

RECEIVED

MAR 10 2009

LATAH COUNTY

1009 Tolo Trail  
Moscow, ID 83843  
March 9, 2009

**Re: Rezone Application #780**

Dear County Commissioners:

Thank you for allowing public testimony regarding Rezone Application #780. We are writing this letter because we strongly oppose the proposed rezone but will not be able to attend the hearing scheduled for March 31.

We believe this proposal should be denied because a rezone that would allow development would result in a significant loss of productive farmland from Latah County. The owners/developers of the property under consideration claim that only 40 acres of the 135 would be developed and removed from production. However, according to Mr. Kyle Hawley, who farms near to this parcel, establishing houses on these 40 acres will effectively remove the surrounding land from production as well because residential housing is incompatible with the "dust, noise, spraying of pesticides, etc." that are inherent in farming practices. This land has been farmed continuously for more than 80 years. Should the proposal be approved, it would result in the loss of the full 135 acres from productive farm use.

Loss of productive farmland to low-density housing is not in the best long-term interest of Latah County and its citizens. As the U.S. and world populations continue to increase and as climate changes, food shortages will also increase, and productive farmland will become even more precious than it is today. Our Latah County Comprehensive Plan is a forward-looking document that includes a philosophy of protection of farmland and the county's rural character. Approving a rezone in this area to rural residential would not be consistent with the intent of the Latah County Comprehensive Plan, would constitute a spot zone that will change the rural character of the area, would benefit a few people financially but would be to the detriment of many other citizens, and would set an unwelcome precedent for other developers in the future. Furthermore, development of this area would increase demand on already diminishing water resources.

The developers claim that the establishment of new homes on this parcel will be simply an extension of the already-existing residential developments in the area. However, photos and maps show a clear difference between the area where most of the homes have been built compared to the area of the proposed development. Nearly all of the existing homes have been built on forest land (most can barely be seen from a distance); soils there are not very productive and the landscape is steep. However, the proposed new development would be on farmland (where each house would stand on top of a Palouse hill); the soils here are deep and productive and the rolling hill landscape is typical of the Palouse.

In December of 2006, the Planning and Zoning Commission, faced with a nearly identical proposal for the same parcel of land (RZ application #731), found against that proposed rezone, largely because the proposal did not measure up to the county's own criteria, as specified in the County Ordinance. Among the conclusions of law for that application is a statement (#6) that the "proposed development is

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 125  
Date: March 31, 2009

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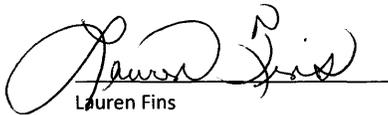
located [on] land that has been in productive agriculture for the last 80 years and the proposed development would take the land out of production and is therefore not suitable for development.”

There are many additional reasons to deny this proposal, including its frequent use by wildlife species. Deer regularly congregate on these lands (we recently observed several dozen in one of the fields). Hawks, coyotes and moose are common visitors, as well as an occasional bear. The establishment of houses and the increased presence of humans and traffic will increase the fragmentation of the landscape and be a detriment to these wildlife species.

The loss of farmland in this country (two acres lost per minute every day) depletes one of our nation’s most critical resources. We urge you to deny this proposed rezone. Such a decision would be an inspiring application of the precautionary principle and a consistent and appropriate adherence to the guiding principles in the county’s Comprehensive Plan.

Thank you for considering our comments.

Sincerely,



Lauren Fins

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David Potter

March 16, 2009

Latah County Commissioners  
Latah County Courthouse  
522 S. Adams  
Moscow, ID 83843

Dear County Commissioners:

I am writing to encourage the Latah County Commissioners to reject the application for a subdivision to be built near the intersection of Foothill Rd. and Lewis Rd. While there are several reasons why I believe the application should be rejected, my comments will focus only on the applicant's statement that the property has low productivity as agricultural land. I hold a PhD in agricultural economics, am a professor of economic sciences at WSU, and have researched and written extensively on the economics of agricultural production.

Evidence that this is not "marginal" agricultural land is reflected in the following two facts:

1. It is currently in crop production.
2. It produces wheat yields far above the national average.

Further, I am informed that this land has been continuously cropped for 80 years. In the applicant's testimony to the Latah County Zoning Commission, they reported winter wheat yields on this property between 2002 and 2008 ranging from 50 to 93 bushels per acre (for an average of 63 bushels). They reported spring wheat yields ranging from 31 to 61 bushels per acre (for an average of 46 bushels) and lentil yields ranging from 673 to 1,129 lb per acre (for an average of 927 lb).

It is true that yields on this property are below Latah County averages. For the reported period, winter wheat average yield was 19% below county average, and spring wheat average yield was 13% below county average. However, these yields in no way suggest that this land has low productivity for agricultural purposes. Its wheat yields are considerably higher than U.S. average yields (45% higher for winter wheat and 23% higher for spring wheat). **It is productive agricultural land.**

In addition, with the high Conservation Reserve Program (CRP) payments available in recent years, much marginal agricultural land in the county has been taken out of crop production and placed in this government program. The fact that this land has never been in the CRP implies that the operator has regarded it as suitable for agricultural production and that it continues to generate a profit in most years.

Thank you.

Sincerely,



C. Richard Shumway  
1055 Joyce Rd.  
Moscow, ID 83843  
882-4389

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MAR 19 2009

LATAH COUNTY

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 126  
Date: March 31, 2009

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MAR 19 2009

LATAH COUNTY

March 16, 2009

Latah County Commissioners  
Latah County Courthouse  
522 S. Adams  
Moscow, ID 83843

Dear County Commissioners:

I am writing to let you know of my opposition to the RZ #780.

When my husband and I chose to live in Idaho despite the fact that our employment is in Washington, it was with the intent that we would enjoy the peace and tranquility of country living in a farming community. Paying Idaho income tax while our income earned in Washington was offset somewhat by our understanding of Latah county's dedication to preserving the valuable farmland in this area.

In the eleven years we have lived here, we have had to step forward three times to speak our mind concerning the preservation of Latah County's precious farmland.

We have also become increasingly aware of the threat to our water supply and can't help but wonder if anyone is watching out for the homeowners who have already invested in homes that depend on granitic wells of limited production.

I voted for each one of you who represent me as one of your constituents. I urge you to promote and protect the general public who supported you believing that you represent our interests rather than speculators whose interests are in their own financial enrichment. It seems short-sighted to me to take out of production valuable, producing farmland that requires no irrigation while other parts of this country, including southern Idaho are seeing declining water resources. Please preserve the well being of those who are already invested in the community.

The Comprehensive Land Use Plan was wisely conceived to preserve sustainable groundwater resources while also conserving the valuable farmland this area enjoys.

Thank you.

Sincerely,

  
Janet L. Shumway  
1055 Joyce Rd  
Moscow, ID 83843  
882-4389

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 127  
Date: March 31, 2009

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MAR 19 2009

LATAH COUNTY

To: Latah County Planning and Zoning Commission

From: Russell Tucker  
1067 Tolo Trail  
Moscow, ID 83843

Date: 27 January, 2009

Re: Rezone application #780, BGB LLC

Planning and Zoning Commission.

Please record my following statement on this application. This application for rezoning virtually duplicates the proposal RZ #731, Terramark / Michael Hoffman, which was denied by the Zoning Commission on 6 December 2006. This denial was based upon exhaustive, detailed testimony from the public and subsequent careful, inclusive reasoning by the Zoning Commission. Given the similarity of these two proposals, this precedent suggests that application #780 should also be denied on virtually identical grounds. Furthermore, it is appropriate to stress that the present owners of this land purchased it apparently knowing full-well that it had just been denied a rezoning application virtually identical to their own.

Contrary to the assertions made in Rezone Application #780, this application does not satisfy the five criteria for rezoning stated in the Latah County Land Use Ordinance #269, Article 6.01.02, "Rezone Criteria," p. 59. Furthermore, RZ #780 fails to satisfy several basic objectives stated in the Latah County Comprehensive Plan.

Although the authors of this proposal make the now-predictable rhetorical move of using the phrase "less productive" to describe the agricultural land that they wish to develop, the facts are that this land consists of soil-types (Southwick, Larkin, and Taney) common to farmland in Latah County, that are officially cited in the Latah County Land Use Ordinance, Article 8.01.02, "Definition of Productive Soil Types," p. 67, as productive soils, and that generate, for instance, quite "productive" yields of winter wheat.

The land directly adjacent to that targeted for development in proposal #780 has indeed been farmed continuously and productively for over 80 years. To develop this land would be to remove it permanently from agricultural production, and this at a time when population is relentlessly increasing and food-supplies dwindling. Hence, such development would not provide for land-use appropriate to local and regional economic needs; it would definitely not help "ensure the continued viability of an agriculture and forest based economy in rural Latah County" (Latah County Comprehensive Plan, Objectives, 1).

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 128  
Date: March 31, 2009

The argumentative use of the phrase "less productive" requires a brief comment. The word "less" is a form of what is known as the "comparative level" of an adjective (in this case the adjective "small"). In order to employ such a word meaningfully, it is necessary to complete the comparison. That is, it's necessary to state exactly what is "less" than what is referred to. The use of a comparative level of an adjective without ever completing the comparison is sub-literate and empty of content, though it's an attempt to create illusions that a precise statement has been made. When done to a conscious purpose, it is also intellectually dishonest.

Proposal #780 clashes in other important ways with the Latah County Comprehensive Plan. To avoid prolonged discussion, let the following suffice: proposal #780 is not consistent with LCCP, "Objectives, Community Design Element," numbers 5, 8, and 9; "Population Element," numbers 1, 2, 3, and 4; "Transportation Element," numbers 1, 2, and 3.

Very significantly, this proposal is inconsistent with LCCP, "Objectives, Natural Resource Element," number 3, in that the proposed residential development, with its "private wells and septic systems" would most certainly not "maintain sustainable groundwater resources and prevent degradation of groundwater quality."

Indeed, proposal #780, even offers as a supposedly positive detail the scheme that the residential parcels "will be conducive to orchards, gardening, tree planting, and other horticultural and small acreage farming activities". In view of the sheer amount of irrigation that such projects would require, and the already well-documented scarcity of groundwater--and consequent low-yield, if not unreliable, wells--in the immediate area, this assertion seems either naively uninformed or obsequiously misleading. A residential sub-division alone, much less attached "orchards, gardening . . . and small acreage farming," would constitute a significant additional and unjustifiable threat to the present, ever-diminishing local "groundwater resources." We can not ignore the limited water resource available.

Of course, there historically has been much local debate about the long-term adequacy, and even renewability, of these resources. Some members of local university faculties have indulged in comforting, economically convenient suggestions that the size of the Grande Ronde aquifer may even be far larger than ever before estimated. And optimistic speculations about the supposed ability of local aquifers to "recharge" seem constant. This is speculative and not supported by scientific data.

In review of this issue, let me offer the following comments:

1) John J. Renton, Distinguished Professor of Geology at the University of West Virginia (a school supported by a state that, with its resources of coal and timber, is at least as dependent upon resource-extraction as Idaho), states emphatically and absolutely in *The Nature of the Earth: An Introduction to Geology* (2006):

"Groundwater is a nonrenewable resource."

In fact, in his basic courses in Geology, Prof. Renton stresses that, if students remember nothing else from his lectures, they must remember this. So we might appropriately dismiss all the soothing pro-"growth" vaguery about the possible "recharging" of local aquifers. My 1067 Tolo Trail residence land well is already severely depleted during the summer months, insufficient to meet my domestic needs and inadequate to offer any reasonable fire protection.

2) In order to emphasize how absolutely basic the issue of conserving groundwater is, I offer these citations. "In a special feature on the global water industry, in May, 2000, *Fortune* magazine declared: 'Water promises to be to the 21st century what oil was to the 20th century: the precious commodity that determines the wealth of nations. . . .' In 1998, the World Bank predicted that the global trade in water would . . . by 2001 [be] one trillion [U. S.] dollars." Maude Barlow, *Blue Gold* (2006), pp. 104-05. "[B]y 1996 . . . we were using over half of the available runoff. In other words, if, as . . . predict[ed], water use doubles over the next thirty-five years, the taps will run dry. . . . Water is a fundamental limit to economic growth." Philip Ball, *Life's Matrix: A Biography of Water* (1999), p. 338. This writer was an editor of *Nature*, a hard-science journal, for ten years.

In closing, I wish to address a basic argumentative strategy in this application: the repeated invocation of vague intentions, which are not legally binding, as a way of justifying absolute claims that the proposal "is compatible" legally with the Comprehensive Plan. These intentions involve the oft-cited "95 acres" that the applicants claim they intend to set aside as "conservation areas," by deeding 52 acres to the Palouse Land Trust and by having, somehow, an additional 43 acres "designated as a conservation area". At times the two parcels are cited as a single "95 acres," then again, they are on occasion distinguished from one another, and only the "52 acre conservation area" is cited.

Consistently, though, these 95 acres are cited within sentences that use verbs ("will be") which overtly signify predictive finality--e. g., "95 acres will be restricted from further residential development"; "95 acres will be designated a conservation area"; "95 acres will designated [sic] as a conservation area"; a "95 acre conservation area will be established".

A crucial issue to which the Zoning Board must consider: Even if 52 acres of land are deeded to the Palouse Land Trust, there will be no binding legal guarantees that define the future fate of this parcel. And furthermore, "the applicant's" mere "intent" that "Another 43 acres will be designated as a conservation area" is vague and non-binding, legally, from the very start. Similarly, it is meaningless to assert that the "applicant will also implement Covenants . . . on the rezone area" because such covenants, whatever they may be, are likewise not legally binding.

In effect, the proposal's overall argument seeks to secure an absolute, legally binding ruling from the County, that will favor a rezone, in exchange for verb-forms which imply that there exists a concomitant final commitment on behalf of the applicants to protect 95 acres of land from future development, when in fact such a commitment does not exist at all. This seems either an attempt to manipulate and cozen the members of the general public and the Zoning Board, or a symptom of remarkable intellectual incompetence.

According to the definition in the Latah County Land Use Ordinance #269, article 2, Section 2.01, what the applicants seek would constitute a "Spot Zone" application. Approval of the application #780 would create an irresponsible precedent that would assure the subsequent obliteration of any other farmland in Latah County.

In closing, please accept my opposition to this application for the aforementioned factors, and do not compromise the agricultural productivity of our farmlands. As I am scheduled to be out of the country over the next month, I will be unable to attend any upcoming public forum(s) to present my opposition to this application and therefore wish to submit this written statement for the public record and for the commissioners consideration. We must maintain the agricultural productive basis of this land and deny this current application.



Dr. Russell Tucker  
Associate Professor  
Washington State University  
1067 Tolo Trail  
Moscow, ID 83843  
rlt@vetmed.wsu.edu

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MAR 19 2009

LATAH CO.

March 19, 2009

Latah County Commissioners  
Latah County Courthouse  
522 South Adams  
Moscow, Idaho 83843

Dear Commissioners,

We are writing to state our opposition to RZ # 780, proposing a rezone of 40 acres of farmland just north of Lewis Road. As our home is situated on 19 acres abutting the north boundary of the 135 acres, we are very familiar with the property and its history.

In 1984 we began searching for a piece of property suitable for our particular needs of raising a severely disabled daughter prone to seizures triggered by excessive noise. We looked for a quiet secluded parcel with easy access to town in case of a medical emergency. Before purchasing what is now our property, we researched county land use ordinances, conferred with various county officials who told us that the likelihood of the adjacent farmland being sub-divided for residential development was remote at best, and spoke with the Lewis family, who assured us that their property would remain farmland under the stewardship of Lee Hawley, who had farmed the land under lease contract since 1977. Armed with these assurances, we used our life savings to buy the property and to build a home. We suspect that Mr. Lewis must be turning over in his proverbial grave at the betrayal of his wishes by an heir who after his wife's death inherited the property.

As Mr. Lewis undoubtedly would have, we oppose the proposed rezone for the following reasons:

1. RZ # 780 is similar in almost every important respect to RZ # 731, which you rejected in 2006 for among other reasons its violation of the Latah County Land Use Ordinance's prohibiting SPOT ZONING. Just move RZ # 731 about a hundred meters south, reconfigure the four home site parcels and you have RZ # 780, the only real difference being some added "green" amenities created as distractions from the core issues on which this application should be judged – an attempt to put green lipstick on a pig.
2. The applicants assert that the required four new wells pose no threat to existing neighboring wells and shallow springs, citing testimony from John Monks, John Bush, and Ted Wright. **BUT THOSE ASSERTIONS SIMPLY DO NOT HOLD WATER:**

a) You have received expert testimony from respected geologists, hydrologists, and engineers – Kevin Brackney, Jerry Fairley, William Elliot - about the fragile groundwater resources of the area in question and more specifically about the difficulty of predicting with certitude the effects of pumping on nearby wells in fractured rock terrain. Moreover, Dr. Jerry Fairley directly refutes Monks' testimony - a recycled letter from the 2006 RZ # 231 application – by stating that " his { Monks } conclusions are based on insufficient data and do not constitute a reliable assessment of the potential effects of construction and pumping of four new wells in the area."

- b) In his letter, John Bush opines that "four wells per 130 acres will not impact

the

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 129  
Date: March 31, 2009

surrounding area.” But, of course, as you know, the applicants are not proposing 4 wells in 130 acres BUT RATHER 4 wells in 40 acres – quite a difference!

- c) To put a human face on the water issue, in August 2001 our 11 gpm suddenly ceased producing water. We hired Dr. Dale Ralston and his assistant Ted Wright to examine our well. The news was bad: our well was dry with virtually no standing water in the 254' well. Pressed for an explanation of why our 11 gpm well went dry, Ralston and Wright pointed to a well head located about 200' from ours, just on the other side of our north property line, and declared: “most likely there's is your problem; two families sipping out of the same soda.” (Unbeknown to us, our neighbors, aware of our good producing well, had a well drilled within 200' of ours.) Both Ralston and Wright pointed out that we had no legal recourse and advised us to drill another well, considerable distance from the old one. Unfortunately, at a cost of over \$18,000 the new well produced slightly less than 2 gpm, requiring us to install a 2,000 gallon storage tank. Ironically, the aforementioned Ted Wright is the SAME Ted Wright who has submitted testimony on behalf of the applicants stating that drilling four new wells in 135 acres would not negatively impact neighboring wells, though he also references 4 wells in 135 acres. As noted above, it's actually 4 wells in 40 acres. The applicants must think that we all are arithmetically challenged.
- d) The applicants' assertions that covenants requiring each lot to install a 2,000 gallon water storage tank would mitigate risks to existing neighboring wells are simply ridiculous and an insult to your intelligence. As you well know, such tanks function as a hedge for homeowners with low output wells (like us) not as protection for neighboring wells. During the December 2008 Zoning Commission Hearing, one of the commissioners asked the applicants' attorney to explain how requiring 2,000 gallon water tanks would reduce the risk to neighbors' wells and springs (“... isn't it the same volume of water being pumped, whether it's piped directly into the house or into the storage tank?”) but never received a satisfactory answer. Covenants requiring 2,000 gallon water storage tanks? Just more green lipstick.

The bottom line on the water issue, as you commissioners know from having listened to dueling hydrologists/geologists during the Naylor hearings, is that although the limited storage capacity of fractured rock aquifers makes existing proximate wells vulnerable to productivity loss due to pumping interference from new wells, no responsible scientist can say one way or the other with absolute certitude. Given such uncertainty we're asking you to err on the side of caution. Without a reliable water source, neighboring homes are WORTHLESS. As Dale Ralston has already warned the BOCC: when drilling in granite, there will come a time when the water supply will not be sufficient for the number of wells needed. Lastly, we want to remind you that homes are CONSUMERS of water; dry land farming is not.

- 3. The applicants' claims (“ Findings of Fact . . . “ page 2) that 109 addressed structures within an approximate 1 ¼ mile radius of the subject property justify the proposed addition of four more homes are specious and misleading. As topographic maps, aerial photographs, and the naked eye of anyone looking north from the subject property plainly show , the existing residential development directly to the north without exception is on steep, heavily

forested, rocky, thinly soiled terrain – totally unsuitable for farming – unlike the terrain of the proposed rezone. Additionally, the residential development to the northwest of the subject property (the Nearing Additions) predated current land use ordinances and the Comprehensive Land Use Plan. And it's problematic whether these developments would be permitted today, hardly a good argument for another residential development using the Nearing and Tatkinmah developments as a rationale. Interestingly, the 2006 RZ # 731 made the very same claims, which you rejected when denying the application.

4. Lastly, as they stated in the December 2008 Zoning Commission Hearing, none of the applicants intends to reside in the proposed development. Their motivation is strictly profit. And, of course, they would not be affected at all, unlike existing neighbors, with the consequences of their development. (Similarly, you couldn't help but notice that a fair number of letters supporting the proposed rezone were from people who do not live in the immediate area and who likewise would be unaffected by the zoning change and subsequent development.) At least the applicant of the rejected RZ 731 Mr. Hoffman planned to use one of his proposed parcels for his family home. We want to be very clear about something: we are not opposed to investors getting a return on an investment; nor are we opposed to growth and development. We are, however, steadfastly opposed to the irrevocable destruction of some of the richest farmland in the world – farmland that doesn't require irrigation – to provide a few high end homes for wealthy folks, while in the process undermining our land use ordinances and comprehensive land use plan that promote and maintain orderly, sustainable growth for the citizens of Latah County. Near the end of the December 2008 Zoning Commission Hearing, the chairperson questioned whether removing farmland that has been continuously and successfully farmed for over eighty years for the benefit of some investors and a few buyers of high end homes was good public policy and an appropriate model for future development in Latah County. We don't think so either! If the applicants of RZ # 780 had purchased for development a parcel of marginal land unsuitable for farming or a parcel located close to the City of Moscow's area of impact and thereby not a creator of disorderly sprawl, we wouldn't be having this conversation with you.

For all of the above reasons and more, we urge you to reject RZ # 780.

Respectfully,



Sid and Renee Eder  
1037 Tolo Trail  
Moscow, Idaho 84843

RECEIVED

MAR 10 2009

Dr. Dennis Geist  
3365 Foothill Rd.  
Moscow ID 83843

Dear Commissioners,

I strongly oppose Rezone Application 780 for a variety of reasons. Most of all, this is a bad idea in itself, a spot zone, and it would set a precedence that could lead to runaway loss of farmland in Latah County.

I am qualified in several ways to address particulars of this case, and thus will confine my comments. First, I am former vice chair of the Latah County Planning Commission and member of the former Planning and Zoning Commission. Thus, I have put considerable thought and work into land use in Latah County. Second, I am a fellow of the Geological Society of America, former chair of the Department of Geological Sciences at the University of Idaho, and former editor of two leading journals of earth sciences, and am thus qualified to address groundwater resource issues.

This rezone and subdivision would permanently destroy productive farmland, and thus violate the comprehensive plan in so many ways that there is no doubt it should be rejected outright. In fact, one does not have to go beyond the first page of the plan to see the extent to which this proposal violates the ideals of the people of Latah County. The first objective of the plan is "Preservation of agricultural and forest land uses to ensure the continued viability...". That this rezone and subdivision would violate that objective is so obvious that it does not require discussion. The proposal violates the second objective, which cites a "sustainable economic foundation": converting annually productive land into a residence is unsustainable. This proposal violates the third objective, which states that higher density residential uses should be clustered. This proposal violates the fourth objective, which is to preserve the rural character of the county. The fifth objective is irrelevant: the applicants have no constitutional right to the rezone. They bought it as ag/forestry land with the full understanding of what that means.

In summary, this proposal violates almost every objective of the comprehensive plan, and does absolutely zero that is consistent with the ideals put forth in the guiding plan.

Admittedly, the explicit application for several lots is not catastrophic, but the real danger is that it sets precedence. If the commission believes this rezone is consistent with the comprehensive plan, then subdividing of this lot (> 100 acres) further in a few years will be consistent with it. So will subdividing and converting to large-lot suburbs all of the land between the Mountain and Moscow's suburbs.

The region of the proposed rezone is fraught with groundwater problems. Unlike the area upon which Moscow is built, which is underlain by basaltic lava flows, the bedrock in this part of the county is granite. Granite lacks large-scale permeable layers that form regional aquifers. Instead, groundwater is concentrated in local fractures, whose orientation is more or less random. The area at the foot of Moscow Mountain is

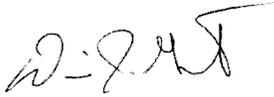
BOCC HRG: RZ 780  
Applicant: BGB LLC.  
Exhibit No. 130  
Date: March 31, 2009

notorious for this: a 100-gallon per minute well can be within 50 yards of a dry well. There are many dry wells in this part of the county, and many other wells are marginally acceptable. The erratic and marginal groundwater resource is a worst-case scenario for rural residential housing. Further exploitation of the extremely limited resource will almost certainly lead to problems, not just in the proposed development, but also for existing wells that might tap the same fracture network. Another issue is that the south flank of Moscow Mountain is the major zone of recharge on a regional scale, the source of groundwater throughout the Paradise basin.

In summary, I urge the Board to vote unanimously to reject this application for rezone. It is unequivocally inconsistent with the Comprehensive Plan, in almost an uncountable number of ways. Rejection of the application will set the right precedent: Latah County will not be developed in an uncontrolled way, which would set back every resident's quality of life and property value. In terms of groundwater resource, the proposed rezone is in one of the worst places in the county for dense housing.

Thank you for your consideration.

Cordially,

A handwritten signature in black ink, appearing to read "Dennis J. Geist". The signature is written in a cursive style with a prominent flourish at the end.

Dennis J. Geist

# WILLIAM L. HERRINGTON, PA

*Attorney at Law*  
P. O. Box 9562; 520 ½ S. Main Street, Suite 3  
Moscow, Idaho 83843  
(208) 882-4262; Fax (208) 882-6632;  
email: attorney@turbonet.com

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MAR 20 2009

LATAH COUNTY

March 19, 2009

Latah County Board of Commissioners  
Latah County Courthouse  
Moscow, Idaho 83843

**Re: BGB LLC Rezone (RZ #780)**

Dear Commissioners:

This letter is written to express concerns regarding the above indicated Rezone of property north of Moscow. This area north of Moscow is sensitive as one of the points where both visitors and those returning home are welcomed to Moscow and the university community,

It is my view that the rezone request, though it creates only four additional lots, establishes a precedent which will make it difficult for future commissions to deny similar developments on neighboring property; I fear that such development will ultimately, in the long run, have the effect of destroying the agricultural character of this part of the County and replacing it with sprawl.

Urban development in this area is also a concern because of the very limited supply of water. Over the years I have had several clients from this area seek advice due to water problems with their wells, which occurred after new wells had been drilled on nearby property.. Such experience is consistent with ZC Finding 20. Even the applicant is concerned about this lack of water. In ZC Finding 13, Mr. Westberg stated that drilling rights on the 43 acres south of the plat would be retained "due to concerns about the wells on the four proposed lots (Exhibit # 2B)".

In reviewing the Zoning Commission Findings (ZC Finding 12), I see that it is proposed that 52 acres north of the rezone will be donated to the Palouse Land Trust. Though I have a high regard for the Trust, it would seem that such provision should be required to be made in a manner that would guarantee that the land would remain open space.

In a similar vein, Mr. Westberg stated that the 43 acres south of the plat would be designated a conservation area via a conservation easement. It would have been comforting if he had indicated who would hold this easement and if he had provided a draft easement that everyone could have reviewed. The promises reflected in ZC Findings 12 and 13 are in my view lacking without a shred documentation (which would not have been difficult to provide).

BOCC Letter - 1

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 131  
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I would urge you to deny the rezone request because of (1) the adverse impact of urban development on the agricultural character of this area; (2) for aesthetic reasons; (3) for the precedent you would create in allowing urban zoning in this area; (4) for the potential adverse impact on existing wells in the area; and (5) because the applicant has not taken adequate steps to ensure that the 43 acres to the south and the 52 acres to the north of this development would be protected from future development.

Should you choose to consider approving this request, it would be prudent to require that draft documents protecting the adjacent 48 and 52 acres be approved by planning and legal staff and yourselves prior to your final approval and that your approval be conditioned on the execution of these documents prior to the plat being signed and filed.

Thank you for your consideration of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "William L. Herrington".

William L. Herrington

WLH:bh

**Aimee Shipman**

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**From:** Margaret Ely [margaretely@gmail.com] on behalf of Margaret Ely [mpely@lmi.net]  
**Sent:** Thursday, March 19, 2009 4:23 PM  
**To:** ashipman@latah.id.us  
**Subject:** Letter to the County Commissioners re. application RZ #780

1174 Idlers Rest Road  
Moscow, Idaho 83843  
March 19, 2009

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Dear Commissioners,

This letter is in reference to RZ #780, the application to rezone approximately 40 acres of farmland from ag/forest to rural residential for a subdivision.

The most serious problem we have is the onset of global warming due to the demands of overpopulation and the careless use of the earth's resources. This problem even overshadows the current, worldwide, economic catastrophe we are facing. Interestingly, compliance with the Latah County Comprehensive Land Use Plan alleviates the dire consequences of unregulated development, namely the warming of the planet and the destruction of farmland for future generations.

Observing the regulation that the LCCLUP provides exemplifies the saying, "Think globally; act locally."

Preservation of farmland and our area's farming economy are primary goals of the Latah County Comprehensive Land Use Plan. The land in question is productive farmland and has been in production for about 80 years. The loss of this agricultural productivity into the future and the setting of a very bad precedence for further development are primary reasons for denying this request. The granting of special privileges to a select owner is not in the best interest of the county nor is it the proper course to take for the future we leave to our grandchildren. Being fair-minded is an American value. Being farsighted is just plain smart.

I urge you to continue your careful stewardship of the land in Latah County by denying the spot rezone requested in RZ # 780.

Very respectfully,  
Margaret Ely

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 132  
Date: March 31, 2009

**Aimee Shipman**

**From:** Dotti Smith [dottijane@gmail.com]  
**Sent:** Thursday, March 19, 2009 7:56 PM  
**To:** ashipman@latah.id.us  
**Subject:** Letter to the County Commissioners re. application RZ #780

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LATAH COUNTY

Robert and Dorothy Smith  
1181 Idlers Rest Road  
Moscow, Idaho 83843

Subject: Letter to the County Commissioners re. application RZ #780

March 19, 2009

Dear Commissioners,

This letter is in reference to RZ #780, the application to rezone approximately 40 acres of farmland from ag/forest to rural residential for a subdivision. Preservation of farmland and our area's farming economy are primary goals of the Latah County Comprehensive Land Use Plan and we urge you to deny the rezone request.

Yours truly,  
Robert and Dorothy Smith

3/20/2009

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 133  
Date: March 31, 2009

**Aimee Shipman**

**From:** fredbarlow1@aol.com  
**Sent:** Friday, March 20, 2009 6:37 AM  
**To:** ashipman@latah.id.us; side@uidaho.edu  
**Subject:** Application RZ #780

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LATAH COUNTY

Aicha Elshabini & Fred Barlow  
1070 Lewis Road, Moscow, Idaho 83843  
[Fredbarlow1@aol.com](mailto:Fredbarlow1@aol.com)

Dear Commissioners,

We live at 1070 Lewis Road in Latah County and we are writing to you to urge you to reject rezone request RZ#780. Our property is located just south and directly adjacent to the property subject to this request.

We strongly oppose this rezone request for several reasons:

- I. **Water:** When Aicha purchased this property in 2006 she was not aware of the issues surrounding water in this area since she had lived in the south east for many years prior to that time. Shortly after moving into the house, water became a serious problem. That summer, the water flow to her house stopped and in the process silt was pumped into her house and damaged the valve in her washing machine. This valve had to be replaced, and it appears that this was due to a lack of water that summer. Since then, she has noticed that particularly during the summer she needs to be very judicious in her water use.

To mitigate this issue, we have installed an expensive drip irrigation system that uses the absolutely minimum amount of water possible for irrigation. Also, we have just installed a pond that will be used for irrigation in the future. It is designed to collect rain water runoff during the fall and winter and then store it for use in the summer. We are also considering a water storage system for our well.

We are very concerned about the addition of new wells in this area. Our experience directly adjacent to this rezone is that water is already a problem. It is logical to assume that additional use will only exacerbate that problem. It is also obvious that the applicant is worried about finding water, and in some of the initial testimony they stated that this was one of the reasons they did not include the portion of the property between our property and the Hawley's in the conservation easement. They intend to keep that portion of the land in reserve in case they do not find water farther up the hillside, in the hope that water will be found on these lower portions of the property.

- II. **Land Use:** When Aicha bought this property it was adjacent to farmland and she was assured that there was a comprehensive plan in place in Latah County for land use, and that this plan placed a priority on preserving farm land. This was a key consideration since she purchased this expensive property with a rural home in mind. We feel that this rezone is not consistent with preservation of farm land or Latah County's stated plans for land use and should be rejected on that basis.

3/20/2009

BOCC HRG: RZ 780  
Applicant: BGB LLC.  
Exhibit No. 134  
Date: March 31, 2009

The applicant has also suggested that this land is marginal in value for farming and that the yields on this property are lower than elsewhere on the Palouse. We have a different perspective on this since one of us (Fred Barlow) ran a small farm in the state of Arkansas for many years. While it may be possible to find higher quality farm land in other areas of Latah County, in comparison to many other parts of this country this is very fertile farm land and we believe it should remain that way. The Hawley's have farmed a portion of our property for several years and wheat and other crops grow very well on this land which is surrounded by the proposed rezone.

It was also suggested by the applicant during some of the initial testimony that the existing developments on nearby land, such as the Nearing addition, make this rezone acceptable. However, there is a clear difference between the land near the top of the mountain and the land farther down the hill side such as that which is now farmed today. It is our belief that this is not a valid argument and should this rezone be approved it will in fact take valuable farm land out of production forever. This land is significantly different from the land higher on the mountain since the top soil is much thinner, and the ground is much rockier at the higher elevations.

For these reasons, we urge you to reject this rezone request. One of the key goals of zoning laws is to protect home owners and their investments in property. We do not think that this rezone is consistent with that goal and we believe that approval of this rezone will jeopardize our property value, and our water supply.

Sincerely,

Aicha Elshabini, Ph.D. P.E. & Fred Barlow, Ph.D.

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3/20/2009

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Board of County Commissioners  
Latah County  
P.O. Box 8068  
Moscow, ID 83843

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LATAH COUNTY

3/20/2009

Dear Commissioners:

I am writing in opposition to RZ # 780 and ask that you reject the proposal for the following reasons:

On December 6, 2006, the BOCC rejected a similar rezone application that proposed a four home-site subdivision on the same parcel of farmland. The substance of the current development proposal is no different than the previous. The previous proposal was ruled to be in conflict with the primary goals of the Latah County Comprehensive Land Use Plan of preserving farmland and the area's farming economy. The new proposal attempts to address this by suggesting that the homeowner's in the new development could plant a small fruit orchard. The small size of such an orchard if one were to be planted would have a negligible contribution to the area's farming economy. Furthermore, this would not be a sustainable farming use of the land as such an orchard would require significant water resources that would further tax a limited, highly variable groundwater supply. The land is very well suited for dryland farming but not small fruit orchards. Such an enterprise would also be in conflict with the Comprehensive Land Use Plan's goal of maintaining sustainable groundwater resources.

RZ 780 does not comply with Latah County Land Use Ordinance #269 which prohibits spot zoning: "the zoning of a small land area for a use that differs measurably from the zoned land uses surrounding the area, usually giving privileges not generally extended to properties similarly located in the area and generally is an arbitrary departure from the Comprehensive Plan . . . ". In the proposal it is argued that this would not be a spot zone as there are already over 100 residential homes within ~1mile of the proposed development. However, as I am sure you are aware, the majority of these residential properties are in the forested land of this area, not on productive farmland. The majority of these homes are not visible as they are in the forest. In contrast the proposed development would likely result in more, large homes, prominent on the tops of hills, changing the open-land character of this area.

The proposal suggests some land will be put into conservation easements, however, what is the point if those little tracts of 'conserved' land are adjacent to homesites?? This seems like something that was added to the proposal to make it more palatable, but really does little to preserve open-space in the county.

I do have my libertarian tendencies and strongly favor individual property rights, however, I also do believe that the intent of the county's Comprehensive Land Use plan is good and should be fostered, lest we have suburban sprawl like so many other areas in the west.

Thank you for your consideration and your service to the residents of the county.

Sincerely,

John R. Wenz  
1034 Tolo Trail  
Moscow, ID 83843

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 135  
Date: March 31, 2009

Kevin M. Brackney, M.S., P.G.  
Hydrogeologist  
838 Lynn Street  
Moscow, ID 83843  
(208) 882-2398

RECEIVED  
MAR 20 2009  
LATAH COUNTY

March 19, 2009

Board of County Commissioners  
Latah County  
PO Box 8068  
Moscow, ID 83843

Re: RZ #780, near intersection of Lewis and Foothill Roads

Dear Commissioners,

I am an Idaho Registered Professional Geologist, Certificate No. 817, and a Certified Ground Water Professional by the Association of Ground Water Scientists and Engineers, Certificate No. 120675. I have been a practicing hydrogeologist since 1992, and I am currently employed as a hydrogeologist by the Nez Perce Tribe, Water Resources Division, Lapwai, Idaho. I have previously commented on the Hoffman application for rezoning of this property in a letter to the County Commissioners dated October 29, 2006. In addition, I have also commented on the Naylor Farms Conditional Use Permit Application and the Naylor Farms Water Application to the Idaho Department of Water Resources in 2005.

I have reviewed letters the applicant received from John Bush, dated November 27, 2007, and from Jon Monks, dated November 8, 2006. I agree with both of these scientists in the presentation of the facts on the limited nature of the groundwater supply.

The area well statistics presented by the applicant clearly illuminate the high level of uncertainty of finding a sufficient water supply. In each of the four sections described, the standard deviation is greater than the median value, and in three of the four sections it exceeds the mean value for well yield in gallons per minute. This implies that mean water well yield based on the surrounding wells is not predictive of future well yield. A homeowner is just as likely to drill a dry hole as find an adequate – though likely minimal – water supply.

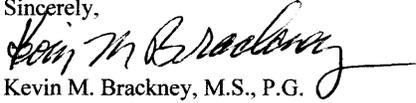
John Bush states in his 2007 letter that water wells distributed at 10-15 acres per well and separated by a distance 500-1000 ft between wells “is above the requirement to ensure the lack of interconnection.” I am not aware of any requirements that specify a minimum distance between wells. If there were such a requirement, it would probably prevent most well interference problems.

Page

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 136  
Date: March 31, 2009

establishing a predictive analytical or numerical model on the effects of pumping on adjacent wells. This type of analysis should be conducted by experts and be subject to peer review of both the test design and results to yield a scientifically defensible interpretation. I believe that this is the only good way to minimize obvious conflicts. Even with thorough hydrogeologic analysis our knowledge of the subsurface is imperfect, and questions will likely remain unanswered. The hydrogeologic interpretation that is consistently repeated is that water shortages will likely be a fact of life in these low-yield granitic aquifers on Moscow Mountain. It makes good sense to minimize well interference problems with careful planning and scientific investigation prior to permitting new developments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin M. Brackney", with a long horizontal flourish extending to the right.

Kevin M. Brackney, M.S., P.G.  
Hydrogeologist

18 March 2009

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MAR 20 2009

LATAH COUNTY

Dear Commissioners,

I am writing to voice my opposition to Rezone Application#780. Since proposed conversions of agricultural land for the purpose of other uses began, I have advocated for strict adherence to the principles given top priority in the Comprehensive Plan, namely the preservation of agriculture in Latah County.

With respect to those persons involved with #780, there have been conflicting opinions as to the value of this particular piece of land as it relates to agriculture. In the interest of obtaining a more unbiased view, I posed a general question to some people who probably don't know of this application. The question, which I asked to complete in one or two sentences:

**"How do you view the importance of agriculture on the Palouse?"**

A few of the surprising number of responses received are listed below:

1. "The importance of agriculture on the Palouse.... Without it the world around us would look very different."
2. "The greater part of our agriculture output should be designated for local use, and we should center our attentions on growing, preferably indigenous, foodstuffs that are easily grown here without emending the habitat, and that fill the needs of the Palouse population, more than those for export, which require so much adaptation and transportation to make them viable in a global market."
3. "Our sole experience with the Palouse was driving across it the summer of 2007. I recall how beautiful it was and how I wanted to return to photograph it. My knowledge of its Ag importance is scant but I suspect it is much like eastern Oregon in that it is a wheat basket of great importance."
4. "Agriculture on the Palouse is of supreme importance! I have two suggestions that everyone should read and watch and take to heart:
  - a. Read Michael Pollan's article in the New York Times from last October 12, 2008. It is entitled "Farmer in Chief" and is an open letter to Barack Obama about the state of food and farming in this country.
  - b. Watch the documentary movie "The Dirt on Farmer John". It is inspiring and shows clearly how much better we would be by going back to community supported agriculture. One very

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 137  
Date: March 31, 2009

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poignant interview with an older farmer shows him coming to tears at the thought of putting good farm soil under concrete.

I'm all for supporting our farmers and getting back to more diverse and chemical free farming!"

5. "Agriculture is at the heart of the Palouse. While the twin pillars of education and agriculture are the largest industries in the Palouse region, agriculture is the strand that connects the past and the future on the Palouse."
6. "It is of vital international importance. It must be managed and preserved properly to maintain its importance to the region, the nation and the world."
7. "Growing on the Palouse:  
  
It's better to grow food here than grow [sub]burbs.  
  
It's the most efficient use of this unique soil—the loess found only here and in China. (In China, it is eroded to gullies hundreds of feet in depth as a result of bad management practices).  
  
It allows for practical use for large scale new methods in farming development and ongoing testing for the best breadbasket per acre anywhere."  
  
I love these hills of grain and legumes! And I love any other foods our farmers may find to lucratively grow here."
8. "In my opinion, agriculture is as vital to the Palouse as food and oxygen! Indeed, it IS food, come to think of it! It is a job-producing industry vital to our area."
9. "Agriculture is the life blood of the economy and spirit on the Palouse. Two Land-Grant Universities situated in the heart of the Palouse are here not by chance but by the necessity to be close to those they serve in accomplishing their mission, which is to conduct agricultural research, teach this information to the next generation and to disseminate this information to the current generation of producers.

Dry land farming on the Palouse started long before the massive irrigation projects converted South Idaho and Central Washington into the production areas they are today. While mining and logging border the Palouse on the East, agriculture is the only industry driving the economy of the towns and cities on the Palouse."

All but one of the respondents are/were residents of the Palouse. All of the answers (including those not listed) refer to the importance of agriculture to the region. The last quote is from a person who was born on the Palouse, has generations of family here, and has led a life dedicated to agricultural research and education.

The applicants' attorney, as well as a portion of the Latah County Zoning Board, have alleged that the land in #780 rezone is not "productive", and therefore suitable for conversion. These comments were made after testimony giving the statistics of cropland loss in the U.S., and the means by which those acreages disappear. The comments made by the applicants' attorney did not take this into account: compared to the average acreage crop yields in the U.S., the yields from all areas farmed on the Palouse (without aid from irrigation) generally exceed the national average yield. Palouse "dry land" agriculture is unique in its ability to absorb enough rainfall for a yearly harvest without interruption/fallow years, as occurs in other states that utilize the dry land process. In light of these facts, the meaning of the word "productive" goes well beyond the interpretation of land "used to produce".

Consider:

"Each day, close to 3,000 acres of farm and ranch land are permanently lost to development in the U.S. With every acre that is lost, we weaken our ability to produce agricultural goods and environmental benefits that are essential to national security." (letter to President Barack Obama from American Farmland Trust, January 20, 2009)

"The world population increased from 3 billion in 1959 to 6 billion by 1999, a doubling that occurred over 40 years. The Census Bureau's latest projections imply that population growth will continue into the 21st century, although more slowly (<1.4%, at least 80 million a year for the next two decades). The world population is projected to grow from 6 billion in 1999 to 9 billion by 2040,.." (<http://www.census.gov/ipc/www/idb/worldpopgraph.html>)

(Note: The low population projection, which *may* be more accurate, rises to 7.7 billion by mid-century, up from *current* population of 6,767,467,055 and counting).

And,

"Grainland per person has been shrinking since mid-century but the drop projected for the next 50 years means the world will have less grainland per person than India has today. Future population growth is likely to reduce this key number in many societies to the point where they will no longer be able to feed themselves. Countries such as Ethiopia, India, Iran, Nigeria, and Pakistan will see grainland per person shrink by 2050 to less than a quarter acre--far smaller than a typical suburban building lot in the U.S." (Worldwatch Paper 143, "Beyond Malthus: Sixteen Dimensions of

the Population Problem", L. Brown, G. Gardner, B. Halweil, p.11,  
September 1998)

While a shift in focus toward consumption of locally grown foods is desirable, the dynamics of the exponential rise of the world population -- without factoring in mismanagement of resources, climate change, and shrinking water supplies\* -- indicate how much we need to preserve existing cropland while improving crop yields for what has been the largest share of the Palouse market (export). **Even with continuous peaks in productivity, world populations are outstripping any increases in grain production.**

Given the general consensus, the charge of the Latah County Comprehensive Plan to preserve agricultural land and foster the agricultural economy of the region, and the broader world view, it is neither logical nor prudent to take Palouse cropland out of its present A/F zoning designation.

I am ardently opposed to Rezone Application #780 and any such attempts to discredit local agriculture. In the future I hope the County will research additional options for preserving this vital community resource.

Sincerely,

Marilyn Beckett

\*(Reference to "shrinking water supplies" above):

"As the growing demand for water collides with the limits of supply, countries typically satisfy rising urban and residential demands by diverting water from irrigation. They then import grain to offset the loss of irrigation water. Since it takes 1.000 tons of water to produce a ton of grain, importing grain becomes the most efficient way to import water."

"The dramatic worldwide decline in irrigated area per person meshes with a recent projection by Sandra Postel in *BioScience*, which concluded that by 2025 the additional irrigation water needed in world agriculture will be equal to the annual flow of 24 Nile Rivers."

(Worldwatch Paper 143, "Beyond Malthus: Sixteen Dimensions of the Population Problem, p.17, September 1998)

March 18, 2009

Latah County Commissioners  
Latah County Court House  
Moscow ID 83843

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MAR 20 2009  
LATAH COUNTY

Re: RZ 780 Lewis/Foothill Roads

Dear Commissioners:

We farm close to this proposed rezone and farm around a number of houses that were previously all farm ground. Farming around these homes has presented numerous challenges. Because of these experiences we oppose the proposed rezone for the following reasons:

The rezone application is in direct conflict with Latah County's Comprehensive Plan objective of preserving agricultural and forest land uses to ensure the continued viability of the agriculture and forest based economy in rural Latah County.

The rezone uses are detrimental and incompatible with agricultural uses which include dust, noise, herbicide and pesticide spraying, etc. These practices are incompatible within a residential zone and make normal farming practices difficult if not impossible. Our experiences with houses built in the middle of an agricultural landscape or on top of a hill within the landscape causes field management and contour farming inefficiencies. The houses cause water runoff erosion, blowing trash and construction materials, and lack of respect for a growing crop.

As it appears, Latah County has numerous available parcels for sale, and it is hard to justify the cost of a new rezone consuming more productive agricultural land. The increased cost of County services should be considered even in the best of economic times and it is hard to see any justification for this action and imposes significant burden to surrounding agriculture/forest lands.

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 138  
Date: March 31, 2009

The rezone proposed would be a "Spot Zone," surrounded by active agriculture/forestry zone. It appears this could create problems down the road, creating precedence for future zoning changes of this nature and manipulate the comprehensive plan taking land out of production and creating a leap frog maze in the remaining Ag/Forest Land.

Your attention to these concerns will be greatly appreciated.

Sincerely,

Handwritten signature of Larry and Janice McMillan in cursive script.

Larry and Janice McMillan  
731 Camas  
Moscow ID 83843

15 March 2009  
1064 Tolo Trail  
Moscow, ID 83843

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MAR 20 2009

LATAH COUNTY

To: Board of Latah County Commissioners

From: William Bonney

Subject: Opposition to RZ#780, a request by BGB LLC to rezone 40 acres of a 135-acre parcel from Agriculture / Forest (AF) to Rural Residential (RR)

Let's clear the air right away. This letter is not written in knee-jerk opposition to business. But it is meant to state opposition to the opportunistic taking of quick profit when such a taking will require that the Latah County Comprehensive Plan and Latah County Land Use Ordinance #269 be arbitrarily changed, that their clear intent and spirit be subverted, and that a legal precedent be set which will virtually guarantee that more and more productive farmland will be despoiled in the future at the whim of legally aggressive would-be developers.

I.

Recently speaking before the Latah County Zoning Commission, a person representing BGB LLC asserted immediately that the members of the group are longtime local citizens, and that they therefore primarily have only the welfare of the local area at heart. Predictably, these heartwarming claims of benevolent concern contained no mention of quick-money profiteering; similarly, a pursuit of profit is not mentioned when RZ#780 announces its "goal" (p. 1).

Yet there exists the revealing designation "LLC," which suggests a less-than-charitable intent to evade, legalistically, whatever adverse consequences to the community might result from such profiteering. Such consequences include, subversion of

- 1) the natural resources and aesthetic integrity of the landscape,
- 2) the domestic and economic stability and welfare of residents living near the proposed development,
- 3) and the future legal enforceability of the Latah County Comprehensive Plan and Latah County Land Use Ordinance #269.

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 139  
Date: March 31, 2009

That is, abstract, mobile profits are to be claimed privately, while precise material costs and adverse social consequences are imposed upon the general citizenry, who must remain behind to accommodate disruption and loss as best they can. Of course, this is a controlling principle that I'm sure experienced public officials do indeed understand.

## II.

At the very outset, let there be no mistake. **RZ#780 does not seek a mere Conditional Use Permit. What RZ#780 seeks is a final, absolutely binding, legal concession from Latah County that would irrevocably set a legal precedent and change the letter and spirit of the LCCP--specifically, removing 135 acres of currently farmed land from production.** But RZ#780 claims--astonishingly--that the applicant will be continuing "the Comprehensive Plan's objective to preserve agricultural . . . land uses" (p. 1) by annulling 135 acres of currently productive farmland! And anyway, the preservation of agricultural land uses is already rather nicely accomplished by the LCCP. The County needs no interventionist aid from developers. I'm confident that experienced public officials can see through all this distraction and understand exactly what the stakes are in this overall game.

## III.

RZ#780 also uses the following specious argument: there already exists a cluster of homes to the N., on Moscow Mountain; therefore the applicants' request for irrevocable change in the LCCP and LC Land Use Ordinance #269 should be granted by the County so as to allow yet more homes to be built.

The presence of homes on Moscow Mountain is treated, by implication, as if it were the result of an exemption that the County has already, somehow, granted to a variety of homeowners. This implication ignores simple history. Many of the homes on Moscow Mountain were built long before the LCCP and LC Land Use Ordinance #269 ever

existed. Their mere presence is not evidence of a vague precedent that the County has supposedly already set for granting exemptions from its land-use ordinances.

**Importantly, this kind of baseless argument was clearly anticipated, and annulled, by the authors of LC Land Use Ordinance #269, because it states quite clearly: “The existence of a nonconforming use shall not be adequate justification for permitting other uses prohibited by this ordinance” (section 4.01.02, p. 37).**

**Indeed, if anything were to be out-of-order here, it is not the presence of homes on Moscow Mountain, since much of this construction long predates the Comprehensive Plan; it would be the exemption that RZ#780 seeks, because such an exemption clearly meets the definition of a “spot zone,” which is prohibited by LC Land Use Ordinance #269.**

A “spot zone” is defined in this way: “the zoning of a small land area for a use that differs measurably from the zoned land uses surrounding the area, usually giving privileges not generally extended to properties similarly located in the area and generally is an arbitrary departure from the Comprehensive Plan, the other adjacent zoning, the other adjacent land uses, and the other adjacent eligible parcel sizes; typically a spot zone is for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole” (article 2 section 2.01, p. 21; my emphasis--the reason is made clear immediately below in section IV).

#### IV.

RZ#780 makes much of the pretense that “The area surrounding the rezone has evolved toward residential development” (p. 4; my emphasis). If the word “surrounding” is understood here according to the standard meaning of the verb “to surround”—“To extend on all sides of simultaneously; encircle; ring” (*The American Heritage Dictionary of the English Language* [1969 edition], p. 1295; my emphasis)--then this assertion is false, as a map that shows locations of existing residences will confirm. For only to the

North of the proposed subdivision is there a cluster of homes, while to the South there exist several small farms and an isolated residence.

Furthermore, in RZ#780 additional confusion is created by means of the aerial photograph that labels “Adjacent Property Owners.” Obviously the parcel-in-question is surrounded by property that is owned! But an “owner” is not at all the same as an actual resident.

**Notice the remarkable repetition of the word “surrounding” in the following passages.** RZ#780 refers to “approximately 100 rural residential home sites [upon] surrounding properties.” These residences supposedly constitute the “actual use of a majority of the surrounding land,” and therefore the applicant claims that “The proposed rezone will not . . . differ measurably from the surrounding uses” and “will not differ in kind from actual land uses surrounding the rezoned parcel” (p. 3; my emphasis).

**This word apparently has been lifted directly from the definition of a “spot zone” in LC Land Use Ordinance #269 (p. 21; quoted in my section III, right above). Once again, the County’s definition of a prohibited practice is apparently being superficially echoed in order to circumvent that definition by creating an unsubstantiated illusion that the prohibition is irrelevant in the particular case of RZ#780.**

Similarly, note that the same device of inane echoing occurs with regard to the phrase “differs measurably,” which appears in the definition of a “spot zone” in LC Land Use Ordinance #269. Seeking exemption from the content of this definition, RZ#780 merely offers the assertion that the rezone it wants “will not . . . differ measurably . . .,” while having measured practically nothing.

All this is a commonplace rhetorical strategy that students can learn in elementary English Comp. classes. It’s distracting and misleading, and therefore can muddle readers’ concentration and responses. But, finally, it’s typically just shallow and

reductive. Still, some perhaps less-gifted folk may come to lean upon the device disproportionately, relying upon it, say, even while scribbling legalistic compositions.

#### V.

**There is a large and dramatic topographical discontinuity between the cultivated farmland that RZ#780 wants to develop, and Moscow Mountain, the steep, rocky, forested landscape to the North, where various private homes are located. Conveniently, this crucial fact is not mentioned in RZ#780.**

Such topographical discontinuity, of course, is not apparent on the 2-dimensional aerial photographs that RZ#780 provides. And the “7.5 Minute Quad Topographic Map” in the application only focuses, close-up, on the 135-acre parcel, thereby slickly omitting information about the radically different, supposedly “surrounding” topography directly to the North.

Still, the potentially compromising facts that have been omitted can be obtained in an efficient, uncontroversial manner. Just consider the “percent grade” of Tolo Trail, the road up Moscow Mountain, which averages a 6% grade, and which in places can exceed an 8% grade--a slope that is reflected, somewhat less extremely, by the “percent grade” of highway 95, just to the Southwest, of course.

#### VI.

Finally, this application for rezoning virtually duplicates the proposal RZ#731, Terramark / Michael Hoffman, which was denied by the Zoning Commission on 6 Dec. 2006. This denial was based upon exhaustive, detailed testimony from the public and subsequent judgment by the Zoning Commission made within the current context of Latah County’s precisely defined land-use ordinances.

In spite of its green-camo, RZ#780 would probably remove as much farmland from production as RZ#731 threatened to do. To discourage and terminate farming it is not necessary directly to settle the land. It is only necessary to divide the land with such irregular boundaries that it becomes impractical, if not impossible, for large-scale farmers to use their agricultural machinery. So the haphazard rezoning of what may seem to be "only small" parcels will ultimately cause just as much agricultural land to be despoiled as would happen were single large developments to be permitted. Under no conditions should such rezoning be approved.

Given the similarity of RZ#780 and RZ#731, the precedent of this negative judgment regarding RZ#731 suggests that RZ#780 should be denied on essentially identical grounds. The same parcel of land is even involved. And this fact, moreover, makes it appropriate here to stress that the present owners of this land should have known full well, before they bought it, that it had just been denied an application to rezone that is almost identical to the one they've subsequently concocted.

I have stated here only several of the reasons why the BOCC should not approve RZ#780. But the length of this document is growing unwieldy. I am sure other persons will address LCCP "Objectives," elements of Community Design, 5, 8, 9, Population, 1, 2, 3, 4, Transportation, 1, 2, 3, and especially Natural Resource Element, 3.

Respectfully,

*William Bonney*  
William Bonney

**Aimee Shipman**

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**From:** Tom Stroschein [tstroschein@latah.id.us]  
**Sent:** Friday, March 20, 2009 11:26 AM  
**To:** ashipman@latah.id.us  
**Subject:** FW: Letter from Whiting family: Rezone #780

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**From:** nicolewhiting@aol.com [mailto:nicolewhiting@aol.com]  
**Sent:** Thursday, March 19, 2009 4:26 PM  
**To:** tstroschein@latah.id.us; jnelson@latah.id.us; jbarrett@latah.id.us  
**Cc:** dewwhiting@hotmail.com  
**Subject:** Letter from Whiting family: Rezone #780

February 20, 2007

Latah County Commissioners  
Tom Stroschein, Jennifer Barrett & Jack Nelson  
Latah County, Idaho  
Moscow, Id 83843

Dear Commissioners:

We are writing this letter in regards to Rezone # 780 with the intention of familiarizing you with our family and our intentions in applying for this project. My wife, Nicole Whiting, and myself, Dewey Whiting, have a twenty percent interest in BGB, LLC. Both individually and as a whole, we believe in the betterment of Latah County and would like to live in a community that supports positive and responsible growth.

Both my wife and I are long time residents of Latah County. Nicole graduated from Moscow Senior High School and Washington State University while I graduated from Troy High School and University of Idaho. Nicole stays at home with our one year old son, Carson, and I have been a local business owner for the past twelve years. We have both enjoyed growing up in the area and now raising our family here as well.

My wife and I live on nine and a half acres just north of the Moscow city limits located at 1047 Schultz Rd. Living in the midst of the Palouse's legendary "rolling hills" we appreciate the ambiance that the Palouse has to offer. We chose to build our home in Latah County and raise our son in the country for the lifestyle it has to offer. This is one of the reason we feel so strongly about the proposal in the Rezone application. We do not want to see high density development on this parcel. This also brings me to the allotted area which will be given to the Palouse Land Trust. This donation will reinforce our goals and allow the Palouse Land Trust to carry out their mission to conserve open space, wildlife habitat, water quality, and scenery of the Palouse.

We have attempted to contact and communicate with the neighbors about this Rezone project and have tried to respect the residents of the adjacent areas. With that being said, we believe the application and proposal we bring forth is a reflection of our visions and considerations to benefit Latah County and its residents as a whole.

3/20/2009

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 140  
Date: March 31, 2009

We thank you for your time and consideration of our application.

Sincerely,

Dewey & Nicole Whiting

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[Great Deals on Dell 15" Laptops - Starting at \\$479](#)

3/20/2009

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**Jarrold Nichols**

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**From:** "Tod Kiblen" <cjkiblen@gmail.com>  
**To:** <JNichols@latahrealty.com>  
**Sent:** Friday, March 20, 2009 12:09 PM  
**Subject:** Rezone

RECEIVED

MAR 20 2009

LATAH COUNTY

March 20th, 2009

Latah County Commissioners  
Latah County Court House  
5th and Van Buren St  
Moscow, ID 83843

Re: Rezone #780

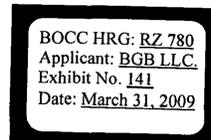
Dear Commissioners:

This letter is regarding the above captioned rezone. Both my wife and I support the rezone for several reasons. We strongly feel that a less dense development, with a large portion designated as green space, will obviously consist of fewer people using less water, fewer houses and buildings will preserve the green space for all types of wildlife and vegetation, and maintaining our rural area as such without compromising it to a large development in the future.

We are unable to attend the meeting and have asked Jarod Nichols to deliver this letter for us. We will be happy to answer any questions upon our return to Moscow after March 26th.

Sincerely,

Charles (Tod) Kiblen  
Laural Kiblen



3/20/2009

RECEIVED

MAR 20 2009

LATAH COUNTY

March 15, 2009

Latah County Commissioners  
Tom Stroschein, Jennifer Barrett, and Jack Nelson  
P.O. Box 8068  
Moscow, ID 83843

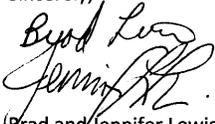
Dear Commissioners,

We are one of five families who own BGB, LLC and are requesting rezone #780. My wife and I have lived in Latah County for over 20 years and intend on calling it home for years to come. We are raising two children and the both attend schools in the Moscow School District. We both graduated from University of Idaho and were fortunate to find employment in Moscow after earning our degrees. Since we plan on living in Latah County for many years, we have given careful thought to the proposed rezone. We feel it is a very unique request, something no other group has done in Latah County.

During the early stages of our project we sought input from some of the neighboring land owners, requesting their feedback and ideas on our rezone. At first we were met with enthusiasm; later we were told they would oppose any project we presented. Although we were disappointed, we continued to maintain our original ideas which included creating a buffer strip for the neighbors as well as limiting the project to just four home sites. After careful thought by the partnership, we decided it would be in the community's best interest to include the Palouse Land Trust (PLT), which we feel gives us the best fit for the goals of our project. We feel with PLT overseeing the remaining 95 acres of farm ground, many of the common goals of the neighbors and our group are achieved. The donation to the PLT will benefit the residents of Latah County as well. The farm proceeds will enable PLT to have the resources to move forward with several of their projects.

The rezone request is in the rural designation of Comprehensive Plan. There are many homes in neighboring subdivisions that surround our project. We appreciate the country setting that has been created in this area, and with four home sites, the country setting will still be maintained. Our group is proposing a very creative project, one that Latah County will be proud of in the future. We hope you will agree and give us the opportunity to put our vision into motion.

Sincerely,



Brad and Jennifer Lewis  
2214 Orchard Ave  
Moscow, ID 83843

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 142  
Date: March 31, 2009

March 16, 2009

RECEIVED  
MAR 20 2009  
LATAH COUNTY

Latah County Commissioners  
Tom Stroschein, Jennifer Barrett, and Jack Nelson  
PO Box 8068  
Moscow, Idaho 83843

Dear Commissioners:

We are writing this letter to you as one of the five families requesting rezone #780. Throughout this process we have strived to design a project that we can be proud of as long-time residents of Latah County. Countless hours have been spent creating a project that we feel meets the goals and policies of the Latah County Comprehensive Plan and rezone criteria. We have carefully considered feedback from interested parties, integrated their thoughts into our proposal, and have attempted to mitigate as many concerns as possible. The letters provided by North Central Health District, the Moscow School District, Latah County Highway District, Idaho Transportation Department, and the Latah County Sheriff's Department and our consultation with the Moscow Rural Fire Department demonstrate our willingness to involve all agencies that are critical to the development of Latah County and provide you with all the information you need to make a decision. Our group has been approached by eight separate interested buyers and two real estate offices asking us to keep them updated on the progress of the rezone and to inform them if the home sites become available in the future. Many people enjoy having their home in this area and others would like the same opportunity.

Our primary goal was to design a project that incorporates low density residential housing with conservation efforts. Our application and CC&Rs reflect the time spent researching relevant topics. Meetings in the past year with the Palouse Land Trust (PLT) have been positive. We feel their mission to conserve the open space, wildlife habitat, water quality, and scenery of the Palouse is a good fit with our goals for this subject property. With the PLT overseeing 95 acres or 70% of this property, we believe it will benefit Latah County, the PLT, and the surrounding neighbors. The farm proceeds the PLT will receive along with our group's yearly donation for the PLT to manage the conservation easement will benefit this organization's current and future projects in Latah County.

Since the 1970's the Moscow Mountain area has evolved into a rural residential setting. It is evident with the multiple subdivisions and over 100 homes that the subject property can no longer be disregarded as a potential site for low density housing. In the Comprehensive Plan there is a clear line drawn between the Rural designation to the north of Lewis Road (that encompasses the subject property and the many homes that surround it) and the Productive designation to the south (that is mainly farm land with very few homes). There are certain rural areas of the county that have grown substantially in population with the Moscow Mountain area being one of them. There are very good

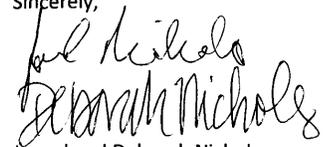
BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 143  
Date: March 31, 2009

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reasons for this. It is close to Moscow, has a desirable rural setting, and is located in the Moscow School District. This area is clearly a rural residential setting and has the characteristics of a Rural Residential zone.

We believe our group has created a project that is positive for Latah County. We hope you feel the same and will give us the opportunity to move forward with our vision.

Sincerely,

Handwritten signatures of Jarrod and Deborah Nichols in cursive script.

Jarrod and Deborah Nichols  
2173 East Sixth Street  
Moscow, Idaho 83843

March 14, 2009

RECEIVED

MAR 25 2009

LATAH COUNTY

Latah County Commissioners  
Tom Stroschein, Jennifer Barrett & Jack Nelson  
Latah County, Idaho  
Moscow, Id 83843

Dear Commissioners:

I am writing this letter in regards to Rezone #780. My wife and I have a twenty percent interest in BGB, LLC and would like to share a few words regarding who we are and the rezone application.

My wife and I are both born and raised in Kendrick, Idaho, graduates of Kendrick High School and University of Idaho. My wife stays at home with our two children and volunteers daily at McDonald Elementary School. I have been a local small businessman in Moscow for the last thirteen years. We both love Latah County and Moscow and enjoy the education system, the small-town atmosphere, and the quality of the people.

In creation of our project, we contacted the Palouse Land Trust to inquire of their interest in accepting a 52 acre gift of land and control of a 43 acre easement. Over the past year, our group has had numerous meetings and discussions with representatives of the Palouse Land Trust regarding our project. Last month we met with the Palouse Land Trust at a regular board meeting to answer any questions and to reiterate our intentions on why we are involving their group. We have been told that the land, farm proceeds, and the annual donation for monitoring the easement will be a significant donation to their organization. Their willingness and enthusiasm to work with us has been greatly appreciated. In addition, their assistance on providing language for the conservation easement has been invaluable. The Land Trust deserves a significant amount of credit in conserving open space, wildlife habitat, water quality and scenery on the Palouse and its surrounding areas. Through this rezone application, we hope to contribute 95 of our 135 acres to their mission.

The land on Moscow Mountain has been in transition for many years. Even though that area is zoned A/F, it has grown to accommodate over 100 homes. Our proposal is requesting four residential home sites on the entire 135 acres, with the remaining being controlled by the Palouse Land Trust. We feel that over the last two years we have received input and feedback from various interested parties and have created a project that will benefit the neighboring land owners, the Palouse Land Trust, and Latah County.

Thank you for your time on reading this letter and for serving as Commissioners.

Sincerely,



Cade and Nicole Konen  
2635 Wildrose Drive  
Moscow, ID 83843

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 144  
Date: March 31, 2009

RECEIVED  
MAR 20 2009  
LATAH COUNTY

**REZONE NARRATIVE WORKSHEET**

**OWNER/APPLICANT: BGB, LLC**  
315 S. Almon  
Moscow, ID 83843

**DESCRIPTION OF PROPOSAL:**

The land is in Sections 16 and 17, Township 40 North, Range 5 West, Boise Meridian, located on Lewis Road, approximately 3.5 miles north of Moscow. It is also identified as Assessor's parcels RP40N05W177220 and RP40N05W165606, as indicated in the attached plat map. The property is designated Rural in the Comprehensive Plan. The subject property is approximately 135 acres in size and lies south of Nearing 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Additions and Tatkinmah Phase I and II and east of Hideaway Hills Addition. It is the goal of the applicant to create a project that blends with the foothills character through design and architectural standards and is sensitive to the surrounding neighbors and environment. The project will take a very conservative approach with low density housing, water storage requirements, underground utilities, ample open space for free range of wildlife, and large buffers between the proposed residences and the surrounding neighbors. The applicant, BGB, LLC, desires to rezone approximately 40 acres of a 135 acre parcel of land from Agriculture/Forest (AF) to Rural Residential (RR) to create 4 new building sites. Fifty-Two acres will remain zoned Agriculture/Forest (AF), and will be given to the Palouse Land Trust at the time of short plat approval. The Palouse Land Trust will receive the 52 acres in fee and will receive the farm proceeds from the property. The 43 acres basically surrounding the rezoned area will be controlled by a conservation easement and CC&Rs such that there can be no further development upon that parcel.

**EXISTING USES OF PROPERTY:**

The land is currently being used for commercial agricultural purposes.

**Section 6.01.02 – REZONE CRITERIA**

The proposed rezone conforms with the goals and policies of the Comprehensive Plan. The rezone, and the low density residential use it permits, will not be detrimental to the surrounding area and instead is highly compatible with the rural residential character and present uses in the area. The rezone will have no substantial costs to the public and therefore will meet the criterion that the rezone provide some public benefit that exceeds any public costs. The rezone will not impose a significant burden to any public services. The rezone is not a spot zone.

## **CONSISTENCY REQUIREMENTS:**

### **1. The rezone is in accordance with the goals and policies of the Comprehensive Plan.**

This proposal is compatible with the Comprehensive Plan's objective to preserve agricultural and forest land uses to ensure the continued viability of an agricultural and forest based economy in rural Latah County. A total of 52 acres will be deeded to the Palouse Land Trust and will remain Agriculture/Forest (AF). The Palouse Land Trust will have the option to continue with conventional agricultural uses. The 52 acres will be restricted from further development. The proposal will remove an additional 43 acres from future development.

This property is designated rural in the Comprehensive Plan. This means that the area is generally composed of less productive agricultural and forest land, and contains low density residential development not directly related to agriculture. This area should be protected from conversion to more concentrated residential, commercial, or industrial development; however, sites within this area may be suitable for consideration for further low density residential development. This area is adjacent to medium density development and is suitable for low density development.

This proposal promotes the Comprehensive Plan's objective of fostering other land uses which will help achieve a solid broad-based and sustainable economic foundation. By creating additional opportunities for buyers seeking rural residential home sites, it will increase the assessed valuation of this parcel for tax base purposes. Given that this proposal encompasses low density residential and that property owners will have private wells, septic systems, and driveways similar to the surrounding residential developments.

The project will take a conservative approach with low density housing (4 home sites on 135 acres), water storage and conservation requirements, underground utilities, ample open space for free range of wildlife, and large buffers between the proposed residences and the surrounding neighbors. The removal of 95 acres from future development will be constituted of 52 acres being donated to the Palouse Land Trust at the time of short plat approval, and 43 acres being restricted from residential development, which will keep 70% of this parcel from ever being developed. Therefore, this proposal is in accordance with the Comprehensive Plan's objective of preserving the rural character of Latah County.

**2. The rezone and the uses it permits, shall not be detrimental to or incompatible with the surrounding area, and the uses permitted in that area:**

The area adjacent to the subject property is currently used for rural residential housing. The parcel lies south of Nearing 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Additions and Tatkinmah Phase I and II and east of Hideaway Hills Addition. There are additional homes that border the property to the north, east, south, and west. The proposal will be very compatible with the rural residential character that is currently present with low density housing (4 home sites on 135 acres) and ample open space. The 95 acres of the 135-acre parcel will be restricted from future residential development. It is the goal of the applicant to create a project that is consistent with the Comprehensive Plan and is compatible with the surrounding area and the uses permitted in that area.

**3. The rezone must provide some public benefit that exceeds any costs imposed upon the public:**

The proposed rezone provides the opportunity for people to live in a rural setting. Once those sites are built upon, they will increase the assessed valuation of this parcel for tax purposes, resulting in an increase in the County's tax base. The costs for improvements will be made at the expense of the owner and the home sites will be served by private wells, septic systems, and driveways.

The 52 acres of additional open space to be deeded to the Palouse Land Trust will be left as Agriculture/Forest (AF) and restricted from future development. The Palouse Land Trust will receive all future farm proceeds, which may be allocated towards projects that are beneficial to Latah County.

There will be minimal, if any costs imposed on the public.

**4. The rezone shall not impose a significant burden to any public services.**

The surrounding properties are already served by fire protection, police, school, health, solid waste, and other services; the addition of 4 home sites will not impose a significant burden on any public services. The home sites will be served by private wells, septic systems, and driveways.

**5. The rezone is not a spot zone.**

The proposed rezone is in close proximity to over 100 rural residential home sites. Although the surrounding properties have not been rezoned to Rural Residential, these residential developments are consistent with properties zoned with a Rural Residential (RR) designation. The adjacent properties to the north and west have been developed as if the area was zoned Rural Residential. The proposed rezone

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will not, if rezoned, differ measurably from the surrounding uses. The proposed rezone will be consistent with the character and use of adjacent properties.

The actual use of a majority of the surrounding land is residential and this application will not result in a use that differs measurably from the surrounding area. This rezone will not give privileges which are not generally extended to properties similarly located in the area. This proposal is not an arbitrary departure from the Comprehensive Plan, other adjacent land uses, and other adjacent eligible parcel sizes. This proposal is for the benefit and welfare of the community as a whole.

The proposed rezone will not result in a spot zone.

## **6. Comprehensive Plan Elements**

### **6.1. Community Design Element**

Goal: To ensure a pattern of planned growth which results in the orderly and attractive development of Latah County.

**6.1.1** Encourage Commercial Development to Locate At or Near Existing Cities

N/A

**6.1.2** Minimize Commercial Strip Development

N/A

**6.1.3** Encourage clustering of commercial and industrial developments so that access points to existing arterials are limited.

N/A

**6.1.4** Ensure that new residential developments on lots less than one acre occur in or near existing cities.

N/A. Lots will be more than one acre, and are in an area that has medium density residential housing.

**6.1.5** Encourage low density residential development to occur in a pattern which minimizes both conflicts with existing land uses and public service costs.

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This is a low density residential proposal, which is adjacent to and in the direct proximity of a number of residential sites. The property is in the Rural designation in the Comprehensive Plan which is defined as generally less productive agricultural land. The property will be served for access by existing County roads, on-site wells, and septic systems. The project will have minimal costs to public services. The 40 acres being rezoned is topographically located where we would generally expect the least productive ground to be situated. The remaining 95 acres will be preserved for and available for agricultural use.

6.1.6 Encourage the designation of open spaces in new developments.

Preserving 95 acres as not being developable in the future, will assure the designation of open spaces in this area.

6.1.7 Encourage landscaping of new developments to protect the existing character of the surrounding area.

Between the xeriscape concepts being applied, and the planting of trees and shrubs within the 50' no build strip around the lots, the landscaping of these 4 lots will be designed to protect the existing character of the surrounding area.

6.1.8 Protect existing land uses from conflicting uses.

Based upon the County requirement to stop farming the land upon rezone, the Rezone would result in 40 acres being taken out of agricultural production. The acres to be taken out of production are on a small ridge top, generally the type of topography that is the least productive acres on a property. The Rezone will not significantly interfere with farming the remaining 95 acres.

6.1.9 Preserve the rural character of Latah County.

This proposal is very consistent with the surrounding properties, and land uses, and the landscaping proposals are consistent with the rural character of that portion of the County.

6.2. Population Element

Goal: To ensure that population growth is accommodated in an orderly pattern.

6.2.1 Limit higher density residential development to areas easily served by infrastructure and public services.

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This is not applicable, as this proposal is low density, residential.

- 6.2.2 Discourage high density development where it would conflict with agriculture, forestry, or existing commercial activity.

This element is not applicable, as this proposal is consistent with the Rural designation in the Comprehensive Plan, and is a low density proposal.

- 6.2.3 Direct growth away from areas with important environmental features which will be negatively impacted by development.

There are no known environmental features in this area, and this type of low density rezone will have a light impact on any environmental issue.

- 6.2.4 Encourage growth to occur in existing cities or areas likely to be annexed into existing cities.

While this is not growth in or next to an existing city, this proposed rezone fits the established pattern of growth in the area and does not conflict with the surrounding land uses. This Rezone is further supported by the parcel's designation in the Comprehensive Plan as Rural.

- 6.2.5 Unproductive agricultural or forest lands may be developed, if these lands are suitable for development and if such development will not otherwise conflict with surrounding uses.

The portion of this parcel being rezoned is of the type generally considered to be the least productive portion of a parcel. The parcel is located in an area generally of less productive property (the Comprehensive Plan designation of Rural). The proposed usages will not conflict with surrounding residential or agricultural uses.

### 6.3 Housing Element

Goal: To ensure an adequate and attractive living environment to meet the needs of residents of different ages, family sizes, lifestyles, and income levels.

- 6.3.1 Encourage the development of a variety of housing types on land suitable for development.

This low density rezone is in the proximity of some medium density residential areas. The productivity of the rezone area,

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and the surrounding usages and designation in the Comprehensive Plan as Rural make this an area suitable for this type of development.

- 6.3.2 Ensure public safety by requiring all residential construction to conform with building codes and public health standards.

All residential construction will be required to conform to current building codes, as well as all public health standard issues will be addressed. Further, residences will be required to conform with green building concepts.

- 6.3.3 Encourage the construction of energy efficient housing.

The location of the lots will allow the owners to utilize passive solar, solar, and ground base geothermal heat sources should they desire, and the requirements of complying with green building concepts will create energy efficient housing.

#### 6.4 Economic Development Element

Goals: 1) To foster agriculture and forestry and their supporting activities; 2) To provide for land uses appropriate to local and regional economic needs; 3) To encourage economic diversification consistent with other goals and policies of this plan; 4) To guide the development of a commercial and industrial sector that will be compatible with the natural environment and existing land uses.

##### Agriculture and Forestry

- 6.4.1 To protect agricultural and forestry lands from scattered development.

This rezone request is utilizing what is generally the least productive farm land on this parcel, and is in an area with a significant number of residential houses. It is not a form of scattered development.

##### Commercial and Industrial

- 6.4.2 Designate a sufficient amount of land suitable for commercial and industrial uses.

N/A

- 6.4.3 Ensure buffering of new commercial and industrial uses from surrounding land uses.

N/A

- 6.4.4 Discourage commercial and industrial development which adversely affects the public's health and safety.

N/A

#### Mining

- 6.4.5 Protect existing residences and businesses from impacts of mining and processing operations.

N/A

- 6.4.6 Require restoration of mining areas so that the land is suitable for other beneficial uses.

N/A

#### 6.5 Public Services, Facilities, and Utilities Element

Goal: To provide an orderly pattern of development which will ensure adequate public facilities and services without excessive costs.

- 6.5.1 Minimize any adverse effects of new public facilities upon residential areas, natural resources, and special areas or sites.

As this is a low density development, there will be no new public facilities developed pursuant to this proposal.

- 6.5.2 Control and direct development activities in a manner that will avoid excessive burdens to fire, police, health, solid waste, and other services or facilities.

The platting process for this rezone will be subject to approval by fire, police, health, solid waste facilities. This low density proposal will not provide an excessive burden to fire, police, health, solid waste, and other services or facilities.

- 6.5.3 Minimize the cost of providing public services by requiring commercial, industrial, and high density residential development to occur in or near existing cities with adequate public services, facilities, and utilities.

This is not applicable, as this is a low density residential proposal.

- 6.5.4 Ensure adequate sewer and water systems at minimal public cost by requiring developers to provide for necessary facilities and establish a continued maintenance program.

These residential sites will be served by private on-site wells and private on-site septic systems. This will have a minimal public cost.

- 6.5.5 Ensure the responsible disposal of solid waste to protect the health and welfare of the public as well as the County's natural resources.

Solid waste pick-up already available in this area and the additional units provided by this rezone will not adversely affect solid waste issues.

This proposed rezone is in the existing pattern of development, and will not add excessive cost to ensure adequate public services and services.

#### 6.6 School Facilities and Student Transportation

Goal: To minimize the adverse effects of new residential development on school facilities and student transportation.

- 6.6.1 Direct new residential development to areas with adequate school facilities and student transportation.

This area is currently served by Moscow School District No. 281. Moscow School District No. 281 has indicated there is no substantial effect on them by this rezone request. There are adequate school facilities and transportation to serve this area.

#### 6.7 Transportation Element

Goal: To promote an efficient and safe transportation system in Latah County.

- 6.7.1 Ensure that access onto public roads will not disrupt traffic flow and that access is adequate for emergency response vehicles.

North Latah Highway District has provided approval for access onto the adjacent public roads.

6.7.2 Limit the number of access points to state and federal highways.

This will create no access points onto State or Federal highways.

6.7.3 Encourage bike and pedestrian routes and mass-transit as transportation options.

The location of this project does not lend itself to bike, pedestrian routes, or mass transit; however, this development will not hinder the development of any of those options.

6.7.4 Ensure the compatibility of airstrips with surrounding land uses and protect existing airstrips from encroachment by development.

There are no airstrips within the surrounding area.

6.7.5 Ensure that buildings are set back a safe distance from public roads.

All setbacks will be addressed in the platting of the property. Due to the locations of these parcels, all buildings will be at least 50' from the edge of any lot, which will be a safe distance from public roads.

6.7.6 Encourage the preservation and growth of rail service within Latah County.

N/A

6.8 Natural Resource Element

Goal: To ensure sound stewardship of the County's natural resources.

6.8.1 Conserve streams, floodplains, wetlands, wooded areas, and other areas of natural significance and, where appropriate, incorporate natural features into planned developments as open space or buffer zones.

This proposed rezone does not adversely affect any streams, flood plains, wetlands, wooded areas or other areas of natural significance. The topography and flora of the area should provide natural open spaces and buffer zones. The designation of 95 acres as having development restrictions on them will keep the area significantly as it is now, and provide protection

of the natural features of the area and provide open spaces and buffer zones.

- 6.8.2 Prohibit development that significantly pollutes or degrades the natural environment.

This proposed rezone will not significantly pollute or degrade the natural environment.

- 6.8.3 Maintain sustainable groundwater resources and prevent degradation of groundwater quality.

This area appears to provide sufficient groundwater for all of the proposed residences. The addition of four new wells in this type of granite formation is not expected to result in any negative effect on any of the surrounding wells or springs. The addition of these wells and septic systems will not degrade the groundwater quality. A review of the local wells log data shows that there are some low volume wells in the area; as well as some high volume wells in the area. The CC&Rs will require cisterns and xeriscape landscaping which will help maintain the groundwater resources and prevent degradation of the groundwater quality.

- 6.8.4 Protect wildlife habitat, particularly critical winter range, from encroachment of incompatible development.

There is no critical winter range for wildlife in this area, and no wildlife habitat specific to any particular species.

#### 6.9 Special Areas Element

Goal: To recognize and preserve special areas and sites of historic, archeological, architectural, geological, biological, or scenic significance.

- 6.9.1 Protect and preserve recognized sites and areas with cultural, scenic, or natural significance.

This rezone has no recognized sites or areas with cultural, scenic, or natural significance.

- 6.9.2 Encourage the preservation and use of historic buildings.

There are no historic buildings in close proximity.

#### 6.10 Hazardous Areas Element

Goal: To protect life and property from natural hazards.

- 6.10.1 Ensure appropriate regulation of development in hazardous areas, such as floodplains and on unstable slopes.

This parcel has no instability in its slopes.

- 6.10.2 Ensure that appropriate measures are used to minimize loss of property due to wildfire in rural developments.

The proposed Covenants, Conditions, and Restrictions to be placed on this property will contain the provision for fire resistant roofing and siding materials and appropriate fire breaks to help protect against additional wildfire issues.

#### 6.11 Recreation Element

Goal: To encourage a variety of recreational opportunities in Latah County.

- 6.11.1 Encourage the development of suitable land for recreational uses.

There will be no dedicated recreational use of the property.

- 6.11.2 Ensure the compatibility of recreational areas with adjoining land uses.

Development will in no way hinder any of the recreational usages made of the adjoining lands.

- 6.11.3 Encourage the dedication of land within new developments for recreational use.

A development of this size does not support specific creation of recreational use sites; however, the future development restrictions leave the land open for whatever recreational uses are developed in the future.

#### 6.12 Land Use Element

This parcel of property is in the area designated as Rural. This area is generally composed of less productive agricultural and forest lands, and contains low density residential development not directly related to agriculture.

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This property is lesser productive property and is very suitable for the lower density residential proposal in this request.

6.13 Implementation Element

This element is not implicated by this proposed rezone.

6.14 Property Rights Element

Goal: To ensure that land use policies, restrictions, conditions and fees do not unconstitutionally violate private property rights, and establish an orderly, consistent review process that enables the County to ensure that any proposed actions will not result in an unconstitutional taking of private property without due process of law.

Approval of the proposed rezone will insure that Latah County's land use policies, restrictions, and conditions, do not unreasonably infringe upon the Applicant's rights to derive greater economic advantage from their land. Given the designation of the surrounding area as Rural in the Comprehensive Plan, and the prevalence of residential uses already, strong justification showing significant conflict with other goals and policies of the Comprehensive Plan should be required to justify denying the Applicants the right to proceed with low density residential development in an affected property.

Conclusion

Based upon the Comprehensive Plan designation of Rural, this proposal conforms to each of the criteria in Section 6.01.02 of the Latah County Zoning Ordinance. This Application for Rezone should be approved.

RECEIVED

MAR 29 2009

LATAH COUNTY

**DRAFT**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

(hereinafter "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by BGB, LLC, an Idaho limited liability company, (hereinafter referred to as "Declarant"), with reference to the following facts:

A. Declarant owns the following described real property lying and situate in Latah

County, Idaho, to-wit:

Parcel 1

Rezoned Lot 1

Parcel 2

Rezoned Lot 2

Parcel 3

Rezoned Lot 3

Parcel 4

Rezoned Lot 4

Parcel 5

43-acre parcel

B. The purpose of this Declaration is to impose upon the Property mutually beneficial restrictions under a general plan of operation for the benefit of all of the Property and the current and future owners thereof. Declarant's intent is not to interfere unnecessarily with any owner's reasonable use and enjoyment of his/her parcel of real Property, but to impose architectural, use and other restrictions on the Property to improve and maintain property values by ensuring an attractive and

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - 1**

BOCC HRG: RZ 780  
Applicant: BGB LLC  
Exhibit No. 145  
Date: March 31, 2009

desirable residential development.

ARTICLE 1

DECLARATION

Declarant hereby declares that there is to be established a general plan for the development, improvements, maintenance and protection of the Property and the Declarant does hereby establish this Declaration of Covenants, Conditions, and Restrictions, hereinafter called "Restrictions," as set forth in Sections 1 through 8 below. The Restrictions shall attach to and shall pass with the real Property described above and shall bind all persons who may at any time hereafter and from time to time own or claim any right, title or interest in and to said Property, whether acquired through voluntary act or through operation of law. Now, therefore, Declarant hereby declare that the Property described above shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The term, "Declarant," wherever used herein, shall refer to the LLC to whom the rights of the Declarant, as set forth in these Restrictions, shall be specifically transferred, who shall hereafter assert or claim any right, title, claim or interest in and to the said Property, or any part and parcel thereof, whether as successors in title or otherwise, and whether voluntary or by operation of law.

The Declarant hereby covenants for said Property these covenants, conditions, restrictions, and agreements, and agree for themselves, their heirs, administrators, and assigns to be bound by each of such covenants, restrictions, reservations, and servitudes jointly, separately and severally. The breach of any of these covenants, conditions, restrictions, and agreements, or any repurchase by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Property, but these covenants, conditions, reservations, and

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restrictions shall be binding upon and effective against any such mortgagee or trustee or owner thereof, whose title thereto or whose title is or was acquired by foreclosure, trustee's sale, or otherwise.

No delay or omission on the part of the Declarant or the owner of other any portion of the Property in exercising any rights, power, or remedy herein provided, in the event of any breach of the covenants, conditions, or restrictions herein contained, shall be construed as a waiver hereof or acquiescence therein, and no right of action may be brought or maintained by anyone whatsoever against the Declarant for or on account of their failure to bring any action on account of any breach of these covenants, conditions, or restrictions.

These covenants, conditions and restrictions, are cumulative, and all remedies provided herein for breach are in addition to any rights and remedies provided by local or state laws, and not in lieu thereof. These covenants, conditions, and restrictions shall attach to and run with said Property.

Invalidation of any provisions, sentence, or paragraph contained in the Restrictions by judgment or court order in no wise affect or invalidate any of the other provisions, but the same shall be and remain in full force and effect. In the event the provisions of these Restrictions are declared void by a court by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against suspension of alienation as set forth in the laws of the State of Idaho.

Approval by a city or county governing board, vested with the responsibility of reviewing, planning and zoning having jurisdiction over this parcel, of an application made by any owner of any portion of the Property which is in conflict with any covenants, conditions, or restrictions of this Declaration shall in no way affect or invalidate this Declaration, but this Declaration shall remain in full force and effect, and subject to enforcement and remedies for violation hereof.

ARTICLE 2

ARCHITECTURAL CONTROL

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS – 3**

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Except for improvements placed or erected on the Property by the Declarant; no building, wall, or other structure shall be commenced or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including but not limited to exterior and type of finish as well as the erection of antennas, aerials, the placement of each Residential Unit or other exterior attachment, until the plans and specification showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee composed of five (5) representatives consisting of the following: Jarrod Nichols, Cade Konen, Brad Lewis, Dewey Whiting, and Craig Knott; all appointed by the Declarant. Said Committee shall have absolute and sole discretion as to approval of any and all plans, which shall not be unreasonably withheld. Furthermore, the Committee shall have the discretion to grant a variance from any of the restrictions contained herein, so long as the character of the neighborhood is not compromised. The Committee shall also have the discretion to mitigate the impact of any variance granted by implementing additional requirements not otherwise stated herein. Should any one of the representatives become unavailable to serve on the committee, another representative shall be assigned in the replacement as approved by consensus of the remaining committee members.

A set of construction plans and specifications shall be submitted in both paper and electronic format to the Committee for approval and shall consist of the following:

- 1) Site Plan including the footprint of any structure on the lot
- 2) Building Elevation
- 3) Complete set of exterior specifications
- 4) Plan for landscaping

Said committee shall respond within ten (10) calendar days after receipt of each

submission of the documents, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of documents, or (ii) the disapproval of such documents, specifying the segments of features of the plans which are objectionable and suggestions, if any, for the curing of such objections.

In the event the committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the plans, the applicant may give the committee written notice of such failure to respond, stating that unless the committee responds within (10) days of receipt of such notice, approval shall be deemed granted. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with any other term(s) of the Declaration.

The committee shall not approve of any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or appearance of any Lot. Provided that nothing herein contained shall be construed to permit interference with the development of the Property by the Declarant in accordance with its general plan of development.

### ARTICLE 3

#### COVENANTS, CONDITIONS AND RESTRICTIONS

The following covenants, conditions and restrictions shall apply to the property:

3.1 A Lot shall be used only for private residential purposes, except as otherwise expressly allowed by this Declaration.

3.2 Specifically, the Lot comprised of the 43-acre parcel surrounding Lots 1-4, shall not be allowed to be utilized for any type of development, including but not limited to residential, commercial, or industrial.

3.3 No structure of a temporary nature, including but not limited to a mobile home, motor home, home, vehicle trailer, pick-up camper, tent, garage, or shed shall be used on any portion

of a Lot as a residence, either temporarily or permanently. No more than one (1) outbuildings may be constructed on a Lot and will be built with similar materials as the primary residence.

3.4 No "junkyard" shall be placed upon any Lot as defined in Idaho Code §40-111, as follows: "Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

3.5 No commercial activity, gainful occupation, profession, trade or other nonresidential use of any kind shall be conducted on a Lot other than telecommuting and the keeping of a home office that does not increase traffic, and is not open to the general public.

3.6 No Lot shall be used in any manner to explore for or remove any hydrocarbons, minerals, gravel, earth, or any other earth substance of any kind.

3.7.1 No Lot shall be subdivided or separated into smaller parcels, and no portion less than all of any Lot shall be conveyed or transferred by the Owner. Notwithstanding the foregoing, nothing herein shall prevent boundary line adjustments between adjoining Lots 1 thru 4 and/or the dedication or conveyance of portions of Lots for public utilities, in which event the remaining portion of such Lots shall, for the purposes of this provision, be treated as the whole Lot.

3.7.2 Lot 5 shall not be available for any type of lot line adjustment or division.

3.8 No Lot may be used as a landfill for the dumping of any type of product. No rubbish trash, garbage, or other waste shall be dumped or remain on any portion of the Lot, and it shall be kept in sanitary containers that are maintained in a clean and sanitary condition and regularly removed from the Lot so as not to accumulate, or in the case of brush or similar items cleared from the property, otherwise disposed of within a reasonable time and in accordance with all applicable laws, rules, and regulations.

3.9 The main floor living area shall be no less than 1500 square feet for a one-level

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home. Any structure of two or more stories shall have no less than 1850 square feet. All structures shall have at least a two car garage.

3.10 All roofs shall be constructed such that the total roof shall have a roof pitch of at least 5:12. The roof shall be made of 30 year architectural quality or better. Only asphalt shingles, tile, or metal will be used in construction. All metal materials must have a light reflectance value of 25% or less.

3.11 Siding and siding trim for all structures shall be made of hardwood, real wood, or hardiplank siding material.

3.12 The construction of all permanent residences, as defined above, shall be substantially completed on-site, and no manufactured homes shall be placed as a permanent residence on any portion of a Lot.

3.13 No structure shall have an exterior color, including roof color, that is unreasonably bright or loud. The substantial majority of all exterior colors of all structures shall be muted in tone, and shall be earth tones or similar colors that compliment or blend with the landscape and do not sharply contrast with the landscape. Trim may be of colors that reasonably compliment the colors referenced in this paragraph, but shall not be unreasonably bright or sharply contrasting with the colors referenced in this paragraph. All colors shall be approved by the architectural committee.

3.14 All residences shall be constructed with a minimum of a twelve-inch (12") eave or roof overhang on all sides.

3.15 All roofing material shall be made of fire resistant materials (Class A,B, or C per ASTM E-108/UL 790 tests).

3.16 No permanent structure shall be constructed within fifty feet (50') of any Lot boundary. In the event one Owner owns more than one Lot, and the Lots are adjacent to each other, this restriction shall apply to the exterior boundary lines of the Lots.

3.17 The owners of Lots 1 thru 4 shall maintain the 50' no building strip set out in paragraph 3.16 above, in such a manner that it contains native trees and shrubs. The area may be maintained in a manner consistent with good silviculture practices, but will be nurtured so as to create natural visual breaks provided by the trees and shrubs. It is expected that each of Lots 1 thru 4 shall have at least 200 trees planted in each lot's 50' no building strip.

3.18 All exterior lights shall be of a wattage no greater than 250. All exterior lights shall be constructed or shielded such that the direct light therefrom does not go beyond the boundaries of the Lot from which they emanate, except for security lights operated by a properly functioning motion sensor set to run no more than five minutes at a time and not exceeding three per lot. In no circumstance shall lighting be allowed to create an unreasonable nuisance to or burden upon neighboring properties.

3.19. Vegetative (natural and landscape plants) fuels, and other combustibles on the lot shall be maintained in a manner which will increase their resistance to ignition and prevent them from sustaining flaming combustion within thirty (30) feet of all structures, in substantial compliance with NFPA 1144, Standard for Reducing Structure Ignition Hazards from Wildlife Fire 2008 Edition. All landscaping must be generally consistent with xeriscape landscaping concepts. A landscape plan will be required and, must be approved by the architectural committee. The landscape plan must be

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designed such that it will limit water and energy demand while preserving and enhancing the natural environment. A significant part of the plan must utilize turf grass and other vegetation that is native or regionally appropriate, limit turf areas, and place plants with similar water needs in similar groups.

3.20 Dogs, cats, and other household pets may be kept on any owner's Lot, so long as they are not bred or maintained for a commercial purpose, and do not exceed four per household. Dogs shall not be allowed to roam off of the Owner's Lot. No livestock or animals normally considered being non-pets or non-household shall be kept on the premises. No animals may be kept in such a way as to create a nuisance or disturb the quiet and peaceful enjoyment of the use of any portion of the Property by another owner. Animal shelter(s) shall only be allowed near the main dwelling structure in unobtrusive locations.

3.21 There shall be no fencing on any lot, with the exception of a small enclosure for a family pet.

3.22 Radio and television antennas not exceeding five (5) feet in height above the roof line of the residence and satellite dishes or disks not exceeding eighteen (18) inches in diameter shall be permitted. Wireless internet apparatus shall be permitted.

3.23 All Owners of Lots must respect the rights of nearby farming operations and the farm operators' continuing, normal agricultural practices. In connection with said farming operations, there occur dusty conditions, customary practices of spraying herbicides, fertilizers and pesticides, as well as extended hour field operations from time to time. Lot Owners, their guests and invitees have no rights to access nearby farm property and must not do so unless expressly permitted.

3.24 The discharge of fireworks and firearms is strictly prohibited on any Lot. The term "firearms" includes "B-B" guns, pellet guns, bows and arrows, crossbows and other firearms of all types regardless of size.

3.25 No outdoor burning, with the exception of an enclosed cooking device, shall be

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allowed.

3.26 The exterior of all buildings must be completed within nine (12) months of excavation, or if no excavation is undertaken, within nine (12) months of the start of substantial construction work. All landscaping must be completed within eighteen (18) months of the start of construction.

3.27 Unregistered and/or disabled motor vehicles may not be parked in view of other residences constructed on any portion of the Property, nor be visible from the road.

3.28 All utilities such as telephone and electrical service lines shall be placed underground, except that electrical service transformers, telephone service peds, well heads, and propane tanks may specifically be placed above ground at reasonable locations.

3.29 All residences shall install a 2,000 gallon domestic water holding tank and shall be in accordance with the water conservation measures. In addition, all residences shall install water-conserving Energy Star rated appliances, water efficient shower heads, sink faucets, and ultra low flow toilets. The National Association of Home Builders (NAHB) Green Home Building Guidelines shall be used in the construction of each primary residence. These guidelines take into consideration lot design, preparation and development, resource efficiency, energy efficiency, water efficiency, and indoor environmental quality.

3.30 No sign of any kind shall be displayed to public view on any Lot, except for an address marker sign or family name designation sign of no more than 100 square inches in size, political signs of temporary duration and one sign of customary size advertising for sale or rent.

3.31 All uses of any portion of the Property shall be in accordance with all applicable zoning and land use laws or ordinances.

3.32 No noxious, illegal, or offensive activities shall be carried on within any Lot; nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or

which may in any way interfere with the quiet enjoyment of each of the other Owners of their respective Lots.

3.33 All Lots (with each Lot owner being referred to as a "Party" herein) shall be subject to the following Common Road Maintenance Agreement:

a. This Common Road Maintenance Agreement shall apply to the following-described road located in the County of Latah, State of Idaho, over which all of the Lots have an easement or an easement over a portion of the easement parcel for ingress, egress and utilities:

INSERT ROAD LEGALS HERE

b. Each party will share in the repairs and maintenance of the road only in that portion of the road that they actually utilize for ingress and egress.

c. The repairs and maintenance of the road to be undertaken and performed under the terms of this Agreement include but are not limited to the following: grading of the road surface; resurfacing with gravel as needed; cleaning of ditches and maintaining adequate road surface drainage; weed control; snow plowing; any other repairs or maintenance necessary to keep the road in good and serviceable condition for all weather use.

d. If any party or any party's invitee causes damage to the road requiring maintenance or repair not normally needed as a result of ordinary day-to-day use of the road (such as during the construction of a structure on their premises), such party shall be solely liable for all expenses of such maintenance or repair.

e. The parties intend that the road be maintained as an all weather gravel road. If any party desires to improve the road by paving or seal coating, that party will first communicate with the other party and if the other party does not agree to share in the cost of such improvements, the party desiring to make the improvements shall have the option of making them

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at their own expense. Such improvements must be made in accordance with generally accepted standards for construction of paved or seal coated roadways. If constructed to such standards, all parties shall share in the costs of maintenance and repairs as set forth above.

ARTICLE 4

DECLARANT RIGHTS

Declarant hereby reserves to itself, its successors and assigns, the right to establish and grant from time to time, prior to the date that is 50 years after the date of recording of this Declaration, underground utility easements, permits or licenses over, across, through and under the portion of any Lot upon which no structure may be constructed and to specify the terms to govern any such easements, permits or licenses established and granted by Declarant. Any such grant shall be established as close to the road or lot edge as possible so as to minimize impact and restriction upon the burdened estate.

ARTICLE 5

GENERAL

5.1. The covenants, conditions, restrictions, easements, rights, and privileges in this Declaration shall run with the Lots and Property and shall be binding on all Owners and on all their heirs, successors, and assigns as of the date it is recorded.

5.2. The invalidity, in whole or part, of any provision in this Declaration shall not affect the remainder of such provision or any other provision and, where possible, shall be replaced by a valid provision that effects as closely as possible the intent of the invalid provision.

5.3. If any of the covenants, conditions, restrictions, easements, rights, or privileges created by this Declaration would otherwise be unlawful and void or voidable for violation of the rule against perpetuities, then such provision shall continue in existence until required by law to terminate.

5.4. In the event of any breach of the covenants, conditions, restrictions, easements,

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rights, or privileges contained in this Declaration, no delay or omission on the part of the Declarant or any Owner in exercising any rights provided in this Declaration shall be construed as a waiver hereof or acquiescence therein.

5.5. All exhibits attached hereto shall constitute and be deemed a part of this Declaration and are fully incorporated herein. The captions of the provisions in this Declaration are for convenience of reference only and shall not affect the construction or interpretations of any term or provision hereof.

5.6. The construction and interpretation of this Declaration shall be governed by the laws of the State of Idaho.

5.7. Declarant and any Person having or acquiring any right, title, or interest in or to any Lot and/or part of the Property and/or other real property that may become subject to this Declaration shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, easements, rights, and privileges imposed by this Declaration, including without limitation the right to prevent a violation or breach of this Declaration by injunction and/or to recover damages for violation or breach thereof. The prevailing party in any such action shall be entitled to recover costs and reasonable attorney's fees.

5.8. By acceptance of a deed, or by acquiring any ownership interest in the Property, each Owner, for itself, its heirs, successors, and assigns binds itself, its heirs, successors and assigns to the covenants, conditions, restrictions, easements, rights, and privileges imposed by this Declaration. By doing so, each Owner acknowledges that this Declaration provides a scheme for the improvement of the Property, and evidences that its interest in the covenants, conditions, restrictions, easements, rights, and privileges shall run with the land and be binding on all future Owners, and their heirs, successors, and assigns. Each Owner fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by Declarant, its successors, heirs and assigns, and all

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future Owners, heirs, successors, and assigns.

5.9. Nothing contained in this Declaration shall be deemed to constitute a dedication for public use or to create any rights in the general public. Nothing contained in this Declaration shall be construed as creating an obligation on any governmental authority having jurisdiction over the Property to maintain, repair, or replace any portion of the Property, any improvements thereon, or the appurtenances thereto.

5.10. Notwithstanding anything to the contrary contained in this Declaration or any marketing or other materials distributed or published by or on behalf of Declarant, ANY AND ALL WARRANTIES WITH RESPECT TO ANY PORTION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW (INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY SPECIFICALLY DISCLAIMED. DECLARANT DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSON OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT, AN OWNER AGREES THAT DECLARANT IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, AND IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY, THE ADJOINING PROPERTY OR THE EXPANSION PROPERTY.

5.11. To the maximum extent permitted by applicable law, Declarant and any agent, employee, or representative of Declarant shall not be liable to any person or entity for any action or failure to act under this Declaration if the action or failure to act was in good faith and without malice.

5.12. Deeds to and instruments affecting any Lot or any other part of the Property may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations and easements, set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and its, his or her heirs, executors, administrators, successors and assigns.

5.13. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, provided that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers as provided herein.

#### ARTICLE 6

#### AMENDMENTS

This Declaration shall not be amended, modified or changed, other than as set out below, and applies to Paragraphs 3.2 and 3.7.2 herein, unless an instrument to that effect is unanimously signed and recorded in the records of Latah County, Idaho, by the owners of Lots 1 thru 4, based upon one vote for each separately-owned parcel of any portion(s) of the Property.

Paragraphs 3.2 and 3.7.2 of this Declaration shall not be amended, modified, or changed, unless an instrument to that effect is unanimously signed and recorded in the records of Latah County, Idaho, by one hundred percent of the owners of Lots 1 thru 5, the owner of the 52-acre parcel being donated to the Palouse Land Trust, and the owners of all parcels adjacent to the 135 acre parcel, as shown by the Latah County Assessor's Office at the time that said instrument is executed.

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ARTICLE 7

DURATION

This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive ten (10) years, unless a Declaration of Termination is recorded meeting the requirements of an amendment to this Declaration as set forth in Article 5.

Invalidation of this Declaration or any portion of this Declaration by order of a court of competent jurisdiction shall not affect any remaining terms or provisions of the Declaration, all of which shall remain in full force and effect.

The restrictions set out in Paragraphs 3.2 and 3.7.2 above shall continue to be effective until such time as there is a 100% approval vote of the owners of Parcels 1 thru 5, the 52 acres being donated to the Palouse Land Trust, and all of the parcels adjacent to the 135 acre parcel, as shown by the Latah County Assessor's Office at the time of the vote to rescind those paragraphs.

ARTICLE 8

ENFORCEMENT

Any person or entity having or acquiring an ownership interest in or to any part of the Property shall have the right to enforce, by any proceedings at law or in equity, all declarations, limitations, covenants, conditions and restrictions now or hereafter imposed by this Declaration or any amendment thereto and in such action, including mediation or arbitration, the prevailing party or parties shall be entitled to recover costs and reasonable attorney fees from the non-prevailing party or parties . Such actions shall include the right to prevent a violation or breach of this

Declaration by restraining order and/or injunction and/or to recover damages for violation or breach thereof.

The terms of Paragraphs 3.2 and 3.7.2 only, shall be enforceable not only by the persons above delineated, but also by the owners of the 52 acres being donated to the Palouse Land Trust, or any of the parcels immediately adjacent to the 135-acre parcel.

IN WITNESS WHEREOF, Declarant has hereunto subscribed its name as of the day and year first written above.

**BGB, LLC, an Idaho limited liability company**

\_\_\_\_\_  
By: Jarrod Nichols, Member

\_\_\_\_\_  
By: Cade Konen, Member

\_\_\_\_\_  
By: Brad Lewis, Member

\_\_\_\_\_  
By: Dewey Whiting, Member

\_\_\_\_\_  
By: Craig Knott, Member

STATE OF IDAHO )  
 ) ss.  
County of Latah )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

(seal)

\_\_\_\_\_  
Notary Public in and for the State  
of Idaho, residing at \_\_\_\_\_, ID.  
My commission expires: \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Latah )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

(seal)

\_\_\_\_\_  
Notary Public in and for the State  
of Idaho, residing at \_\_\_\_\_, ID.  
My commission expires: \_\_\_\_\_

STATE OF IDAHO            )  
  ) ss.  
County of Latah            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me the undersigned a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they 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.

(seal)

\_\_\_\_\_  
Notary Public in and for the  
State of Idaho, residing at  
\_\_\_\_\_, Idaho.

My commission expires: \_\_\_\_\_

STATE OF IDAHO            )  
  ) ss.  
County of Latah            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me the undersigned a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they 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.

(seal)

\_\_\_\_\_  
Notary Public in and for the  
State of Idaho, residing at  
\_\_\_\_\_, Idaho.

My commission expires: \_\_\_\_\_

STATE OF IDAHO            )  
  ) ss.  
County of Latah            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me the undersigned a Notary Public in and for the State of Idaho, personally appeared \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they 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.

(seal)

\_\_\_\_\_  
Notary Public in and for the  
State of Idaho, residing at  
\_\_\_\_\_, Idaho.

My commission expires: \_\_\_\_\_