

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

ARKANSAS STATE CLAIMS COMMISSION
MAY 19 2009

RECEIVED

Mr. Bruce Burrow, Claimant

Do Not Write in These Spaces
Claim No. 09-0857-CC
Date Filed May 19, 2009
Amount of Claim \$ 20,000.00
Fund AGFC

State of Arkansas, Respondent
AR Game & Fish Commission

COMPLAINT Refund of Expenses

Bruce Burrow, the above named Claimant, of 1001 Merrywood, Jonesboro
AR, 72401 (870) 932-1400 County of Craighead represented by N/A

State agency involved: Arkansas Game and Fish Commission Amount sought: \$20,000.00

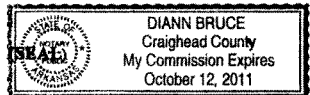
Month, day, year and place of incident or service: July 20, 2003
Explanation: Bruce Burrow, as a principal of MBC Holdings, LLC of Jonesboro, AR, executed a payment of \$20,000.00 to the Arkansas Game and Fish Commission to ensure the "Dark Hollow site" was included in a review of possible locations for placement of the AGFC Central Arkansas Nature Center.

This payment was required, according to AGFC Director Scott Henderson, who stated the AGFC lacked necessary funding to provide evaluations of sites not already contracted for survey. According to Director Henderson, survey of a site was a requirement prior to any consideration by the Commission of that site for possible placement of the Central Arkansas Nature Center. At a later date, the Commission selected a site without requiring that site to undergo the same prerequisite survey as outlined by Director Henderson. In fact, this newly selected site was eventually determined to be unsuitable for construction of the Central Arkansas Nature Center. On behalf of MBC Holdings, LLC, Bruce Burrow requests refund of the \$20,000.00 required for a survey in view of the fact that Director Henderson was in error and sites could be and actually were selected without the prerequisite survey. Supporting documentation is attached.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? YES; when? Feb. 8, 2008; to whom? AGFC Director Scott Henderson and Deputy Director Good; and that the following action was taken thereon: Request for payment was declined. Letter advising the claim is denied is attached. and that \$0.00 was paid thereon: (2) Has any third person or corporation an interest in this claim? Yes; if so, state name and address MBC Holdings, Inc. MBC Plaza, Suite 5000, Jonesboro, AR 72401 and that the nature thereof is as follows: The actual contract is with MBC Holdings, LLC. Bruce Burrow is a principal. and was acquired on July 20, 2003, in the following manner: Bruce Burrow obligated MBC Holdings, LLC as a principal of this entity.

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true. BRUCE BURROW (Print Claimant/Representative Name) [Signature] (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Jonesboro Arkansas



on this 12th day of May 2009 (Date) Diann Bruce (Notary Public)

SF1- R7/99

My Commission Expires: October 12 2011 (Month) (Day) (Year)

MAY 19 2009

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**Timeline for AGFC / Dark Hollow-Shoppes at North Hills Issue**

**February 3, 2003** – AGFC and Cromwell Architects Engineers, Inc. execute a contract to evaluate the sites (North Little Rock River Front and Little Rock Otter Creek) to determine the best suited for the location of the Central Arkansas Nature Center. Total amount of the contract was \$56,000 less reimbursable expenses, projected at \$8,000. Final contract approval was for \$64,000. Proposed project scope includes "...site evaluations/analysis of the two sites to determine which best meets the criteria required for the facility."

**June 18, 2003** – Bruce Burrow, on behalf of MBC Holdings, LLC. (Belz Burrow Development Group, LLC) writes a letter to Director Henderson providing information regarding the Dark Hollow site and offering the site as a possible location for the Central Arkansas Nature Center.

- (Note: A copy of this letter is attached and identified by **Exhibit A** in the top right hand corner.)

**July 1, 2003** – Daniel Fowler of Cromwell Architects Engineers forwards an email to Director Henderson proposing an agreement to add Dark Hollow to the reviews of the North Little Rock site and the Otter Creek Site "...for the Lump Sum of \$22,000, not including reimbursable expenses..."

- (Note: A copy of this email is attached and identified by **Exhibit B** in the top right hand corner)

**July 9, 2003** – AGFC Director Henderson receives a letter from Cromwell Architects Engineers proposing to add the Dark Hollow site to the already contracted review (North Little Rock Riverfront and Otter Creek) for a Lump Sum amount of \$22,000 not including reimbursable expenses estimated not to exceed \$2,500.

- (Note: A copy of this letter is attached and identified by **Exhibit C** in the top right hand corner)

**July 11, 2003 9:00 AM** – Bruce Burrow, Ron Fuller (Fuller Enterprises), Troy Looney (CEI Engineers), and Kelly Boyd (Arkansas Governor's Office) meet with Director Scott Henderson (AGFC) at the Peabody Hotel in Little Rock. The meeting was to provide an overview of the Shoppes at North Hills and offer that site as a possible location for the Central Arkansas Nature Center. During the meeting, Director Henderson stated a survey of all competing sites was required by the commission and no additional funds were available for the contract, which was already issued. Henderson advised the amount would be approximately \$20,000. Bruce Burrow stated that Belz Burrow (MBC Holdings, LLC) would underwrite the cost related to adding the Dark Hollow site to the list already included in the required survey.

**July 14, 2003** – Neil Curry of AGFC emails Daniel Fowler and advises that they are awaiting confirmation from Bruce Burrow that he will "...be providing \$20,000 toward this proposal and AGFC will cover an additional \$2,500." He also notes this is \$2,000 less than Cromwell's original offer.

- (Note: A copy of this email is attached and identified by **Exhibit D** in the top right hand corner)

**July 17, 2003** – Director Henderson writes a letter to Bruce Burrow confirming that the AGFC will add the Dark Hollow site in North Little Rock "to our current contract pending written confirmation that your firm has agreed to provide \$20,000."

- (Note: A copy of this email is attached and identified by **Exhibit E** in the top right hand corner)

**July 31, 2003** – Director Henderson signs a contract amendment with Cromwell Architects Engineers, Inc. for \$22,500 to include the Dark Hollow site in the study for possible locations of the Central Arkansas Nature Center. The new, amended contract amount is \$76,000 compensation plus \$10,500 reimbursable expenses for a total of \$86,500.

- (Note: A copy of this contract was obtained via a FOIA request to the AGFC and may be provided upon request of the Arkansas Claims Commission.)

**November 13, 2003** – The Arkansas Game and Fish Commission issues invoice number 111303A to MBC Holdings, LLC. (Belz Burrow Development Group, LLC) in the amount of \$20,000.00 for the purposes of "Site Study of Dark Hollow in North Little Rock."

- (Note: A copy of this invoice is attached and identified by **Exhibit F** in the top right hand corner.)

**January 22, 2004** – Director Henderson prepares a written request to include an item on the agenda of the next meeting of the AGFC. The request states "This item is a request for acceptance of the staff recommendation to place the Central Arkansas Nature Center at the city of North Little Rock Arkansas River front location between the I-30 bridge and east to the pedestrian bridge that will link to Little Rock."

- (Note: A copy of this request is attached and identified by **Exhibit G** in the top right hand corner. A copy of the minute order is attached and identified by **Exhibit H**.)

**January 22, 2004** – AGFC Commissioner Sheffield Nelson makes public during a regular meeting of the Arkansas Game and Fish Commission, a letter from Little Rock City Director Dean Kumpuris offering city property, site preparation, and utility moves for an area located behind the Museum of Discovery.

**February 4, 2004** – MBC Holdings, LLC. (Belz Burrow Development Group, LLC.) issues check number 001025 on Liberty Bank in the amount of \$20,000.00 to the Arkansas Game and Fish Commission.

**February 9, 2004** – Liberty Bank check number 001025 in the amount of \$20,000.00 clears after deposit by the Arkansas Game and Fish Commission.

**February 13, 2004** – Arkansas Times publishes an article by Leslie Newell Peacock entitled *Fishing for a Nature Center*. According to the article, the offer from Little Rock occurred less than 60 days prior to the AGFC voting to accept the offer, "Dean Kumpuris wouldn't take credit for coming up with the idea to lure the nature center back to Little Rock, though Commissioner Nelson said it first came up when Kumpuris approached him with the idea at a Christmas party. "I said, 'Dean, we're in the 11th hour,' "Nelson said, but that certainly he was interested in what Little Rock had to offer and to give him a call after Christmas."

Additional issues with the site included 404 permit problems and adjusting the construction plan of the Nature Center to allow for a 54 inch sewer pipe which traversed the proposed site. Quoting again from the article, "...there's another hurdle: Getting the U.S. Army Corps of Engineers to sign off on a Sec. 404 permit to fill the wetland and passing a Corps' Hydrologic Engineering Center Study to show no ill affect on the floodplain.

There was some confusion as to the status of the permit. Kumpuris thought it was in hand. But according to Corps spokesman P.J. Spaul, the city, which had applied for a permit a couple of years back when a private concern was looking at the property, had withdrawn the application and had not filed another. City Manager Moore said Tuesday he'd authorized "staff to move forward" with the application two weeks ago."

- (Note: A copy of this news article is attached and identified by **Exhibit I** in the upper right hand corner.)

**February 16, 2004** – Bruce Burrow, on behalf of MBC Holdings, LLC. (Belz Burrow Development Group, LLC) writes a letter to Director Henderson requesting refund of \$20,000. According to the Burrow letter, "Since the new site was selected without such a requirement (comparative study), we believe in a sense of fair play, our fee of \$20,000 should be refunded to us." A hand-written note is scrawled across the top of the letter, which was a copy of the letter in the hands of Director Henderson (obtained by FOIA) which states "Hold til decision is final. But no real mood to refund money."

- (Note: A copy of this letter is attached and identified by **Exhibit J** in the upper right hand corner.)

**February 26, 2004** – Director Henderson writes a letter to Bruce Burrow denying the selection of the Little Rock riverfront site is final. However, he does include the caveat "...I do believe this site will become final." He adds the following, "The Commission has decided to table your request for reimbursement until a final decision is reached."

- (Note: A copy of this letter is attached and identified by **Exhibit K** in the upper right hand corner.)

**February 15, 2005** – Deputy Director David Goad writes a letter to Bryan Day, Director of Parks and Recreation for Little Rock, outlining 8 items outstanding which must be resolved prior to any agreement by the AGFC to accept the "...buildable" site located in the River Market Area between the Amphitheatre and the I-30 Bridge..."

- (Note: A copy of this letter is attached and identified by **Exhibit L** in the upper right hand corner)

**February 8, 2008 9:00 AM** -- Kelly Boyd meets with Director Henderson and Deputy Director David Goad of AGFC at AGFC HQ. During that meeting, 4 letters are delivered along with a face-to-face discussion of the circumstances and request from the standpoint of MBC Holdings, LLC. The four letters include 1) cover letter requesting refund of \$20,000, 2) FOIA letter requesting any and all information related to the study of Dark Hollow and 2 additional sites, 3) FOIA letter requesting any and all information related to a study of any "interim selected sites" for the nature center, and 4) FOIA letter requesting any and all information related to a study of any "final selected site" for the nature center.

- (Note: A copy of the cover letter requesting refund of the \$20,000.00 is attached and identified by **Exhibit M** in the upper right hand corner. Copies of the FOIA letters are available to the Arkansas Claims Commission upon request.)

**February 8, 2008 11:15 AM** – Kelly Boyd receives phone call from AGFC Paralegal Wendy Higgins requesting an extension of the delivery time for FOIA materials from 3 working days until Friday, February 15, 2008. Agreement upon this extension was reached.

**February 15, 2008** – Kelly Boyd drives to Little Rock to await notification that the package of FOIA material is ready for pick-up. No notification is provided and at 3:45 PM, Boyd contacts Higgins by phone requesting an update. Higgins advises “the information is gathered up and on her desk awaiting a review with her supervisor.” Boyd asks if the information will be ready by close of business and Higgins advises that it would be better to pick the materials up on the next business day, which is Tuesday since Monday is a state/federal holiday.

**February 19, 2008** – Kelly Boyd contacts AGFC at approximately 1:00 PM and is advised that Wendy Higgins is out of the office. He is advised that the information is “on her desk and awaiting review with her supervisor.”

**February 20, 2008** – Kelly Boyd is advised the materials are ready for pick-up. Kelly Boyd drives to Little Rock and takes possession of materials at AGFC HQ at approximately 1:30 PM.

**February 27, 2008** – Director Henderson forwards letter to Kelly Boyd/MBC Holdings, LLC declining repayment of \$20,000 because “Belz Burrow and the Commission arrived at an agreement based upon fair terms and I believe no further action on the part of the Commission is necessary.”

- (Note: A copy of this letter is attached and identified by **Exhibit N** in the upper right hand corner.

**Conclusion:**

- MBC Holdings, LLC. (Belz Burrow Development Group, LLC) wished to have its “Dark Hollow site” considered as a location for the proposed Arkansas Game and Fish Commission’s Central Arkansas Nature Center. In a face-to-face meeting with AGFC Director Scott Henderson, Bruce Burrow of MBC Holdings, LLC. was informed that 1) before any site would be considered a survey would have to be performed, 2) the cost of this survey would be in the range of \$20,000.00, and 3) the AGFC had no funds available to add in the “Dark Hollow site” to the survey already under contract.
- On behalf of MBC Holdings, LLC. (Belz Burrow Development Group, LLC) Bruce Burrow offered to underwrite the cost of performing a survey of the “Dark Hollow site” and an amount of \$20,000.00 was agreed upon. This agreement is confirmed through a variety of emails, letters, an invoice, and a cancelled check in the amount of \$20,000.00.
- Late in the process, the city of Little Rock, Arkansas made an offer to the Arkansas Game and Fish Commission for an alternate site, one that was not required to undergo the same prerequisite survey as the other sites under review. In fact, this site proved to be unacceptable and the city provided an alternate site, one which was accepted in April of 2004. This finally approved site was not required to undergo the prerequisite survey as was required of the first three sites.
- Bruce Burrow requested the AGFC refund his payment based upon the fact that a survey was not required for a site to be considered, in conflict with the statements to him by Director Scott Henderson. In addition, the only entity to provide its own funding for a site survey was MBC Holdings, LLC. All other site surveys were either 1) funded by the AGFC, or 2) not actually required as in the two Little Rock sites. In response to this request by Bruce Burrow, AGFC Director Scott Henderson replied that “the Commission had decided to table your request for reimbursement until a final decision is reached.” The final decision comment was in reference to an earlier sentence in the same letter which stated, “You are mistaken in your understanding that the Little Rock riverfront site is final.”
- Bruce Burrow elected to wait until the Central Arkansas Nature Center was complete prior to making another request to ensure that any site selected was “final” and a “final decision” was reached.
- Another request via letter and direct meeting was made on February 8, 2008 via MBC Holdings, LLC. representative Kelly Boyd. As a result of the letter and meeting requesting reimbursement of the \$20,000.00, Director Scott Henderson replied by letter on February 27, 2008 again

declining to make the reimbursement. As he did in the February 26, 2004 letter to Bruce Burrow, Director Henderson went to considerable length to explain why the site selected by the AGFC was picked, but never addressed the issue of why Bruce Burrow was required to make a payment of \$20,000.00 for a survey Director Henderson stipulated was required of all sites, when the final site selected faced no such requirement.

- MBC Holdings, LLC. (Belz Burrow Development, LLC) while disappointed that their site was not ultimately selected for the nature center, is aware that the Arkansas Game and Fish Commission has an ultimate responsibility to the citizens of Arkansas when making decisions. They are also aware that this nature center will benefit all of Central Arkansas, regardless of whether their site was selected or not. Simply put, there is no argument with the site selected. However, there is considerable disagreement with being required to be the only site out of five to be required to pay \$20,000.00 for a survey. Of the five sites under consideration, two surveys were paid for by the Arkansas Game and Fish Commission, two sites did not even face the stated requirement of undergoing a survey before selection, and only the site offered by MBC Holdings, LLC., was required to pay for their site to be surveyed.
- In all correspondence between the Arkansas Game and Fish Commission and either Bruce Burrow or Kelly Boyd, there has never been a dispute they were indeed informed that a survey was required before the Commission accept a site as a possible location for the nature center. At the same time, the evidence is clear that the final site was not required to remit such a payment.

Therefore, MBC Holdings, LLC. (Belz Burrow Development, LLC) requests the reimbursement of the \$20,000.00 payment made to the Arkansas Game and Fish Commission for a site survey required by the Arkansas Game and Fish Commission, but which ultimately turned out not to be required.

# Exhibit A

**BELZ • BURROW**

Development Group

Bruce Burrow  
Principal

2400 East Highland Drive  
Regions Bank Building • Suite 5000  
P.O. Box 19009  
Jonesboro, Arkansas 72402  
(870) 932-1400  
(870) 932-2314 Fax

June 18, 2003

Mr. Scott Henderson  
Director  
Arkansas Game & Fish Commission  
#2 Natural Resources Drive  
Little Rock, Arkansas 72205

ARKANSAS STATE  
CLAIMS COMMISSION  
MAY 19 2009  
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RE: Proposed Nature Center Location  
The Shoppes at North Hills  
North Little Rock, Arkansas

Dear Director Henderson:

I wanted to take this opportunity to introduce our firm to you. In that regard, I have taken the liberty to enclose herewith information on our newest development, The Shoppes at North Hills in North Little Rock, Arkansas.


As you may be aware, we were successful in securing Bass Pro as an anchor for our development. In addition to retail, we are creating a "themed" Mitigation Wetland Park just east of the Bass Pro site across North Hills Blvd. A review of our web site ([www.theshoppesatnorthhills.com](http://www.theshoppesatnorthhills.com)) will provide you with an overview of the proposed park development, reflecting the uniqueness of this mitigation land development.

We believe that our site offers Game & Fish the ultimate Nature Center location in the Little Rock metro area. Our firm is willing to provide the funding for a comparative study relative to the viability of our location as compared to other sites that may be under construction. We have the support of the City of North Little Rock to have the Nature Center located at the North Hills project.

In the next few days, I would like to set up a meeting with you to explore this opportunity. Thank you for your attention to this matter.

Best personal regards,

BELZ • BURROW

  
Bruce Burrow  
Partner

BBB:hb

Enclosure

## Exhibit B

ARKANSAS STATE  
CLAIMS COMMISSION  
MAY 19 2009  
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**From:** dkfowler@cromwell.com [mailto:dkfowler@cromwell.com]  
**Sent:** Tuesday, July 01, 2003 8:14 AM  
**To:** Henderson, R. Scott  
**Cc:** cjpenix@cromwell.com; aeskew@studioedr.com; Curry, James N.; 2003-059@cromwell.com; trcannon@cromwell.com  
**Subject:** AGFC Nature Center- Site Study Amendment

Scott-

Per Neil's request from last week, we have prepared a proposal to amend our contract to include the study of the Dark Hollow site in addition to the Otter Creek and Downtown sites. A more detailed hard copy will follow shortly. For your purposes of conversation with the developer I have included a general description of the terms.

We propose to perform a study of the Dark Hollow site, building on the basic services and work plan from the original proposal, for the Lump Sum of \$22,000, not including reimbursable expenses- travel, printing, etc. We can perform the additional study and prepare for a final presentation for the October Commission meeting cycle, which we understand is the target for making a decision. The additional study will require at least one on-site working session for site investigation and design charette session with the working group in Little Rock. If you choose, a pre-final presentation can be made to you and your working group prior to the final presentation to the Commission.

We will be prepared to begin site data collection at your approval with the on-site investigation occurring mid-August.

Please contact me or Charley if you have any questions or comments.

As always, we look forward to continuing our efforts to help AGFC realize its goals for the Central Arkansas Nature Center.

Daniel K. Fowler, AIA  
Vice President  
Cromwell Architects Engineers  
101 South Spring Street  
Little Rock, Arkansas 72201  
voice: 501-372-2900  
fax: 501-372-0482  
dkfowler@cromwell.com  
www.cromwell.com

2/13/2008

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**Exhibit C**

July 8, 2003

Mr. Scott Henderson  
Director  
Arkansas Game and Fish Commission  
#2 Natural Resources Drive  
Little Rock, Arkansas 72205

RE: Central Arkansas Nature Center  
Site Evaluation Study  
A/E Project #2003-004

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JUL 09 2003  
Directors Office

Scott:

Per your request, I am pleased to offer a proposal to amend the original scope of work for this study to include the Dark Hollow site in North Little Rock. As we understand it, the site will be similar to Otter Creek in that it will be adjacent to a proposed Bass Pro Shop outdoor center.

We propose to perform a study of the Dark Hollow site, building on the basic services and work plan from the original proposal, for the Lump Sum of \$22,000, not including reimbursable expenses- travel, printing, etc. We estimate reimbursables for the additional work will be approximately \$2,500.

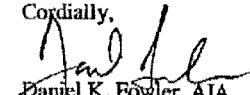
We will perform the study of the additional site and prepare for a final presentation of the entire evaluation (3 sites) for the October Commission meeting cycle, which we understand is the target for making a decision. The additional study will require at least one on-site working session for site investigation and design charette session with the working group in Little Rock. If you choose, a pre-final presentation can be made to you and your working group prior to the final presentation to the Commission.

We will be prepared to begin site data collection at your approval with the on-site investigation occurring mid-August.

Please contact me or Charley if you have any questions or comments. If the proposal is acceptable, we will begin the process to amend our current contract with AGFC at your direction.

As always, we look forward to continuing our efforts to help AGFC realize its goals for the Central Arkansas Nature Center.

Cordially,



Daniel K. Fowler, AIA  
Vice President

cc: Charley Penix  
Allen Eskew

DF/df

**Exhibit D**

ARKANSAS STATE  
CLAIMS COMMISSION  
MAY 19 2009  
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Higgins, Wendy K.

**From:** Curry, James N.  
**Sent:** Monday, July 14, 2003 4:06 PM  
**To:** 'dkfowler@cromwell.com'  
**Cc:** Goad, David C.; Henderson, R. Scott  
**Subject:** RE: July Commission Meeting

Dan, Scott is currently in Washington D.C. He was able to review your proposal and he has discussed it with Mr Bruce Burrows who is involved with the Dark Hollow site. We are waiting confirmation from him that they will be providing \$20,000 toward this proposal and AGFC will cover an additional \$2,500. This is \$2,000 below your original proposal. After we talked by phone this afternoon I will wait to hear from your shop if these proposed costs would keep the project moving forward, and I will also let you know when we have confirmation so that we can then look at setting a future meeting. (We discussed the first part of August since Allen Eskew and I will not be available the last part of July.) David Goad has also discussed this directly with Scott and I'll try to get clarification on any other billing questions after we get confirmation documents from Mr. Burrows. At this time I do not have any information showing that the Nature Center has been put back on the agenda for this month. If I find out otherwise I will let you know. Please add David Goad (listed in this cc [dgoad@agfc.state.ar.us](mailto:dgoad@agfc.state.ar.us)) to any further project emails. Any questions just let me know. Neil

-----Original Message-----

**From:** [dkfowler@cromwell.com](mailto:dkfowler@cromwell.com) [<mailto:dkfowler@cromwell.com>]  
**Sent:** Monday, July 14, 2003 1:30 PM  
**To:** Henderson, R. Scott  
**Cc:** Curry, James N.; Gunter, James D.; [cjpenix@cromwell.com](mailto:cjpenix@cromwell.com); [aeskew@studioedr.com](mailto:aeskew@studioedr.com); 2003-004@cromwell.com  
**Subject:** July Commission Meeting

Scott-

I wanted to check in to make sure you had received the proposal for the Dark Hollow site and to see if you had any questions regarding that proposal. In addition, I read an article today in a North Little Rock publication that indicated that the Nature Center location would be on the agenda for the next Commission meeting. Per your instruction via Neil Curry, we have cancelled plans for the presentation of the two original sites pending the addition of the new site and extension of the deadline to October.

Please advise

Daniel K. Fowler, AIA  
Vice President  
Cromwell Architects Engineers  
101 South Spring Street  
Little Rock, Arkansas 72201  
voice: 501-372-2900  
fax: 501-372-0482  
[dkfowler@cromwell.com](mailto:dkfowler@cromwell.com)  
[www.cromwell.com](http://www.cromwell.com)

2/14/2008

10

# Exhibit E

## Arkansas Game & Fish Commission 2 Natural Resources Drive Little Rock, Arkansas 72205

Dr. Lester Sizes  
Chairman  
Hope

Forest Wood  
Vice-Chairman  
Flippin

Mike Frazier  
England

Sheffield Nelson  
Little Rock



Scott Henderson  
Director

Senly Varnel  
St. Paul

Freddie Black  
Lake Village

Brett Morgan  
Little Rock

Dr. Dan Davis (ex-officio)  
University of Arkansas  
Fayetteville

July 17, 2003

Mr. Bruce Burrow  
Belz Burrow Development Group  
P.O. Box 19009  
Jonesboro, AR 72402

ARKANSAS STATE  
CLAIMS COMMISSION  
MAY 19 2009  
RECEIVED

Dear Mr. Burrow:

This is to follow up on our project funding conversation for a site study of Dark Hollow in North Little Rock as a potential location for the Central Arkansas Game and Fish Nature Center. The Arkansas Game and Fish Commission will add this site to our current contract pending written confirmation that your firm has agreed to provide \$20,000. You may confirm this agreement by signing and returning this letter in the enclosed franked envelope or by any other method you deem appropriate. If there are further questions that you may have about the project please feel free to contact me.

Whatever the outcome of the study and the decision of our Commission, the Nature Center will be an excellent component to showcase wildlife conservation to Arkansans and visitors to our great state.

Your interest in the project shows that you share in this vision.

Sincerely,

Scott Henderson  
Director,

Bruce Burrow  
Belz Burrow Development Group

Phone: 501-221-0200 Fax: 501-273-6446 Website: www.agfc.com

The mission of the Arkansas Game and Fish Commission is to wisely manage all the fish and wildlife resources of Arkansas while providing maximum enjoyment for the people.

Arkansas Game & Fish Commission  
2 Natural Resources Drive Little Rock, Arkansas 72205

**Exhibit F**

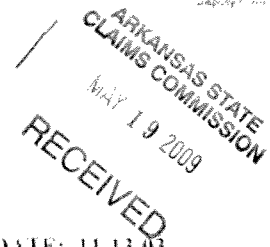
David Good  
Deputy Director



Scott Henselmann  
Director

LuAnn Henselmann  
Deputy Director

**INVOICE**



INVOICE # 111303A

DATE: 11-13-03

**BILL TO:** Belz Burrow Development Group  
Attn: Bruce Burrow  
PO Box 19009  
Jonesboro, AR 72402

Central Arkansas Game & Fish Nature Center

Site Study of Dark Hollow in North Little Rock

Per Attached Agreement \$20,000.00

**TOTAL:** \$20,000.00

Please Remit To: Arkansas Game & Fish Commission  
Attn: Ray Sebren  
2 Natural Resources Drive  
Little Rock, AR 72205

(VANSIS Vendor #9990080)

# Exhibit G

Agenda Item \_\_\_\_\_

Arkansas Game and Fish Commission  
Administration Division  
January 22, 2004

Subject: Central Arkansas Nature Center Site Selection

Submitted by: Scott Henderson  
Director

This item is a request for acceptance of the staff recommendation to place the Central Arkansas Nature Center at the city of North Little Rock Arkansas River front location between the I-30 bridge and east to the pedestrian bridge that will link to Little Rock.

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APR 19 2009  
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Scott Henderson, Director

# Exhibit H

ITEM NO. \_\_\_\_\_

ARKANSAS GAME AND FISH COMMISSION  
Little Rock, Arkansas

ARKANSAS STATE  
CLAIMS COMMISSION  
MAY 19 2009  
RECEIVED

MINUTE ORDER NO: \_\_\_\_\_ SUBJECT: Nature Center Location  
DATE PASSED: \_\_\_\_\_  
PAGE 1 of 1 PAGES LOCATION: North Little Rock/ AR Riverfront  
Pulaski, County

WHEREAS, Site locations of the Central AR Nature Center have been evaluated; and  
WHEREAS, the staff recommends the site for the Center be located in the city of North Little Rock along the Arkansas River Front east of I-30 bridge. This site can be developed as a center if the following actions occur: The property the city of North Little Rock provides extends to the end of the pedestrian bridge and adequate parking area is also provided west toward the I-30 bridge. That a portion of the planned pedestrian bridge linking the site to Little Rock is offered as additional interpretive exhibit space for the center. That the site is approved for a building location as per U.S. Army Corps of Engineers permit requirements for river floodway.

NOW, THEREFORE, BE IT ORDERED, THAT THE ARKANSAS GAME AND FISH COMMISSION MEETING IN REGULAR SESSION ON THE 22<sup>ND</sup> DAY OF JANUARY, 2004 ENDORSES THE STAFF RECOMMENDATION FOR CONSTRUCTION OF THE CENTRAL ARKANSAS NATURE CENTER AT THE NORTH LITTLE ROCK/ ARKANSAS RIVERFRONT LOCATION.

	<u>STAFF APPROVAL</u>	<u>COMMISSION APPROVAL</u>
Submitted by:	Scott Henderson	Chairman
Division:	Administration	Commissioner
Approved:	Director	Vice Chairman
Approved:	Legal	Commissioner
Approved:	Fiscal	Commissioner

2/2/2004

# Exhibit I

## Fishing for a nature center

### A fourth bid for the trophy, from Little Rock

Leslie Newsell Pearson  
Updated: 2/13/2004

REPRINT E-MAIL DELICIOUS DIGG THIS

It's quite a fish story, the landing of the \$5 million Central Arkansas Nature Center, an enterprise that's proved as hard to hold onto as a big, wiggling, slippery largemouth bass.

It now appears the state Game and Fish Commission project, one of four around Arkansas, will rise on 4.5 acres - much of which is currently under water - on Little Rock's riverfront, from the Riverfest Amphitheatre east to about 70 feet past the Interstate 30 bridge. It's possible, too, that the nature center will encompass or include on its grounds the Pro Bass Hall of Fame.

The nature center has slipped three previous hooks - the first on 3 acres of North Little Rock's riverfront, the second at Otter Creek and the third at Dark Hollow (though only the North Little Rock site was official). What's making it jump is the chance to be near bigger fish.

First it was the Clinton Presidential Center, when the Commission announced it had chosen the North Little Rock site next to the Rock Island pedestrian bridge. The Commission went so far as to take bids from architects.

But Bass Pro Shops proved to be a stronger lure. For a time, it looked like developer Tommy Hodges and the huge sports supply store had a deal on lakeside land at Otter Creek just off Interstate 30. As those waters churned, the Commission announced that it would likely drop the North Little Rock site as being too expensive to build on; now its eye, unofficially at least, was on Otter Creek.

But before Otter Creek could set the hook, Bass Pro bailed out, prompted, perhaps, by the state legislature's refusal to call it an entertainment center and give the company a tax rebate.

Now, Belz-Burrow developers have got Bass Pro on their line for the Shoppes at North Hills, to be built just south of Interstate 40 in North Little Rock. The fickle Game and Fish switched sweethearts, and began discussions with Belz-Burrow. A third interest - the Pro Bass Hall of Fame, a nonprofit that wants to build a fishing and Hall of Fame attraction - came on board last October, meeting in Gov. Mike Huckabee's office with Game and Fish representatives and Bruce Burrow. For a while, things looked settled: Dark Hollow it would be, with multiple draws to those who love to use and observe nature.

But at the Jan. 22 Commission meeting, Commissioner Sheffield Nelson made public a letter to him from Little Rock City Director Dean Kumpuris offering the city property, and offering to pay for site preparation and utility relocation as well.

The site's location on the Arkansas River near the River Market, next to a planned promenade behind the Museum of Discovery and a biking/hiking trail to the Clinton presidential library, made it irresistible to the Commission.

"Everybody is enamored of it," Nelson said this week. He said the North Little Rock site - where plans to mitigate the floodplain it must fill have produced negative comments to the Corps of Engineers - was proving to be an expensive choice. "If in fact we'd chosen to build there, it would have been half a million just to prepare the site," Nelson said.

After a trip to the Little Rock property and a visit by Mayor Jim Dailey to the January meeting, the Commission unanimously decided to authorize the agency to work with Little Rock on the details, initially on a 3-acre parcel. (Another 1.5 acres, taking in land on the east side of the interstate, was just recently added.) The Commission will take final action after the proposal has been put in contractual form and voted on by the city Board of Directors.

Commission Chairman Dr. Lester Sitzes acknowledged there had been "a lot of twists and turns in this story," and that the site selection had more to do with contiguous attractions and money than any natural features. (At the Little Rock location, the center's outdoor area, for fishing, could be in backwater under the I-30 bridge.)

Sitzes, of Hope, recalled the 2000 Commission meeting at which representatives from Little Rock, North Little Rock and the state Parks and Recreation Department presented their proposals for various sites. City Parks Director Bryan Day, pushing Fourche Creek, and Pinnacle State Park director Randy Frazier, pushing Pinnacle, showed up with Powerpoint presentations and packets of prepared materials. Day, Sitzes recalled, gave "the best presentation. It was real impressive."

But in the end, the Commission chose North Little Rock, swayed, ostensibly, by commerce chief Joe Smith's posterboard with pictures of surrounding attractions glued to it. Sitzes chalked up the decision to "sensitivity" to the excitement surrounding the Clinton library.

Little Rock's offer in January - exactly three years after the Commission voted to put the center on North Little Rock's shore - was "out of the blue," Sitzes said, and "messes us all up a little bit."

Sitzes visited the Little Rock property with the rest of the Commission in January. "It's a big hole of water," he said. "I saw beaver swimming around in it."

But it's going to take more than beaver dams to fill in the hole. "It's going to take some work," Sitzes said. "It boggles my mind to see what they're going to have to do with that site to make it doable."

Still, Sitzes can see locating there - and he can see the Pro Bass Hall of Fame there, too.

The Bass Hall of Fame board at one point hoped to raise \$25 million to build on Lake Catherine. A consultant, however, suggested that they might be better able to raise money for the Hall if they were to locate in Little Rock, with its built-in audience.

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Scott Henderson, Game and Fish director, said that "under the right circumstances," the agency would like to do some sort of joint venture with the Hall of Fame. One scenario he mentioned was that if the Hall of Fame would build an aquarium - they are hugely expensive and eat up the nature center budgets - the Commission could put its money "into other things" for the nature center.

Hall of Fame director Bill Fletcher laughed - sort of - when he heard that. "Frankly, we were thinking of the reverse, that they would build the aquarium."

Pro Bass (not to be confused with Bass Pro) took a \$78,000 cut in a \$300,000 state appropriation in 2001, when decreased revenues required across-the-board spending cuts. During its consultant's poll of potential donors in Arkansas and nationally, the nonprofit learned that Gov. Mike Huckabee wanted the Hall of Fame to consider building in Little Rock. "We called the governor and said, 'If you feel like this is what we need to be talking about, we're interested,'" Fletcher said, and agreed to meet with Burrow and Game and Fish representatives in the governor's office. "Since then, we've been negotiating with all three of them, but hoping Game and Fish would decide where they were going to put [the nature center]."

"Really, we were kind of hoping all three of us might be together ... where one plus one plus one equals more than three," Fletcher said, quoting Bass Pro Shops owner Johnny Morris.

"We don't know where we fit in" on the Little Rock site "until we start looking at what they hope to build," Fletcher said. Considering the size of the site, Fletcher said the Hall would probably have to be located within the Nature Center itself. The advantages: The Nature Center could address the black bass biology and the Hall of Fame could honor great fishermen, and the Hall of Fame wouldn't have to raise \$25 million. "My gut feel is that yeah, we are probably talking significantly less money partnering with Game and Fish. ... Especially at that site. There's only so much money you can pour into that little hole."

Now, the Hall of Fame board has to decide whether to back out of its offer to Belz-Burrow on the Shoppes at North Hills site. There is some board support for that decision from members who worry that proximity to Bass Pro Shops might look to some like an endorsement of their gear, including boats. Competing boat manufacturers include Ranger Boats' Forrest Wood, who is on the state Game and Fish Commission.

Unfortunately, it's got to make a decision on the North Little Rock land before the Commission meets in February, when it's expected to decide on the Little Rock site.

Dean Kumpuris wouldn't take credit for coming up with the idea to lure the nature center back to Little Rock, though Commissioner Nelson said it first came up when Kumpuris approached him with the idea at a Christmas party. "I said, 'Dean, we're in the 11th hour,'" Nelson said, but that certainly he was interested in what Little Rock had to offer and to give him a call after Christmas. Nelson said that interest was sharpened after he met with Mayor Dailey, City Manager Bruce Moore and Parks Director Bryan Day and heard what they would offer.

Kumpuris is clearly excited about the idea. With the inclusion of the nature center, there would be "seamless" development along the riverfront that would bring in "critical mass" for attractions, including the considerable draw of the Clinton library and a planned Heifer Project International exhibit on its headquarters grounds. He envisions the Museum of Discovery partnering with the nature center, and busloads of children taking advantage of both.

Kumpuris cited the Imax theater at the Aerospace Education Center as an example of a tourist attraction that suffers from being too far from the action. If it were downtown instead of on isolated property near the airport, its attendance would blossom.

"I know this is late in the game," Kumpuris said. But, "we want to build up as many entities, be as symbiotic, as we can."

While Kumpuris' letter and Mayor Dailey have promised the city would pick up the cost of site preparation - which would mostly entail filling the backwater slough that makes up a large portion of the acreage - neither could say exactly what it would cost. Kumpuris said he "guessed" it could be \$100,000 to \$150,000. City Manager Moore said he thought it could be done for as little as \$50,000 to \$75,000.

But money aside, there's another hurdle: Getting the U.S. Army Corps of Engineers to sign off on a Sec. 404 permit to fill the wetland and passing a Corps' Hydrologic Engineering Center Study to show no ill affect on the floodplain.

There was some confusion as to the status of the permit. Kumpuris thought it was in hand. But according to Corps spokesman P.J. Spaul, the city, which had applied for a permit a couple of years back when a private concern was looking at the property, had withdrawn the application and had not filed another. City Manager Moore said Tuesday he'd authorized "staff to move forward" with the application two weeks ago.

The Corps had a couple of concerns with the first permit application: That light from the development, a hotel, would blind tow boat captains seeking the channel as they navigated under the I-30 bridge; and that the impact of filling in the slough on the floodplain needed to be addressed.

Those challenges might not apply to the new project, Spaul said. Parks' Day said he was confident the city would get the necessary permits, since the Corps had earlier approved larger projects along the riverfront.

There's also the matter of a 54-inch sanitary sewer line that runs through the site. The nature center will have to be built high enough over the line to allow for repairs and maintenance.

Noise from I-30 traffic above? Commissioner Nelson said the commission visited the site at 5 p.m., during rush hour traffic, and "it wasn't a problem at all."

Noise from the amphitheater? Their operating hours aren't the same, Nelson said.

Parking? While the location won't allow for a large parking lot beside it, the city will provide space for employees, and, as Kumpuris and others were quick to point out, visitors can also park at the city's new deck now under construction two blocks from the site.



# Exhibit J

**BELZ BURROW**

Development Group

Bruce Burrow  
Principal

VIA FEDERAL EXPRESS  
(501) 223-6300

February 16, 2004

Mr. Scott Henderson, Director  
Arkansas Game and Fish Commission  
2 Natural Resources Drive  
Little Rock, AR 72205

*Hold til decision is final. But no real mood to refund money.*

2400 East Highland Drive  
Regions Bank Building - Suite 5000  
P.O. Box 19009  
Jonesboro, Arkansas 72402  
(870) 932-1400  
(870) 932-2314 Fax

RECEIVED  
RECEIVED  
FEB 17 2004  
Directors Office  
MAY 19 2004  
ARKANSAS STATE  
CLAIMS COMMISSION

RE: Arkansas Game & Fish  
Nature Center Site Selection  
Central Arkansas Facility

Dear Mr. Henderson

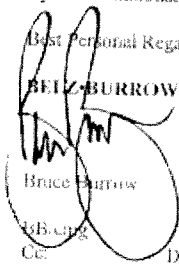
We have of course been following the recent events depicted in press relative to the Game & Fish Nature Center site selection process. It is our understanding that a determination has now been made and the site selected will be the Riverfront site in Little Rock.

While it is true we are disappointed our North Hills Development was not selected, we realize full well that Game & Fish has to consider many factors in making a site selection decision. We congratulate you on finding a property that you feel best suites the need of the Game & Fish for your Central Arkansas Nature Center. As you know, we own The Peabody Hotel just a few blocks from the chosen location.

I believe we all approached the process in a straightforward fashion and in that regard, we were told that in order to have our site considered, we would have to fund a comparative site analysis study in the amount of \$20,000.00, which, of course, we did. Since the new site was selected without such requirement, we believe in a sense of fair play, our fee of \$20,000.00 should be refunded to us.

Finally, in the event you are unable to move forward with the Riverfront site for any reason, we would be pleased to try to accommodate you in the future at North Hills should the need arise

Best Personal Regards,

  
B.BURROW  
Bruce Burrow  
BB:eng  
Cc: Dr. Lester Sitzes

# Exhibit K

## Arkansas Game & Fish Commission 2 Natural Resources Drive Little Rock, Arkansas 72205

Lester Sitzes  
Chairman  
Hope

Forrest Wood  
Vice Chairman  
Hippin

Mike Frenzo  
England

Sheffield Nease  
Little Rock



Scott Henderson  
Director

Sunny Varnes  
St. Paul

Freddie Black  
Lake Village

Drott Morgan  
Little Rock

Dr. Glyn Davis (ex officio)  
University of Arkansas  
Fayetteville

February 26, 2004

Mr. Bruce Burrow  
Belz Burrow  
PO Box 190009  
Jonesboro, AR 72402

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Dear Mr. Burrow:

I have discussed with our commissioners your letter requesting that we refund payment for the site analysis at your North Hills Development. You are mistaken in your understanding that the Little Rock riverfront site is final. The city of Little Rock has made an initial offer that would include resolution of all infrastructure and permitting issues before we ever moved on site for construction. Once all this has been discussed and reduced to contractual agreement and finally approved by both the Commission and the City, I do believe this site will become final. It is this offer of a ready-to-build site with no wetland, permitting, or infrastructure problems that we think sets this site apart and will allow us to make a decision without further analysis as compared to the other three sites. The Commission has decided to table your request for reimbursement until a final decision is reached.

We do appreciate your help and understanding as we work our way toward a final site selection for the central Arkansas Nature Center.

Sincerely,

Handwritten signature of Scott Henderson in cursive.

Scott Henderson  
Director

# Exhibit L

## Arkansas Game & Fish Commission 2 Natural Resources Drive Little Rock, Arkansas 72205



David Gosd  
Deputy Director

Scott Henderson  
Director

Loren Hitchcock  
Deputy Director

February 14, 2005

Mr. Bryan Day  
Director of Parks and Recreation  
500 West Markham  
Little Rock, AR 72205

*Bryan*  
Dear Mr. Day:

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Several months ago, the city offered the Arkansas Game and Fish Commission a "buildable" site located in the River Market Area between the Amphitheatre and the I-30 Bridge for the Witt Stephens, Jr. Central Arkansas Nature Center. We have consulted with Cromwell Architects and Engineers and below is a bulleted list of items necessary to fulfill that commitment.

1. Clear delineation of site boundary (i.e., Promenade to Arkansas River and Amphitheatre to I-30 Bridge).
2. Completed archaeology survey.
3. Level I environmental assessment.
4. All public and private utilities brought to within a five-foot perimeter of the building footprint.
5. Relocation and re-routing (if necessary) of existing overhead and underground public or private utilities as necessary to permit Nature Center construction.
6. Exception to the current fifty-foot easement to allow construction within thirty-feet of the fifty-four inch sewer line.
7. Allowance for construction directly above the fifty-four inch sewer line with adequate overhead clearance.
8. Off-site parking for at least six Arkansas Game and Fish Commission employees.

Upon receipt of an approved resolution from the City, I will present a Minute Order to our Commission that will officially validate our commitment to build upon that site.

Sincerely,

David Gosd,  
Deputy Director

Phone: 501-223-6300 Fax: 501-223-8448 Website: www.agfc.com

The Arkansas Game and Fish Commission (AGFC) is a state agency that manages all the fish and wildlife resources of Arkansas while providing maximum enjoyment for the people.

# Exhibit N

**Sonny Varnell**  
Chairman  
St. Paul

**Freddie Black**  
Vice Chairman  
Lake Village

**Brett Morgan**  
Scott

**Craig Campbell**  
Little Rock



Keeping the Natural State natural.

## Arkansas Game and Fish Commission

**Scott Henderson**  
Director

**George Dunkin Jr.**  
DeWitt

**Ron Pierce**  
Mountain Home

**Rick Watkins**  
Little Rock

**Kim Smith, Ph.D., Ex-Officio**  
University of Arkansas  
Fayetteville

February 27, 2008

Mr. Kelly Boyd  
MBC Holdings  
Regions Bank Building, Suite 5000  
2400 E. Highland Dr.  
Jonesboro, AR 72401

Re: Inquiry regarding Dark Hollow Site Analysis - 2003 Proposal for AGFC Central Arkansas Nature Center Submitted by Belz Burrow Development Group

Dear Mr. Boyd:

I am writing in response to your letter to me dated February 6, 2008 and our visit at my office on February 8<sup>th</sup>. Both in your letter and during our meeting, you requested on behalf of MBC Holdings (Belz Burrow Development Group) that the Arkansas Game and Fish Commission refund \$20,000.00, which was the amount paid by Belz Burrow in February 2004 to have the Dark Hollow property included in a 2003 site analysis study, prepared at the Commission's request, for evaluation of potential building sites for the AGFC Central Arkansas Nature Center.

I have gone back over past correspondence and have reviewed the circumstances surrounding the 2003 decision to include Belz Burrow's Dark Hollow site among the various locations considered by the Commission for the proposed nature center. That decision was based in large part upon Belz Burrow's written offer to pay the cost for the site to be included in the comparative study the Commission had requested from Cromwell Architects Engineers (see attached letter dated June 18, 2003 from Bruce Burrow). The Commission accepted that offer and confirmed the inclusion of Dark Hollow in the study by way of a letter agreement between the Commission and Belz Burrow (see attached letter dated July 17, 2003 signed by Bruce Burrow and myself). That agreement specifically stated that Belz Burrow would provide payment of the \$20,000.00 amount in return for the Commission adding Dark Hollow to the Commission's existing site study contract with our architect-engineers.

While you pointed out that the site offered by the City of Little Rock was not included in the same comparative site study as Dark Hollow, that site nevertheless did receive extensive evaluation. The key difference, however, was that the City of Little Rock proposed to the Commission to provide that site as "ready-to-build" at no cost. In other words, the benefit to the Commission was substantial site preparation cost savings that were voluntarily paid for by the City of Little Rock.

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## Exhibit N (page 2)

As I have outlined above, Belz Burrow and the Commission arrived at an agreement based upon fair terms and I believe no further action on the part of the Commission is necessary. Accordingly, I must decline your request for return of the \$20,000.00 payment.

Sincerely,



Scott Henderson,  
Director

Encs. 2

cc: AGFC Commissioners

ARKANSAS STATE  
CLAIMS COMMISSION

JUN 09 2009

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**BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

BRUCE BURROW

CLAIMANT

VS.

No. 09-0857-CC

ARKANSAS STATE GAME & FISH COMMISSION

RESPONDENT

**ARKANSAS STATE GAME AND FISH COMMISSION'S  
ANSWER AND MOTION TO DISMISS**

For its response to the Complaint of the Claimant, Bruce Burrow ("Burrow"), Respondent Arkansas State Game and Fish Commission (hereafter "AGFC"), through its undersigned counsel, respectfully states:

1. AGFC has been served with a Complaint, which was filed by Claimant with the State Claims Commission on or about May 19, 2009. AGFC is the state agency charged under the Arkansas Constitution with the conservation and management of the fish and wildlife resources of the State of Arkansas. Ark. Const., Amend. 35, § 1.

2. AGFC denies any liability for Claimant's alleged damages and, unless otherwise admitted herein, denies each and every material allegation contained in his Complaint, as well as in the Timeline, Conclusions, and Exhibits that were attached to the Complaint.

3. Claimant alleges in his Complaint that AGFC declined to refund to MBC Holdings, Inc. (hereafter "MBC") the sum of \$20,000.00 in expenses paid by MBC, which had been required for a site survey "to ensure the 'Dark Hollow site' was included in a review of possible locations for placement of the AGFC Central Arkansas Nature Center (sic)."

4. AGFC asserts that the \$20,000.00 was voluntarily paid by MBC's predecessor, Belz-Burrow Development Group (hereafter "Belz-Burrow"), to ensure that the North Little Rock "Dark Hollow" acreage belonging to Belz-Burrow would be included, as a late addition for consideration, in the site evaluation comparison for the new Witt Stephens, Jr. Central Arkansas Nature Center. As noted in item 1 of the "Timeline for AGFC / Dark Hollow-Shoppes at North Hills Issue" attached by Claimant to his Complaint, in February 2003, AGFC contracted with Cromwell Architects-Engineers to conduct a site evaluation of several potential locations for the proposed nature center. The site evaluation comparison was to cost AGFC \$64,000.00. Four and one-half (4½) months later, Claimant Bruce Burrow contacted AGFC Director Scott Henderson and suggested that Belz-Burrow's Dark Hollow property be included as a possible site for the new nature center. In his unsolicited introduction letter, Burrow expressly volunteered to Director Henderson that Belz-Burrow would pay any additional expense so that its property could be included in the site evaluation comparison. (See letter dated June 18, 2003 from Bruce Burrow to Scott Henderson attached as Exhibit "A" to the Complaint. For convenience, an additional copy of the letter, with enclosure, is attached hereto). In that letter, Claimant stated: "Our firm is willing to provide the funding for a comparative study relative to the viability of our location as compared to other sites that may be under construction (sic)." (Emphasis in original). Based upon this offer from Belz-Burrow, AGFC agreed to consider the Dark Hollow site and directed the amendment of AGFC's existing contract with Cromwell Architects-Engineers to include that location in the site evaluation comparison and pay additional expenses in the amount of \$22,500.00. (See e-mails and letter dated July 2003 attached as Exhibits "B," "C," and "D" to the Complaint.). AGFC looked to Belz-Burrow to pay \$20,000.00 of the additional expenses and AGFC agreed to pick-up the balance of \$2,500.00. Claimant,

acting on behalf of Belz-Burrow, then signed a letter agreement dated July 17, 2003 in which Belz-Burrow expressly agreed to pay the \$20,000.00 to fund the inclusion of the Dark Hollow property in the site evaluation comparison. (See letter agreement between AGFC and Belz-Burrow dated July 17, 2003 attached as Exhibit "E" to the Complaint. Note that the copy attached hereto is fully signed by Belz-Burrow and AGFC). Accordingly, it is absolutely clear that Belz-Burrow reached an arms-length agreement with AGFC and voluntarily undertook to pay the additional expense to ensure that its Dark Hollow property would be included in the evaluation of possible locations for placement of the Witt Stephens, Jr. Central Arkansas Nature Center.

5. No contractual provisions existed at any time between AGFC and either Claimant or Belz-Burrow that would have provided for a "refund" of the \$20,000.00 or any monies.

6. AGFC affirmatively asserts that the applicable three-year statute of limitations is a complete affirmative defense that bars Claimant's Complaint pursuant to Rule 8(c) of the Arkansas Rules of Civil Procedure ("A.R.Civ.P"), and Ark. Code Ann. §16-56-105(3). The letter agreement that is the basis of Claimant's Complaint is dated July 17, 2003. However, that July 17, 2003 letter makes no reference to any possible "refund" of the \$20,000.00. There is no evidence whatsoever – in writing or otherwise – that any "refund" of money was ever contemplated or agreed to by Belz-Burrow and AGFC. Therefore, any claim for a refund of the \$20,000.00 payment should have been filed within three years thereafter -- i.e., on or before July 16, 2006. Additionally, on or about February 16, 2004, Claimant submitted to AGFC his written request seeking a refund of the \$20,000.00 payment, and AGFC subsequently declined to make any refund. Clearly, more than three years have elapsed since Claimant's request for a refund

first took place. Accordingly, the applicable three-year statute of limitations for filing this claim has expired and Claimant's Complaint now must be dismissed as untimely.

7. Alternatively, AGFC asserts that Claimant's Complaint must be dismissed for failure to state facts upon which relief can be granted. *See* Rule 12(b)(6), A.R.Civ.P. Claimant's Complaint contains no allegations of wrongdoing or illegality on the part of AGFC such that AGFC should bear legal liability for the alleged damages. Claimant has advanced no legal basis for invalidating the July 17, 2003 letter agreement or requiring AGFC to refund Belz-Burrow's payment. Accordingly, the Complaint fails to state facts demonstrating that Claimant is entitled to relief of any type from AGFC.

8. Furthermore, AGFC submits that Claimant is not the proper party to assert the claim actually alleged in his Complaint, since the subject agreement for payment of the \$20,000.00 took place between AGFC and the firm Belz-Burrow Development Group. Therefore, any such claim would have had to be asserted on behalf of Belz-Burrow as the real party in interest, and not individually on behalf of Claimant Bruce Burrow.

9. AGFC reserves the right to plead further in this case as may become necessary upon completion of discovery and a more extensive investigation.

10. A brief in support of this Motion to Dismiss is filed concurrently herewith and incorporated by reference.

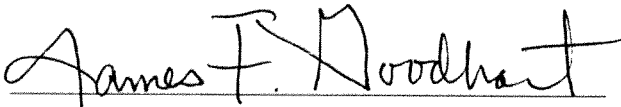
WHEREFORE, Respondent Arkansas State Game and Fish Commission prays the claim of Claimant Bruce Burrow, as set forth in his Complaint, be denied and that the State Claims Commission enter judgment in favor of Respondent dismissing said claim because:

1. Claimant's Complaint alleging a refund of \$20,000.00 is barred under the applicable Arkansas statute of limitations as a matter of law; and

2. Alternatively, Claimant's Complaint contains no allegations of wrongdoing or illegality on the part of AGFC such that AGFC should bear any legal liability for the alleged damages and, accordingly, the Complaint fails to state facts showing that Claimant is entitled to relief of any type from AGFC; and
3. Alternatively, Claimant is not the proper party to assert any claim for refund of the \$20,000.00 payment.

Respondent also prays for such other general and equitable relief as may be just and appropriate under the circumstances.

ARKANSAS STATE GAME AND FISH COMMISSION

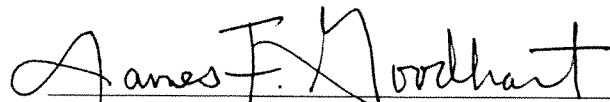
BY: 

James F. Goodhart, ABA #92080  
Robert K. Jackson, ABA #85079  
John P. Marks, ABA #2003132  
Arkansas Game & Fish Commission  
2 Natural Resources Drive  
Little Rock, AR 72205  
TEL: (501) 223-6327  
FAX: (501) 223-6463

**CERTIFICATE OF SERVICE**

I, James F. Goodhart, do hereby certify that a true and correct copy of the foregoing Answer and Motion to Dismiss has been mailed for service by regular mail, postage prepaid, to the following individuals on this 9<sup>th</sup> day of June 2009:

Mr. Bruce Burrow  
1001 Merrywood  
Jonesboro, AR 72401

  
James F. Goodhart

26

**BELZ • BURROW**

**Development Group**

Bruce Burrow  
Principal

2400 East Highland Drive  
Regions Bank Building • Suite 5000  
P.O. Box 19009  
Jonesboro, Arkansas 72402  
(870) 932-1400  
(870) 932-2314 Fax

June 18, 2003

Mr. Scott Henderson  
Director  
**Arkansas Game & Fish Commission**  
#2 Natural Resources Drive  
Little Rock, Arkansas 72205

RE: Proposed Nature Center Location  
The Shoppes at North Hills  
North Little Rock, Arkansas

Dear Director Henderson:

I wanted to take this opportunity to introduce our firm to you. In that regard, I have taken the liberty to enclose herewith information on our newest development, The Shoppes at North Hills in North Little Rock, Arkansas.

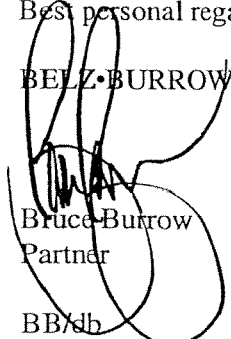
As you may be aware, we were successful in securing Bass Pro as an anchor for our development. In addition to retail, we are creating a "themed" Mitigation Wetland Park just east of the Bass Pro site across North Hills Blvd. A review of our web site ([www.theshoppesatnorthhills.com](http://www.theshoppesatnorthhills.com)) will provide you with an overview of the proposed park development, reflecting the uniqueness of this mitigation land development.

We believe that our site offers Game & Fish the ultimate Nature Center location in the Little Rock metro area. Our firm is willing to provide the funding for a comparative study relative to the viability of our location as compared to other sites that may be under construction. We have the support of the City of North Little Rock to have the Nature Center located at the North Hills project.

In the next few days, I would like to set up a meeting with you to explore this opportunity. Thank you for your attention to this matter.

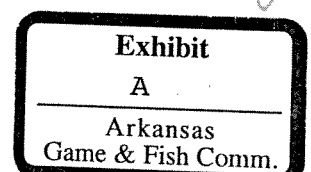
Best personal regards,

BELZ • BURROW

  
Bruce Burrow  
Partner

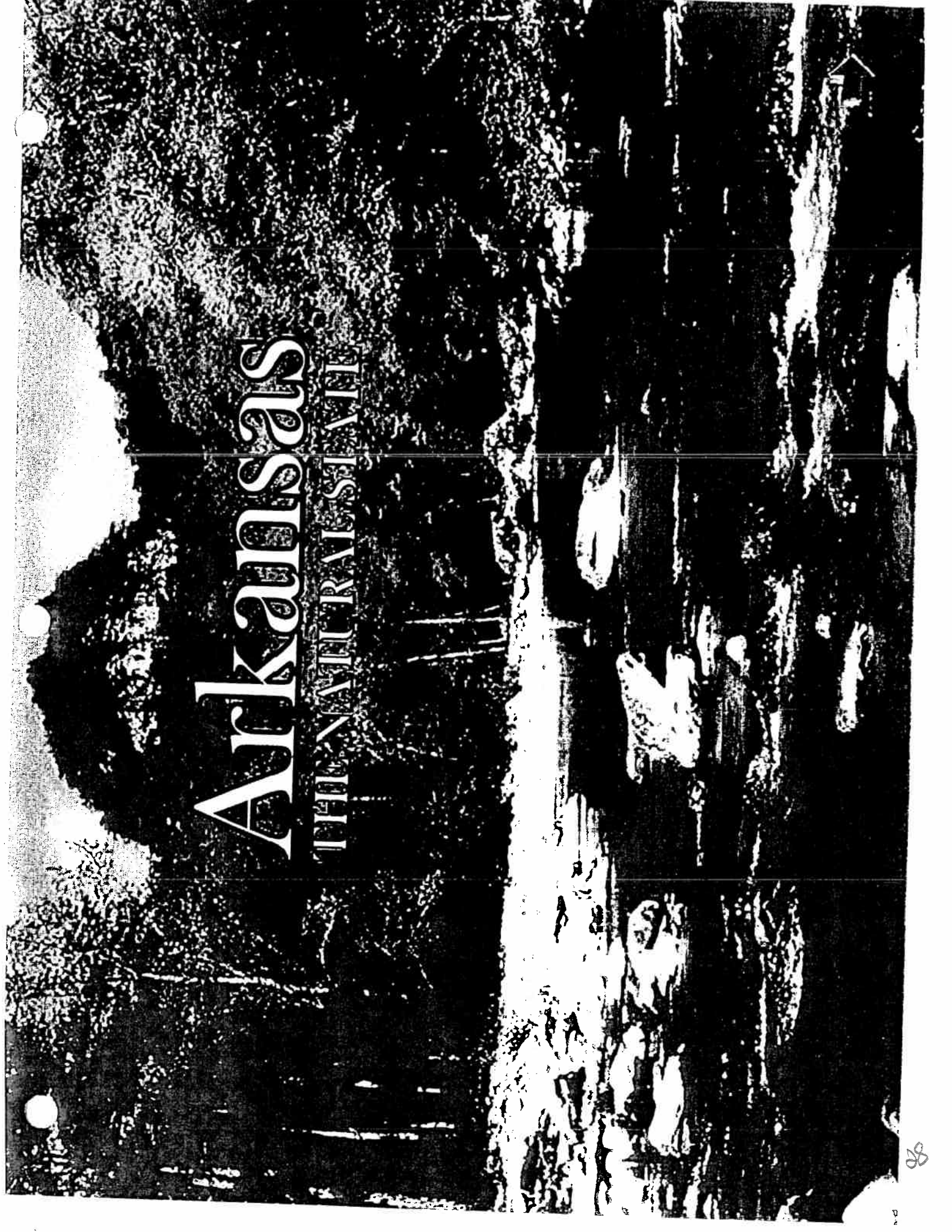
BB/jb

Enclosure



# Arkansas

THE NATURAL STATE



88

# North Hills Wetland Park

CEI Environmental Division  
Design Phase



ENGINEERING ASSOCIATES, INC.

**CEI Engineering Associates, Inc**

- Bentonville, AR
- Nashville, TN
- Fresno, CA
- Atlanta, GA
- St. Augustine, FL
- Scranton, PA
- Dallas, TX
- Jasonville, IN

(479)273-9742    Fax (479)273-0844  
1-800-433-4173



# Vision of North Hills to our Client

Shopping Center of Tomorrow  
Tourism Attraction for the State  
Wetland Mitigation Park  
Educational Tour of History

## Innovative Design for ..... "Tomorrow's Dreams"

Park Like NO Others -----  
Educational  
Historical Tour  
Sportsman's Dream  
Tour The State Within an Hour



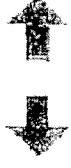
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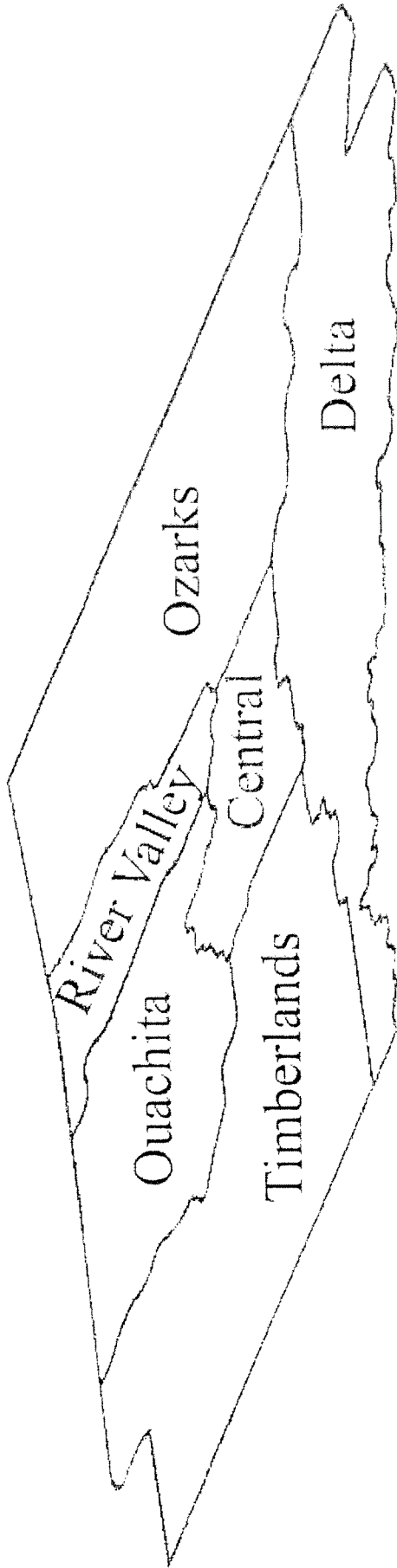
# North Hills Vision Statement

THE CREATION OF A WETLAND PARK FOR:

CONSERVATION & PRESERVATION OF  
NATURAL WILDLIFE & AQUATIC LIFE

DONATED TO:  
EDUCATION OF HUMANITY



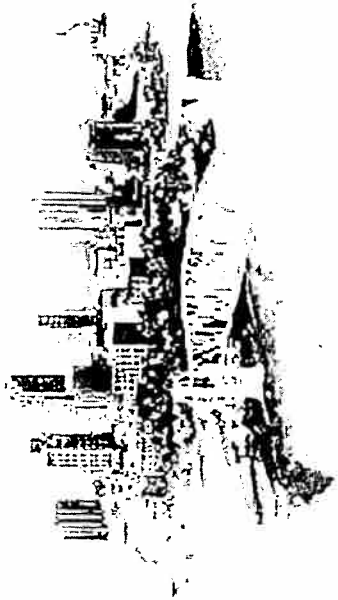


Ouachita River Valley Ozarks  
Timberlands Central Delta



# Little Rock

arkansas

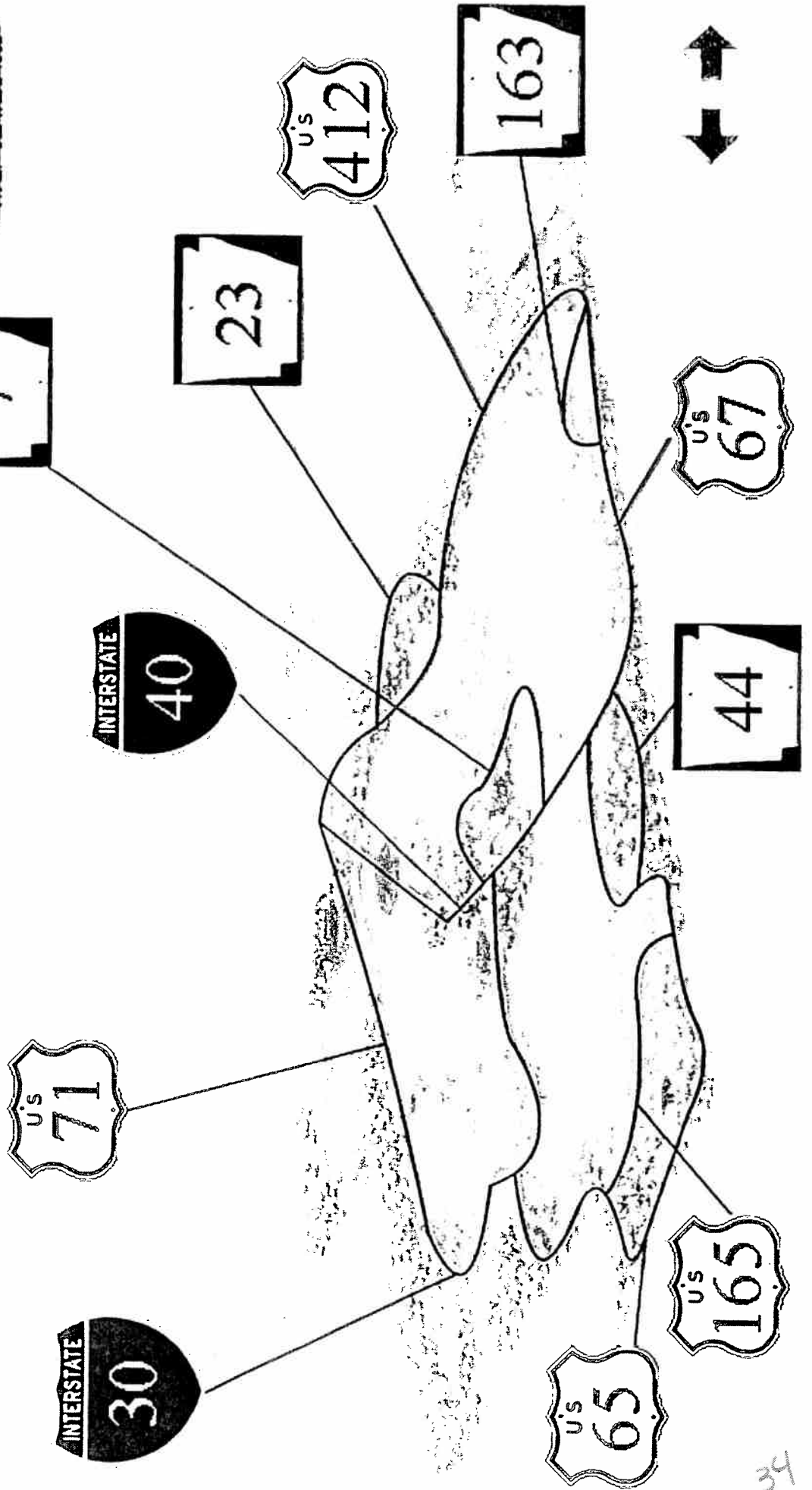
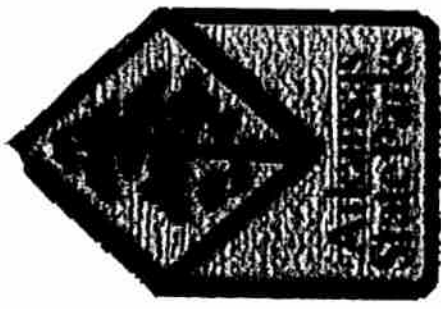


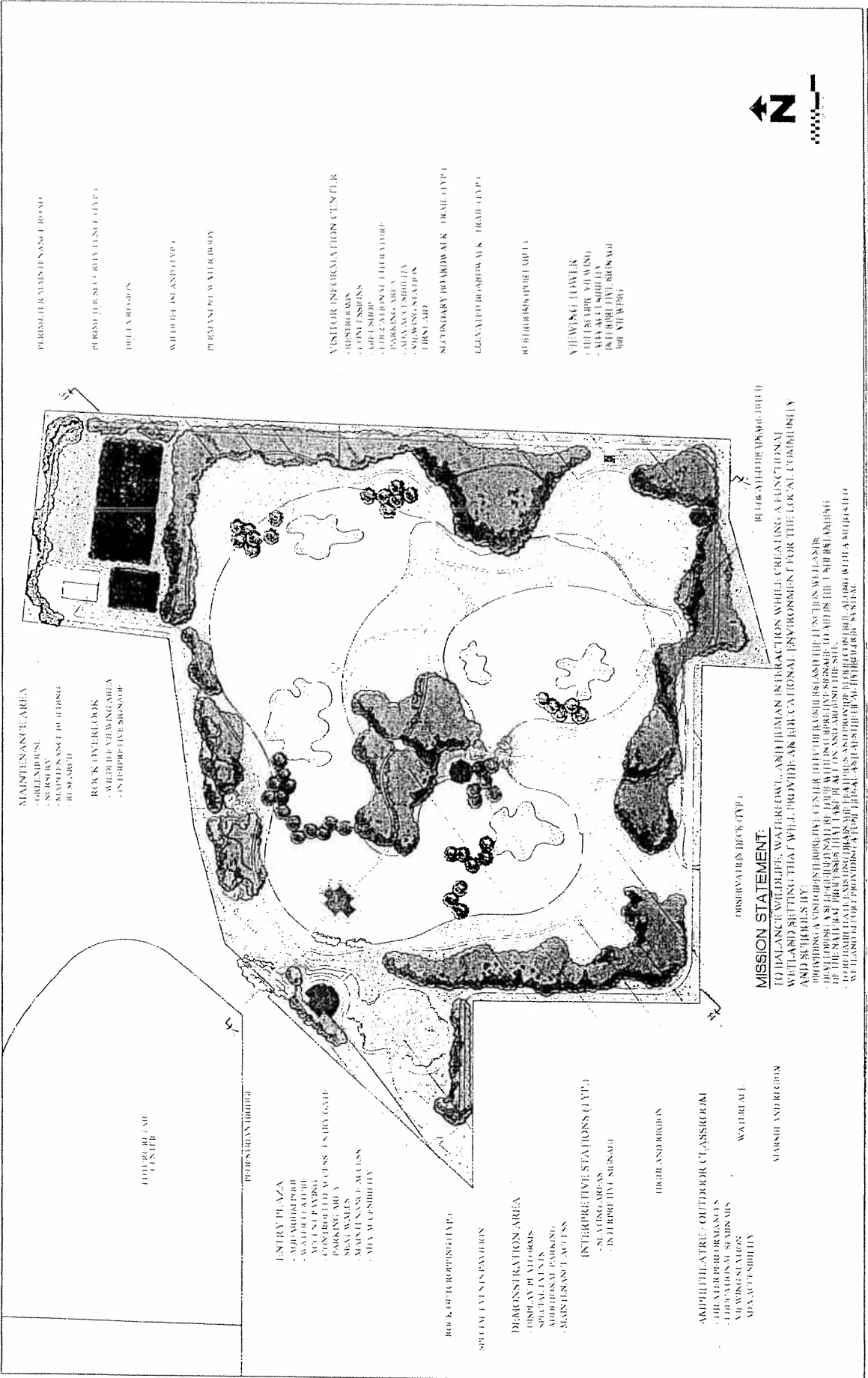
Quachita  
River Valley  
Ozarks  
Central  
Timberlands  
Delta



Trails: Main Trails (Blue) - 1.8 Miles  
Secondary Trails (Red) - 0.5 Miles

**Total Trails: 2.3 Miles**





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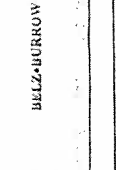
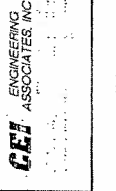
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**MISSION STATEMENT:**  
 TO BALANCE WILDLIFE, WATERFOWL, AND HUMAN INTERACTION WHILE CREATING A FUNCTIONAL WETLAND SETTING THAT WILL PROVIDE AN EDUCATIONAL ENVIRONMENT FOR THE LOCAL COMMUNITY AND SURVIVE BY:  
 - PROVIDING A VISITOR EDUCATIVE CENTER TO VISIT RAINBOWS AND THE FUNCTION WETLANDS  
 - PROVIDING A SHELTERED NATURAL SETTING WITH EDUCATIONAL SENSORS TO AID IN THE LEARNER'S UNDERSTANDING OF THE NATURAL PROCESS THAT TAKE PLACE AROUND THE WETLANDS  
 - TO PROVIDE EDUCATIONAL OPPORTUNITIES FOR THE LOCAL COMMUNITY, ALONG WITH A SUSTAINABLE ENVIRONMENT FOR THE WETLANDS AND THE SURROUNDING ENVIRONMENT

# NORTH HILLS WETLAND PARK

CITY OF NORTH LITTLE ROCK, ARKANSAS

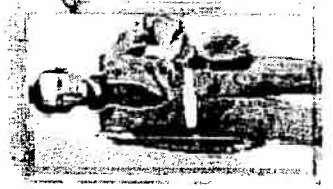
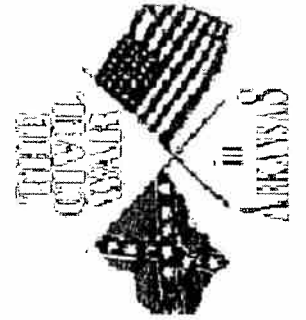
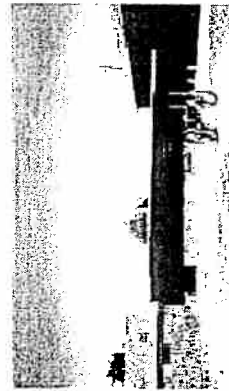


# Who is our Client's "Client"

## Mission Statement:

To balance wildlife, waterflow, and human interaction while creating a functional wetland setting that will provide an educational environment for the local community and schools by:

- Developing a self-guided nature tour with interpretive signage to aid in the understanding of natural processes that take place on and around the site.





# Goals and Objective Within Our Team

Desired Goal.....

- Meet our Client's Dreams

Desired Objective.....

- Meet the Client's Desires

Tourism Attraction of the Area

Take Just an Afternoon or a Whole Day

Family Environment

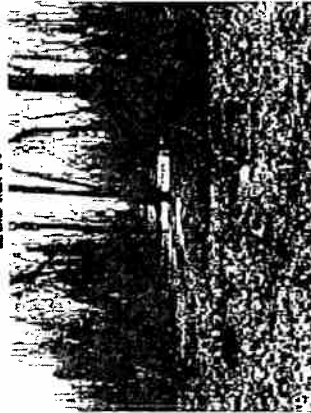




# Current Wetland Delineation Map



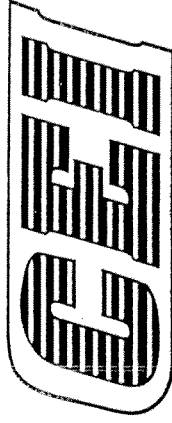
Wetland Zone ID	Acres	Percent
101	13,000	3.00
102	1,100	0.26
103	650	0.15
104	37,000	8.87
105	910,000	21.71
106	755	0.18
107	1,200	0.29
108	600,000	14.52
109	230,000	5.58
<b>Total Wet</b>	<b>3,075,100</b>	<b>74.63</b>
<b>Dry</b>	<b>75,000</b>	<b>1.83</b>
<b>Ground Total</b>	<b>3,150,100</b>	<b>76.46</b>





*“Our goal in the practice of civil engineering is to discover and anticipate non-standard or unusual challenges and use our experience to overcome them.”*

**C. Michael Shupe, PE  
Co-Founder/Chairman**



**Engineering Associates, Inc.**

# MBC HOLDINGS

Bruce Burrow • *Principal*

FEDERAL EXPRESS

September 30, 2009

Dr. Norman L. Hodges, Director  
**Arkansas State Claims Commission**  
101 East Capitol Avenue  
Little Rock, Arkansas 72201-3823

RE: Bruce Burrow v. Arkansas State Game and Fish Commission  
Arkansas State Claims Commission No. 09-0857-CC

Dear Dr. Hodges:

This letter is to notify you that the following individuals will be available to provide testimony in the hearing scheduled for November 13, 2009 related to the above-styled claim:

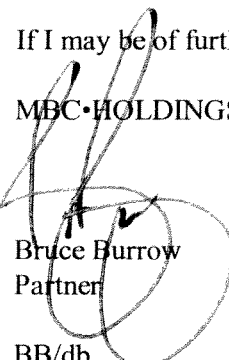
Kelly Boyd  
P.O. Box 62  
214 West Taylor Street  
Havana, Arkansas 72842  
501-516-1330

Ron Fuller  
#5 Braeburn Court  
Little Rock, Arkansas 72212  
501-960-6611

All other documentation related to the above-styled claim has already been submitted and accepted by the Arkansas State Claims Commission. I anticipate no further document submissions unless specifically requested by the Commission.

If I may be of further service, please do not hesitate to contact me.

MBC HOLDINGS

  
Bruce Burrow  
Partner

BB/db

A Marty Belz • Bruce Burrow Company

**ARKANSAS STATE  
CLAIMS COMMISSION**

OCT 01 2009

**RECEIVED**

2400 East Highland Drive  
Regions Bank Building • Suite 5000  
P.O. Box 19009  
Jonesboro, Arkansas 72402  
(870) 932-1400  
(870) 932-2314 Fax  
mbcholdings.net

**BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

BRUCE BURROW

CLAIMANT

VS.

No. 09-0857-CC

ARKANSAS STATE  
CLAIMS COMMISSION

OCT 09 2009

ARKANSAS STATE GAME & FISH COMMISSION

RECEIVED

RESPONDENT

**ARKANSAS STATE GAME AND FISH  
COMMISSION'S PRE-HEARING BRIEF**

The Arkansas State Game and Fish Commission ("AGFC"), by and through its undersigned attorneys, submits the following Pre-hearing Brief.

**I. INTRODUCTION**

Claimant Bruce Burrow ("Burrow") alleges in his Complaint that AGFC has not refunded to MBC Holdings, Inc. the sum of \$20,000.00 in expenses paid by MBC Holdings, Inc., which was required for a site survey "to ensure the 'Dark Hollow site' was included in a review of possible locations for placement of the AGFC Central Arkansas Nature Center (sic)." *See* Complaint. As will be detailed below, this Commission should summarily dismiss Burrow's claim for compensation for any one or all of the following three reasons: (a) the applicable Arkansas statute of limitations for bringing this claim has prescribed since more than five years has elapsed since an agreement was entered into or since any alleged breach of contract took place; (b) the Complaint fails to state sufficient facts to support a legal claim against AGFC; and (c) Claimant is not the proper party to assert the claim actually alleged in his Complaint.

## **II. STANDARD OF REVIEW**

This Commission “shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(b)(3)(A). A claimant before the Claims Commission must set forth the same “averments of fact necessary to state a cause of action against a private person or corporation.” Ark. Code Ann. § 19-10-210. That is, like a plaintiff in a civil lawsuit, a claimant must include in its complaint “a statement in ordinary and concise language of facts showing that . . . [claimant] is entitled to relief.” Ark. R. Civ. P. 8(a) (also made applicable by Commission Rule 8.1). Such facts must be alleged directly and positively, not merely by argument, inference, or legal conclusion. McKinney v. El Dorado, 308 Ark. 284, 824 S.W.2d 826 (1992). Where “the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction,” this Commission shall make no award on the claim. Ark. Code Ann. § 19-10-204(b)(3)(B); *see also* Ark. R. Civ. P. 12(b)(6) (providing for dismissal of claims for “failure to state facts upon which relief can be granted”). When considering a motion to dismiss under 12(b)(6), this Commission must take the facts alleged in the Complaint as true and view them in the light most favorable to the claimant. *See Deitsch v. Tillery*, 309 Ark. 401, 833 S.W.2d 760 (1992).

## **III. DISCUSSION**

Even when viewed in the light most favorable to Claimant, it is clear that Burrow’s Complaint fails to state a claim against AGFC. Therefore, this Commission should dismiss the same on the basis of one or more of following reasons, any one of which alone constitutes a sufficient basis for summary dismissal of the Complaint.

**A. Burrow's claim is barred by the applicable statute of limitations.**

Claims before this Commission are subject to the same statutes of limitations as private actions. *See* Ark. Code Ann. § 19-10-209 (“No claim may be considered and allowed by the Arkansas State Claims Commission unless it has been filed with the director of the commission as provided by this subchapter within the period allowed by law for the commencement of an action for the enforcement of the same type of claim against a private person.”).

An action for breach of a contract not in writing is subject to the three-year statute of limitations in Ark. Code Ann. § 16-56-105<sup>1</sup>. *See Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co.*, 353 Ark. 201, 114 S.W.3d 189 (2003) (The three year statute of limitations applies to oral contracts). Likewise, written contracts that are altered by oral modifications as to constitute a new oral contract are subject to the three-year statute of limitations. *See Davis v. Patel*, 32 Ark. App. 1, 794 S.W.2d 158 (1990). That limitations period begins running at the time the cause of action accrues and a true test in determining when a cause of action arises is to establish the time when Claimant could have first maintained an action to a successful conclusion. *See Davenport v. Pack*, 35 Ark. App. 40, 812 S.W.2d 487 (1991); *Eckels v. Arkansas Real Estate Com'n*, 30 Ark. App. 69, 783 S.W.2d 864 (1990); *Rice v. McKinley*, 267 Ark. 659, 590 S.W.2d 305 (1979).

In February 2003, AGFC contracted with Cromwell Architects-Engineers to conduct a site evaluation of several potential locations for the proposed nature center. The site evaluation

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<sup>1</sup> § 16-56-105. **Three year time period**

The following actions shall be commenced within three (3) years after the cause of action accrues:

- (1) All actions founded upon any contract, obligation, or liability not under seal and not in writing, excepting such as are brought upon the judgment or decree of some court of record of the United States or of this or some other state;
- (2) All actions for arrearages of rent not reserved by some instrument in writing, under seal;
- (3) All actions founded on any contract or liability, expressed or implied;
- (4) All actions for trespass on lands;
- (5) All actions for libels;
- (6) All actions for taking or injuring any goods or chattels.

comparison was to cost AGFC \$64,000.00. Four and one-half (4½) months later, Claimant Bruce Burrow contacted AGFC Director Scott Henderson and suggested that Belz-Burrow's Dark Hollow property be included as a possible site for the new nature center. In his unsolicited introduction letter, Burrow expressly volunteered to Director Henderson that Belz-Burrow would pay any additional expense so that its property could be included in the site evaluation comparison. (See letter dated June 18, 2003 from Bruce Burrow to Scott Henderson attached as Exhibit "A" to the Complaint. For convenience, an additional copy of the letter, with enclosure, is attached hereto). In that letter, Claimant stated: "Our firm is willing to provide the funding for a comparative study relative to the viability of our location as compared to other sites that may be under construction (sic)." (Emphasis in original). Based upon this offer from Belz-Burrow, AGFC agreed to consider the Dark Hollow site and directed the amendment of AGFC's existing contract with Cromwell Architects-Engineers to include that location in the site evaluation comparison and pay additional expenses in the amount of \$22,500.00. (See e-mails and letter dated July 2003 attached as Exhibits "B," "C," and "D" to the Complaint.). AGFC looked to Belz-Burrow to pay \$20,000.00 of the additional expenses and AGFC agreed to pick-up the balance of \$2,500.00.

It is undisputed that Claimant, acting on behalf of Belz-Burrow, signed a letter agreement with AGFC dated July 17, 2003 in which Belz-Burrow expressly agreed to pay \$20,000.00 to fund the inclusion of the Dark Hollow property in an ongoing site evaluation comparison of multiple properties that were under consideration as the site for the new nature center. (See letter agreement between AGFC and Belz-Burrow dated July 17, 2003 attached as Exhibit "E" to the Complaint. The additional copy attached to AGFC's Answer and Motion to Dismiss is fully signed by Belz-Burrow and AGFC). The July 17, 2003 letter makes no reference to any possible

“refund” of the \$20,000.00. There simply is no evidence whatsoever – in writing or otherwise – that any “refund” of the money was ever contemplated or agreed to by Belz-Burrow and AGFC. Burrow also conceded in his Complaint that the month, day, year and place of the incident or service giving rise to his claim was July 20, 2003. See Complaint.

Since there was never a written agreement for any “refund” should the Dark Hollow site not be chosen as the final site for the nature center, any claim for a “refund” by Burrow would be subject to the applicable three-year statute of limitations in Ark. Code Ann. §16-56-105 that governs actions for damages based upon contracts not in writing. Accordingly, a claim by Burrow based upon any alleged oral agreement for a refund had to have been filed within three years thereafter -- i.e., on or before July 16 or July 19, 2006.

Additionally, it is undisputed that Burrow knew as early as February 16, 2004, that another site would likely become the location chosen for the Witt Stephens, Jr. Central Arkansas Nature Center. See Complaint and Timeline; see also Exhibits “J” & “K” to Complaint. Burrow submitted to AGFC his written request on or about February 16, 2004, seeking a refund of the \$20,000.00 payment, and AGFC subsequently declined to make any refund. AGFC ultimately decided that the nature center would be located in the Julius Breckling Riverfront Park in Little Rock, Arkansas. Clearly, more than three years have elapsed since Claimant’s written request for a refund first took place. Furthermore, more than three years have passed since the site selection of the Witt Stephens, Jr. Central Arkansas Nature Center was made by AGFC. Therefore, under any of these circumstances, the applicable three-year statute of limitations for filing this claim has expired.

In the event Claimant was to somehow argue that a five-year statute of limitation was available under Ark. Code Ann. § 16-56-111<sup>2</sup> due to enforcing a “contract in writing” (which should not be the case, since no written provision exists that supports Claimant’s claim for a payment refund), then even that greater time limit would have expired already. Any claim that a contractual provision within the July 17, 2003 letter agreement with AGFC was unfair or otherwise invalid should have been filed within five years thereafter -- i.e., on or before July 16, 2008. See Zufari v. Architecture Plus, 323 Ark. 411, 914 S.W.2d 756 (1996); see also Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co., 353 Ark. 201, 114 S.W.3d 189 (2003) (An alleged breach of a written contract is controlled by the five-year statute of limitations set forth in A.C.A. § 16-56-111); Peden v. Peden, 234 Ark. 26, 350 S.W.2d 509 (1961) (Holding that either the three-year or five-year statute of limitations, depending upon whether agreement of partnership was oral or written, barred a former partner from an accounting in regard to a partnership dissolved by agreement where the former partner did not seek such accounting until ten years after the dissolution). Additionally, more than five years have elapsed since Claimant’s February 16, 2004 written request for a refund first took place.

Burrow’s allegation that his claim was presented to and denied by AGFC on February 8, 2008 is misleading. Exhibit M to Burrow’s Complaint is a letter dated February 6, 2008 from Mr. Kelly Boyd on behalf of Burrow and MBC Holdings “in reference to a meeting held at 9:00 a.m. on Friday, July 11, 2003. Exhibit M was written by Burrow’s representative nearly five years after the meeting! Burrow has conceded in his Complaint that he knew in February, 2004, that his Dark Hollow site would not be chosen as the nature center’s permanent site. The

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<sup>2</sup> § 16-56-111. **Written obligations, duties, and rights**

(a) Actions to enforce written obligations, duties, or rights, except those to which § 4-4-111 is applicable, shall be commenced within five (5) years after the cause of action shall accrue.

(b) However, partial payment or written acknowledgment of default shall toll this statute of limitations.

February 2008 letter and meeting requested by Burrow are little more than attempts by Claimant to resurrect a stale claim that long since had expired.

In summary, the undisputed evidence demonstrates that the applicable three-year statute of limitations barred Burrow's Complaint effective July 16 (or July 19) 2006. Assuming, *arguendo*, that accrual of Burrow's claim for a refund did not take place when that agreement was reached, then accrual surely took place on February 16, 2004, when Burrow became aware that his Dark Hollow site would not be chosen and he submitted his first written request for a refund. Under that circumstance, the three-year statute of limitations still would have expired by February 15, 2007. And, on the outside chance that a five-year statute of limitations could be applied to Claimant's claim (which should not be the case), then even that greater time limit likewise would have expired no later than either July 16 (or July 19) 2008, or February 15, 2009. Accordingly, under any of these possible scenarios, the applicable Arkansas statute of limitations for filing this claim for a refund of \$20,000.00 has expired and Claimant's Complaint must be summarily dismissed.

**B. Burrow has failed to state a claim against AGFC.**

Burrow's Complaint contains no allegations of wrongdoing by AGFC such that it should bear legal liability for any alleged damages. Burrow stated in his Complaint that he seeks a "refund of \$20,000.00 required for a survey" paid by him "to ensure that the Dark Hollow site was included in a review of possible locations for placement of the AGFC Central Arkansas Nature Center (sic)". *See* Complaint. No proof whatsoever was offered to support Burrow's erroneous allegation that a refund of the money was either expressly or impliedly due from AGFC. Also, there is no evidence tendered of any contract breach by AGFC.

It is noteworthy that Burrow's letter dated February 16, 2004, to Director Henderson, which was attached to the Complaint as Exhibit "J," states the following reason behind his request for a refund: "Since the new site was selected without such requirement [a comparative site analysis study], we believe in a sense of fair play, our fee of \$20,000.00 should be refunded to us." In other words, despite Belz-Burrow's prior "voluntary" agreement to help fund the added expense so its Dark Hollow property could be evaluated as a possible site for the new nature center, Burrow now felt that bargain was no longer "fair" given that the "ready-to-build site" offered by the City of Little Rock had been evaluated differently. Even if subsequent events suggested to Burrow that perhaps Belz-Burrow made a "poor bargain" when it offered and agreed to pay the \$20,000.00 expense, he has advanced no legal basis for invalidating that agreement or requiring AGFC to refund Belz-Burrow's payment. While individuals and businesses sometimes regret their business dealings, that in no way entitles them, under any applicable Arkansas law, to simply request invalidation of their arms-length contractual agreements or otherwise demand a refund of a payment that was made pursuant to a binding legal obligation.

Therefore, the Complaint fails to state facts showing that Burrow is entitled to relief of any type from AGFC. *See* Ark. Code Ann. § 19-10-210 (stating that a claimant must set forth the same the "averments of fact necessary to state a cause of action against a private person or corporation"). Accordingly, this Commission should summarily dismiss AGFC from this action. *See* Ark. Code Ann. § 19-10-204(b)(3); Ark. R. Civ. P. 12(b)(6) (providing for dismissal of claims for "failure to state facts upon which relief can be granted").

**C. Burrow is not the proper party to assert the claim alleged in his Complaint.**

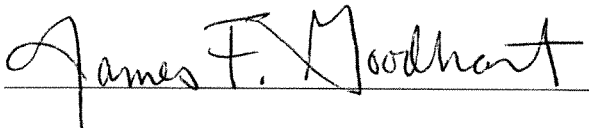
Burrow is not the proper party to assert the refund claim actually alleged in his Complaint, since the subject agreement for payment of the \$20,000.00 took place between AGFC and the firm Belz-Burrow Development Group. Belz-Burrow is the real party interest and, therefore, any such claim would have had to be asserted on behalf of Belz-Burrow and not individually on behalf of Claimant Bruce Burrow. Recinos v. Zelk, 369 Ark. 7, 250 S.W.3d 221 (2007) (Only a real party in interest may bring a cause of action and the real party in interest is considered to be the person or corporation who can discharge the claim on which the allegation is based); Bar S Bar Western Store v. Martin, 295 Ark. 176, 747 S.W.2d 113 (1988). Burrow simply is without standing to assert the claim contained in the Complaint.

**IV. CONCLUSION**

For the reasons stated herein, AGFC respectfully submits that Burrow's claim is barred as a matter of law. Therefore, this Commission must dismiss the Complaint against AGFC pursuant to Ark. Code Ann. § 19-10-204(b)(3).

Respectfully submitted,

ARKANSAS STATE GAME AND FISH COMMISSION

BY: 

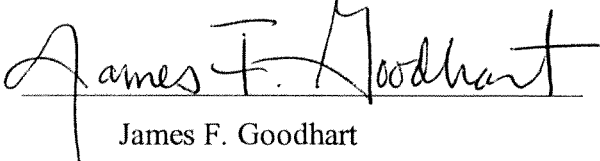
James F. Goodhart, ABA #92080  
Robert K. Jackson, ABA #85079  
John P. Marks, ABA #2003132  
Arkansas Game & Fish Commission  
2 Natural Resources Drive  
Little Rock, AR 72205  
TEL: (501) 223-6327  
FAX: (501) 223-6463

Attorneys for Respondent  
*Arkansas State Game and Fish Commission*

**CERTIFICATE OF SERVICE**

I, James F. Goodhart, do hereby certify that a true and correct copy of the Arkansas State Game and Fish Commission's Pre-hearing Brief has been mailed for service by regular mail, postage prepaid, to the following individual on this 8<sup>th</sup> day of October, 2009:

Mr. Bruce Burrow  
1001 Merrywood  
Jonesboro, AR 72401

  
James F. Goodhart

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

BRUCE BURROW

VS.

No. 09-0857-CC

ARKANSAS STATE  
CLAIMS COMMISSION  
CLAIMANT  
OCT 09  
RECEIVED

ARKANSAS STATE GAME & FISH COMMISSION

RESPONDENT

ARKANSAS STATE GAME AND FISH COMMISSION'S  
WITNESS LIST

The Arkansas State Game and Fish Commission ("AGFC"), by and through its undersigned attorneys, submits the following list of Witnesses for the Hearing set to begin at 10:00 a.m. on Friday, November 13, 2009:

1. Scott Henderson, Director (will call);
2. David Goad, Wildlife Management Div. Chief (may call);
3. Neil Curry, Witt Stephens, Jr. Central Arkansas Nature Center Facility Dir. (may call);
4. Dan Fowler, Cromwell Architects – Engineers (may call);
5. AGFC reserves the right to call witnesses for rebuttal purposes which may or may not be listed above.

Respectfully submitted,

ARKANSAS STATE GAME AND FISH COMMISSION

BY: James F. Woodhart

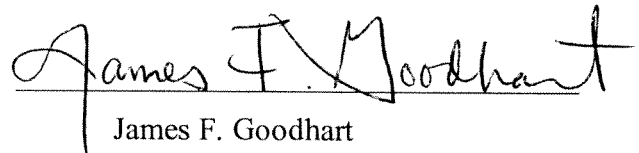
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Attorneys for Respondent  
*Arkansas State Game and Fish Commission*

**CERTIFICATE OF SERVICE**

I, James F. Goodhart, do hereby certify that a true and correct copy of the Arkansas State Game and Fish Commission's Witness List has been mailed for service by regular mail, postage prepaid, to the following individual on this 8<sup>th</sup> day of October, 2009:

Mr. Bruce Burrow  
1001 Merrywood  
Jonesboro, AR 72401

  
James F. Goodhart

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 20,000.00

Claim No. 09-0857-CC

Bruce Burrow Claimant vs. Pro se Claimant  
Attorneys  
AR Game & Fish Commission Respondent  
State of Arkansas  
Scott Henderson, Director  
James Goodhart, Legal Counsel Respondent  
Date Filed May 19, 2009 Type of Claim Refund of expenses

FINDING OF FACTS

This claim was filed for a refund of expenses in the amount of \$20,000.00 against Arkansas Game and Fish Commission.

Present at a hearing November 13, 2009 was the Claimant, pro se, and the Respondent, represented by David Dawson, Attorney.

The Claims Commission hereby unanimously finds liability on the part of the Respondent awards this claim in the amount of \$20,000.00 and **will submit the claim in a Claims Bill to the 88<sup>th</sup> Arkansas General Assembly, 2010 Legislative Session, for subsequent approval and payment.**

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously allowed this claim in the amount of \$20,000.00 and **will submit the claim in a claims bill to the 88<sup>th</sup> General Assembly, 2010 Legislative Session for subsequent approval and payment.**

Date of Hearing November 12, 2009

Date of Disposition November 12, 2009

[Signature] Chairman  
Bill Lancaster Commissioner  
[Signature] Commissioner

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