, Boise Meridian adjacent to the subdivision development known as "Riverside Village Subdivisions." A copy of said "Agreement" is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, certain portions of said greenbelt have been constructed and paved with asphalt and most portions thereof have deteriorated by tree roots which have severely buckled the pavement. The greenbelt is depicted in Exhibit B to the "Agreement", which is incorporated herein by reference. A metes and bounds description of the pathway is set forth on the attached Exhibit B, which is incorporated herein by reference;

WHEREAS, on May 26, 1994, the Plaintiffs filed a lawsuit

Exhibit D

against Defendants in the Fourth Judicial District Court, in and for the County of Ada, Case No. 97796, seeking specific performance of certain aspects of the 1980 Agreement;

WHEREAS the State alleges that Idaho Forest Industries, Inc. is a partial successor to the developer of the Riverside Village Subdivisions, which IFI denies, but IFI admits owning certain lands adjacent to the Boise River; 

WHEREAS the parties seek to resolve the dispute concerning implementation of the 1980 Agreement without further litigation;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree as follows:

1. IFI will remove the deteriorated asphalt on the greenbelt, except for that portion delineated on Exhibit B that remains in good condition and is not in need of removal. The removed portions of the asphalt greenbelt will be replaced with 3/4" angular bedding chips to a width of six (6) feet, the current width of the pathway, and the width called for in the 1980 Agreement. In conjunction with the greenbelt reconstruction, the City of Garden City will cut and remove the tree roots that have buckled the present greenbelt. Replacement of the greenbelt shall be completed no later than June 1, 1997.

2. Two bridges that have been constructed on the greenbelt shall be reconstructed as follows: Bridge #1 as identified on Exhibit B shall be replaced or modified to be six (6) feet in width, with handrails for safety. Safety rails shall be constructed on bridge #2. These improvements shall be completed no

later than June 1, 1997.

3. The parties hereby acknowledge that the State has received a description of the most southerly boundary line owned by IFI.

4. As set forth in Exhibit C, the City of Garden City is interested in obtaining control of the subject greenbelt pathway system in order to preserve and maintain it as a public amenity. The conveyance of State land, and land owned by IFI, to Garden City, as contemplated by the 1980 Agreement, will be effected upon completion of construction. Said conveyances shall contain a condition that the lands conveyed shall be used only for public purposes related to a public greenbelt pathway, and that if such public use shall be terminated, or if Garden City shall attempt to convey the former State lands to another entity without State authorization, title to said lands shall automatically revert to the State and IFI according to the respective portions conveyed by them.

5. Each party shall bear its own costs, expenses and attorney's fees with respect to this Agreement.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest, and permittees and assigns.

DATED this ____ day of ^{December}~~September~~, 1996.

Philip E. Batt

PHILIP E. BATT
Governor and President of the State
Board of Land Commissioners

DATED this 17th day of ^{DECEMBER (P.T.C.)}~~September~~, 1996.

Pete T. Cenarrusa

PETE T. CENARRUSA
Secretary of State and Secretary of
the State Board of Land Commissioners

DATED this ____ day of September, 1996.

J. Pa. President

IDAHO FOREST INDUSTRIES, INC.

DATED this ____ day of September, 1996.

Wm. Paul Evans
EVANS BROTHERS CONSTRUCTION

William L. Evans
EVANS BROTHERS CONSTRUCTION

DATED this ____ day of September, 1996.

Ted E. Ellis

TED ELLIS
Mayor, City of Garden City