



4975769
Page: 1 of 7
10/06/2003 02:33P
Spokane Co, WA

Return to:

Daniela Erickson
Clerk of the Board
Commissioners' Office

**AGREEMENT TO IMPLEMENT CONTINGENCY PLAN (FOREST HILLS 4TH) RELATIVE TO
REQUEST FOR VARIANCE FROM THE NORTH SPOKANE STORMWATER ORDINANCE
AND RESOLUTION 03-0780 AUTHORIZING EXECUTION OF SAID AGREEMENT**

Reference numbers of related documents:

Resolution No. 03-0780
Agreement to Implement Contingency Plan dated July 1, 2003

Grantor(s): SPOKANE COUNTY, a political subdivision of the State of Washington, 1116 W. Broadway, Spokane, WA 99260; SPOKANE COUNTY UTILITIES/ STORMWATER UTILITY, 1026 W. Broadway, Spokane, WA 99260

Owner(s)/

Company: Howes Development Company, a Washington Company, 5015 W. Howesdale Dr., Spokane, WA 99208

Legal Description: GENERALLY LOCATED ON THE NORTH SIDE OF FIVE MILE PRAIRIE, APPROXIMATELY 150 FEET SOUTH OF TONI RAE DRIVE AT THE TERMINUS OF WILDWOOD CIRCLE, SWEETBRIAR COURT, AND RONALD DRIVE, IN AN AREA KNOWN AS FOREST HILLS, IN THE NORTHEAST 1/3 OF SECTION 13, TOWNSHIP 26 NORTH, RANGE 42 E.W.M., SPOKANE COUNTY, WASHINGTON AND IDENTIFIED AS TAX PARCEL NUMBER 26131.9105, 26131.9106 AND 26131.9102.

Assessor's Property Tax Parcel Account Number(s): 26131.9105
26131.9106
26131.9102

Site Address: SEE LEGAL DESCRIPTION



After Recording, Return To:
DANIELA ERICSSON
CLERK OF THE BOARD

3 0780 AGREEMENT TO IMPLEMENT CONTINGENCY PLAN

This Agreement is made as of the 1ST day of JULY, 2003 by and between SPOKANE COUNTY, a political subdivision of the State of Washington (hereinafter "County"), and Howes Development Company, a Washington Company (hereinafter "Company").

RECITALS

1. The County has adopted an ordinance entitled "Stormwater Control for the North Spokane Stormwater Planning Area" (hereinafter the "Rules").
2. The Rules provide for the preparation of a contingency plan and an agreement to implement the contingency plan in event "ground water monitoring shows that on site and downstream impacts are in fact occurring and/or are likely to occur".
3. The Company has prepared a contingency plan dated March 27, 2003 consisting of a six-page report with appendices (hereinafter referred to as the "Plan"), which depicts and narratively describes the elements of the contingency plan. A summary of the contingency plan is attached hereto as Exhibit 'A' and is incorporated herein by reference.
4. The County and the Company wish to provide an agreement to implement the contingency plan as provided in the Rules.

NOW THEREFORE, the Parties agree as follows:

1. The Company agrees to implement the contingency plan as depicted and described in the Plan, which Plan is incorporated herein by this reference. The Company also agrees to perform the groundwater monitoring prescribed by the Rules. The contingency plan shall be implemented if the County determines that ground water monitoring shows that negative on site and/or down stream impacts are in fact occurring and/or are likely to occur. The County's determination to implement the Contingency plan shall be binding on the Company. The County shall, however, provide to the Company the

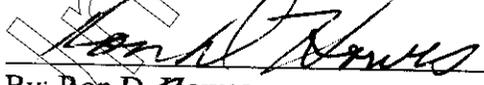


data or evidence indicating that negative on site and down stream impacts are in fact occurring and/or are likely to occur together with reasonable notice to implement the contingency plan. Reasonable notice is intended to be at least thirty (30) days but may be less than thirty (30) days in the case of an emergency.

2. This Agreement shall terminate in accordance with the Rules when adequate alternative facilities, approved by the County Engineer and Director of Utilities, are available to convey and dispose of stormwater and other water discharges from the site.
3. The Company agrees to indemnify, hold harmless and defend the County from any loss, cost or expense, including reasonable attorney's fees, claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of Company or agents in meeting its responsibilities under the terms of this Agreement.
4. The provisions of this Agreement shall run with the Site and shall be binding on subsequent Site owners.
5. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.
6. Miscellaneous Provisions:
 - a. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.
 - b. This Agreement constitutes the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
 - c. In the event that any action is filed in relation to this Agreement the unsuccessful party in the action shall pay to the successful party its attorney fees.

COMPANY

HOWES DEVELOPMENT COMPANY,
A WASHINGTON COMPANY



By: Ron D. Howes

Its: 

STATE OF WASHINGTON)



Exhibit 'A'

3 0780

**Forest Hills 4th Addition
Stormwater Control Ordinance Variance Request
Contingency Plan**

7/1/03

Plat Site Contingency Plan (On-site)

If groundwater levels recorded in the monitoring wells described above rise to a level that threatens down-gradient basements or to a level 2 feet above normal seasonal levels, either the developer (prior to the formal establishment of a Homeowners Association) or the Homeowners Association shall implement the following contingency plan steps.

1. **Lawn watering controls:** develop and implement a self-monitored neighborhood program to reduce the amount of water used to irrigate lawns and landscaped areas.
2. **Hydrogeologic Evaluation:** If lawn watering controls prove to be ineffective at reducing groundwater levels or proves difficult to implement and/or enforce, a report shall be prepared by a licensed geotechnical engineer evaluating the hydrogeologic cause of rising groundwater. The report shall provide recommendations on the number and location of groundwater dewatering wells.
3. **Groundwater dewatering wells:** install submersible groundwater pumps that discharge to the storm sewer as recommended in the hydrogeologic report described above. Depending on the results of the hydrogeologic evaluation, the recommendations of the geotechnical engineer, the estimated effectiveness, pumps may be installed in the following facilities:
 - Existing triple-depth drywells on Tracts 2 and 3.
 - Existing four monitoring wells, if adequately sized to accommodate pumps.
 - Newly constructed conventional drywells located in the middle third of the plat where shallow bedrock is present.
 - Newly installed conventional drilled wells located near the monitoring well sites.
 - Newly installed conventional drilled wells at the following locations:
 - Tract I, Block 1
 - Lot 18, Block 1, within Strawberry Lane right-of-way or proposed drainage easement.
 - Between Lots 30 and 31, Block 2

Disposal Site Contingency Plan (Off-site)

There are two possible situations that could occur at the disposal site requiring implementation of a contingency plan; 1) the ponds do not drain properly due to reduced infiltration capacity of the drywells, and 2) excessive increase in groundwater levels.



Condition #1 - Drywell Failure

In the event the disposal site ponds do not drain or dispose of water within 48 hours after a major storm event, the following steps shall be taken by the developer (if prior to the formal establishment of a Homeowners Association) or the Homeowners Association:

1. **Full-scale drywell tests:** shall be conducted by a qualified geotechnical firm on each drywell located at the bottom of the pond to determine if they are able to infiltrate water at the designed rate. If any of the drywells test show infiltration rates to be less than the design rates, proceed to step 2. If the drywells are functioning properly at the design infiltration rates, go to step 3.
2. **Drywell Maintenance/Replacement:** depending on the results of the drywell tests and the potential cause of reduced infiltration rates, the drywells shall be either cleaned and re-tested or replaced. The geotechnical engineer performing the full-scale tests shall determine if cleaning or replacing is necessary. If maintenance or replacement of the drywells does not mitigate the infiltration problem, go to step 3.
3. **Illicit Connections:** an evaluation of inflows to the disposal site ponds shall be completed to determine if there are any unauthorized discharges, either to the storm sewer or directly overland. Depending on the results of the evaluation, mitigation may be required such as adding storage to intercept inflow or adding drywells to the pond. If there are no illicit connections to the storm sewer or direct discharges to the ponds, go to step 4.
4. **Tanker Truck Disposal:** if infiltration problems continue and there is concern about water levels in the pond, pumping excess water from the ponds to tanker trucks shall be undertaken. The tanker trucks shall dispose of the collected water at a location approved by Spokane County.

Condition #2 – Increased Groundwater Levels

If groundwater levels recorded in the monitoring wells associated with the disposal site rise to a level that threatens down-gradient properties or to a level **20 feet above the basalt elevations**, either the developer (if prior to the formal establishment of a Homeowners Association) or the Homeowners Association shall implement the following contingency plan steps:

1. **Hydrogeologic Evaluation:** a geotechnical engineer, licensed in the State of Washington, shall prepare a report to determine whether the increased groundwater levels are a direct result of infiltration at the disposal site or a reflection of regional hydrologic trends or a combination of both.

If groundwater levels are not a direct result of infiltration at the disposal site, continue monitoring. If increased groundwater levels are a direct result of infiltration at the disposal site or if continued monitoring indicates groundwater levels to rise to a level **30 feet above the basalt elevations**, go to step 2.



7/01/03

2. **Pond Conversion – Plat Site:** Stormwater ponds 1 and 2 shall be altered to prevent the first portion of runoff from entering the storm sewer. This shall be accomplished by plugging the underdrain pipe at the catch basin to convert the swale to an evaporative pond. After such modifications, regular groundwater monitoring at the disposal site should be performed for at least two years to determine the effectiveness of this technique.
3. **Pond Conversion – Disposal Site:** All drywells in Pond 4 will have their rims raised to an elevation 5' above the bottom of the pond to store more runoff volume in the pond. Ponds 3 and 4 shall be re-worked to prevent infiltration by sealing the bottom and sides with bentonite, or something equivalent. The overflow weir at Pond 3 will be raised to store more runoff volume.
4. **Pond Pumping – Plat Site:** If additional infiltration volume reduction is necessary, retained water in ponds 1 and 2 will require pumping into tanker trucks for disposal at an approved off-site facility.
5. **Pond Pumping – Disposal Site:** If additional infiltration volume reduction is necessary, retained water in Ponds 3 and 4 will require pumping into tanker trucks for disposal at an approved off-site facility.