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<b>FILED</b>	
THIRD JUDICIAL DISTRICT COURT Payette County, Idaho	
APR 18 2012	
A.M. P.M.	
BETTY J. DRESSEN	
By _____	Deputy

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Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE**

JOHN W. BURLILE, an individual; H HOOK )  
LLC, an Idaho Limited Liability Company; )  
CLIFFORD D. MORGAN and MARY A. )  
MORGAN, individually and as husband and )  
wife; TOM PENCE, an individual; CYRIL W. )  
ROLAND and IRENE J. ROLAND, )  
individually and as husband and wife; )  
THOMAS G. ROLAND and MARCIA R. )  
ROLAND, individually and as husband and )  
wife; JAMES S. UNDERWOOD, JR., an )  
individual; and JEFFREY G. WEBER, an )  
individual, )

Plaintiffs, )

vs. )

ALTERNATE ENERGY HOLDINGS, INC., a )  
Nevada Corporation; DONALD L. GILLISPIE, )  
an individual; JENNIFER RANSOM, an )  
individual; COUNTY OF PAYETTE, a )  
political subdivision of the State of Idaho; and )  
DOES 1-10, fictitiously named, )

Defendants. )

Case No. CV-2012-364

**COMPLAINT, REQUEST FOR  
INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
OTHER EQUITABLE RELIEF**

**SUSAN E. WIEBE**  
District Judge

COME NOW The Plaintiffs and for causes of action against the Defendants, state, allege and aver as follows:

**Parties**

1. Plaintiff John W. Burlile is a property owner in Payette County and resides at 8105 Little Willow Road in Payette County.

2. Plaintiff H Hook LLC is an Idaho Limited Liability Company that owns and operates the H Hook Ranch in Payette County (referred to as “H Hook Ranch”) that is located at 10495 Stone Quarry Road.

3. Clifford and Mary Morgan are property owners in Payette County and reside at 7405 Little Willow Road in Payette County.

4. Tom Pence is a property owner in Payette County and resides at 5433 Big Willow Road in Payette County.

5. Cyril W. and Irene J. Roland are property owners in Payette County and reside at 4001 Little Willow Road in Payette County.

6. Thomas G. and Marcia R. Roland are property owners in Payette County and reside at 4331 Little Willow Road in Payette County.

7. James S. Underwood, Jr. is a property owner in Payette County and resides at 8720 Little Willow Road in Payette County.

8. Jeffrey G. Weber is a property owner in Payette County and resides at 10465 Stone Quarry Road in Payette County.

9. Defendant Alternate Energy Holdings, Inc. (“AEHI”) was founded by Donald L. Gillispie and incorporated in Nevada with its principal place of business in Eagle, Idaho. AEHI is a development stage company that purportedly plans to build a nuclear power plant in Payette

County on a 500 acre parcel of land that is located between Little Willow Road to the north, Stone Quarry Road to the east, and Big Willow Road to the south.

10. Defendant Donald L. Gillispie has been President, CEO, and Chairman of AEHI at least since the company went public in 2006. Gillispie resides in Eagle, Idaho. AEHI reported that Gillispie owned 39,600,000 of its shares (15.9%) as of the end of 2009.

11. During the relevant period, Defendant Jennifer Ransom was Senior Vice-President of Administration and Secretary for AEHI. In 2008, she was given responsibility for AEHI administration, human resources, accounting and restricted stock sales. Ransom resided in Star, Idaho, had a personal relationship with Donald Gillispie and was the beneficiary of his IRA account. AEHI reported that Ransom owned 17,000,000 of its shares (6.74%) as of the end of 2009.

12. Defendant County of Payette is a political subdivision of the State of Idaho.

13. Defendant DOES 1-10 are individuals and entities whose true names are unknown in this matter sharing responsibility and/or liability for the misconduct and wrongdoing of the other Defendants.

#### **Jurisdiction And Venue**

14. This court has subject matter jurisdiction and personal jurisdiction pursuant to Idaho Code, Section 5-514. The amount in controversy exceeds the amount of \$10,000.

15. Venue is proper with this Court because the wrongdoing described herein occurred in Payette County.

#### **Summary Of The Action**

16. This matter arises out of the injuries and irreparable harm to Plaintiffs that have been and are being caused by Payette County's participation in and material assistance to the

AEHI Defendants' (AEHI, Gillispie and Ransom) scheme to manipulate the market and price for AEHI's stock. Payette County has knowingly or recklessly provided material assistance to the scheme by, among other things, deliberately violating the Idaho Local Land Use Planning Act ("LLUPA"), illegally making and granting a Change to its Comprehensive Plan, a Zoning Change, and a Variance, all of which the AEHI Defendants have used to give an appearance of legitimacy to their claim that they plan to build a nuclear power plant in Payette County. Payette County also entered into an illegal Development Agreement, dated August 29, 2011, that gives AEHI a twenty-year term (with possible unlimited extensions) to build its purported nuclear power plant on a parcel of land next to and in the vicinity of property owned by Plaintiffs. The Payette County/AEHI 20-year Development Agreement, together with the Payette County Zoning Change, Variance and Change to the Comprehensive Plan, materially aided the Defendants in the fraud scheme by which Defendants raised millions of dollars, caused and continue to cause injury and irreparable harm to Plaintiffs' current and future use and enjoyment of their real property by significantly decreasing their property values, negatively affecting the marketability of their properties, and interfering with the free use and enjoyment of their properties.

17. Two of the Plaintiffs share a border along Stone Quarry Road with the parcel of land upon which Payette County has given the AEHI Defendants their requested Zoning Change, Variance and 20-year Development Agreement for the construction of a nuclear power plant. The other Plaintiffs all have property located in the immediate vicinity on Stone Quarry Road, Little Willow Road or Big Willow Road that provide access to the site of the Payette County approved nuclear plant that has been at the center of the fraudulent stock scheme. In addition, Plaintiffs are all located within the 10-mile Emergency Plan Zone that the United States Nuclear

Regulatory Commission has mandated for nuclear power plants. The fear of the Payette County endorsed nuclear plant scheme has and will continue to injure and adversely impact Plaintiffs' use and enjoyment of their land. The cloud of uncertainty created by the 20-year Payette County/AEHI Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan, all of which are in violation of Idaho law, has and will continue to not only diminish Plaintiffs' property values but also prevent potential sales of or development of their properties. These injuries are particularly acute and significant for Plaintiffs, all of whom own property within a ten mile radius from the AEHI/Payette-approved nuclear power plant site.

18. According to the U.S. Securities and Exchange Commission ("SEC"), in the lawsuit that it filed in the U.S. District Court for the District of Idaho against AEHI, Gillispie and Ransom:

AEHI is a development stage company that purportedly plans to develop a nuclear reactor in Payette County, Idaho. AEHI and Gillispie have raised millions of dollars from individual investors in Idaho, elsewhere in the U.S., and Asia in illegal unregistered transactions, and by making misleading statements about the viability of AEHI, which has no realistic possibility of building a multi-billion dollar nuclear reactor. AEHI has never had any revenue or product. Beginning in 2006, Defendants engaged in a scheme to pump up the price and volume of AEHI's stock to artificially high levels through false press releases and promoters, and subsequently dump the stock through secret sales made by other entities and individuals connected to AEHI.

*(Securities and Exchange Commission v. Alternate Energy Holdings, Inc., et al., U.S. District Court for the District of Idaho, No. 1:10-CV-621, Dkt. No. 81-1.)*

19. The illegal actions of Payette County provided immediate and material assistance to the AEHI Defendants' stock price manipulation scheme. During the early stages of the fraud scheme, the AEHI Defendants had limited success. In February of 2008, Defendant Gillispie and another company affiliated with AEHI defaulted on a real estate purchase and sale

agreement for property located in Elmore County by failing to pay the balance owed on the contract. Even after filing their application in Payette County, Gillispie was still attempting to recover \$235,000 in earnest money which had been paid on the defaulted contract. During the eighteen months before Payette County began aiding and participating in the scheme, the AEHI Defendants raised less than \$750,000 from their private stock sales. However, after Payette County joined the scheme, the AEHI Defendants raised almost \$10 million in the next nine months. And, after AEHI announced that the Payette County Commissioners had provided their stamp of approval, the price of AEHI stock jumped from \$.22 to more than \$1.40 per share in a single day on May 12, 2010. Indeed, the value of Gillispie's personal shares increased by more than \$45 million and the value of Ransom's AEHI shares increased by approximately \$20 million immediately following AEHI's May 11, 2010 announcement of Payette County's endorsement of AEHI's purported nuclear power plant.

20. The Payette County officials continued to assist Gillispie, Ransom and AEHI even after the U.S. Securities and Exchange Commission filed suit against AEHI, Gillispie and Ransom on December 16, 2010. The Complaint charged AEHI, Gillispie and Ransom with operating a scheme for manipulating the market for AEHI stock and defrauding individuals who purchased AEHI stock. On December 20, 2010, one of the Plaintiffs caused to be delivered to the Payette County Commissioners a letter urging them to take no further action on the AEHI application until after resolution of the U.S. District Court lawsuit against the AEHI Defendants. On that same day, Payette County Planning and Zoning Chairman Chad Henggeler apparently advised the County Commissioners that Defendant Donald Gillispie had called him asking that the County provide help to him and AEHI. Less than a month after the filing of the U.S. Securities and Exchange Commission suit, on January 13, 2011, Chairman Henggeler signed an

Order recommending that the Board of County Commissioners approve the application and Development Agreement submitted by AEHI. The Payette County Board of Commissioners later approved AEHI's request for Rezoning the subject agricultural property to heavy industrial (I-2), approved a conceptual plan and Variance, and entered into a Development Agreement with AEHI. The Development Agreement, which is not authorized by Idaho law, was nonetheless executed by the Payette County Commissioners on August 29, 2011, states that:

This Agreement shall promote and encourage the development of the property by providing AEHI and AEHI creditors with general assurances of AEHI's ability to timely and economically complete development of the project.

The Development Agreement does not require any performance by AEHI other than periodic reporting. The County, however, agreed to provide cooperation and assistance to AEHI for twenty years and to refrain from changing the zoning on the subject property for that time.

21. Payette County's participation in and material aid to the AEHI fraud scheme has come at a high price to the Plaintiffs, all of whom own property adjacent to or in the immediate vicinity of the property that is now the subject of the 20-year Payette County/AEHI Development Agreement, Zoning Change, Variance and Change to the Payette County Comprehensive Plan. The injuries to Plaintiffs and their property interests are ongoing and will continue on into the future. The material assistance Payette County has provided to the fraud scheme in the form of the 20-year Payette County/AEHI Development Agreement, Zoning Change, Variance and Change to the Payette County Comprehensive Plan have caused, among other things, an ongoing blight of uncertainty over the future land use for the area, diminished prospects for property sales, decreased property values, diminished demand for products and services, and eliminated any prospects for future development of their properties. In addition, Payette County has given

AEHI the unilateral right to expand the roads that have been established by easements over private property owned by Plaintiffs and other landowners in the area.

22. Plaintiffs in this lawsuit are not seeking damages for their injuries because damages would not and could not provide an adequate remedy for their injuries or the continuing nature of those injuries. Moreover, even assuming that AEHI has never had and will never have the ability to build a nuclear power plant, the one-sided Payette County/AEHI Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan have adversely affected Plaintiffs' property and will prevent and interfere with Plaintiffs' free use and enjoyment of their property in a manner that is not susceptible to a damage calculation. As a result, Plaintiffs are asking the Court for declaratory and injunctive relief providing that the 20-year Payette County/AEHI Development Agreement, Zoning Change, Variance and Change to the Payette County Comprehensive Plan are illegal, void and not enforceable. This Court has the authority to grant this relief under any and all of the six theories set forth in this Complaint - - 1) Declaratory Judgment, 2) Rescission of Illegal Actions and Contract, 3) Nuisance, 4) Change to Comprehensive Plan Violated LLUPA, 5) Failure to Comply with and Beyond Statutory Authority, and 6) Constitutional and Due Process Violations.

#### **Payette County's Participation In And Material Assistance To AEHI's Fraud Scheme**

23. AEHI was created out of Sunbelt Energy Resources, Inc. (Sunbelt), a Nevada and Florida private development company. Gillispie was one of the founders of Sunbelt which was apparently capitalized with only \$75,000 of cash contributions by its initial owners according to corporate reports filed with the SEC. AEHI was formed as the surviving entity in September 2006, when Gillispie used Sunbelt to effect a "reverse merger" takeover of Nussentials Holdings, Inc., a failed Nevada nutritional supplement company.



24. AEHI's reverse merger with Nussentials was a cheap means for acquiring a company that only exists on paper and whose only asset or value lies in the fact that it had previously been registered as a public company with the U.S. Securities and Exchange Commission. That registration, of course, opens the door for widespread opportunities (and abuse) for raising money from the "public." As one corporate expert has explained, a reverse merger is a financing technique used as a cheap means to acquire a publicly-traded shell company: "...generally only low-quality companies undertake reverse mergers because more attractive financing options are available to higher quality companies. Hence, going public through a reverse merger signals to the market that the company has likely been passed over by underwriters and is therefore of low quality." (The Truth About Reverse Mergers, Entrepreneurial Business Law Journal, Vol. 2 (2008); by Professor William K. Sjostrom Jr., University of Arizona – James E. Rogers College of Law.) AEHI's stock is registered under Section 12(g) of the Securities and Exchange Act and is quoted on the Over-the-Counter Bulletin Board and Pink Sheets markets.

25. Gillispie has claimed that AEHI is on the forefront of the alternate energy field with plans to, among other things, harvest electricity from lightning, build mini-nuclear reactors, develop fuel additives to reduce natural gas production costs, and construct nuclear powered desalinization reactors to provide the third world with clean water. After it had become a public company, AEHI's website touted its technological expertise and projects:

Lightning harvesting: As a proven leader in the energy field, AEHI seeks to become the first company to harness the natural energy delivered in a bolt of lightning.

Urban Mini-reactors: An additional new green energy advance is AEHI's concept of a nuclear power plant that is minimal in size, has multiple safety features, uses a minimum reactive mass, and requires no large cooling towers or lakes.

CO2 Removal: AEHI has developed a safe and effective system for the common greenhouse gas, carbon dioxide (CO2), from the exhaust of combusted fuels.

Energy Saving Fuel Additives: Our most recent breakthrough has been the development of an economical and environmentally-friendly fuel additive that will reduce the cost of natural gas energy production by 25% to 40%.

26. AEHI has never actually completed any of its projects or schemes other than the construction of a few residential homes. No lightning has been harvested, no mini-nuclear power plants have been built, no fuel additives for the natural gas industry have been produced, and no nuclear powered desalinization plants have been constructed. Aside from isolated house sales, AEHI has never generated any revenue, never shown a profit. Instead, AEHI has been little more than a vehicle by which Gillispie, Ransom and others could raise money which was then used to support their lifestyles and further promote the fraud scheme. According to AEHI's filings with the SEC, Gillispie received \$870,000 of stock and other compensation in 2008, \$633,000 of stock and other compensation in 2009, and \$1,394,000 of stock and other compensation in 2010. And, according to the SEC's Complaint, in 2010 Ransom received at least \$323,747 in compensation even though AEHI had only reported that she had received \$130,000. In addition, the SEC has said that Ransom sold 1 million AEHI shares between June and September 2010, netting \$675,326. The SEC has also claimed that Gillispie sold AEHI shares using Ransom and an attorney named Brian Webb during 2010 so that he could conceal his activities from the investing public.

27. Beginning in December 2006, and for most of the three years prior to concentrating their efforts in Payette County, AEHI attempted to obtain the assistance of Owyhee County, and then Elmore County in its fraud scheme. That is, AEHI shopped for an Idaho county that would support its purported plan to construct a nuclear power plant. AEHI,

Gillispie and Ransom apparently knew that they could raise money from investors -- money that was used to support their lifestyle and scheme -- if they obtained approval and endorsement of their purported plan to build a nuclear power plant from an Idaho county.

28. In June 2008, AEHI announced it was abandoning its proposed site in Owyhee County for another location in Elmore County. AEHI cited geologic problems as the reason for the move, even though Gillispie admitted under oath that AEHI lacked sufficient funds to close the purchase of the Owyhee County property. The next year, in August 2009, impatient with Elmore County's prudent response and desperate for a quick decision which would assist its fraud scheme, AEHI issued a press release announcing it was considering other locations as, "...several Idaho counties and the state have recently offered lands for AEHI's nuclear plant following delays in local approval at the current site in Elmore County."

29. AEHI turned to Payette County, following Owyhee County's refusal to participate in the scheme, and after Elmore County processed AEHI's zoning change application in an orderly manner which was not fast enough for the AEHI Defendants' purposes. On or about October 15, 2009, AEHI and Gillispie filed with the Payette County Planning and Zoning Commission a flawed and incomplete application to amend the Comprehensive Plan. The application requested a change in the County's Comprehensive Plan Map for part of the area along Stone Quarry Road, with Little Willow Road to the north and Big Willow Road to the south, from Agriculture to Industrial. Although Payette County had no prior experience in processing an Application for Amending its Comprehensive Plan Map to provide for a nuclear power plant, it completed a staff report and conducted a Planning and Zoning Commission hearing only thirty-five days after the filing of the application. AEHI was beginning to receive

the participation and material assistance in its fraud scheme that it had been seeking from an Idaho County government.

30. Plaintiffs and other interested parties provided testimony regarding AEHI's lack of credibility, lack of financial capability and experience, and provided evidence that demonstrated serious questions concerning AEHI's claims that it was going to build a nuclear power plant which would create 5,000 construction jobs and 1,000 permanent jobs when the plant became operational. Plaintiffs' testimony and information was ignored and less than two months after filing its request to change the Payette County Comprehensive Plan Map, the Payette County Planning and Zoning Commission approved on December 10, 2009, AEHI's request for a change in the Comprehensive Plan Map and voted to send its recommendation to the Payette County Commissioners. The AEHI Defendants immediately began to use the hastily considered change to the Comprehensive Plan Map as a major component of the fraud scheme. On January 15, 2010, AEHI issued a press release stating that "the Payette County Planning and Zoning Commission approved a proposed change to the county's comprehensive plan." Gillispie was quoted as saying, "This is a major hurdle for AEHI, one which sets us on a path to building a nuclear power plant in Payette County."

31. Although AEHI had spent 18 months seeking local approval in Owyhee County and 15 months in Elmore County with a total failure to obtain any type of local land use approval, in less than two months, the Payette County Planning and Zoning Commission not only ignored the mounting evidence that AEHI was operating a stock fraud scheme, but quickly recommended approval of their request for the change in the Comprehensive Plan Map. This cooperation by the Payette County Planning and Zoning Commission, by quickly agreeing to change the Comprehensive Plan Map without the planning required by the Idaho Local Land Use

Planning Act, materially aided and assisted AEHI in the furtherance of the securities fraud scheme.

32. AEHI's flawed and incomplete application for a Comprehensive Plan Map change was then scheduled for a hearing before the Payette County Commissioners, to be held on February 22, 2010. That hearing was scheduled by the Payette County Commissioners before the Planning and Zoning Commission had even adopted the statutorily required Findings of Fact and Conclusions of Law in support of its recommendation for approval in violation of Idaho Code Section 67-6509. In addition, in its notice of hearing, the Payette County Commissioners required that all written testimony on the Comprehensive Plan Map change be submitted to it at least five (5) days prior to the February 22, 2010 hearing date, a requirement which posed two problems. First, such a requirement is expressly contrary to the Payette County Code; and second, such a requirement made it practically impossible to comment on the Planning and Zoning Commission's Findings of Fact and Conclusions of Law.

33. Upon being informed of the defect by members of the public opposed to the Comprehensive Plan Map change, rather than rescheduling the hearing, the Payette County Commissioners decided to hold three (3) hearings, one on February 22, 2010, to consider the AEHI Comprehensive Plan Map change application, another on March 1, 2010, to hear testimony from a particular interest group opposed to AEHI's Comprehensive Plan Map change application, and a third, on March 22, 2010, to hear testimony on the Planning and Zoning Commission's Findings of Fact and Conclusions of Law. This highly unusual procedure adopted by Payette County Commissioners was intended to aid AEHI in the furtherance of its fraud scheme by expediting the AEHI Comprehensive Plan Map change application.

34. During the procedurally deficient, expedited Comprehensive Plan Map change hearing process, it was brought to the attention of the Payette County Commissioners that AEHI's application for a Comprehensive Plan Map change was also improper because the Idaho Local Land Use Planning Act requires that each county's comprehensive plan must include "an analysis showing general plans for...power plant siting," and that the Payette County Comprehensive Plan lacks such an analysis. This defect makes the Payette County Comprehensive Plan invalid under Idaho law and makes a Comprehensive Plan Map change to accommodate a power plant improper. Instead of rejecting AEHI's application for a Comprehensive Plan Map change for its proposed power plant, and causing Payette County to engage in the statutorily required planning process or requiring AEHI to submit a proper application for an amendment to the text of the Payette County Comprehensive Plan, the Payette County Commissioners elected to skip the planning process altogether and illegally and improperly converted AEHI's Comprehensive Plan Map change application into an application for both a map change and a text amendment. It did so by inviting any interested parties, including AEHI, to submit language for a proposed amendment to the text of the Payette County Comprehensive Plan for consideration at a hearing to be held for such purpose on April 12, 2010.

35. Although objections to the procedure employed by the Payette County Commissioners for consideration of a text amendment to the County's Comprehensive Plan were lodged with the Board of County Commissioners, and although Plaintiffs and other interested parties continued to provide testimony regarding AEHI's lack of credibility, lack of financial resources, and provided evidence that demonstrated serious questions concerning AEHI's claims that it was going to build a nuclear power plant in Payette County, the Payette County Commissioners, on April 26, 2010, voted to approve an amendment to the text of the Payette

County Comprehensive Plan. That amendment provided that, rather than planning for the siting of power plants in Payette County as required by Idaho law, power plant sites would be considered on a case-by-case basis upon an application being made therefore by power producers. On that same day, the Payette County Commissioners also voted to approve AEHI's application for a comprehensive plan map change. The illegal and improper procedure followed by the Payette County Commissioners in approving a comprehensive plan text amendment without an application for such having been filed and without engaging in the statutorily mandated planning process materially aided and assisted AEHI in the furtherance of its securities fraud scheme.

36. During the 39 months (i.e., the prior thirteen quarterly financial periods) before Payette County started helping the fraud scheme, AEHI had reported average private common stock sales per quarter of approximately \$350,000. However, in the two financial quarters (i.e., six months) following the Payette County Planning and Zoning Commission's recommendation for approval, AEHI sold \$9.1 million worth of common stock or an average of \$4.5 million for each of those two quarters. That is an increase of over ten times the prior quarterly average. In the six months following the Payette County Planning and Zoning Commission's approval recommendation, AEHI was able to collect more than twice as much cash from common stock sales than it had collected in the preceding three-plus years of its existence.

37. AEHI's January 15, 2010 AEHI press release was followed by a string of other announcements based on Payette County's endorsement and material aid to AEHI's scheme:

- A February 22, 2010 release claimed that AEHI had a potential deal to acquire a reactor from KEPCO, and then elaborated on Payette County:

These reactors are sought after for their quality and price, which in some cases could be a third less than the cost of KEPCO's competitors. It's also one of the reasons AEHI is

looking to use one of these reactors at a proposed plant in Payette County, Idaho.

The project has received a lot of attention lately after the county Payette Planning and Zoning Commission approved a change to the county's comprehensive plan, opening the door to nuclear power. Most recently, on February 15<sup>th</sup>, the Times News in Twin Falls, ID also reported Idaho Power is keeping a close eye on this project. When finished it will be a low-cost power opportunity for the company's portfolio. ....

The project is also appealing to an overwhelming majority of Payette County residents, who are looking forward to the thousands of high-paying jobs it will provide. The reactor project asset would be about 20% of Idaho's GDP when completed and produce low cost, clean reliable energy for 60 years.

- AEHI's February 23, 2010 press release announced "Huge turnout for AEHI at Payette County Commission hearing." Gillispie was quoted as saying,

I believe the commissioners took into account the overwhelming support for our cause, and will use that to make the necessary changes to the county's comprehensive plan. This hearing verifies what we have known all along, that there is a growing need for nuclear power nationally and in local communities that need the jobs and economic stability this project will provide.

- A March 21, 2010 AEHI press release described the potential economic benefits in staggering terms:

..., some of the standout numbers from the study indicate Payette County and the State of Idaho will benefit in dramatic fashion from this endeavor. Just a few of those numbers show an annual commercial impact to Idaho's economy of \$5.3 billion during construction. Payette County would also see a dramatic increase of \$4.8 billion, which is unprecedented in that part of Idaho.

During operations the study shows the state's gross domestic product increasing by \$3.58 billion (nearly seven percent of Idaho's current GDP) and Payette County's GDP rising by \$3.43 billion. These revenues will increase year



over year and are good for the life-expectancy of the plant, which is 60 years.

- On March 24, 2010, AEHI issued a press release announcing that the “Nuclear Regulatory Commission has officially recognized AEHI’s proposal to build a nuclear power plant in Payette County, Idaho.”
- On April 6, 2010, Gillispie was quoted in a release as stating that “Before long, AEHI may be faced with a decision that no one expected, choosing between two approved sites, one in Payette County, the other in Elmore County.”
- On April 14, 2010, AEHI sent out a press release stating that it “remains very optimistic after a hearing by Payette County Commissioners.... The hearing allowed commissioners to consider a few other proposed changes to the county’s comprehensive plan.”
- On April 27, 2010, AEHI distributed a press release, describing Payette County’s help:

Alternate Energy Holdings, Inc. today announced that in a unanimous decision yesterday, April 26, 2010, Payette County Commissioners approved a key change to the county’s comprehensive plan, which advances AEHI’s plans to develop a nuclear power plant within the county. The comprehensive plan change allows for an industrial complex on a 5,000 acre parcel under the precondition that the industrial use involve a nuclear power plant. The change creates a footprint for industrial uses in an area once designated solely for the purpose of agriculture. The parcel is located near Big Willow Road and Stone Quarry Road, just a few miles from New Plymouth, Idaho.

‘This important decision brings us one step closer to final approval of a large advanced nuclear power plant and also illustrates the strong support we have from both county leaders and the community. The planned nuclear plant will be a “win-win” for local residents, in the form of lower utility costs and high paying jobs, the local and state government, through an enhanced tax base, and the nation in the form of low-cost, clean and reliable power,’ said Don Gillispie, AEHI CEO. ‘This decision also represents a major victory for our shareholders who have been enormously supportive throughout this process.’

- On May 4, 2010, AEHI sent out a release discussing Payette County's aid to AEHI's plans:

AEHI was the first independent company in 30 years to propose building an investor-funded nuclear power plant in the United States. Today the company is very close to getting the necessary approval. In fact, last week the Payette County Board of Commissioners approved a change to the county's comprehensive plan specifically for AEHI's nuclear project.

- On May 6, 2010, AEHI distributed another press release that included a discussion of Payette County's assistance: "AEHI has also witnessed tremendous success in the United States. Last week, the Company achieved the first stage in local approval to build a nuclear power plant in Payette County, Idaho."

38. Payette County's actions and participation had a dramatic impact on the success of AEHI's fraud scheme. AEHI had raised less than \$750,000 during the eighteen months (i.e., six quarters) prior to its move into Payette County in the fall of 2009. However, after AEHI began reporting the aid and assistance from Payette County, AEHI's fundraising fortunes expanded exponentially. In fact, AEHI's quarterly reports showed that it had sold \$873,470 of private stock sales in the fourth quarter of 2009 (October-December) followed by private sales of \$3,769,517 in the first quarter of 2010 (January-March), and \$5,312,230 for the second quarter of 2010 (April-June). Thus, AEHI raised \$9,995,217 directly from private stock sales, during that October 2009 to June 2010 time period, which corresponded with the initiation of Payette County's help and material aid to the scheme. That is, AEHI's fraudulent stock scheme raised almost \$10 million during the first nine month period that it had Payette County's help compared to less than \$750,000 for the eighteen month period before Payette County began participating in the scheme.

39. A more dramatic illustration of the assistance and importance of Payette County to the AEHI fraudulent stock scheme is illustrated by AEHI's May 2010 announcement that

Payette County had approved its nuclear power plant. On May 11, 2010, AEHI issued a press release entitled “Alternate Energy Holdings Receives Unanimous Commissioner Vote Specifically for Nuclear Plant on Industrial Site - - Payette County Commissioners Approve Plan Changes to Industrial Use - - Only for AEHI Nuclear Plant.” In the release, Gillispie said that:

The decision clearly indicates the county wants our nuclear plant on that location and no other industrial complex will do. This proves beyond a doubt their support is very strong for our plant. It is excellent news for AEHI, including our investors, not to mention residents who want good jobs and low cost, reliable power. Our supporters have been very patient waiting for local approval in Idaho and their patience is paying off.

AEHI’s announcement of the Payette County approval had the desired impact on Defendants’ stock price manipulation efforts. The next day, the price of AEHI’s stock shot from \$.22 to \$1.45 per share. There was more than a six-fold increase in the price of AEHI publicly traded stock following the announcement. Moreover, the volume of shares traded on May 12, 2010 also jumped to more than 2,900,000, even though the trading volume for the previous week had averaged less than 120,000 shares per day.

40. The market capitalization for AEHI stock increased by almost \$300 million on the day after AEHI had announced Payette County’s unanimous approval for its purported nuclear power plant. According to AEHI’s quarterly Form 10-Q Report for the time period ending March 31, 2010, it had 252,314,764 shares outstanding. When AEHI shares were trading at \$1.45, its market capitalization was approximately \$366 million. Such a large market capitalization was incredible given the fact that AEHI had never had any revenues, never shown a profit, never built anything, and according to Gillispie did not even have the 15 employees that it had reported to the SEC (only fte’s, which involved the AEHI Defendants’ imaginary way of counting employees). In addition, according to one of AEHI’s other filings with the SEC (i.e.,

March 25, 2010 Form 4), Gillispie owned 39,600,000 AEHI shares which meant that the market value of his personal holdings increased from approximately \$8.7 million to more than \$55.4 million on May 12, 2010. Similarly, Ransom owned 17,000,000 AEHI shares according to an AEHI filing with the SEC (the Form 10K filed on March 31, 2010), which meant that her personal holdings increased in value from \$3.74 million to \$23.8 million on May 12, 2010. Clearly, given AEHI's documented lack of customers, revenues, or assets, it was solely on the strength of the Payette County "unanimous approval" of the AEHI scheme that such an inflated market capitalization could be attained. Most noteworthy is the fact that over \$66 million of the market capitalization increase was to the benefit of Gillispie and Ransom, AEHI's two principal perpetrators of the stock fraud scheme.

41. On the heels of Payette County's help with the change to the County's Comprehensive Plan, Gillispie's AEHI salary was raised to \$40,000 per month in June 2010. AEHI failed to report that salary increase according to the SEC, but AEHI did admit many months later that Gillispie had received \$1,394,000 in stock and other compensation from AEHI during 2010. Once again, Gillispie was paid handsomely by AEHI, a company with no profits, no revenues, and no operational history other than the aid and assistance provided by Payette County to the securities fraud scheme.

42. AEHI used Payette County's illegal actions as the cornerstone of the scheme to fraudulently promote its stock and boost its stock price by continually issuing statements about the County's endorsement of AEHI and its purported nuclear power plant in order to create an air of legitimacy for the scheme. In fact, a review of other public statements from 2010 shows the material assistance and aid provided by the Payette County officials:

- On May 20, 2010, an AEHI press release highlighted the involvement of Payette County:

‘We continue to make rapid progress on our plans to permit and construct a nuclear reactor in Idaho, through our Idaho Energy Complex (IEC) subsidiary,’ said Don Gillispie, AEHI CEO. ‘Most recently, in May 2010, the Payette County, Idaho Board of Commissioners unanimously approved changes to the county’s comprehensive plan in order to allow development of a nuclear power plant at our site, and we expect final local approvals in 2010.’

- On June 9, 2010, Gillispie and AEHI posted an investor slideshow on the internet updating investors on the company’s proposed primary nuclear site in Payette County. In a press release on the same date, AEHI and Gillispie said:

We [AEHI] are the only independent nuclear power plant developer in the U.S. seeking to build in non-nuclear states. ... The fact that we have now received unanimous approval from Payette County’s Board of Commissioners for its comprehensive county plan change, as well as the planning and zoning approval at our backup site in Elmore County, demonstrates we have made dramatic operational progress and are well on our way to NRC review, followed by the construction phase at one or both of these sites. At each stage of the permitting and regulatory approval process, the commercial value of these sites increases substantially driving significant value creation for our shareholders.

- On June 22, 2010, AEHI reported that:

[T]he company has entered the final stage of gaining local approval to build a nuclear power plant after officially filing a rezone application this morning.

\* \* \*

Recently the Payette County Board of Commissioners unanimously approved a county-wide zoning change, which makes this final step possible. The decision to do so was custom-designed for AEHI, because commissioners made the change specifically for a nuclear power plant; meaning the property in question could be rezoned from agricultural to industrial, but only if a nuclear power plant is built there.

- A July 15, 2010 press release discussed Payette County’s help with AEHI’s plans for its stock:

[P]reparing for a move to a senior U.S. stock exchange in response to rapid progress towards local approval for the Company's planned nuclear reactor in Idaho, .... AEHI believes it substantially meets the requirements to uplist to a senior U.S. stock exchange.

- A July 28, 2010 announcement by AEHI further emphasized the aid from Payette County:

'This large plant will offer jobs, financial security and opportunity that many people in the community are looking for. It's the same message we continually hear every time we attend one of the hearings. It's also the reason county commissioners unanimously approved the next-to-last step in the rezone process on the basis that only a nuclear power plant could locate on the property,' said Gillispie.

- An AEHI press release dated August 9, 2010 announced that it had been picked as a featured stock of the month citing to "AEHI's proposed construction of a nuclear power plant in Payette County, Idaho...."
- An August 20, 2010 press release credited Payette County's assistance and cooperation as the reason for withdrawing from Elmore County:

[AEHI], developer and marketer of innovative clean energy sources based in Eagle, Idaho today announced its plans to move forward exclusively on a proposed nuclear power plant in Payette County, Idaho and, in turn, has withdrawn its zoning application in Elmore County, Idaho.

The company recently selected a new Idaho backup site adjacent to the current site in Payette County to replace the Elmore site. ...

'Our plans to permit and ultimately construct a nuclear reactor in Payette have progressed very smoothly, and we have been very pleased with both the pace of local approvals and the level of local support for the project. In less than a year, Payette County Commissioners approved initial rezoning measures and they are already moving forward on the final application process....,' said Don Gillispie, AEHI CEO.

- On August 11, 2010, AEHI released another press release explaining the significance of the Payette County assistance:

- The proposed construction of AEHI's \$10 billion Idaho Energy Complex in Payette County, as recognized by the Nuclear Regulatory Commission (NRC), is on a 5,300-acre parcel with an adjacent 6,000-acre backup site. Local approvals are expected by the end of 2010; the NRC application process should be completed by the fourth quarter of 2011; and the plant is expected to be operational in 2018.
  - AEHI plans to use a combination of investor funds and loans in two phases of this project. Phase 1 requires about \$100 million to pay for land, water, engineers, lawyers and the NRC applications. Phase 2 is expected to take place after AEHI receives local and federal approval. Once approved, the property is projected to increase in value to about \$1.5 billion. The land can then become an asset used to borrow most of the \$8 billion to \$10 billion, which is needed for construction. At full capacity, the plant is projected to create about \$3 billion annually in profits for 60 years.
- An August 16, 2010 AEHI press release discussed the company's "proposed \$10 billion commercial nuclear plant...in Payette County, Idaho" and quoted from a purported stock analyst named Larry Oakley who allegedly compared AEHI to Microsoft and Intel:

I believe that this special situation is one that will do as well as any of the really successful situations that I have followed during the last several decades. In my opinion, it could easily outperform Microsoft, Intel, & any others that you may wish to mention.

- On August 19, 2010, another press release was issued captioned "AEHI Reaches Key Milestones in Nuclear Power Goals..." Again, AEHI credited Payette County for its assistance:
  - In May this year, Payette County Commissioners approved a key change to the county's comprehensive plan, which allows for an industrial complex on a 5,000 acre parcel under the precondition that the industrial use involve a nuclear power plant.
  - In July, AEHI filed for final rezone approval and AEHI is confident the approval will come before the end of the year.
  - Application preparations are also underway for the Nuclear Regulatory Commission in advance of the local approval process in Payette County Idaho.

- A September 2, 2010 AEHI release publicized the Payette Chamber of Commerce's endorsement of its nuclear power plant:

The Chamber and its members are confident in AEHI's success and look forward to the local approval process, which the Chamber believes will result in a positive result for the company, its shareholders and the people who live in Payette County.

- A September 3, 2010 press release again used Payette County:

Today's jobs report from the U.S. Dept. of Labor continues to highlight the need for U.S. private sector job growth. 'But there is an excellent way to create millions of high-paying jobs,' says Don Gillispie, .... 'Build new nuclear plants.'

Gillispie has the experience and numbers to back up his statement. He is a 45-year veteran of the nuclear industry. Now his company is on track to build two big plants in Payette County, Idaho. He expects approval from the county and state by the end of the year.

The plants will take about five years to build, directly employing more than 5,000 workers during that time. And since nuclear plants need hundreds of thousands of tons of concrete, more than 30,000 tons of steel, and countless specialized parts from a giant chain of suppliers, the total number of jobs created by the plants will actually be in the tens of thousands.

- A September 7, 2010 press release linked AEHI's stock performance with actions by Payette County:

Alternate Energy Holdings, Inc....today announced a decision to suspend all efforts involving a reverse stock split with the anticipation of milestone events in the near future that could greatly reduce a reverse split or render it unnecessary in order to uplist to the major exchange.

Based on confidence in AEHI's accomplishments and long term potential, company directors and line officers have maintained their stock ownership, in which no shares have been sold since company inception.



... In particular, AEHI also anticipates a favorable zoning decision from the Payette County, Idaho Board of Commissioners, which would give the company the local and state approval necessary to build a proposed nuclear power plant.

- A September 20, 2010 release discussed the size and significance of AEHI's Payette County project:

AEHI is among those companies that intend to apply to the NRC for a license for its proposed \$10 billion commercial Idaho Energy Complex, which the company plans to construct on a 5,300-acre parcel in Payette County, Idaho. AEHI also secured a backup nuclear site on 6,000 acres adjacent to the primary site. The initial plant is expected to become operational in 2019.

According to a recent independent study, AEHI's proposed plant about 60 miles northwest of Boise is expected to create around 5,000 jobs through the construction phase and more than 1,000 direct and 2,000 indirect jobs during operations. Pay levels for those jobs would average \$60,000 and \$80,000 respectively. Revenue for the county and state during the construction phase alone is projected to increase Idaho's GDP by some \$5.3 billion inclusive of \$4.8 billion that would flow directly through Payette County.

- A September 27, 2010 press release by AEHI connected the trading of AEHI stock on the OTC Bulletin Board market ("OTCBB") to Payette County's endorsement of AEHI:

Now that OTCBB trading has resumed, and the stock continues to be actively trading on OTCQB. I [Gillispie] trust these concerns can be put to rest-particularly in light of the progress we are making toward final local approval of our planned nuclear reactor in Payette, ID, the strong international interest we have received in our nuclear desalinization reactors, and our solid balance sheet.

- On September 30, 2010, AEHI's Gillispie made a statement discussing insider stock sales and again crediting Payette County for its critical help:

Recent insider purchases and the fact that neither I, our CFO, board members, nor any officers who have day-to-

day line responsibilities for running the company have sold a single share since the Company's inception speak to our strong confidence in the outlook for the business. Near-term, we anticipate two important catalysts for our business: the anticipated final local approval of our nuclear power plant site in Payette County; and the potential sale of a nuclear desalination plant to one or more overseas buyers.

- On October 14, 2010, AEHI issued another press release praising Payette County's assistance:

Alternate Energy Holdings, Inc...., a developer and marketer of innovative clean energy sources based in Eagle, ID, today announced their plans to build a nuclear power plant in Payette County, Idaho will now enter the final local and state approval process. This comes on the heels of an announcement from Payette County that the process is moving forward.

\* \* \*

The next step involves a public hearing before the Payette County Board of Planning and Zoning Committee. The remaining process could be finished as early as the end of the year.

'We are very excited to finish this process and I am confident in the technical findings. The Board of Commissioners already unanimously approved our petition during the first zoning phase and even indicated in their decision that the only project that could locate on the property in question is a nuclear power plant. I believe this speaks volumes about where this process will be in just a few months,' said Don Gillispie, AEHI CEO.

- On October 28, 2010, AEHI issued another press release linking Payette County to its fundraising efforts and stock sales:

Alternate Energy Holding, Inc...., a developer and marketer of innovative clean energy sources based in Eagle, Idaho today announced a funding facility, Securities Purchase Agreement, with Source Capital Group, Inc. for the committed purchase of up to 170 million shares of common stock which is approximately \$120 million today to cover payments for land, water rights, engineering work and Nuclear Regulatory Commission (NRC) application fees to obtain a combined construction and operating

license (COL) for building and operating a nuclear power plant in Payette County, Idaho.

\* \* \*

The proposed plant has received overwhelming approval at previous hearings in Payette County, Idaho and has been given endorsements from every mayor in the county as well as the Payette and Fruitland Chambers of Commerce.

‘We hope our success in Payette will become a model for other companies to seek out and build new nuclear power plants on greenfield sites.’

- On November 1, 2010, AEHI again linked Payette County to another fundraising deal:

Alternate Energy Holdings, Inc. ..., announced today the signing of a \$150M Equity Funding Facility with Alpharetta, Georgia based Roswell Capital Partners, which is designed to fund the initial phase of a nuclear power plant project in Payette County, Idaho. The funding proceeds will be applied towards the land, water rights and the Nuclear Regulatory Commission application.

- On December 6, 2010, an AEHI press release discussed Gillispie’s interview with an online publication:

In the interview, Gillispie highlighted AEHI’s proposal to build an advanced nuclear power plant in Payette County, Idaho and to provide power locally and to a number of western states. Gillispie said that after securing local, state, and federal approval, the company expects to begin construction in late 2014 and operation in 2019. The project would be the first new, greenfield nuclear power plant developed in the U.S. since 1977, Gillispie said.

- On December 10, 2010, AEHI issued a press release discussing the significance of Payette County’s assistance:

Alternate Energy Holdings, Inc. ...today announced that it has received recommended rezone approval on a site to build a nuclear power plant in Payette County, Idaho. The decision by Payette County Planning and Zoning Commissioners is nationally significant as being the first decision of its kind regarding a western U.S. greenfield nuclear site in 33 years and the first rezone ever of a greenfield site for an independent company.

As the press releases bragged about Payette County's involvement, AEHI insiders sold one million shares of their AEHI stock at the inflated prices created by Payette County's aid and assistance. According to the U.S. Securities and Exchange Commission, Ransom sold one million shares netting proceeds of \$675,326 between June and September 2010, at the direction of Gillispie.

### **SEC's Fraud Action Against AEHI, Gillispie And Ransom**

43. On December 14, 2010, the U.S. Securities and Exchange Commission suspended trading in AEHI stock based upon its charge that AEHI had been engaged in a fraudulent securities scheme, and filed a Complaint two days later, on December 16, 2010, in the U.S. District Court for the District of Idaho. The SEC lawsuit, which was brought against AEHI, Gillispie, Ransom and two other companies controlled by Gillispie and Ransom, not only provided a detailed description of AEHI's fraud scheme but the SEC has also made extensive evidence of the fraud publicly available in the U.S. District Court lawsuit.

44. In the Amended Complaint that the SEC filed in U.S. District Court, the SEC explained the history of the fraud scheme:

#### *Gillispie and AEHI Raise Millions of Dollars From Investors Through Public Solicitations*

15. From at least October 2006, AEHI and Gillispie engaged in a continuous plan to raise money by offering and selling AEHI stock directly to the public. This offering was not registered with the Commission.

16. The principal method by which AEHI and Gillispie conducted their offering was through mass e-mail distributions of offering documents called Private Placement Memoranda ("PPMs"). Typically, Gillispie would email the PPMs to a list of supporters, paid promoters and finders and invite them, in turn, to forward the solicitation to potential investors. Gillispie included

cover notes touting the offering as the “last chance” and the “lowest it will be” and repeatedly (over four years) warned that investors should rush to buy stock from the company before the company’s “public offering” or “IPO.” These statements were false. AEHI never engaged in a “public offering” (aside from the unregistered offerings made pursuant to PPMs), and could not have conducted an “IPO” or initial public offering because it was already a publicly-traded company. These false statements were made to induce unsophisticated investors into purchasing the company’s stock.

17. Some of the AEHI’s promoters and finders were paid regular consulting fees for disseminating the PPMs. Others were offered commissions for producing investors. From at least November 2006 to September 2010, Gillispie also personally solicited investors through mass e-mail distributions, mailings to existing shareholders, fax blasts, and in-person investor presentations.

18. In addition to Gillispie’s false and misleading statements made in his cover emails, the PPMs also contained false and misleading statements, which are described in detail below.

19. AEHI’s PPMs also did not include important financial information about the company. Specifically, the PPMs did not include audited financial statements or other information that would, among other things, inform investors as to the risk of the investment.

\* \* \*

23. AEHI has also issued more than 120 million shares of common stock to compensate employees, consultants, stock promoters and finders. The company has valued these shares at more than \$12 million. These transactions were also not registered with the [U.S. Securities and Exchange Commission].

*Despite AEHI’s Weak Financial Condition, Defendants Promote AEHI*

24. Despite pitching many business ventures that the company planned to pursue over the past four years (including harvesting lightning; developing fuel additives to reduce natural gas production costs by 40 percent; and using nuclear-powered desalination reactors to provide the third world with clean water), AEHI has no meaningful revenue and describes itself as a development stage company. AEHI’s promotional material claims that AEHI plans to pay the \$10 billion cost of building the nuclear

reactor “[w]ith capital raised from stock and direct investments.” According to AEHI’s Form 10-K for the fiscal year ended December 31, 2010, AEHI has “minimum liquid assets” and “will be reliant upon stock and/or debt offerings to fund any kind of nuclear operations.” The company took in more than \$14 million through private placement offerings, yet according to its most recent Form 10-K filed with the Commission on April 6, 2011, AEHI had no revenue from inception to December 31, 2010 and had spent substantially all the cash it had raised from investors. The revenue that AEHI has recognized consists entirely of proceeds of the sales of two homes that it built under its “Energy Neutral” brand. AEHI stated in its 2010 10-K that the homes were sold for \$447,000, but that one home was sold at an undisclosed loss and one was sold at a profit of approximately \$7,500. Despite AEHI’s weak financial condition, Gillispie stated in a November 12, 2010 interview that, in the long term, AEHI “could rival Exxon Mobil in profitability.”

*Gillispie Uses Promoters to Manipulate AEHI Trading Volume and Stock Price*

25. Soon after AEHI became a public company in 2006, Gillispie engaged the services of stock promoters to find prospective investors for AEHI and to manipulate AEHI’s stock price. Gillispie offered promoters AEHI stock in exchange for their efforts. Gillispie coached promoters on how to manipulate AEHI’s stock price, instructing them to buy at the end of certain trading days to increase artificially the stock’s price and trading volume.

\* \* \*

27. Gillispie encouraged further price manipulation in advance of meetings with wealthy potential investors in order to make the investment appear more attractive. Gillispie’s manipulation of AEHI’s stock price also helped him raise money from the public pursuant to PPM; because the artificially-inflated market price was higher than the direct offering price. This artificial discount was a key component of Gillispie’s pitch. Gillispie’s manipulation of AEHI’s stock price allowed him to rake in more investor funds and, thus, to further perpetuate his scheme.

28. Coupled with his use of false and misleading press releases, Gillispie’s stock price manipulation also allowed him and Ransom to sell their AEHI shares at artificially inflated prices, further enriching themselves at the expense of investors.

*Defendants Make Misrepresentations and Omissions, and Fail to File SEC Filings Disclosing Material Events*

29. Defendants' offering fraud and stock price manipulation scheme were part of a larger effort by Defendants to mislead the public about AEHI's business. While AEHI spent investor money on undisclosed executive salaries and payments to stock promoters, it raked in investor funds and made misleading statements in a barrage of press releases claiming that it was a growing, multi-national business whose financial success was just around the corner. This was false.

*AEHI and Gillispie Misrepresent That No Officer Has Sold AEHI Stock*

30. Gillispie used press releases as a key part of his scheme to manipulate AEHI's stock price and volume. AEHI has issued 166 press releases since it went public in September 2006, 87 of them since January 2010, despite the fact that the company has no revenue or meaningful operations. Several press releases contain false and misleading statements.

31. On September 7, 2010, AEHI issued a press release claiming that "Based on confidence in AEHI's accomplishments and long term potential, company directors and line officers have maintained their stock ownership, in which no **shares have been sold since company inception.**" (emphasis added). On September 30, 2010, an AEHI press release quoted Donald Gillispie as stating: "Recent insider purchases and the fact that **neither I**, our CFO, board members, **nor any officers** who have day-to-day line responsibilities for running the company **have sold a single share since the Company's inception** speak to our strong confidence in the outlook for the business." (emphasis added).

32. Both statements are false. AEFII's Senior Vice-President of Administration and **Secretary** Jennifer Ransom sold one million **AEHI** shares netting proceeds of \$675,326.14 between June and September 2010. . . .

33. Gillispie's tactics worked. AEHI's average daily closing price for the month in April 2010 was \$0.18 and average daily volume for the month was 262,905. AEHI issued 11 press releases in May and during this time the daily average closing price for the month rose to \$0.43 and monthly average volume rose to 894,950. Ransom secretly sold her stock from June to September – with her last two September 2010 sales at \$0.72 and \$0.74 per share.

\* \* \*

*AEHI and Gillispie Misrepresent That Gillispie Has Not Sold AEHI Stock*

37. The September 7 and September 30, 2010, press releases falsely stated that CEO Gillispie had not sold shares. Although Gillispie has not sold shares held in his name, he sold stock through nominees Jennifer Ransom and AEHI attorney Brian Webb. In 2010, Ransom sold at least one million AEHI shares, as set forth in paragraph 32 above. Additionally, Gillispie sold shares through AEHI attorney Brian Webb. In 2010, Webb sold at least 137,000 shares of AEHI stock. Gillispie, Ransom, and Webb all had brokerage accounts located at the same firm and used the same broker. Gillispie instructed the broker to sell stock for Ransom and Webb, including how and when to execute the trades.

38. Gillispie enriched himself using the proceeds of these nominee sales. Ransom transferred at least \$200,000 of the \$675,326.14 in proceeds from her sales of AEHI stock to Gillispie. Ransom wrote a check to Bosco (her limited liability company) for the majority of the \$200,000, but the check was deposited in Gillispie's Energy Executive bank account, which Gillispie uses for personal expenses, such as jewelry, cruises, and his Maserati sports car. In addition, Gillispie, who had a personal relationship with Ransom and made her the beneficiary of his IRA account, had determined to pay down Ransom's debt. Accordingly, when Gillispie directed sales of Ransom's AEHI stock holdings, he was benefiting himself. Thus, Gillispie's statement that he never sold AEHI shares was false in light of his use of Ransom and Webb as his nominees for stock sales.

\* \* \*

*AEHI and Gillispie Falsely State in Private Placement Memoranda and Elsewhere That They Have Funding*

41. AEHI and Gillispie have repeatedly misled investors about the status of AEHI's funding. Funding is a critical factor for investors because AEHI has claimed that it plans to pay the \$10 billion cost of building a nuclear reactor "[w]ith capital raised from stock and direct investments."

42. .... PPMs are documents used by companies to solicit investors to purchase issuers' securities. Several of these PPMs contained false statements about the status of AEHI's funding.



- AEHI's June 4, 2007 PPM stated that "The project has obtained \$3.5 billion in funding."
- AEHI's November 30, 2007 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."
- AEHI's December 1, 2008 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."
- AEHI's January 13, 2009 PPM stated that "The project has funding arrangements and is seeking process approvals."
- Another version of AEHI's January 13, 2009 PPM, which Gillispie personally distributed on July 6, 2009, stated that "The project has funding commitments and is seeking process approvals."
- AEHI's February 13, 2009 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."
- AEHI's March 31, 2009 PPM stated that "The project is funded and seeking N[uclear] R[egulatory] C[omission] approval."

43. These statements in the PPMs were false. The "project" was the purported development of a nuclear reactor in Idaho. The company's Form-10K for fiscal year ended December 31, 2008 -- filed with the Commission on March 31, 2009 -- indicated that the company had no such funding: "The Company may need to obtain loans to fund any amounts not funded by private placement subscriptions." The Form 10-K described the company's financial condition as very weak and explained that AEHI "has minimum liquid assets" and "will be reliant upon stock offerings to fund any kind of nuclear operations." The 10-K further stated that "The monies raised by any private offering may not be sufficient for the continued proposed operations of AEHI." AEHI and Gillispie made material misrepresentations to potential investors when they wrote in PPMs, including those identified above, that they had funding.

\* \* \*

44. When faced with the false and misleading PPM dated March 31, 2009, Gillispie said in a sworn affidavit that the

statement about funding was “nonsensical” and that the “document was altered without AEHI’s knowledge or permission and was never disseminated by AEHI.” But Gillispie’s sworn statement is also false, as Gillispie personally distributed the false and misleading PPM to potential investors on multiple occasions. For example, in pitching AEHI’s February 13, 2009 PPM, Gillispie wrote a cover email to potential investors stating that “we believe our nuclear rezone and funding will occur with [sic] the next 30 days or so lifting the stock even higher...” Gillispie’s email was inconsistent with the attached PPM, which stated that the project “is funded.” In any case, both statements were false, as the project was not funded and Gillispie had no reason to believe that AEHI would obtain funding within the next 30 days.

\* \* \*

46. AEHI and Gillispie made other false and misleading statements about the status of AEHI’s funding. As described above, Gillispie repeatedly urged potential investors to buy stock in private transactions because AEHI was about to do a “public offering.” Gillispie also told investors in a September 9, 2009 letter that “we are starting the process for our first public stock offering (IPO) for later this year.” These statements were false. First, the company never did an “IPO” or any similar transaction. Second, AEHI could not have done an “IPO” because it was already a publicly-traded company.

47. AEHI and Gillispie also misled investors when they failed to disclose that the nuclear power plant could not be funded absent certain events which were distant and highly speculative. Gillispie stated in a September 9, 2009 letter to investors that “we have a large energy trust that is willing to loan us up to \$5 billion for the plant construction phase.” This statement omitted key facts and was misleading. Gillispie himself later acknowledged that at the time he considered the interest rate on the proposed loan to be unacceptable, and that the financing deal would not be available until AEHI had spent several years and hundreds of millions of dollars (which it did not have) on various approvals.

48. In his many statements in PPMs and elsewhere about AEHI’s funding status, Gillispie failed to disclose that he, himself, believed that funding would be contingent on at least two future and uncertain events: AEHI’s being approved for listing on a national stock exchange, and the successful execution of a new public offering. Gillispie wrote in a May 26, 2010 email exchange that he knew that “[t]he Idaho project is contingent upon the offering we mentioned which will occur after we move to a higher exchange.” In the same exchange he wrote that “[t]he funds for the

Idaho reactor project is [sic] coming from a separate offering in the future and until we raise those funds the project would not be launched.”

\* \* \*

*AEHI and Gillispie Falsely State Gillispie's 2009 Compensation*

51. In its Form 10-K for the fiscal year ended December 31, 2009, signed and certified by Gillispie, AEHI stated that Gillispie's cash compensation for 2009 was \$133,000 that “consisted of expense allotment for travel, auto, Idaho living expenses, entertainment.” AEHI reported no other cash compensation to Gillispie for 2009.

52. In reality, Gillispie pocketed these purported expense allotments while AEHI separately paid his bills. For example, Gillispie, a Virginia resident until 2009, set up automatic debits from AEHI starting in 2008 so that the company would pay rent on a \$3,000-per-month house that he leased in Idaho. Gillispie also submitted at least \$143,456.15 in credit card bills directly to AEHI for payment, and kept his expense allotment for those same expenses. The bills included charges for travel, food, and season tickets to football games. Gillispie received at least \$55,000 of additional undisclosed cash from AEHI in 2009.

53. In 2009, AEHI paid Gillispie and Energy Executive (Gillispie's LLC) at least \$367,456.15 in cash and paid expenses – approximately \$230,000 more than AEHI disclosed to the public. Thus, AEHI and Gillispie understated Gillispie's compensation by approximately 64%.

\* \* \*

*AEHI Fails To Disclose A Material Change in, And Then Falsely States, Gillispie's 2010 Compensation*

55. AEHI did not provide any updated information to investors about Gillispie's compensation in 2010. Gillispie's salary increased to at least \$306,500 during 2010, because AEHI's board increased Gillispie's salary to \$40,000 per month effective July 1, 2010. In addition to his salary, AEHI paid Gillispie at least \$102,950.98 for his rent and credit card bills. Plus, Gillispie received at least \$200,000 from Ransom after he directed her secret stock sales described above in paragraphs [37-38]. Gillispie's 2010 compensation from AEHI totaled at least \$658,950.98 – a more than \$525,000 increase over the 2009 figure released to shareholders. Yet, AEHI failed to file a Form 8-K with the Commission or otherwise inform the public.

56. In its Form 10-K for the fiscal year ended December 31, 2010, signed and certified by Gillispie, AEHI and Gillispie stated that Gillispie received cash compensation for 2010 was \$393,000. In a footnote to its Summary Executive Compensation Table, AEHI stated that Gillispie's cash compensation for 2010 was \$344,000. Each of these statements is false. As described above, AEHI paid Gillispie more than \$650,000 in 2010.

\* \* \*

*AEHI and Gillispie Falsely State Ransom's 2009 Compensation*

58. In its Form 10-K for the fiscal year ended December 31, 2009, signed and certified by Gillispie, AEHI stated that Ransom's cash compensation for 2009 was \$130,000 for "expense allotment, travel, auto and entertainment." AEHI reported no other cash compensation to Ransom for 2009.

59. In reality, like Gillispie, Ransom kept the cash that was given to her as "expense allotment" while AEHI paid \$62,502 to her credit cards for those same expenses.

60. In 2009, AEHI paid Ransom at least \$191,028 in cash and paid expenses.

\* \* \*

*AEHI and Gillispie Fail to Disclose Ransom's 2010 Compensation*

62. During 2010, Ransom's compensation increased to at least \$323,747, which was substantially beyond the \$130,000 that had previously been disclosed to investors. Her compensation consisted of \$136,000 in cash paid to Bosco, her consulting company, plus \$187,747 in payments by AEHI to Ransom's credit cards for the same expenses that were covered by her "expense allotment." As such, Ransom's 2010 compensation was more than **double** what had previously been disclosed to investors.

63. However, in its Form 10-K for the fiscal year ended December 31, 2010, signed and certified by Gillispie, AEHI made no disclosure whatsoever about Ransom's 2010 compensation.

\* \* \*

*AEHI Falsely States That A Promoter Was Not Paid for Touting AEHI*

65. On October 14, 2010, AEHI issued a press release announcing that Pinnacle Digest "vetted" and "recommended" AEHI stock. Pinnacle holds itself out as an exclusive online financial newsletter for investors. The release stated that "Pinnacle

Digest was not paid or compensated by AEHI in any way for writing the article.”

66. This statement was false. Pinnacle’s website disclosed that it had been paid to display and disseminate AEHI news.

67. In fact, Pinnacle’s President was a paid promoter for AEHI. In a May 27, 2010 email, Gillispie said about Pinnacle’s President that “he does our stock promotion in Canada.” In the months leading up to Pinnacle’s October 14, 2010 article touting AEHI, AEHI sold Pinnacle’s President 170,000 shares of its common stock at a quarter of the market price, or less. Pinnacle’s President bought an additional 2,500 shares of AEHI common stock on October 14, 2010 – the very same day that he published his article touting AEHI stock – which he sold a week later.

\* \* \*

*AEHI and Gillispie Mislead Investors About AEHI’s Employees*

69. In its Form 10-K for the fiscal year ended December 31, 2009, signed and certified by Gillispie, AEHI stated that “The Company and its subsidiaries have 15 full-time employees, in addition, nine officers and directors provide certain services dedicated to current corporate and business development activities.” This statement was false and misleading in at least two respects.

70. First, during the period when this statement was made, according to Gillispie, AEHI did not have a single full-time employee. Instead, AEHI engaged the services of independent contractors who billed AEHI for their time with invoices on a month-by-month basis.

71. Further, even counting independent contractors, AEHI had less than half of the work force that it claimed. In fact, as of the date that AEHI filed its 2009 10-K, AEHI had at most seven individuals, and possibly fewer, who were working regular hours for the company as independent contractors.

\* \* \*

*AEHI and Gillispie Mislead Investors About AEHI’s Offices and Subsidiaries*

73. AEHI and Gillispie have stated to investors and the public that AEHI has offices in Beijing, China; Seoul, Korea; and Lagos, Nigeria. For example, in a June 18, 2009 press release

AEHI stated that:

AEHI will open an office in the Chaoyang District, central business district, of Beijing [China] in July to facilitate institutional investors for AEHI projects and joint ventures with Asian companies for nuclear plant components and other energy-related projects with US companies. Nancy Shi will be the President of AEHI China reporting to AEHI Chairman and CEO, Don Gillispie, in the US.

In a September 9, 2009 letter to investors, Gillispie wrote that “In July, we opened an office in Beijing, China...” In a May 2010 AEHI newsletter to investors, AEHI listed offices in Eagle, Idaho, Beijing, China and Seoul, South Korea. In that same newsletter, Gillispie began his “Notes from the CEO” by writing: “Greetings from our China office...” In AEHI’s PPM the Company specifically listed “AEHI China, Ltd.” and “AEHI Korea” along with its other subsidiaries under the heading “Business of the Company.” These statements are false or misleading.

74. AEHI has disclaimed any control over AEHI China, Ltd. or its President, Nancy Shi. According to Gillispie, AEHI decided not to open its own independent China office because it was too costly. Instead, according to Gillispie, AEHI China, Ltd. was set up by Shi as a separate entity substantially all of which she owns along with other Chinese investors. According to Gillispie, AEHI asked these investors to create AEHI China, Ltd. in the hope that AEHI would one day receive a share of revenues from the business they operated; however, no such revenue has been generated. According to Gillispie, AEHI has a similar relationship, lacking control, with AEHI Korea.

75. AEHI and Gillispie also misled investors about the business of its subsidiary, Energy Neutral. In AEHI’s May 2010 investor newsletter, Gillispie announced that “a number of people even began ordering new Energy Neutral homes. We will begin to franchise Energy Neutral around the country this summer.” This statement was false. No one had ever ordered an Energy Neutral home, and AEHI made no meaningful effort to franchise Energy Neutral.

\* \* \*

*AEHI and Gillispie Mislead Investors and the Public with Press Releases*

77. AEHI and Gillispie routinely used press releases to mislead the market about AEHI’s purported progress towards its

goals.

78. In a January 4, 2010 press release, AEHI stated that “Don Gillispie, AEHI’s CEO, left today for Seoul to formalize negotiations with Korean Electric Power Company, KEPCO, to import the South Korean’s advanced reactor, APR 1400, for its Idaho and Colorado sites.” AEHI had no agreement with KEPCO that it could “finalize,” and had not obtained local or federal approvals for the construction of nuclear power plants in Idaho or Colorado.

79. In a March 24, 2010 press release, AEHI stated that “The Nuclear Regulatory Commission has officially recognized AEHI’s proposal to build a nuclear power plant in Payette County, Idaho.” AEHI had not obtained any approval from the Nuclear Regulatory Commission. Rather, the Nuclear Regulatory Commission had simply acknowledged that AEHI had applied for such approval.

80. In the summer of 2010, AEHI ramped up its promotional activity, flooding the market with press releases that were non-substantive, duplicative and, in some cases, misleading.

*AEHI Continues to Issue New Press Releases*

82. On or around September 22, 2010, after raising the issue with Gillispie and company management, AEHI’s securities lawyers and investor relations firm resigned over their concerns about the volume and nature of AEHI’s press releases.

83. Following these resignations, AEHI continued to issue a new press release almost every business day, including on October 4, 11, 14, 15, 18, 19, 25, 27, 28; November 1, 2, 8, 9, 11, 15, 17, 22, 29; and December 1, 2, 3, 6, 10, and 13, 2010. On December 6, 2010, a promotional fax purporting to originate from AEHI provided contact information for those seeking to invest in AEHI, noting that investors had the option of purchasing the company’s publicly traded stock or making multi-million-dollar direct investments in the company, and quoting Gillispie extolling nuclear power as “a tremendous investment opportunity with excellent return potential.” From November 30 to December 7, the daily trading volume of AEHI stock doubled, rising from 357,500 to 841,900 shares.

\* \* \*

*AEHI Has Raised Millions of Dollars from Investors While Issuing Press Releases and Touting Its Stock Through Promoters*

84. ...AEHI issued 166 press releases between the time it went public in September 2005 and October 16, 2010, 87 of them since January 2010, despite the fact that the company has no meaningful revenue or operations. Several press releases contain false and misleading statements. AEHI has also aggressively used promoters to tout its stock, including on the internet. In an October 14, 2010 email, AEHI's public relations director circulated an article about AEHI from the website "steroidstocks.com" and said: "These are our web guys at work. They are now making about 15 posts per day per site and when we see days of increase they will also post articles about us on their websites and in investor newsletters." Gillispie's scheme to manipulate the market is working. In 2010, investors invested at least \$5 million in AEHI.

\* \* \*

*The Commission Suspends Trading of AEHI Stock*

85. On December 14, 2010, the [U.S. Securities and Exchange] Commission suspended the trading of AEHI stock pursuant to Section 12(k) of the Exchange Act which grants the Commission emergency authority to suspend the trading of any security where the Commission believes suspension is in the public interest and will protect investors.

*(Securities and Exchange Commission v. Alternate Energy Holdings, Inc., et al., U.S. District Court for the District of Idaho, No. 1:10-CV-621, Dkt. No. 81-1.)*

**Payette County's Continued Participation In And Material Assistance To AEHI's Fraud Scheme**

45. A noteworthy example of Payette County's participation in the stock fraud scheme occurred shortly before the SEC initiated its lawsuit in U.S. District Court. On October 7, 2010, an online journal called Stockhouse published an article in which Don Dressen, an administrator with the Payette County Planning and Zoning Commission, was quoted. The AEHI Defendants, through their lawyer, immediately called Payette County and then sent a letter stating that AEHI and "its investors were justifiably disturbed and troubled to read Mr. Dressen's comments in the national media." And, even though the AEHI letter did not claim that Mr.



Dressen had said anything that was not accurate, AEHI demanded that the County remove Mr.

Dressen and issue a press release:

We ask the County to make a public statement to the effect that Mr. Dressen is not the official representative of the County, that his comments to the media do not reflect the position of the County, and that the public can look to the Board of County Commissioners for official statements on pending applications. Further, we ask the County to remove Mr. Dressen from any further responsibility on, and contact with, the AEHI applications before the County.

Mr. Dressen is no longer employed by Payette County Planning and Zoning.

46. Payette County fully complied with the request to help protect the “business and financial interests of AEHI.” A Payette County press release was issued, and signed by all three County Commissioners, that provided:

Lindsey N. Royston has been designated by the Board of Commissioners as the contact person from the Payette County Planning and Zoning Department. Jennifer Carlquist is the contact person for the Prosecuting Attorney’s Office. Any comments made by employees of Payette County do not reflect the position of the County and the public can look to the Board of County Commissioners for official statements regarding AEHI.

47. The role played by Payette County in the fraud scheme has been further demonstrated by statements from AEHI investors that have been filed with the U.S. District Court in the SEC lawsuit. One AEHI investor told the Court that he had “followed the progress of [AEHI] during 2010 and feel that the stock price rose in response to the progress the company was making throughout the local approval process and zoning change.” (*Securities and Exchange Commission v. Alternate Energy Holdings, Inc., et al.*, U.S. District Court for the District of Idaho, No. 1:10-CV-621, Dkt. No. 51.) Another investor explained to the Court that he had “followed the [AEHI] stock throughout 2010 and...felt that it rose commensurate with the progress the company was making getting and securing citizen backing, zoning changes, land-

use permits, and a viable building site.” (*Id.*, Dkt. No. 50.) And, another AEHI investor stated to the Court that “...the positive move supporting the installation of a nuclear facility by the Payette County Commissioners [and the President’s support of nuclear energy] are what had the most impact on share price of AEHI stock throughout the timeframe covered by the SEC [lawsuit].” (*Id.*, Dkt. No. 49.)

48. Despite the overwhelming evidence of the securities fraud scheme and the actions of the U.S. Securities and Exchange Commission, Payette County continued to aid and assist AEHI. A few days after the SEC filed its lawsuit, one of the Plaintiffs, James S. Underwood, Jr., provided a letter to Payette County in which he notified the County that:

A complaint filed by the U.S. Securities and Exchange Commission, in Case No. 10-621-CV EJM, alleges on page 2, that AEHI, Donald L. Gillispie and Jennifer Ransom, have been perpetrating a scheme to defraud individual investors ‘...by making misleading statements about the viability of AEHI, which has no realistic possibility of building a multi-billion dollar nuclear reactor.’ In the First Claim for Relief, the complaint, on page 12, claims that ‘Defendants AEHI and Gillispie have...engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.’

Mr. Underwood asked Payette County to stay or table its involvement with the AEHI scheme until resolution of the federal charges.

49. Nevertheless, Payette County made the knowing and deliberate decision to continue helping AEHI. On January 13, 2011, less than one month after the SEC had filed suit and while AEHI’s assets were still subject to a freeze order, the Payette County Planning and Zoning Commission issued Findings of Fact, Conclusions and Order in response to AEHI’s Zoning Change Request, Variance Request and Approval of the Development Agreement. The Payette County Planning and Zoning Commission provided AEHI with a 100% endorsement of

its requests. That is, despite the initiation of the securities fraud action by the SEC, the Payette County Planning and Zoning Commission turned a blind eye to the County's role in the fraud scheme and pretended as if AEHI were a legitimate company to the detriment of not only the investing public but also the Payette County property owners, like Plaintiffs, who reside in the vicinity of AEHI's purported nuclear plant.

50. The January 13, 2011 Payette County Planning and Zoning findings included an Order recommending that the Payette County Board of Commissioners 1) approve AEHI's zoning change request from agriculture to industrial, 2) approve the conceptual plan, 3) approve AEHI's request for a variance so that it could build four buildings that exceeded the 125 foot height limit, and 4) approve the Development Agreement that had been written by AEHI.

51. Payette County officials not only ignored the evidence of fraud that had been presented in U.S. District Court, but they also apparently ignored the existence of a federal criminal investigation of the AEHI stock fraud scheme. On February 9, 2011, Payette County received a request for records from Special Agent Melissa Ripley of the U.S. Department of Treasury, Internal Revenue Service, Criminal Investigation Division.

52. The Payette County Board of Commissioners held a hearing to consider the Planning and Zoning recommendation in support of AEHI's requests on June 6, 2011. That hearing was followed by the Payette County Commissioners' June 20, 2011 announcement of their approval of the Zoning Change, the Variance Request and AEHI's Development Agreement. Thus, six months after the U.S. Securities and Exchange Commission had filed its lawsuit and disclosed a massive amount of evidence showing the AEHI securities fraud scheme, Payette County continued to participate and assist the AEHI Defendants. In June 2011, Gillispie

not only received help from Payette County, but his AEHI monthly salary was increased to \$46,000 per month.

53. On August 29, 2011, Payette County memorialized its decision in a written document entitled “Findings of Fact, Conclusions and Order in the Matter of Request by Alternate Energy Holdings Inc. (AEHI) for Rezone Conceptual Plan, and Development Agreement.” In that Order, the Payette County Board of County Commissioners approved the Zoning Change, Variance and 20-year Development Agreement. Payette County’s aid and assistance to AEHI, Gillispie and Ransom culminated in its execution of the illegal Development Agreement with AEHI (also on August 29, 2011). That Development Agreement, which was approved and signed by all three Payette County Commissioners, and Gillispie for AEHI:

- Provides that the Agreement provides “AEHI and AEHI’s creditors with general assurances of AEHI’s ability to timely and economically complete development of the Project.”
- Requires the County to “continue to take steps necessary to rezone the Property.
- Provides that the term of the Agreement is twenty (20) years (with possible unlimited extensions) and waives any “time limits set forth by the County Code.”
- Binds the County to the rules and regulations in place on the date of the Agreement with respect to the “Project” and requires that the County must undertake all future actions consistently with the terms of the Development Agreement, including future land use ordinances and policies, safety codes, and rezoning of property.
- Gives AEHI a vested right to develop the property, but states that it has no obligation to do so.
- Grants AEHI its costs and fees should it bring legal action to enforce the Agreement.
- Obligates Payette County to provide written statements vouching for AEHI stating that the Development Agreement is in full force and effect and a binding obligation, and that there are no defaults.

- Allows AEHI to be released and discharged from all obligations if it chooses to sell or assign its rights under the 20-year Development Agreement.

54. Payette County has gone to great lengths to help AEHI throughout its involvement in the fraud scheme. Indeed, at every stage, Payette County consistently tilted the regulatory process in favor of the AEHI Defendants. A few examples illustrate this point:

- The initial approval of AEHI's application to Change the Comprehensive Plan Map occurred less than two months after it was filed in Payette County.
- AEHI has never been required to post the type of guarantee or security bond by Payette County that one would expect for a multi-billion dollar project.
- Payette County has allowed itself to become practically a guarantor for AEHI; Payette County's Agreement provides "AEHI and AEHI creditors with general assurances of AEHI's ability to timely and economically complete development of the Project."
- Provides AEHI with a 20-year term (with possible unlimited extensions) for its project, without imposing any obligations on AEHI other than a minor reporting requirement.
- Payette County ignored AEHI's routine warning that it could not fund its ongoing operations: "We do not have capital sufficient to meet our cash needs...there can be no assurance that any additional funds will be available to us to allow [us] to cover our expenses...."
- AEHI is allowed to expand the access roads (Big Willow, Stone Quarry and Little Willow) without regard for the private property owners and any original easements that established the roads.
- A key notice was neither published nor provided to the impacted property owners, but was merely posted on a bulletin board inside the County Courthouse.
- As recently as February 2012, the Payette County Commissioners ignored the plain language in their own County Ordinance that would have stayed AEHI's request for a conditional use permit.

55. During the course of its fraud scheme, AEHI has announced that it had six different financing partners - - Roswell Capital Partners from Alpharetta, Georgia [\$150

million]; Source Capital Group, Inc. of Westport, Connecticut [\$120 million]; Powered Corp. of Houston, Texas; Unistar Nuclear Energy of Baltimore, Maryland; Silverleaf Capital of Salt Lake City, Utah [\$150 million]; and Cobblestone Financial Group of New York, New York [\$3.5 billion]. None of these six financial transactions ever materialized. At the same time, it is worth noting that none of the announcements regarding these six financing partners had the type of impact on the fraud scheme that occurred as the result of Payette County's help to AEHI.

**Payette County's Participation In And Material Assistance To  
The Fraud Scheme Violates Idaho Law And Public Policy**

56. Idaho has a strong public policy relating to the registration and sales of securities as reflected in the Idaho Securities Act. I.C. § 30-14-101, et seq. More importantly, the Idaho law clearly prohibits fraud schemes:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) To employ a device, scheme, or artifice to defraud;

(2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

I.C. § 30-14-501.

57. The Idaho Securities Act provides for both criminal penalties (I.C. § 30-14-508), civil remedies (I.C. § 30-14-509) and administrative remedies (I.C. § 30-14-603). Moreover, the Act specifically states that its coverage is broad -- joint and several liability is imposed not only on the principals of the fraud scheme, but also on anyone "associated" with the principals "who materially aids" the fraudulent conduct. I.C. § 30-14-509(g)(3). As demonstrated herein,

Payette County has materially aided the fraudulent conduct of Defendants AEHI, Gillispie and Ransom.

58. Under the Idaho Constitution, counties and county commissioners only have such power as conferred by statute. (Id. Const., Art. XVIII, § 11.) It should go without saying that an Idaho county, like Payette, should not participate in or materially aid a fraudulent securities scheme. That is, neither the Idaho Constitution nor the Idaho Code give counties or their commissioners the power to use their offices to assist or aid a fraud scheme like the one that has been and is being perpetrated by AEHI and its principals.

59. In fact, Idaho law reflects a policy that counties, acting through their commissioners, should not take any actions that would violate any laws, such as the Idaho Securities Act. One section of the Idaho Code states that:

Any commissioner who neglects or refuses, without just cause therefor, to perform any duty imposed on him, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently or corruptly attempts to perform an act, as commissioner, unauthorized by law, shall be guilty of a misdemeanor.

I.C. § 31-855.

60. In Idaho, illegal contracts are void, and the law will not recognize illegal agreements. As the Idaho Supreme Court has explained:

The usual test applied by courts in determining whether a contract offends public policy and is antagonistic to the public interest is whether the contract has a tendency toward such an evil; if it is opposed to the interest of the public, or has a tendency to offend public policy, it will be declared invalid, even though the parties acted in good faith and no injury to the public would result in the particular instance; the test to be applied is not what is actually done but that which may or might be done under the terms of the contract; it is the evil tendency of the contract and not its actual injury to the public that is determinative, as the law looks to its

general tendency and closes the door to temptation by refusing to recognize such agreements.

*Quincy v. Quincy*, 130 Idaho 560, 568 (1997), quoting *Stearns v. Williams*, 72 Idaho 273, 283

(1952). And, regardless of how or when the illegality is raised with the court:

...it becomes the duty of a court to refuse to enforce it; again, a court of equity will not knowingly aid in the furtherance of an illegal transaction; in harmony with this principle, it does not concern itself as to the manner in which the illegality of a matter before it is brought to its attention.

*Id.*, 130 Idaho at 567.

61. The Idaho Securities Act also provides that:

No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter [the Idaho Securities Act] or rule adopted or an order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

I.C. § 30-14-509(k).

62. In Idaho, “[a]nything which is...an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property...” is a nuisance. I.C. § 52-101. *See also* I.C. § 18-5901 (nuisance is “[a]nything which is...an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood...”). Moreover, an Idaho statute provides that an action may be brought to enjoin or abate a nuisance by anyone “whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.” I.C. § 52-111.

63. Idaho recognizes a policy against contract zoning:

A local government is generally prohibited from contracting away the exercise of the zoning power or obligating itself by an advance contract to provide a particular zoning. A contract made by the



zoning authorities to zone or rezone for the benefit of a private landowner is generally illegal and is denounced as ‘contract zoning’ and as an ultra vires bargaining away of police power.

*Ciszek v. Kootenai County Board of Commissioners*, 151 Idaho 123, 254 P.2d 24, 35 (2011).

64. As detailed herein, Payette County shares responsibility and is accountable for the misconduct and fraud scheme described in the Complaint. The actions of Payette County represent the type of material aid and assistance that is prohibited under the Idaho Securities Act, I.C. § 30-14-509. Moreover, in Idaho, a civil conspiracy exists when there is an agreement between two or more to either accomplish an unlawful objective or to accomplish a lawful objective in an unlawful manner. Any agreement to aid or assist a securities fraud scheme is an unlawful objective, particularly after the SEC filed its lawsuit against the AEHI Defendants on December 16, 2010. Moreover, the use of the fraudulent securities scheme in pursuing a lawful objective (e.g. a power plant), would still make the participants, the AEHI Defendants as well as Payette County, equally culpable as civil conspirators.

**Payette County’s Participation In And Material Assistance To The  
Fraud Scheme Violated Payette County Ordinances, the Idaho State  
Local Land Use Planning Act, and the Constitution**

65. On June 28, 2010, the text of the Payette County Comprehensive Plan was amended to include the following language after the last paragraph of Section 9.2.7.1, Page 64, as follows:

Energy Producers who wish to locate electric, gas, or other energy production facilities in Payette County must apply to the Payette County Planning and Zoning Department and each application will be considered on an individual basis in accordance with the Local Land Use Planning Act (I.C. § 67-6500 *et seq.*), Payette County Code and this plan.

66. The Idaho Local Land Use Planning Act (“LLUPA”) provides that a county’s comprehensive plan must contain an analysis showing general plans for power plant sites and

utility transmission corridors, unless the plan specifies a reason why this component is unneeded. I.C. § 67-6508. Because it provides for consideration of power plant sites on an ad hoc basis, the Payette County Comprehensive Plan does not comply with this directive, and fails to specify a reason why this particular component is unneeded.

67. Idaho law further states that a county has a statutory duty to “conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan.” I.C. § 67-6508. The Comprehensive Plan must “consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. *Id.* The Comprehensive Plan may only be amended after analysis of “...natural land types, existing land covers and uses, and the intrinsic suitability of the lands for such uses as agriculture...industry and public facilities.” I.C. § 67-6508(e). The Payette County Defendants did not comply with these requirements with their June 28, 2010 amendment of the Comprehensive Plan.

68. The 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are invalid because they violated Idaho Code § 67-6511A. That statute provides that a County may “require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel.” The 20-year Development Agreement at issue here exceeds the authority of Idaho Code § 67-6511A because it contains commitments by Payette County concerning the development of the parcel and no material commitments by the owner developer.

69. The 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are also invalid because they bind future boards of the Payette County Commission. Payette County’s decision approving the AEHI Application and entering into and

recording the related Development Agreement, Rezone, Variance and Change to the Comprehensive Plan is in excess of the statutory authority of the Board. Payette County's decision approving the 20-year Development Agreement, Rezone, Variance and Change to the Comprehensive Plan is not in accordance with Payette County's Comprehensive Plan and/or is based on an invalid Comprehensive Plan. Additionally, the Payette County decision approving the 20-year Development Agreement, Rezone, Variance and Change to the Comprehensive Plan violated the applicable provisions of the ordinances of Payette County. Thus, Payette County has entered into an illegal development agreement, and violated Article XVIII, Section 11, of the Idaho Constitution, because it has not performed its duties as prescribed by law.

70. Payette County's decision approving the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan was made upon unlawful procedure for, among other reasons, the reasons that improper and inadequate notice of the AEHI Application and hearings; the AEHI Application and the materials in support thereof were not timely made available to the public for review and comment; the Payette Planning and Zoning Commission and the Payette County Commissioners improperly limited oral testimony and/or the submission of written testimony in evidence at the hearings on the AEHI Application; the Payette Planning and Zoning Commission and/or the County Commissioners engaged in illegal ex parte contacts and violated the Idaho State Open Meeting Laws; and Payette County failed to make adequate and complete findings of fact and conclusions of law.

71. The Payette Planning and Zoning recommendation and Payette County Commissioners' decisions approving the AEHI Application and entering into and recording the related 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are not supported by substantial evidence in the record. The decisions

approving the AEHI Application and entering into and recording the related 20-year Development Agreement are arbitrary, capricious, or an abuse of discretion.

72. The Development Agreement includes specific requirements relating to the modification and expansion of Big Willow Road, Little Willow Road and Stone Quarry Road (at Exhibit D). Payette County did not have the authority to make those commitments because the Payette County Highway District had exclusive authority and jurisdiction over the roads located in Payette County. I.C. § 40-1310. Furthermore, to the extent that those roads have been established by prescriptive easement, Payette County does not, at the expense of the property owners including the Plaintiffs, have the right to unilaterally expand the permissible use of those easements for the benefit of a private developer like AEHI. The 20-year Development Agreement is also illegal because Payette County bargained away its zoning power. In fact, the Agreement provides that AEHI must give written consent to any future zoning changes.

73. Payette County has further violated the constitutional and property rights of Plaintiffs in the following ways:

- a. Payette County has violated Idaho's Sunshine Act, I.C. § 67-2340 et seq. by conducting public business in secret by receiving information relating to its decisions concerning the nuclear site that was not placed on the public record in an open meeting.
- b. Payette County's decision approving the 20-year Development Agreement was made upon unlawful procedure for, among other reasons, improper and inadequate notice of the AEHI Application and the hearings to be held thereon was provided; the AEHI Application and the materials in support thereof were not timely made available to the public for review and comments; the Payette Planning and Zoning Commission and the County Commissioners improperly limited oral testimony and/or the submission of written testimony in evidence at the hearings on the AEHI Application; the Payette Planning and Zoning Commission and/or the Board of County Commissioners engaged in illegal ex parte contact and violated the Idaho State Open Meeting Laws; and the Board of County Commissioners and the Payette Planning and Zoning Commission failed to make adequate and complete findings of fact and conclusions of law.

- c. The actions of Payette County have deprived Plaintiffs of their property rights in a manner that is arbitrary, capricious, and without rational basis. Those actions include, but are not limited to, the following:
- i. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement is in violation of constitutional and statutory provisions;
  - ii. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement is in excess of the statutory authority of the Board;
  - iii. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement is not in accordance with Payette County's Comprehensive Plan and/or is based on an invalid comprehensive plan;
  - iv. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement is in violation of the applicable provisions of the ordinances of Payette County;
  - v. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement was made upon unlawful procedure for, among other reasons, improper and inadequate notice of the AEHI Application and the hearings to be held thereon was provided; the AEHI Application and the materials in support thereof were not timely made available to the public for review and comment; the Payette County Planning and Zoning Commission and the Board of County Commissioners improperly limited oral testimony and/or the submission of written testimony in evidence at the hearings on the AEHI Application; the Payette County Planning and Zoning Commission and/or the Board of County Commissioners engaged in illegal ex parte contacts and violated the Idaho State Open Meeting Laws; and the Board of County Commissioners and Payette County Planning and Zoning Commission failed to make adequate and complete findings of fact and conclusions of law;

- vi. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement is not supported by substantial evidence in the record;
- vii. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement has created a nuisance; and
- viii. The Payette County decision approving the AEHI Application and entering into and recording the related 20-year Development Agreement is arbitrary, capricious, or an abuse of discretion.
- ix. The Payette County decision allowing for the dramatic expansion of the use of any easements underlying the Little Willow, Big Willow and Stone Quarry Roads and taking away property from adjoining property owners for the private benefit of AEHI.

#### **Ongoing Injuries To Plaintiffs**

74. All of the Plaintiffs own property and reside on one of the three roads adjoining the Payette County site for the purported nuclear power plant. All of the Plaintiffs are located within the 10-mile Emergency Planning Zone that the U.S. Nuclear Regulatory Commission has established for nuclear power plants. Under rules in force since 1978, communities near nuclear power plants must have federally mandated evacuation plans for everyone living within 10 miles of the nuclear plant. The reason for the 10 mile Emergency Planning Zone is because in a severe accident, most of the early deaths are predicted to occur within a 10 mile radius from radiation sickness, not cancer. The 10 mile Emergency Planning Zone must include plans for evacuation, sheltering and the use of potassium iodide. (Potassium iodide reduces the risk of thyroid cancer and other diseases but it does not protect against external exposure to radioactive material and the FDA has warned that side effects from potassium iodide include gastrointestinal problems, allergic reactions, iodide goiter, and hypothyroidism.) The Nuclear Regulatory Commission also

mandates a secondary 50 mile Emergency Planning Zone which would include a ban on food and water that would be contaminated within that zone. Nuclear power plants generate tritium (a radioactive isotope of hydrogen) as part of their routine operations, which results in emissions of tritium in the form of tritiated water (radioactive water) into the air and water. Radioactive materials, like tritium, are recognized carcinogens at any level of exposure.

75. The fact that people do not want to purchase or use property near a nuclear power plant, or even near a proposed plant that has been approved by the County, is obvious. The AEHI/Payette 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan have injured and adversely affected Plaintiffs and will make it difficult for any of them to sell or otherwise develop their property. In addition, the AEHI/Payette 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan have and will continue to interfere and obstruct Plaintiffs' free use and comfortable enjoyment of their property. Indeed, the AEHI/Payette 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan have placed a dark cloud over Plaintiffs and their property, that will, unless removed, cause irreparable harm on into the future. Moreover, Plaintiffs do not have an adequate damages remedy that could compensate for the injuries caused by Payette County's participation in, and material aid and assistance to, the AEHI fraud scheme.

76. Plaintiff John W. Burlile lives at 8105 Little Willow Road, approximately 2-3 miles from the nuclear plant site. He has lived in the area for more than 25 years and is the manager of the H Hook Ranch.

77. Plaintiff H Hook Ranch is a 9,000 acre working cattle ranch that is located along Little Willow Road and Stone Quarry Road. In fact, the H Hook Ranch shares a common boundary along Stone Quarry Road, approximately one-quarter mile in length, with the property

where the purported nuclear power plant will be located. The H Hook Ranch utilizes ground water wells for its crop irrigation, stock water and home drinking needs. It has approximately 700 acres of irrigated farmland. The H Hook Ranch has 14 full time residents.

78. Plaintiffs Clifford and Mary Morgan reside at 7405 Little Willow Road, approximately three and one-half miles from the northern boundary of the purported nuclear power plant. They have approximately 72 acres with 40 acres under cultivation, raising feed for their livestock.

79. Plaintiff Tom Pence and his family have owned a ranch that is located on Big Willow Road since 1867. The Pence property is located less than four miles from the site of the purported nuclear plant. In addition to its agricultural uses, the Ranch Hunting Club has operated on the property for nearly twenty years. Moreover, the largest motorcycle event in the State of Idaho - - the Big Nasty Hillclimb - - uses part of the Pence property. More than 13,000 people attended last year's event.

80. Plaintiffs Cyril and Irene Roland moved to their ranch on Little Willow Road over sixty years ago, a few years after Cyril was discharged from the Navy at the end of World War II. Cyril and Irene Roland, along with their son, Plaintiff Thomas G. Roland, and his wife, Plaintiff Marcia R. Roland, have a farming operation along Little Willow Road on which they raise corn, wheat, alfalfa and both dairy and beef cows.

81. Plaintiff James S. Underwood, Jr., owns two pieces of land near the site of the Payette County approved nuclear site. His home and residence is located at 8720 Little Willow Road approximately seven miles from the nuclear plant site. In addition, Mr. Underwood also owns a larger plot of land approximately six miles north of his home.



82. Plaintiff Jeffrey Weber lives on a piece of property on Stone Quarry Road that is approximately three miles from the proposed nuclear site. Weber and his wife operate a dog training and boarding business that can accommodate as many as 45 dogs. The Webers selected the property for its remote location because of the need for open expanses of land where live ammunition can be used on a daily basis. Clients are attracted to the Webers' training operation because of the modern facility as well as the rural and remote location.

83. The ongoing injuries caused by the 20-year Payette County/AEHI Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan and the other actions and wrongdoing of the AEHI Defendants and Payette County include, but are not limited to, the following:

- An ongoing blight of uncertainty hanging over their neighborhood properties and homes lasting for more than an entire generation of family members;
- Diminished prospects for selling their property;
- Decrease in the value of their property;
- Diminished demand for products and services from activities or events on their property;
- Elimination of, or at least sharply reduced prospects for, any future development or subdivision of their property; and
- Unreasonable expansion of the public easements underlying the access roads, for the private benefit of AEHI.

The wrongdoing and injuries are ongoing and will continue as long as the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are allowed to continue and remain in place.

**First Cause of Action**

**(Declaratory Judgment)**

84. Plaintiffs repeat and reallege all of the preceding and subsequent paragraphs in this Complaint.

85. Plaintiffs seek declaratory judgment pursuant to Idaho Code § 10-1201, et seq. declaring that the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are null, void and cannot be enforced.

86. There is an actual and justiciable controversy concerning whether the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are null and void.

87. The 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan were and are illegal in violation of Idaho law and public policy. In addition, the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan were part of the securities fraud scheme, and Payette County did not and does not have the authority to participate in, or enter into contracts or agreements that would aid, a fraud scheme.

### **Second Cause of Action**

#### **(Rescission of Illegal Actions and Contract)**

88. Plaintiffs repeat and reallege all of the preceding and subsequent paragraphs in this Complaint.

89. The 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan were entered into in aid of AEHI's fraud scheme and should be rescinded on that basis. The 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan violate Idaho law and public policy and, as a result, should be rescinded as illegal actions and an illegal contract.

90. Plaintiffs seek an order rescinding the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan as well as whatever other equitable relief is necessary including preliminary and permanent injunctive relief addressing the immediate and irreparable injuries caused by the Defendants' actions.

**Third Cause of Action**

**(Nuisance)**

91. Plaintiffs repeat and reallege all of the preceding and subsequent paragraphs in the Complaint.

92. The participation and assistance of Payette County in the fraudulent stock scheme included, among other things, the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan. In addition, Payette County violated Idaho law and policy when it entered the 20-year Development Agreement, made the change to its Comprehensive Plan, and agreed to the Rezone and Variance requests. These actions have and will injure Plaintiffs by interfering and obstructing Plaintiffs' free use and comfortable enjoyment of their property.

93. An injunction should be entered prohibiting Payette County from further participation in the fraud scheme as well as rescinding the previous actions taken that aided and assisted the scheme.

**Fourth Cause of Action**

**(Change to Comprehensive Plan Violated LLUPA)**

94. Plaintiffs repeat and reallege all of the preceding and subsequent paragraphs in the Complaint.

95. As noted above, on June 28, 2010, pursuant to Resolution No. 10-18, the text of Payette County Comprehensive Plan was amended to include the following text after the last paragraph of Section 9.2.7.1, Page 64, as follows:

Energy Producers who wish to locate electric, gas, or other energy production facilities in Payette County must apply to the Payette County Planning and Zoning Department and each application will be considered on an individual basis in accordance with the Local Land Use Planning Act (I.C. § 67-6500 *et seq*), Payette County Code and this plan.

96. The Idaho Local Land Use Planning Act (“LLUPA”) provides that a county’s comprehensive plan must contain an analysis showing general plans for power plant sites and utility transmission corridors, unless the plan specifies a reason why this component is unneeded. I.C. § 67-6508.

97. Because it provides for consideration of power plant sites on an ad hoc basis, the Payette County Comprehensive Plan does not comply with this directive, and fails to specify why this particular component is unneeded.

98. Idaho law further states that a county has a statutory duty to “conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan.” I.C. § 67-6508. The Comprehensive Plan must “consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. *Id.* The Comprehensive Plan may only be amended after analysis of “...natural land types, existing land covers and uses, and the intrinsic suitability of the lands for such uses as agriculture...industry and public facilities.” I.C. § 67-6508(e).

99. The Commissioners did not comply with these requirements in their June 28, 2010 amendment of the Comprehensive Plan.

100. The Court should therefore enter declaratory and injunctive relief providing that the amendment to the Comprehensive Plan is invalid, and the Zoning Change, Development Agreement and Variance that had followed that amendment are therefore invalid as well.

**Fifth Cause of Action**

**(Failure to Comply With and Beyond Statutory Authority)**

101. Plaintiffs repeat and reallege all of the preceding and subsequent paragraphs in the Complaint.

102. The 20-year Development Agreement, the Zoning Change, Variance and/or Change to the Comprehensive Plan are invalid because they exceeded the scope of Payette County's statutory authority in several important respects including, but not limited to, the following:

- Idaho Code § 67-6511A that provides that the owner or developer can make commitments, not the County.
- Beyond the statutory authority of the County Commissioners.
- Failed to comply with the notice and comment procedures of LLUPA and the Idaho Open Meeting Law.
- Failed to perform the necessary planning for power plants as required by LLUPA.
- Not supported by substantial evidence.
- Infringes and takes away property rights of Plaintiffs and other property owners for the private benefit of AEHI.
- Amended the Payette County Comprehensive Plan to allow for ad hoc consideration of power plant sites.
- Bargained away its zoning power by giving AEHI a veto right over future zoning changes.

103. The injuries to Plaintiffs are ongoing and will, unless enjoined, continue on into the future. As a result, Plaintiffs request injunctive and declaratory relief providing that the AEHI/Payette County 20-year Development Agreement, Zoning Change, Variance and/or Change to the Comprehensive Plan are illegal and void.

### **Sixth Cause of Action**

#### **(Constitutional and Due Process Violations)**

104. Plaintiffs repeat and reallege all of the preceding and subsequent paragraphs in the Complaint.

105. Payette County's consideration and adoption of the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan were fatally flawed because, among other reasons, they deprived Plaintiffs of their rights in a manner that was arbitrary, capricious, and without rational basis as previously detailed herein. Furthermore, Payette County failed to follow basic due process requirements of notice and opportunity to be heard, the requirements of the Idaho State Open Meeting Law, and the requirements relating to adequate and complete findings of fact and conclusions of law.

106. The injuries to Plaintiffs are ongoing and will, unless enjoined, continue into the future. As a result, Plaintiffs request injunctive and declaratory relief providing that the AEHI/Payette County 20-Year Development Agreement, Zoning Change, Variance and/or Change to the Comprehensive Plan are illegal and void.

### **Attorney Fees**

107. Plaintiffs are entitled to attorney fees pursuant to I.C. § 12-117(1), I.C. § 12-120, I.C. § 12-121, 42 U.S.C. § 1983, I.C. § 6-918A.

### **Prayer for Relief**

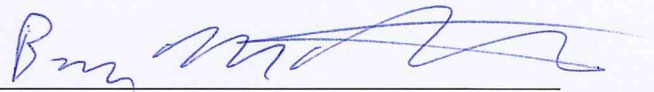
Based upon the foregoing allegations, Plaintiffs request the following relief:

- (1) Issuance of an Order enjoining any party from enforcing the 20-year Development Agreement, Zoning Change, Variance or Change to the Comprehensive Plan.
- (2) Declaratory judgment that the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan are null and void.
- (3) Issuance of an Order rescinding the 20-year Development Agreement, Zoning Change, Variance and Change to the Comprehensive Plan.
- (4) An award of attorney's fees and costs incurred in pursuing this matter.
- (5) For such other and future relief as the Court deems just and proper.

DATED this 16<sup>th</sup> day of April, 2012.

MAUK & BURGOYNE

By:

  
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