

North Ada County Foothills Association

One voice. One goal. One plan.

June 11, 2007

Eagle Planning and Zoning Commission
Jason Pierce, Chair
660 E. Civic Lane
Eagle, ID 83616

Re: CITY OF EAGLE HEARING FILE: A-14-06 M3 Eagle Proposed Pre-Annexation and Development Agreement dtd 4/12/07, including PUD Standards (Exhibit D) dtd 4/18/07 and maps merged 4/18/07

Dear Chairman Pierce and Commissioners:

This letter and the four attachments hereto constitute NACFA's written commentary on the referenced application to be discussed at the June 11, 2007 hearing.

I apologize for the late submittal of the comments. We had been delaying preparation of our written comments in hopes that, when hearing packages as prepared for Commissioners were available on Friday, June 8, 2007, a written staff report (or equivalent thereof) on the Development Agreement by the City Attorney would be available. Since that was not the case, some of our comments may have been addressed; we have no method of determining whether or not all our comments remain relevant in the absence of a written analysis of the applicant's Development Agreement.

That caveat notwithstanding, fundamental deficiencies and problems exist in the Development Agreement, as addressed in summary and detailed fashion in the attachments. Our many serious concerns about the Agreement can be broadly categorized as follows:

- Outdated, incomplete and/or insufficient information, complicated by highly suspect assumptions and apparent refusal by the applicant to address concerns of city staff, as well as agency comments and community values.
- An extreme level of variability in basic project parameters that makes reasonable analysis and practical assessment of project impacts impossible.
- A development agreement which obligates and burdens the City to a proportionally far greater extent than the applicant.
- Development agreement terms that preclude changes, unless the applicant agrees, during the entire 20-year term, irrespective of the effects of critical additional information (needed from the applicant), reviews by other agencies, planning and funding assumptions which in future are found to be erroneous and other changing circumstances.

- The applicant's virtually complete disregard for concepts and values embodied in the draft Foothills Comp Plan Amendment.

We remind you again that the applicant knew the zoning (1/40 and 1/10) on the lands covered by the application when the land was purchased. That zoning governs the applicant's legal property rights. The applicant committed capital and began project planning and design work with no guarantee that project ambitions would be realized. Simply and bluntly put, the applicants assumed any and all risk solely at their own volition.

The City does not owe the applicant financial solvency, a return on investment, an approval ahead of Foothills Comp Plan Amendment adoption or treatment different than that afforded to any other applicant, including other foothills developers.

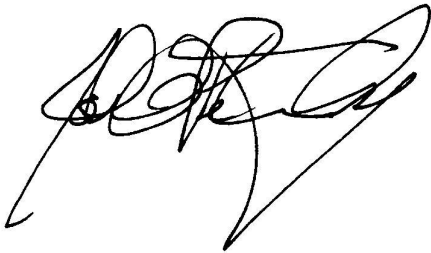
Rather, the City has responsibilities far greater than any it may have to the applicant. The City represents the interests of its citizens, taxpayers and, given the scope and impact of this proposal, the entire Treasure Valley and the State. Those responsibilities should be exercised exceedingly carefully—for the public trust—on the basis of complete understanding of commitments being made.

The Commission does not, at this time, have nearly enough information to make even basic determinations about the impacts and costs of the proposal, much less assess complex and/or subtle effects. Given this, the Commission cannot evaluate whether land uses codified in the Development Agreement are appropriate or desirable.

The Development Agreement, as currently constituted, would commit a blind and deaf City to a course of unknown consequence with broad and deep ramifications for tens of thousands of people.

We recommend, in strongest terms, that the proposed Development Agreement be indefinitely continued or denied.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Petrovsky', written in a cursive style.

John Petrovsky, Chairman
NACFA

**APPLICATION CONCERNS
MAJOR ISSUES, SITE-WIDE
Attachment 1**

NACFA letter dated June 11, 2007 for Eagle Planning and Zoning

CITY OF EAGLE HEARING FILE: A-14-06 M3 Eagle Proposed Pre-Annexation and Development Agreement dated 4/12/07, including PUD Standards (Exhibit D) dated 4/18/07 and maps merged 4/18/07

Areas of concern or incomplete information which **bear directly on density and unit entitlement** and must be addressed **before any entitlements**, implied or expressed, are granted.

TRANSPORTATION

1. State Highways: The application is blind to the realities of Idaho state highway funding, currently in deficit for maintenance of *existing* state roads. Both the city's consultant and ITD (in comments and through repeated testimony) have warned that the applicant's assumption of expressway quality upgrades is particularly perilous given:

- the lack of funding for these hugely expensive projects; and
- the reality that the North Foothills development traffic is not even *recognized* in any current highway improvement plans.

The application blithely assumes expressway quality for SH 16, with presumably at least some GARVEE funds availability, when, given the composition of the legislature and wrangling over these funds last legislative session, exactly the opposite is more likely true.

The project would result in significant traffic load to both SH 16 and, to a lesser extent, SH 55. Lack of expressway-quality state highways would have disastrous impacts on all roads south of the development, severely impacting all foothills and City neighborhoods and resulting in incredible traffic congestion.

a. Recommendation: Require the applicant to provide the City a revised traffic analysis for 5640 units (pre-mitigation entitlement) based on "worst case", not best case, assumptions, illustrating traffic impacts if SH 16 & 55 upgrades are not in place by, at minimum, years 5, 10 and 15 of the development term.

b. Recommendation: Condition approval of the development agreement on development and implementation of a mechanism for the applicant to pay fair share costs of state highway upgrades (and the applicant's commitment to fund those upgrade costs on a fair share basis).

c. Recommendation: Until the "worst case" analysis is available, revise the development agreement to entitle units and density only for the Southwestern and, if the applicant desires, Mixed Use sub-areas, which can likely be accommodated on SH 16 in its current configuration. Exclude entitlements and density parameters for all other (high/higher density) subareas.

2. County roads: Normally, ACHD would evaluate transportation at the preliminary plat stage. The applicant proposes to provide preliminary plats *only by sub-area*, after unit and density entitlements have been granted via the adopted development agreement. The applicant proposes no other submittal, short of a preliminary plat, which would provide a detailed roads plan. ACHD is 6-12 months away from completing a North Foothills Transportation System Plan. Rigorous ACHD transportation analysis thus has not been performed on this level of units. The cart (unit entitlement and density) is before the horse (evaluation of impacts).

The applicant's proposed regional circulation system envisions numerous unacceptable impacts and at least one potentially unachievable connection. For example, it is extremely unlikely heavy traffic on North Eagle Road or through downtown Eagle will be tolerated by the community. Similarly, the Willow Creek Bypass connection to Beacon Light Road is dubious, given passage through large parcels of privately-owned land, segments of which ACHD would likely have to condemn in order to secure connection.

On June 5, the City published a conceptual (North) Foothills circulation system, based not on any development proposals but on a total of 25,000 additional housing units in support of the draft Foothills Comp Plan Amendment (which, it should be noted, lists a target level of 20,000 units).

Thus there are two existing proposed circulation systems (that of the applicant, that of the City) and a third (ACHD) to come. The critical transportation implications are thus, at best, undefined and confused. Since the governing transportation plan, at least to the arterial level, will be that developed and adopted (after hearings) by ACHD, the plans of the applicant and the City are less predictive of the ultimate acceptable circulation system.

a. Recommendation: Modify the development agreement to entitle units and density only for the Southwestern and, if the applicant desires, Mixed Use sub-areas, which will have marginal impact on ACHD roads. Exclude entitlements and density parameters for all other (high/higher density) subareas.

b. Recommendation: Assuming clustering of most/all units at the state highways, request ACHD model various levels of total foothills housing unit entitlements (e.g., 5,000, 10,000, 15,000, 20,000) to obtain independent and more complete information on traffic impacts, thus establishing a context in which to evaluate the traffic impacts of this and all other foothills applications. Assess community tolerance for road widening and increased congestion based on the ACHD modeling. Request ACHD coordinate this modeling with ITD.

3. Shortfalls of the existing traffic analysis: The applicant has assumed a 30% trip capture rate, to be achieved only at buildout, which is probably at least double the trip capture rate ultimately achievable, particularly since the applicant estimates a relatively low rate of jobs/household. At buildout, the project will be a "...net exporter of employment..." (estimated .41 jobs/household), far below the City Soaring 2025 goal of .85 jobs/household. Again, both the City's consultant and ACHD have expressed skepticism about this capture rate.

It is unclear whether the applicant's traffic predictions account adequately for trips generated by the public equestrian facility, the new high school and the 500 hotel rooms proposed for the Southern and Community Core subareas, as well as traffic drawn to the site by new commercial enterprises.

Furthermore, though construction of the development will, in and of itself, generate significant heavy equipment and worker traffic, that impact is apparently not addressed. Interim traffic impacts, including those associated with development and possibly road construction, will be significant on currently-inadequate roads and very negative for residents of and commuters through the entire area.

Given that the traffic information is expressed in terms of a 20-year end point, we have limited specific information on *the interim effects* of traffic generated by this massive development.

a. Recommendation: Require the applicant to base traffic projections on a more conservative capture rate, perhaps the 15% used as the basis of the June 5, 2007 COMPASS/City model, in all future analyses, including the “worst case” analysis recommended above.

b. Recommendation: Require the applicant to specifically account for construction traffic (equipment and workers) in future analyses, including the “worst case” analysis recommended above. Verify that the traffic analysis includes all traffic—that drawn to commercial and public facilities.

c. Recommendation: Require the applicant to address the specific routes to be used for construction traffic, including appropriate mitigation for impacts if existing neighborhoods are significantly affected and to wildlife.

d. Recommendation: When unit entitlement and densities are ultimately granted for the Northern, Southern and Community Core areas based on coordination with transportation agencies and fair share funding implementation, require the applicant to specifically address interim traffic impacts.

(See also “Habitat” below for discussion of and recommendations (Habitat a. and b.) regarding the proposed SH16/55 connector through Big Gulch.)

DENSITY, DENSITY TRANSFERS, MASSING AND PLACEMENT OF THE HOUSING UNITS WITHIN SUBAREAS

1. Density and Density Transfers: The applicant describes a mix of housing types and configurations for each subarea, a “maximum total density” (i.e., total unit entitlement after mitigation and density transfers), a gross density/acre calculation for the entire subarea (e.g., 2.14 units/acre) and a range of specific densities by housing type (e.g., 4-20 units/acre attached multifamily) by which the gross density will be achieved.

Although the agreement describes pre- and post-mitigation entitlements, it also allows density transfers from one subarea to another as long as the total number of units for the entire site and the “maximum total density” for the subarea are not exceeded. These density transfers are defined as a “minor change” to be approved by the zoning administrator (without amendment to the agreement and without public hearings).

The Northern Area, for example, is as follows

- pre-mitigation--3700 units
- post-mitigation--4500 units (+21%)
- maximum--5900 units (+60% and 31%, respectively).

Totals for all sub-areas are:

- pre-mitigation--5640
- post mitigation--8160
- maximum--10,369 (excluding 500 hotel rooms).

Given this structure, it is not possible to determine with any degree of confidence even roughly how many units are likely to be built in any planning subarea.

2. Massing and Placement of Housing Units within Subareas: III-defined subarea unit entitlement totals translate to a lack of understanding of where and at what intensity units will be placed within each specific subarea. This lack of definition has obvious impacts on both regional and state transportation planning and funding.

Again using the Northern Area, trips generated (using 15% capture rate at buildout) would vary as follows:

- pre-mitigation—31,450 ADT
- post-mitigation--38,250
- ADT maximum--50,150 ADT

Similarly, this lack of definition significantly affects both habitat and open space as well as adjoining neighborhoods.

Granting entitlements under this structure, which gives the applicant such wide latitude with no public process until the subarea concept/preliminary plat phase, is fraught with problems. Transportation, open space and habitat plans, which are relevant to the entire site, will be unnecessarily complicated and subject to frequent revision as the applicant transfers density from one subarea to another. Perhaps equally important, the applicant will proceed with planning without the benefit of public process. This problem will repeat for each of the subareas.

Recommendation:

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- Revise the density transfer provision to limit transfers defined as minor changes to a modest percentage of the pre-mitigation entitlement; or
- Eliminate the “maximum density” entitlement; or
- Redefine the maximum to a level which will establish the confidence necessary for site-wide considerations such as transportation, open space/habitat and impacts on existing neighborhoods.

HABITAT

1. The application and agreement are wholly inadequate in their treatment of habitat preservation. ECC identifies the foothills as an “area of critical concern” and requires an assessment of environmental factors, including wildlife. The draft Foothills Comp Plan amendment requires not only an environmental assessment (details at 7.9.2) but also requires “...mitigation plans prior to final plan submittal...[to] incorporate wildlife habitat in transportation corridors.” The draft also “Require[s] developers in sensitive areas (Foothills and riparian areas) to retain 40% of the acreage as open space in large contiguous blocks.”

The agreement defines as the “Master Habitat Study” a June 2006 wildlife report by URS Corporation and requires no further wildlife information (i.e., no assessment). The City’s consultant describes URS report as “...mostly academic...” in nature, short on specifics and less than useful for the purpose.

2. The applicant’s regional circulation plan, which includes a connector between SHs 16 and 55, calls for five lanes through Big Gulch east of Willow Creek Road. This area is seasonably riparian and home to healthy populations of several species. A major traffic route through it will destroy a large tract of prime habitat, a fact the application makes no mention of. The size of this connector is driven by the Northern and Community Core unit totals and density and their close location to Willow Creek Road.

No mitigation plans (also officially requested in IDFG comments) have been submitted and, *most alarmingly*, the agreement obligates the applicant to mitigate only in three areas: a stand of sage in the Southwestern area and two sensitive mule deer tracts in the Southern area.

3. The applicant's open space in large contiguous blocks totals 880 acres (less than 15% of total acreage). Even for this 880 acres, which the applicant has characterized as a "donation", the agreement now contemplates compensation via the applicant assuming ownership of 800+ acres of public land. (Exhibit O pertains.) Should this transfer be successful, the applicant will have provided essentially no open space, creating a situation in which the applicant is being treated differently than other foothills developers, much to the applicant's benefit and the detriment of wildlife, the community and recreationists from the entire Treasure Valley.

Furthermore, the applicant has undertaken this attempt BLM/applicant lands transfer outside of comprehensive multi-party public lands discussions in which the applicant has been a participant. The applicant's preemptory attempt to acquire a tract of public land of likely high commercial value ahead of an integrated plan for open space including public lands is reprehensible. (See NACFA letter of May 10, 2007, to BLM Four Rivers Field Office for more discussion of this issue.)

Contrary to City and community values, preservation of habitat is reflected as no/low priority in the application and mitigation acknowledged only in the most grudging terms in the agreement. The size, scope and intensity of the proposed project by its nature will have profound impacts on wildlife. We can expect massive die-off if the agreement is adopted as currently written.

a. Recommendation: Revise the development agreement to require an environmental assessment, acceptable to the City (consultant)/IDFG, for the entire 6005 acres and the SH connector through Big Gulch before or with the first subarea plan.

b. Recommendation: Condition unit entitlements and density for any and all subareas on a City-accepted mitigation plan covering the entire site and Big Gulch east of Willow Creek Road and addressing wildlife impacts during construction, to be submitted before or with the first subarea development plan.

c. Recommendation: Oppose the applicant's public lands transfer proposal until integrated public lands/open space planning is complete.

d. Recommendation: Require the development agreement to be revised to reflect open space provision of 40% in large, contiguous blocks to ensure the applicant does not receive special treatment compared to other foothills developers.

ECONOMICS AND COSTS TO TAXPAYERS

The application, given its scope and size, will involve many millions of dollars of infrastructure, support facilities (services, staffing, equipment) and indirect costs, as well as resulting in a new large bond requirement for the Meridian School District. The development agreement is far from clear on how much of this cost will be covered, creating the high probability that the development will generate increases to taxpayers at multiple levels (state, county, city, fire district, school district). Though ultimately tax revenue from new residents will defray costs, in the near- to mid-term current taxpayers will subsidize developments.

The economic analysis submitted by the applicant is based on an outdated/inaccurate number of units to which the applicant potentially would be entitled. The City thus lacks solid financial information on which to evaluate the entitlements which the applicant seeks in the development agreement.

1. Transportation: Discussed above. Impact on state taxes--GARVEE, gas tax, vehicle registration. Impact on county taxes--right of way acquisition, sidewalks, bike lanes (outside development area) even if extraordinary impact fees assessed.

2. Fire, EMS and police: Applicant donates land and commits to up to \$1 million for each new fire/police/EMS building. Costs of staffing, operation and equipment (fire engines, perhaps even helicopter in event of rangeland fire; ambulances outfitted for EMS) are not addressed. Impact on residents of the Eagle Fire District and on City residents, since City contracts for police protection with Ada County Sheriff.

3. Schools: Applicant donates land. Cost of 7 new schools is \$125 million (estimated, current year dollars). Impact on residents of Meridian School District. The applicant has not provided revised schools information pursuant to Superintendent Clark's comment that the applicant's submission is "...woefully inadequate..." on the schools issue.

4. Indirect: At minimum, staffing and consulting fees to process the application. Impact on City of Eagle residents.

a. Recommendation: Before any entitlements are granted, require the applicant to submit a revised economic analysis on pre-/post-mitigation unit totals, which addresses costs of and revenue from the development on an annual basis (or other specific level) demonstrating at what year in the development term revenue equals/exceeds costs.

b. Recommendation: For all years in which tax revenues from the development do not cover costs, require the applicant to submit additional information estimating the cost to taxpayers at the state, county, fire district, school district and City levels.

OTHER

Although asked three times (neighborhood meeting July 2006 (Mr. Brownlee), email to City October 2006 ("For the Applicant") and NACFA board meeting January 2007 on water matters, which applicant (Mr. Robbins) and applicant's hydrologist and water attorney attended) a question on water quality remains unanswered: What will be the effect of lawn chemicals and pesticides (including those associated with two golf courses) on the aquifer, located in "silt/loam" and sandy soils?

Recommendation: Require the applicant to address this issue in the context of master water or master drainage system submissions.

To emphasize: These areas of concern or incomplete information (transportation; density transfers, habitat and cost to taxpayers) bear directly on overall density and total unit entitlement and must be addressed before any entitlements, implied or expressed, are granted. They apply site-wide.