

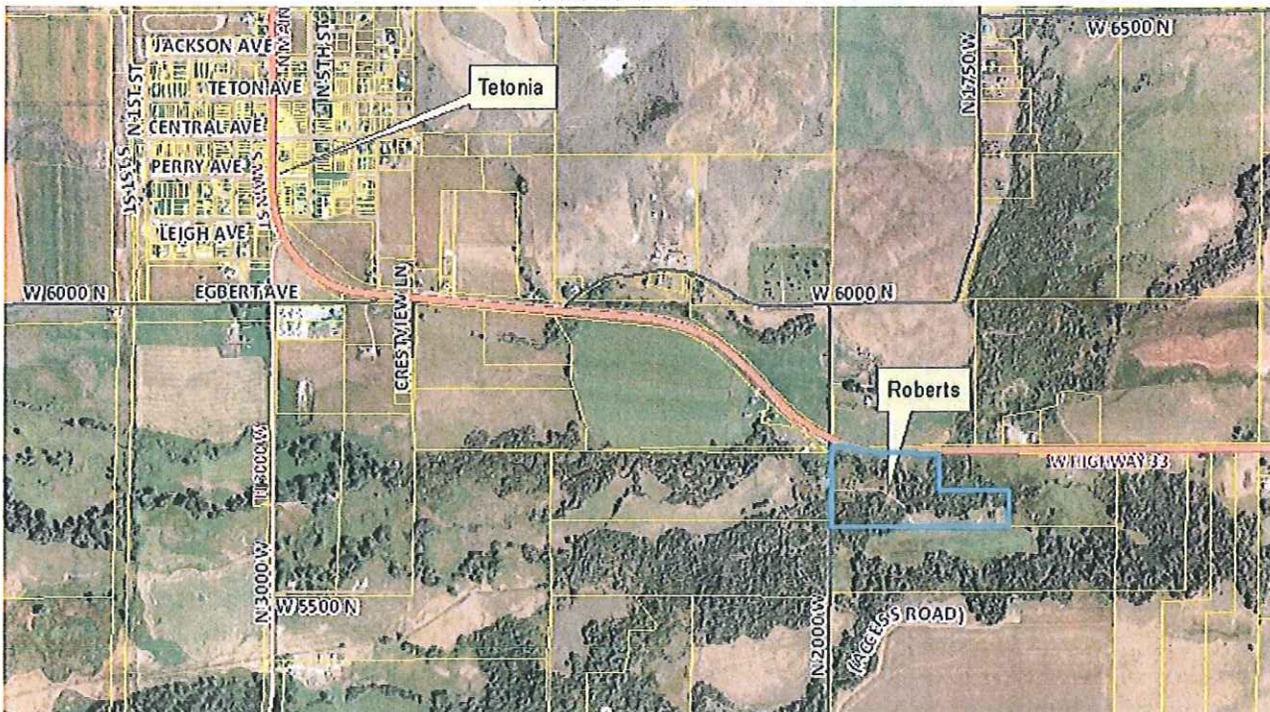


STAFF REPORT
FINAL PLAT
HERITAGE PEAKS
SUBDIVISION

Prepared June 8, for the June 16th, 2011
Board of County Commission Public Hearing

OWNER: D & R Roberts Ltd. **AGENT:** A-W Engineering
REQUEST: Final Plat approval to subdivide a twenty acre parcel into two residential lots that also contains a non-taxed open space tract that is governed by an open space management plan
CODES: Title 9 and Title 8 as amended 09/16/10; Idaho Code Title 67 Chapter 65
LEGAL DESCRIPTION S ½ NW ¼ Section 34, Twp 6N, Range 45E, B.M
LOCATION: Approximately at State Highway 33 and County Road 2000 West; about 1 mile east of Teton

VICINITY MAP



PROPERTY SIZE: 20 acres
ZONING: A/RR- 2.5
LOTS PROPOSED: 2 residential lots and an HOA open space area
OVERLAYS: 1) Wildlife Habitat Overlay, 2) Wetlands & Waterways, 3) Scenic Corridor

PLANNING COMMISSION & STAFF RECOMMENDATIONS:

Having found that all the Planning Commission criteria for approval listed in Title 9-3-2 (C-8) Action/Decision for a Preliminary Plat could be met, the Planning Commission recommended **APPROVAL with conditions**. Planning Staff reviewed the Final Plat application and found that it conformed to the reviewed Preliminary Plat and that the pre-Final Plat conditions of approval were satisfied. Staff recommends **APPROVAL with conditions** of the Heritage Peaks Final Plat (date-stamped May 18, 2011) having determined that it meets the Findings enumerated in subsection 9-3-2 (D-2) of the County Subdivision Ordinance.

BACKGROUND INFORMATION

The Planning & Zoning Commission heard the Preliminary Plat application at their public hearing of March 9th, 2011; the minutes and staff report from that meeting are attached. Considering that this subdivision is two lots on twenty acres and the zoning is AR2.5, the review process has nevertheless been quite involved. The Commission recommended approval with conditions; those conditions are discussed later in this report.



Close up of 20 –acre parcel

Previous to the Preliminary Plat, Patrick Vaile approved the Heritage Peaks Concept Plan on October 30, 2008. That plan depicted five (5) lots. More detailed engineering analysis of the wetlands, two seasonal waterways, and high groundwater necessitated the need for Nutrient Pathogen evaluations. A second round of N-P Study was called on by Idaho DEQ. The plan was eventually reduced to two lots based on the site's hydrologic features.

Prior to this application, the property has been the subject of previous applications and configurations that have depicted many more lots, including a PUD proposal with nine (9) residential lots. The applicant submitted a document "Heritage Peaks Subdivision Time Frame of Events" that recoups the history of the application and the delays and obstacles that have arisen. Due to the hydrologic constraints, the applicant was required to prepare a Nutrient Pathogen evaluation. After the initial N-P report, Idaho DEQ requested more information and Harmony Design provided a Level 1 N-P Study Addendum to address the fate transport of pathogens and phosphorous, among other things. The subdivision application was downsized to two lots following the results of the N-P Study Addendum, which considered the setback limitations for the water features and the drain fields. The need to precisely define the roughly mapped FEMA Flood Plain into more precise elevations was identified later in the process. Title 12- Flood Control of the Teton County; it is a National Flood Insurance Program requirement because the property is larger than 5 acres with has lots in the FEMA flood plain.

CONSISTENCY WITH THE APPLICABLE POLICIES OF 2004-2010 TETON COUNTY COMPREHENSIVE PLAN

The goals and policies of each chapter of the Comprehensive Plan were examined with respect to this specific Heritage Peaks subdivision. AW Engineering and the Planning Staff's March 9th Preliminary Plat staff report to the Commission presented chapter-by chapter analysis as to how this two-lot subdivision is in conformance with the Comp-Plan goals. The Planning Commission likewise determined that this subdivision was in conformance with the 2004 Comp-Plan policies. Rather than copying the Comp-plan analysis to this report, please refer to the Commission's Preliminary Plat staff report attached to this report.

SPECIAL STUDIES, REPORTS & SUBDIVISION DOCUMENTS

Wetland Delineation Report for Roberts Property- Lone Goose Environmental

This 2004 study mapped the jurisdictional wetlands and acknowledges the access road was built across short crossings of wetlands with US Army Corps of Engineers authorization.

Nutrient-Pathogen Evaluation for Heritage Peaks PUD- Rocky Mountain Environmental sent this study to Idaho DEQ and they required much more information about the "fate-transport" modeling of pathogens on this wet property.

Level 1 Nutrient –Pathogen Evaluation Addendum for Heritage Peaks Subdivision- Harmony Design & Engineering submitted their N-P study addendum to DEQ and they stated: "*DEQ feels all previous comments have been addressed and the Water Quality Impact Analysis is acceptable*". They went on to state that "*that there will be no significant impacts to ground water if the recommendations are followed*". They called for a reduction in lots to two and stipulated the use of advanced wastewater treatment units to limit the effluent quality and concentration.

Natural Resources Analysis- Heritage Peaks LL Property- Biota Research & Consulting submitted a report and Table 6 on page 14 summarizes some of the expected impacts to various indigenous species.

- Flood Plain Report-Heritage Peaks Subdivision- The property was originally mapped with roughly estimated floodplains and a few vertical feet of higher elevations islands were found to be within the floodplain; this complicated the analysis. AW Engineering submitted a floodplain study for review to the County's contract Floodplain Administrator, Williams Engineering, Inc. Gerald Williams provided a series of comment letters and requested more information and required that the methodologies conform to the FEMA standards.
- Heritage Peaks Subdivision Development Agreement: The Development Agreement used the County's template. County Engineer Simonet suggested some relatively minor modifications; see page 3 of his October 29, 2010 memo. These suggested changes have been incorporated into the Final Development Agreement that will be recorded with the Final Plat.
- Heritage Peaks Open Space Plan: The plan proposes 8.0 acres within the 20 acres as open space. Weed control is an important element of the management of this area and all areas on the 20 acres. Mr. Roberts will treat the weeds until lots are sold and then it will become the HOA's responsibility.
- Heritage Peaks Subdivision CC& R: These rules have various clauses related to County ordinances. One clause is for "night sky" and limits outdoor lighting to the Teton County ordinance 9-4-12. Another clause references underground utility lines, which are also required. Guest houses are also allowed but restricted in size. House pets are to be restrained or leashed within the subdivision and this reinforces the Biota and IDFG recommendations.

REVIEW OF THE APPLICABLE TETON COUNTY ORDINANCES

A review of the applicable Zoning and Subdivision ordinances and the engineering–design standards was conducted during the Preliminary Plat review by the Planning Staff and by the County Engineer. Louis Simonet’s letter of October 29, 2010 provided comments on the engineering–related sections found in subsections A to J in Section 9-4-1 Design Standards and Section 9-4-2 Improvement Standards. His comments and request for additions or corrections was made a condition of Preliminary Plat approval. The issues have since been addressed by AW Engineering and reviewed by Engineer Mazalewski.

Planning Staff evaluated the Subdivision subsections and agency reviews concerning natural resource analysis, wildlife, open space, CC& R’s and outdoor lighting. Also examined were sections of code related to the Development Agreement, Open Space Management Plan, and an initial review of basic standards in Title 12 Flood Control. From this review, the Preliminary Plat’s Conditions of Approval # 1, 2, and 5 were created and these have now been placed on the Final Plat Master Plan.

AGENCY & DEPARTMENTAL TECHNICAL COMMENTS

Idaho DEQ: Two DEQ comment letters have been sent regarding the Heritage Peaks project. The letter of March 25, 2009 enumerated the short-comings of the initial NP Evaluation and this letter then triggered an NP Evaluation Addendum that was produced by Harmony Design & Engineering. DEQ responded to the Addendum report in a letter of July 16, 2010. It stated: “*DEQ feels that all our previous comments have been addressed and that the Water Quality Impact Analysis is acceptable.*” The DEQ letter did qualify that the reduction in lots to two AND the “*installation of advanced treatment units for septic systems*” was necessary in order to come to their conclusion. **The EIPHD plat note will implement this DEQ requirement.**

Eastern Idaho Public Health: District: A letter of October 28, 2010 from Michael Dronen “*approves the subdivision application and preliminary plat*”. The letter went on to state the general conditions necessary to obtain an individual on-site sewage disposal permit. In follow-up discussions, it was learned that there are particular constraints as to where a system must be located, the type of engineered systems that can be used, and a maximum cap on the amount of gallons per day of effluent that is acceptable to treat- given the restricted areas available to place a drain field. In a comment letter of April 7, 2011, EIPHD (Michael Dronen) stipulated that a document be filed with the Final Plat; it is entitled “*Sanitary Rules and regulations- Heritage Peaks Subdivision*”. **The filing of that document is a condition of final plat approval recommended by staff.**

Teton County Engineer: A comment letter dated October 29th 2010 is attached to this report. County Engineer Simonet provided 7 items of comment and these items were made conditions of approval for the Preliminary Plat. The Final Plat and revised Improvement Plans addressed all those previous comments and recommendations. County Engineer Mazalewski reviewed the previous outstanding engineering issues and his email of June 8, 2011 confirms this.

Floodplain Administrator: Gerald Williams P.E. provided a series of comments about the Heritage Peaks Floodplain Study. The conclusions and findings of the Floodplain Administrator are found in the 17 numbered considerations in the comment letter of March 8, 2011; it is attached to this report. The roughly mapped FEMA floodplain was actually enlarged as a result of the more precise watershed calculations. The Floodplain Administrator recommended that the Master Plan have three (3) plat notations placed on it in order to account for the driveway, erosion, and house site #1 floodplain issues. Those three conditions are on the Master Plan under “*Infrastructure Notes*”.

In a general correspondence sent earlier to Planning Staff, Mr. Williams wrote something worth emphasizing:

“Communities are encouraged to address the flood hazards at the earliest stages of subdivision planning rather than at the actual placement of individual structures. If a community can work with the developer and others when land is being subdivided, many long-term floodplain management benefits can be achieved, particularly if the floodplain is avoided altogether.”

Idaho Department of Fish & Game: Steve Schmidt’s letter dated October 28, 2010 provided nine recommendations. These recommendations have been incorporated into various subdivision documents such as the Covenants, Conditions and Restrictions, and have been made Master Plan Notes for the Final Plat recordation

COMMENTS FROM NOTIFIED NEIGHBORS AND GENERAL PUBLIC

- ✓ Legal ads were made to the Teton Valley News in accordance with code requirements.
- ✓ A development notification was mailed to landowners within 300 feet and to those who own land within subdivisions within 300 feet of the subject property.
- ✓ A development notice was posted onsite in accordance with all code requirements.

There were some neighbor comments received during the Preliminary Plat review. The Planning Commission considered these comments, along with various recommendations from the wildlife, floodplain, and environmental; health professionals. The conditions of approval largely address the neighbor concerns. No written comments or calls have been received to date regarding the Final Plat notifications.

STATUS OF THE RECOMMENDED CONDITIONS OF PRELIMINARY PLAT APPROVAL

1. **Waste water system limitations:** In accordance with provisions in Section 9-3-2 (C-3) N-P Evaluation, and with the Harmony Design & Engineering N-P recommendations, and with the Idaho DEQ letter recommendations dated July 16, 2010, and the County Engineer’s letter of October 29, 2010:

The applicant shall amend the Master Plan and CC&R to provide a disclosure that advanced wastewater treatment units are required and must be professionally engineered, installed, and properly maintained. Said system shall be designed by an Idaho licensed Professional Engineer with consideration to the HD&E’s N-P Study Addendum recommendations beginning on page 18.

- ✓ **The note is found on the “Subdivision Notes” section of the Master Plan.**

2. **Wildlife mitigation:** In order to comply with the Design Review Criteria in Section 9-3-2 (C-2-c-WH-vi), the Biota NRA report’s recommendations, and the IDFG letter of October 28, 2011, the applicant shall amend the Master Plan and CC&R to include the following wildlife impact mitigation measures:

- a) The land owners shall not file a claim against the Idaho Department of Fish & Game for wildlife damage to the property. (IDFG)
- b) The feeding or harassment of wildlife is prohibited. Song bird’s feeders are acceptable except between March and November because bear are active and attracted to them. (IDFG & Biota)
- c) Pets, including dogs and cats, should be restrained or directly attended at all times (IDFG and Biota)
- d) All fences shall be constructed to allow wildlife passage. The Biota fencing standards on page 16 should be used. Buck and rail fences are prohibited and barbed wire fences

shall not be taller than 42 inches, have a smooth wire on top, and constructed to let down in winter. (IDFG & Biota)

- e) Domestic livestock feed shall be stored tightly to exclude deer and elk. (IDFG & Biota)
- f) Utility lines shall be constructed underground. (Teton County, IDFG)
- g) The Roberts Family (and eventually the HOA) shall annually inspect and treat noxious weeds to reduce and eventually eliminate them from the property. (Teton County, IDFG, Biota)
- h) Garbage should be kept in an approved bear-proof container and removed at least once per week. (Teton County, IDFG, Biota)

✓ **The wildlife related notes were placed on the Master Plan.**

3. Floodplain building permit restrictions: The Final Plat application shall not be scheduled for a Board of County Commission Public Hearing until the BFE is accepted by the Floodplain Administrator. Following the establishment of the BFE, any building permit applications shall demonstrate that all foundation requirements and lowest finished floor elevations comply with the International Residential Code and the National Flood Insurance Program standards. An Elevation Certificate will be needed for Lot 1. All building plans are subject to review by the Floodplain Administrator to determine compliance with the NFIP standards.

✓ **BFE and floodplain related notes, per WEI, were placed on the Master Plan.**

4. Engineering Considerations: The Final Plat application shall not be scheduled for a Board of County Commission Public Hearing until the remaining Preliminary Plat engineering items are clearly resolved. County Engineer Louis Simonet's letter of October 29, 2010 identified a list of items and the following items are not addressed in the N-P Study or Flood Plain Study:

- a) The Final Plat shall address all items enumerated in comments a-f under comment # 3- Preliminary Plat.
- b) The Final plat shall be amended to address all items enumerated in comments a-h under comment # 4-Improvement Plans.
- c) Each comment (a-f under # 5) about changes to the Development Agreement shall be added or individually addressed with the Planning Staff.
- d) A note shall be added to the Master Plan saying, "Any construction involving identified wetlands (including transfer lines crossing wetlands) will require prior approval from the US Army Corps of Engineers".

✓ **All the outstanding engineering issues were reviewed and found acceptable to County Engineer Mazalewski.**

5. Lighting: In order to comply with the Purpose statement in Section 8-4-6 Outdoor Lighting, and to reduce undesirable visual impacts in this rural part of the County, no exterior lighting shall be used that does not conform to County standards.

✓ **The Heritage Peaks CC&R subsection 9A requires compliance to the outdoor lighting "Night Skies" ordinance.**

TITLE 9-3-2(C-8) PLANNING COMMISSION'S CRITERIA FOR RECOMEDATIONS OF A PRELIMINARY PLAT

A. *The application is consistent with the Comprehensive Plan.*

- ✓ This staff report discussed the Comprehensive Plan policies and found that, in general, the two-lot subdivision is consistent with the applicable goals enumerated in the plan.

B. *The application complies with all applicable County regulations.*

✓ As conditioned, the application can meet all standards in the County Ordinances.

C. *If the application is for a PUD, it complies with any regulations applicable to PUDs under Chapter 5 of Title 9, including without limitation regulations controlling the types and locations of open space to be included in the development and the required design and size of development clusters. If the application is for a Planned Community PUD, the application adequately mitigates any impacts identified in those additional studies required by Section 9-3-2(C).*

✓ NA.

D. *The application includes trails and pathways as required by Section 9-4-2(B-4) to the maximum extent feasible.*

✓ NA. No future trails are planned or required to be in this area.

E. *The application is consistent with the results of any Nutrient-Pathogen Study required for the property and includes any conditions or changes required to avoid any potential degradation of surface or groundwater identified in that study.*

✓ The Harmony Design N-P Study made recommendations and this application has been conditioned to abide by those recommendations found in the Harmony report.

F. *The application is consistent with the recommendations of any report on the adequacy of the proposed sewage system for the development and includes any recommended mitigation measures identified in that report.*

✓ The Harmony report made recommendations regarding sewage treatment and special conditions of approval were formulated to incorporate the suggested engineering considerations.

G. *The application is consistent with any Traffic Impact Study required for the property and will not result in a decrease in the level of service (for example, from level of service B to C) on any State Highway or a maintained county road and includes any mitigation measures recommended in the Traffic Impact Study.*

✓ There is a net increase in only one unit of development traffic generation. The County Engineer provided input on the project and no special traffic mitigation measures were required.

H. *If the application is for land that is not adjacent to a State Highway or a maintained county road, the applicant will bear the costs of constructing roads to connect the proposed development to at least one State Highway or a maintained county road, and adequate for anticipated traffic and will be constructed to County Road Standards.*

✓ NA

I. *If a Natural Resources Analysis is required the proposed development will avoid all mapped Overlay Areas (except the AV Airport Vicinity Overlay Area), or will minimize any unavoidable impacts to the mapped Overlay Areas to the maximum extent feasible and mitigate any unavoidable impacts. In the case of land located in the WH Overlay Area, the duty to avoid or mitigate impacts on habitat areas shall only apply if the wildlife habitat assessment reveals evidence of an indicator species or the presence of indicator habitat, and shall only apply to portions of the parcel where the evidence or habitat is found.*

✓ Conditions of approval, based on professional biologist's written recommendations, stipulate various mitigation measures to reduce impacts on wildlife.

J. *The required Public Service/Fiscal Analysis shows that all public services provided to the proposed subdivision or PUD have adequate capacity to service it, or if they do not, the applicant has*

committed to mitigation or financing to ensure that those services and facilities will be provided within two (2) years after the first unit in the development is occupied and that any shortfall of tax revenues below the costs of providing the services or facilities will be covered without cost to the County.

✓ There is adequate capacity to serve the two lots with all public utilities and to provide public services such as fire suppression and EMS service. Public roads access the subdivision.

K. *The application is consistent with any capital improvements plan adopted by the County.*

NA.

L. *An adequate institutional structure has been created to ensure that long-term maintenance costs of roads, water, sewer, and drainage systems will be collected from within the development and used to maintain such items. If the chosen structure relies on payments of dues (for example, through a homeowners association) rather than taxes, the county shall be granted the institutional power to enforce payments of those dues in the event the organization fails to do so.*

✓ A HOA will be established to maintain the road and plow portions of the shared roadway.

M. *If land ownership boundaries or natural terrain features make it impossible for the application to meet all of the criteria outlined in Section 9-3-2(C- 3), the application shall meet as many of the criteria as possible.*

✓ The recommended conditions of approval will bring the application into compliance with all applicable regulations and standards.

FINDINGS OF FACT per Section 9-3-2 (D-2-H)

1. *Each exception to otherwise applicable restrictions shall be identified and the reasons supporting the exceptions stated.*

- It has been found that Heritage Peaks Final Plat meets all applicable regulations in the Subdivision and Zoning Ordinances.

2. *The subdivision or PUD is consistent with the public health, safety and welfare of the County and with all applicable provisions of Title 9 and Title 8 of the Teton County code. (amd. 11-14-08)*

- Idaho DEQ, Eastern Idaho Health Department, the County Engineer, Planning Staff, Floodplain Administrator, Idaho Department of Fish And Game, Fire Protection District, and other review entities have reviewed the Heritage Peaks Final Plat and found it to be consistent with the various regulations regarding public health, safety and welfare.

3. *The information required in the application has been verified and is correct.*

- The information required in the application is correct.

4. *The PUD contains the minimum of open space required by this Title or amount of open space agreed to in the plans and plat. (Amd.0605)*

- The subdivision depicts open space that is mapped on the Final Plat and is in accordance with the open space presented on the Preliminary Plat application and plans.

BOARD OF COUNTY COMMISSION ACTION:

A. Recommend APPROVAL WITH CONDITIONS, which are enumerated in this staff report, having determined that all the criteria in Section 9-3-2 (C-8) have been met.

B. Recommend DENIAL of the Final Plat application and provide the reasons and justifications for the denial.

C. CONTINUE consideration of the application to a future Board Public Hearing with reasons given as to the continuation or need for additional information.

RECOMMENDATION:

Action A: A motion that references the required Final Plat findings in the code is appropriate. Here is a suggested motion that could be used to approve the Final Plat

I recommend APPROVAL of the Heritage Peaks Final Plat and Master Plan as described and depicted in the application materials contained in the Board's review packet and with a Final Plat and Master Plan date-stamped May 18, 2011. We have determined that the Final Plat Phase-Findings in Section 9-3-2 (D-2-H) have been satisfactorily met. All the criteria for approval of a Preliminary Plat listed in Title 9-3-2 (C-8) can also be satisfied.

The conditions below should be met at the time of recordation of the final plat.

1. All outstanding invoices from the County Floodplain Administrator and for the WEI Plat review services shall have been paid in full.
2. The Eastern Idaho Public Health District document shall be filed with Heritage Peaks Final Plat.
3. Surety of \$750 for the required subdivision shall be deposited with the County Planning Department. Alternatively, the improvements can be installed and inspected by the County prior to recording.

Attachments:

Preliminary Plat Staff report of March 9, 2011

Planning Commission public hearing minutes of March 9, 2011

- Final Plat Application
- Applicants' Preliminary Plat narrative including special reports:
 - Level 1 Nutrient Pathogen Evaluation Addendum for Heritage Peaks Subdivision July 5, 2010- Harmony Design & Engineering
 - Wetlands Delineation Report for Roberts Property May 12, 2004 Lone Goose Env.
 - Natural Resources Analysis –Heritage Peaks LLC Property. September 1, 2010 Biota Research & Consulting, Inc.
 - Heritage Peaks Floodplain Report –AW Engineering
 - Evaluation Criteria Narrative for Heritage Peaks PUD. AW Engineering
 - Declarations of Covenants, Conditions, & Restrictions for Heritage Peaks Subdivision.
 - Development Agreement date stamp received April 15, 2011
 - Facilities Plan
 - Open Space Management Plan
 - Water rights process initiated with IDWR.
- U.S. Fish & Wildlife Service letter of September 21, 2010
- Idaho DEQ letters of March 25 & July 16, 2010
- IDFG letter of October 28, 2010
- US Army Corp of Engineers email dated March 10, 2011
- Memo from TC Engineer Louis Simonet October 29, 2010
- EIPHD letter and plat note attachment –April 7, 2011
- WEI Floodplain Review Comments (final) of March 8, 2011
- AW Engineering response to County Engineer (Simonet)comments
- Engineer's Final Cost Estimate – April 6, 2011
- Bank of Commerce letter of credit- April 7, 2011
- County Engineer Jay Mazalewski Final Plat comments (final) June 8, 2011