



# North Ada County Foothills Association

One voice. One goal. One plan.

December 3, 2007

Eagle Mayor Nancy Merrill  
Council members Steve Guerber, Scott Nordstrom, Stan Bastian, Phil Bandy  
660 E. Civic Lane  
Eagle, ID 83616

Re: M3 Eagle Pre-Annexation and Development Agreement (PADA) (ZOA-3-06/A-14-06/RZ-19-06-M3 Eagle - M3 Eagle)

Dear Mayor and Council:

Please accept this letter as NACFA's commentary on the M3-Eagle PADA, focusing on the version of the document we received on November 27, 2007. Our comments fall under the headings listed below:

1. Critical need for control cap on total units achievable through both density bonuses and mitigation
2. Potentially fundamental conflict(s) between this PADA and the policies and philosophies in the adopted Comprehensive Plan
3. No identified rationale to support bonus density provisions
4. Need to revisit economic and fiscal analysis due to fundamental changes in project
5. Questionable provisions related to BLM land exchange and/or additional of new properties to the M3-Eagle project

Each of these is outlined herein. In some cases, we will be providing additional detail and insight at the hearing on December 5, 2007.

## **1. Critical need for control cap on total units achievable through both density bonuses and mitigation**

### **A "Working" Cap on Bonuses**

Staff's concept of a control cap on units per "unconstrained" acre must be formally recognized and codified. Otherwise, as Staff has noted, bonuses could accumulate to quite high unit totals. At this moment, a cap of 1.7 units/per unconstrained acre is being proposed, yielding the following "pre-mitigation" maximum development:

- Of the 49,000 foothills acres, 12,000 are unconstrained:  $12,000 \times 1.7 = 20,400$  units

This result is well within the Comp. Plan intent of an overall foothills density of 1 unit per 2 acres:  $49,000 \times 0.5 = 24,500$  units. However, this result is before the wildcard of mitigation...

### **The Wildcard of Mitigation**

#### **The M3 example:**

M3 intends to propose converting 1,191 acres of their “constrained” lands to “unconstrained” status via “mitigation” (i.e. by some means removing floodway, slope gradient, and/or habitat constraints). The increment of additional units they want to achieve is as follows:

- **Starting point:** 3,016 unconstrained acres  $\times$  1.7/acre = 5,127 unit cap
- **Mitigation:** 1,191 acres converted from constrained to unconstrained  $\times$  1.7/acre = 2,025 additional units. (Note: Staff explanation calls this 1,191 acres of mitigation “1/3 of their [M3’s] site”. **Actually, 1,191 acres is ~20% of the overall site, and ~40% of the constrained acreage.**)
- **Post-mitigation maximum development:**  $5,127 + 2,025 =$  7,152 units

#### **Extrapolation to the entire foothills:**

Staff’s extrapolation to the entire foothills planning area assumes “a 30% increase in unconstrained areas due to mitigation”, and yields the following maximum level of development:

- **Starting point:** 12,000 unconstrained acres  $\times$  1.7/acre = 20,400 units
- **Mitigation:** 4,000 acres converted from constrained to unconstrained  $\times$  1.7/acre = 6,800 additional units (Note: 4,000 acres is a 33% increase in unconstrained acres)
- **New, post-mitigation maximum development:**  $20,400 + 6,800 =$  27,200 units

This unit total of 27,200 is roughly 10% above the general “1 unit per 2 acres” density (24,500 units) called for in the adopted Comp. Plan.

*(Note: This is the bottom line for Staff’s extrapolation. Staff’s assertion that prior drafts of the Foothills Comp. Plan would have yielded 30,500 units (i.e. 24,500 + 6,000 bonus for creation of centers) IS NOT VALID. The prior drafts of the plan did not start with 1 unit per 2 acres/24,500 units; the prior drafts of the Plan called for 18,350 units before adding the “Community and Neighborhood Adjustment Factor” and ended up with a total overall foothills density of 0.42 units per acre or 1 unit per 2.4 acres) .*

However, everything rests on how much land is considered “mitigable” (i.e. the devil is in the details...). If we use the M3 example directly and literally (as explained above), two other scenarios should be looked at: Mitigation of [1] 20% of the overall “site” and [2] 40% of constrained land. These scenarios yield the following:

- **20% of the “site” (the foothills overall)**
  - **Starting point:** 12,000 unconstrained acres  $\times$  1.7/acre = 20,400 units
  - **Mitigation:** 20% of 43,600 acres (i.e. 49,000 total minus 5,400 BLM) = 8,720 acres converted from constrained to unconstrained  $\times$  1.7/acre = 14,800 additional units
  - **New, post-mitigation maximum development:**  $20,400 + 14,800 =$  35,200 units
- **40% of constrained land**
  - **Starting point:** 12,000 unconstrained acres  $\times$  1.7/acre = 20,400 units

- Mitigation: 40% of 31,600 constrained private acres (i.e. 43,600 total minus 12,000 unconstrained) = 12,640 acres converted from constrained to unconstrained x 1.7/acre = 21,500 additional units
- New, post-mitigation maximum development: 20,400 + 21,500 = **41,900 units**

The point here is not to be inflammatory or alarmist. Rather, it is to demonstrate that tremendous uncertainty exists in the realm of “mitigation” and how many additional units beyond the pre-mitigation cap may ultimately be proposed. This highlights the equally tremendous latitude that will exist in the realm of City Council discretion as developers beyond M3 come on-line.

## **2. Potentially fundamental conflict between this PADA and the policies/philosophies in the adopted Comprehensive Plan**

The newly adopted Comprehensive Plan specifies that “land use designs should ensure that each development area fits into the natural systems of the foothills (topography, habitat, and drainage) opposed to the natural systems being significantly altered to allow for development” (Section 6.8.11, pg. 64). The proposed M3 PADA would in fact reward the developer for significantly altering natural topography and drainage to make constrained land suitable for development (up to 1191 acres as noted above). This is called “mitigation”, a term normally used to describe minimizing or avoiding impact, rather than encouraging it. Providing density bonuses, at least for mass grading and drainage system alteration, without corresponding commitment of additional open space and/or habitat seems at cross-purposes with expressed Comp. Plan values.

## **3. No identified rationale to support bonus density provisions**

First and foremost, nowhere had the rationale and methodology for specific density bonus provisions been articulated, either by the City or the applicant. We look forward to the staff presentation on 12/5/07 for a specific description of how the values were established or derived, e.g. by such methods as comparison to other localities or by specific weighting to reflect Comp. Plan values. Furthermore, we question the following and recommend modification be considered:

- Elimination of density bonus for “excess” community open space: Use of the current 20% open space standard within the development was recently implemented for applications within city limits. Unless the current PUD ordinance awards a density bonus for increases in community open space above 20%, we see no compelling argument to do so in the foothills. If we base the percent mandatory open space on current code, it is only logical to apply the code in the foothills as done within the city.
- Specification in regional open space density bonus for contiguity: We recommend the 1 to 1 bonus be changed to reward contiguity and support the Comp. Plan goal. One idea in this regard might be: 1.25 units per acre of contiguous regional open space and 0.75 units per acre of non-contiguous regional open space.
- Modification of bonus values for centers: The specific density bonus values for centers (2.5 units/acre for Community and 10 per acre for Neighborhood) discourage clustering at the state highways where the Comp. Plan locates Community centers and work against transit critical mass. Rather than awarding four times the density for Neighborhood centers as that to Community centers, we suggest a better structure be developed to further Comp. Plan goals, with significantly greater rewards for Community v. Neighborhood centers.
- Reorienting relative priorities for bonuses: Under the proposed bonus system in this PADA, far higher bonus yields are awarded for creation of high-density centers, than are achievable

through higher proportions of regional open space. We suggest a better balance be struck between these two important objectives of the Comp Plan.

#### **4. Need to revisit economic and fiscal analysis due to fundamental changes in project**

The proposed M3-Eagle project has changed significantly since the original economic/fiscal impact analysis was completed (most recent revision in February, 2007). These changes may fundamentally affect the future revenue streams realized by service providers. Good business practice would demand a revision of the economic/fiscal impact analysis to determine net fiscal impact.

In addition to this general observation, the following two provisions in the PADA especially should be reviewed carefully for acceptability to the City:

- Section 5.4 of the PADA specifies that fees charged to the developer cannot be raised during the life of agreement. If, as is more than likely, the City's cost for providing services covered by such fees increase over time, and the City cannot pass these cost increases to the developer through increased fee levels, the City will end up subsidizing this development.
- Section 2.5a and 2.5d of the PADA require immediate provision of service levels to new development comparable to levels of service provided in the existing City. These requirements may result in the City subsidizing these services during the early phases of development (e.g. prior to construction of police and fire protection facilities on-site...and perhaps beyond.

#### **5. Questionable provisions related to BLM land exchange and/or addition of new properties to the M3-Eagle project**

##### **BLM Land Exchange Proposal**

If M3's proposed exchange is accomplished, this PADA allocates 2 units/acre for unconstrained lands and 0.2 units/acre of constrained lands:

- This violates the Comp. Plan base of 1 unit/2 acres
- This is "double-dipping" for density that has already been accounted for in the base density calculations of 3000 units (i.e. 1 unit/2 acres for their 6000 acres)
- There is a lack of specificity in the PADA regarding how to adjust previously granted density bonuses should the exchange go through and regional open space is de facto reduced by 800 acres. Since up to 10 years is granted to accomplish this exchange, we could be well into phase 3 before this matter is decided.

Because of the difficulty of reducing entitlements and bonuses after they have been granted, the scenario of the exchange occurring should be clearly detailed out in the agreement, particularly related to provision of bonuses and total entitlements.

##### **Addition of New Property to M3-Eagle (PADA section 1.7)**

New language under "Additional Property" allows M3 to expand the development and increase maximum density by adding newly acquired property, whether contiguous with the current property or not, to the agreement. Further, it specifies that the City shall annex such additional property and amend the agreement to include the new property with the same benefits and obligations as the original PADA.

In order to provide predictability and defined parameters, the PADA should only apply to the existing 6,000 acres. Any proposal to add property to the project should be subject to the public hearing process, as well as contemporaneous laws, ordinances, and fees.

We recognize the enormous time and effort expended by both the City and the applicant to this point. Similarly, we recognize and appreciate the City's desire to control foothills development due to immediate and substantive local impacts.

However, we reiterate testimony presented 11/27/07: With respect, we urge Council to be as rigorous considering this agreement as you would want Star or the County to be. This first agreement will establish a benchmark for entitlements, density and land use patterns in the foothills on which all future developers will base their plans.

We urge you to remember Councilman Bandy's (paraphrased) words during Comp. Plan deliberations as you make this decision: "We need a level playing field. All developers should operate under the same rules."

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Petrovsky", with a stylized flourish at the end.

John Petrovsky, Chairman  
North Ada County Foothills Association