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MAY 20 1994

J. D. WILLIAMS, State Auditor
[Signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

97796

STATE OF IDAHO, by and through)
CECIL D. ANDRUS, Governor; PETE T.)
CENARRUSA, Secretary of State;)
LARRY ECHOHAWK, Attorney General;)
J.D. WILLIAMS, State Auditor; and)
JERRY L. EVANS, Superintendent of)
Public Instruction; as the State)
Board of Land Commissioners; and)
STANLEY F. HAMILTON, Director,)
Department of Lands,)

Plaintiff,

v.

IDAHO FOREST INDUSTRIES, INC., an)
Idaho Corporation, and)

EVANS BROTHERS CONSTRUCTION INC.,)
an Idaho Corporation)

Defendants.

Case No. _____

COMPLAINT

Fee Category: Exempt

The State of Idaho, by and through the State Board of Land
Commissioners and Stanley F. Hamilton, Director, Idaho Department
of Lands (hereinafter collectively referred to as "Board"),

complains and alleges as follows:

NATURE OF THE ACTION

1.1 This is a contract action seeking specific performance to compel the construction of a portion of a bicycle path in the Riverside Village subdivision adjacent to the Boise River, as required pursuant to the terms of a 1980 contract between the Board and the predecessors in interest to the defendants. In the alternative, the Board seeks damages from the defendants for the costs of construction of the bicycle path. The Board also seeks a preliminary and permanent injunction to order the defendants to remove a "No Trespassing" sign from the bicycle path area, and to prohibit the defendants from placing any signs or barricades prohibiting members of the public from using portions of the Riverside Village bicycle path as provided by the 1980 contract.

PARTIES

1.2 The Board is established by art. 9, sec. 7 of the Idaho Constitution, and is responsible for the direction, control and disposition of the public lands of the state. Pursuant to Idaho Code § 58-104 (9), the Board has the power to regulate and to control the use or disposition of lands in the beds of navigable rivers to provide for commercial, navigational, recreational or other public use. The Idaho Department of Lands is the administrative instrumentality of the Board. Idaho Code § 58-119.

1.3 The defendant Idaho Forest Industries, Inc. (hereinafter referred to as "IFI"), is an Idaho corporation.

1.4 The defendant Evans Brothers Construction, Inc. (hereinafter referred to as "Evans Brothers") is an Idaho corporation.

VENUE

1.5 Venue for this action is in Ada County, Idaho because 1) it is the official location of the Board, 2) the contract that is the subject of this dispute was entered into in Ada County, and 3) the property which is the subject matter of the contract is located in Ada County.

FIRST CLAIM FOR RELIEF: SPECIFIC PERFORMANCE

1.6 On or about November 10, 1980 the Board and the Riverside Group through Nile Latta, President, City Corporation, and Jack Hoke (the Riverside Group and Jack Hoke hereinafter referred to as "the developers") executed an "Agreement" (hereinafter referred to as "the Agreement") concerning development of certain state and privately-owned lands adjacent to the Boise River known as "Riverside Village." A true and accurate copy of said agreement is attached hereto as Exhibit A and incorporated herein by reference.

1.7 In the Agreement, the developers agreed to construct certain improvements on state land, including, inter alia, lakes, a bike path, and pedestrian bridges in order to assure a continuous linkage of the greenbelt next to the Boise River for the length of the Riverside Village project. The developers also agreed to provide to the Board a legal description of the most southerly line of the property owned by the developer adjacent to

state land.

1.8 The developers were conveyed certain state lands in partial consideration for the public access and improvements referred to in paragraph 1.7, supra.

1.9 The Boise River is a navigable river.

1.10 The state land pertinent to the Agreement is submerged or formerly submerged bed of the Boise River. Title to said lands are owned by the state of Idaho under the equal footing doctrine and administered by the Board. Submerged lands and formerly submerged lands are subject to the public trust doctrine.

1.11 Sometime after 1985, the defendant IFI acquired all right, title and interest to the "Riverside Village" subdivision development. The Agreement is binding on the defendants as successors in interest to the original parties to the Agreement.

1.12 The defendant Evans Brothers is IFI's development manager for Riverside Village.

1.13 The Board has duly performed all of its obligations under the Agreement.

1.14 The defendants have failed and refused, and still fail and refuse, to perform all of their obligations under the Agreement. Specifically, the defendants have failed and refused to complete construction of the eastern approximately 3700 feet of the bicycle path according to acceptable standards as set forth in the Agreement.

1.15 The defendants have failed and refused to adequately

complete the necessary pedestrian bridges as required by the Agreement. Specifically, the bridge on the west end of the pond is too narrow for greenbelt purposes, and the bridge on the west end of the defendant's property does not have handrails for safety.

1.16 The defendants have not provided to the Board a legal description of the southerly boundary of the property owned by IFI.

1.17 In the Agreement, the Board granted the developers the right to enter upon and use the subject state land for construction of the greenbelt and park improvements. Said right of entry was to be exclusive to the developer to the exclusion of the public so long as the exclusion was deemed by the developer necessary to perform the construction and to protect members of the public from damage or injury on state land.

1.18 All construction on state land was completed by 1985, and all construction on the riverside portion of Riverside Village has been completed.

1.19 Although there is currently no construction activity which could damage or injure members of the public or state land, the defendants have posted the eastern entry to the bicycle path area with a sign that states: "Private Property. No Trespassing. This is not part of the Boise Greenbelt. Violators will be prosecuted."

1.20 The Board has no plain, speedy and adequate legal remedy because:

A. The defendants, and their predecessors in interest have excluded the public from the public bicycle path, and have obtained substantial benefit from exclusive possession of state land bordering the Boise River.

B. A fundamental basis for the Board to execute the Agreement was the express representation by the defendants' predecessors in interest that the bicycle path and bridges would be constructed by the developers, who are in the construction business. In the circumstances of this case, it would be unjust to allow the defendants to avoid their obligations pursuant to the Agreement.

C. A portion of the bicycle path to be constructed is located on land owned by the defendant IFI, and the Board has no authorization to enter such land for construction purposes.

SECOND CLAIM FOR RELIEF: DAMAGES FOR BREACH OF CONTRACT

1.21 The allegations set forth in paragraphs 1.1 through 1.20 of the first claim for relief are incorporated in this claim for relief as if set forth fully herein.

1.22 In the alternative to the first claim for relief, the Board alleges that it has been damaged in an amount that has not yet been determined, but to be proven at time of trial.

THIRD CLAIM FOR RELIEF: INJUNCTIVE RELIEF

1.23 The allegations set forth in paragraphs 1.1 through 1.22 of the first and second claims for relief are incorporated in this claim for relief as if set forth fully herein.

1.24 The Board is entitled to a preliminary and permanent

injunction, ordering the defendants to remove the "No Trespassing" sign placed at the eastern entrance to the bike path where it enters Riverside Village, and to refrain from any action that will in any way limit or restrict public access to the bike path and the state land adjacent to Riverside Village.

WHEREFORE, the Board prays:

RELIEF SOUGHT BY THE BOARD UNDER THE FIRST CLAIM FOR RELIEF

1. That the defendants be ordered to do the following acts in accordance with the terms of the contract:

A. Reconstruct approximately 3700 feet of bike path from the eastern boundary of the Riverside Village subdivision to the west according to construction standards approved by the Board in 1981;

B. Construct additional improvements to two pedestrian bridges along the bicycle path so that the western bridge has side rails for safety, and the bridge west of the pond is as wide as the bike path.

C. Provide to the Board a legal description of the most southerly boundary line of the property owned by IFI in Riverside Village.

2. That pursuant to I.R.C.P. Rules 54(d) and (e) and Idaho Code § 12-121, the Board be awarded its costs and attorneys fees in preparing and litigating this action in the amount of three thousand dollars (\$3,000) in the event of a default judgment, or, in the event of a summary judgment or trial, in a further sum to be proven.

3. For such other relief as the court deems just and proper.

RELIEF SOUGHT BY THE BOARD UNDER THE SECOND CLAIM FOR RELIEF

1. For the costs to replace the easterly portion of bike path according to approved construction specifications, for the cost of making the necessary improvement in the two substandard bridges on the bike path, for the cost of a survey of the legal description of the most southerly boundary line of the property owned by IFI in Riverside Village, and for the reasonable value of the exclusive possession of state-owned riverfront property adjacent to Riverside Village since 1985, in an amount to be determined at trial.

2. That pursuant to I.R.C.P. Rules 54(d) and (e) and Idaho Code § 12-121, the Board be awarded its costs and attorneys fees in preparing and litigating this action in the amount of three thousand dollars (\$3,000) in the event of a default judgment, or, in the event of a summary judgment or trial, in a further sum to be proven.

3. For such other relief as the court deems just and proper.

RELIEF SOUGHT BY THE BOARD UNDER THE THIRD CLAIM FOR RELIEF

1. For a preliminary mandatory injunction ordering the defendants to remove the sign at the easterly entrance to the bike path at Riverside Village.

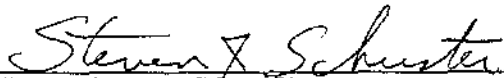
2. For a permanent injunction ordering the defendants to refrain from any action that will in any way limit or restrict

public access to the bike path and state land adjacent to Riverside Village.

3. That pursuant to I.R.C.P. Rules 54(d) and (e) and Idaho Code § 12-121, the Board be awarded its costs and attorneys fees in preparing and litigating this action in the amount of three thousand dollars (\$3,000) in the event of a default judgment, or, in the event of a summary judgment or trial, in a further sum to be proven.

4. For such other relief as the court deems just and proper.

DATED this 26th day of May, 1994.



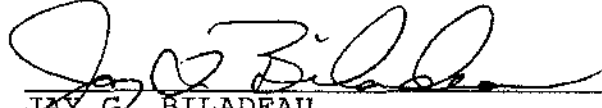
STEVEN J. SCHUSTER
Deputy Attorney General
Idaho Department of Lands

VERIFICATION

STATE OF IDAHO)
) SS.
COUNTY OF ADA)

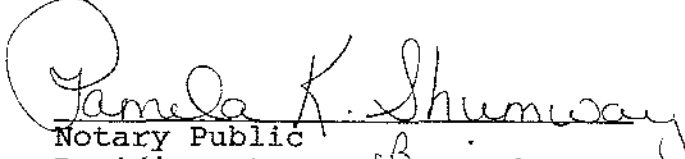
Jay G. Biladeau, Assistant Director for Lands, Range and Minerals, Idaho Department of Lands, being first duly sworn upon, deposes and says:

That he has read the foregoing COMPLAINT of the state of Idaho by and through the state Board of Land Commissioners, that he knows the contents thereof, and that the same are true to the best of his knowledge.



JAY G. BILADEAU
Assistant Director
Idaho Department of Lands

SUBSCRIBED and sworn to before me this 26th day of March, 1994.



Notary Public
Residing at: Boise
Commission Expires: 3-26-96