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First Judicial District, Bonner County
Michael W Rosedale, Clerk of the Court
By: Deputy Clerk - Guzzi, JoAnne

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

MICHAEL BUDIG, TODD BRINKMEYER, JOHN STOCKTON, and **PRIEST LAKE CABIN OWNERS' ASSOCIATION, INC**., an Idaho non-profit corporation,

Petitioners,

vs.

BONNER COUNTY BOARD OF COUNTY COMMISSIONERS,
Respondent.

TRICORE INVESTMENT, LLC,
Intervenor,

CASE NO. CV09-22-1232

MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW

I. FACTUAL AND PROCEDURAL HISTORY

This is a petition for the judicial review of a decision of the Bonner County Board of County Commissioners ("Board") issued on June 21, 2022 ("Decision") approving an application for Minor Land Division 0143-21, ("MLD-1") filed by Tricore Investments LLC ("Tricore") as the landowner on August 9, 2021. Tricore simultaneously filed an application for Minor Land Division 0144-21 ("MLD-2") on adjoining property. The MLD-1 application was placed on the Board's Consent Agenda at its June 21, 2022 meeting. The transcript of the meeting indicates that a motion was made, seconded and passed to approve the Consent Agenda as presented. On the same day, the Chairman of the Board accepted and signed a recommendation of the Bonner County Planning Department to approve the final plat of MLD-1.

On June 29, 2022, a Motion for Reconsideration of the approval of MLD-1 was filed with the Bonner County Planning Department. On July 1, 2022, a letter was sent via email to the Bonner

County Commissioner's Office and the Bonner County Planning Department from the attorney for the Petitioners. The letter stated that it was a Petition for Reconsideration of the June 21, 2022 approval of MLD-1 filed on behalf of Petitioners Michael Budig ("Budig"), Todd Brinkmeyer ("Brinkmeyer"), John Stockton ("Stockton"), and the Priest Lake Cabin Owners' Association ("Association").

On August 16, 2022, the Board held a hearing related to the Petition for Reconsideration. Budig and Stockton provided oral comments during the hearing, as well as Amy Anderson, Executive Director of the Selkirk Conservation Alliance. Immediately after taking comments and without further discussion, the Board voted to approve MLD-1. The Board issued no written findings of fact or conclusions of law addressing any issues raised during the hearing on reconsideration.

Tricore also made application for MLD-2 on August 9, 2021, simultaneously with its application of MLD-1. The consideration of MLD-2 was placed on the Board's Consent Agenda and approved at its October 11, 2022 meeting. Attorney for the Petitioners attended the meeting via Zoom to address concerns regarding MDL-2 and requested that the Board address those issues. The Board voted unanimously to approve MLD-2. On that same day, the Chairman of the Board accepted and signed a recommendation of the Bonner County Planning Department to approve the final plat of MLD-2.

A Petition to Reconsider the approval of MLD-2 was filed with the Board on October 21, 2022. The Board did not hold a public hearing on the Petition to Reconsider and so the petition was denied by operation of law on December 15, 2022 pursuant to Idaho Code 67-6535(2)(b).

A Petition for Judicial Review of the Board's decision approving MLD-1 was filed on September 9, 2022 in case number CV09-22-1232. A Petition for Judicial Review of the Board's

decision approving MLD-2 was filed on December 19, 2022 in case number CV09-22-1717. This Court has consolidated both cases for purposes of review.

On July 7, 2023, this Court entered its Memorandum Decision and Order vacating the Board's decision and remanding the matter to the agency for further action. After a hearing on the Board's and Tricore's Motions to Reconsider, the Court withdrew its July 7, 2023 Order and set this matter for oral argument.

II. STANDARD OF LAW

"The Local Land Use Planning Act ("LLUPA") permits an affected person to seek judicial review of an approval or denial of a land use application, as provided in the Idaho Administrative Procedures Act ("IDAPA"). I.C. § 67–6521(1)(d)." *Neighbors for Preservation of Big & Little Creek Community v. Bd. of Cnty. Comm'rs of Payette Cnty*., 159 Idaho 182, 186, 358 P.3d 67, 71 (2015). Where a district court acts in its appellate capacity pursuant to IDAPA, its decisions are reviewed through an independent review of the agency record. *917 Lusk, LLC v. City of Boise*, 158 Idaho 12, 14, 343 P.3d 41, 43 (2015).

There is a strong presumption that a county's actions were valid and that it correctly interpreted its own ordinances. *Id.*

> Idaho Code section 67–5279(3) provides that a board's decision will only be overturned where its findings, inferences, conclusions, or decisions are:
> (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion.

Id., citing I.C. § 67-5279(3).

Issues of statutory interpretation are questions of law which are reviewed by the Idaho Supreme Court de novo. *IDHW v. John Doe (2022-32),* 171 Idaho 677, 680, 525 P.3d 715, 718 (2023) (citing *Smith v. Kount, Inc*., 169 Idaho 460, 463, 497 P.3d 534, 537 (2021)). "Similarly,

[c]onstitutional issues and the construction and application of legislative acts are pure questions of law over which [the Idaho Supreme Court] exercises free review.'" *Id.*, quoting *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234, 1240 (2022).

"Jurisdictional issues, like standing, are questions of law, over which this Court exercises free review. Similarly, [the Idaho Supreme Court] has free review over whether dismissal for lack of jurisdiction was properly granted." *Tucker v. State*, 162 Idaho 11, 17, 394 P.3d 54, 60 (2017) (internal citations omitted).

III. DISCUSSION

LLUPA, I.C. §§ 67–6501 et seq., provides the right of judicial review for affected persons that may be adversely affected by "[t]he approval, denial or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter." I.C. § 67-6521(1)(a)(i). The approval or denial of an application "required or authorized" by LLUPA must be in writing and "accompanied by a reasoned statement" that explains the rationale for the decision. I.C. § 67-6535(2). Failure to issue a written finding is grounds for the invalidation of the decision. I.C. § 67-6535(2)(a).

In this matter, it is undisputed that the Board did not issue written findings of fact and conclusions of law upon its approval of the MLDs. The Petitioners argue that this matter is governed by LLUPA and, in the absence of written findings, the Board's approval of the MLD's should be vacated. The Board and Tricore argued in the Motion for Reconsideration, and now, that LLUPA is not applicable to this matter because Bonner County ("County") specifically exempted minor land divisions from the definition of a subdivision. Therefore, the threshold issue in this matter is whether an MLD, as defined by the Bonner County Revised Code ("BCRC"), is subject to judicial review under LLUPA.

The Petitioners argue that while I.C. § 50-1301 does allow a county to adopt its own definition of a subdivision, it does not allow it to exempt itself from LLUPA requirements such as the written-decision requirement or from judicial review. The Petitioners contend that the Board's interpretation that the County can exempt itself from judicial review under LLUPA runs afoul of Article V, Section 20 of the Idaho Constitution, which gives the legislature alone the authority to control the appellate jurisdiction of the district courts. *Petitioners' Brief ISO Petition for Judicial Review* ("Pets. Brief"), pp. 7-8.

The Petitioners contend that the MLD applications are applications for a subdivision as contemplated in I.C. § 67-6521(1)(a)(i), arguing that LLUPA's § 67-6513 requires each county to adopt an ordinance for standards and processing of applications for subdivision permits under I.C. §§ 50-1301 through 50-1329. As the County utilized I.C.§ 50-1301 to define a subdivision not to include a minor land division, the Petitioners argue that the MLD application is an application for a subdivision which is subject to judicial review under I.C. § 67-6521(1)(a)(i) because the County's authority to define a subdivision is derived from the LLUPA statute. *Id.*, pp. 8-9.

Alternatively, the Petitioners argue that the MLD applications are "similar applications" as contemplated under I.C. § 67-6521(1)(a)(i) because they divide land into 4 lots instead of the statutory definition of a subdivision which is defined as a division of 5 lots or more. Further, the Petitioners contend that this Court should view the two MLD applications together, as they were filed on the same day, by the same applicant, on contiguous property owned by the same landowner. The Petitioners argue that the two applications are, in reality, a single 8-lot application to divide land and present substantially the same policy issues as an application for the division of land into 5 or more lots, such as impacts to infrastructure, services, adjacent property owners, and the environment.

The Petitioners argue that Title 50, Chapter 13 sets forth detailed requirements for subdivision and plat approval, including the materials of the plat itself, the markings of public roadways and other detailed requirements. The Petitioners contend that I.C. § 50-1301's provision allowing a county to redefine a subdivision merely allows the county to exempt some land divisions from the onerous requirements of the chapter. The Petitioners argue that LLUPA sets forth broad procedural and substantive requirements that apply to all land-use applications authorized by LLUPA, including the requirement of a written decision and judicial review. *Id*., p. 13.

The Petitioners rely heavily on *Terrazas v. Blaine Cnty. ex rel. Bd. of Comm'rs*, 147 Idaho 193, 207 P.3d 169 (2009). In that case, an application for a 4-lot land division was initially processed under the short plat subdivision procedures of the Blaine County Code, which were a streamlined version of the standard subdivision application procedures. *Id*., 147 Idaho at 196, 207 P.3d at 172. On review, the court applied LLUPA's standards. *Id*., 147 Idaho at 204, 207 P.3d at 180. The Petitioners argue that the holding in *Terrazas* gives effect to counties' authority to define subdivisions under I.C. § 50-1301(18) while still applying the LLUPA requirements of a written decision and judicial review. While conceding that the county code at issue in *Terrazas* did not specifically state that a short-plat was not a subdivision, as in this present case, the Petitioners argue that because it was a streamlined process which exempted a short plat from the procedures that would normally apply to "full-blown" subdivisions, it did, in essence, exempt the short plat from the definition of a subdivision as authorized in I.C. § 50-1301(18). The Petitioners argue that it is irrelevant what name is assigned to the land division, be it "short-plat" or "minor land division." The Petitioners argue that the Idaho Supreme Court reviewed the 4-lot land division application under LLUPA standards, and invites this Court to do the same.

The Board argues that LLUPA's requirement of a written finding does not apply to the approval of MLDs because the County has created a statutory framework to specifically exclude MLDs from LLUPA review. The Board argues that under the authority of I.C. § 67-6513, which compels each county to adopt an ordinance "for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code," the County enacted BCRC § 12-611 which specifically excluded a minor land division from the County's definition of a subdivision. I.C. § 50-1301(18) defines a subdivision as a tract of land divided into five or more lots, parcels, or sites for the purpose of sale or development, but provides that cities or counties may adopt their own definition of a subdivision. The Board argues that under this statute as well as BCRC § 12-611, a division of land resulting in less than five lots is not a subdivision and therefore not subject to appeal under LLUPA or its requirement of written findings of fact and conclusions of law. In support of this argument, the Board cites to *Arnold v. City of Stanley*, 162 Idaho 115, 394 P.3d 1160 (2017), in which the Idaho Supreme Court held that I.C. § 67-6521(1)(a)'s use of the language "and such other similar applications required or authorized pursuant to this chapter" did not include the review for the grant or denial of building permits.

Further, the Board relies on a recent Jefferson County, Idaho district court ruling, where the court found that an application for a land split did not fall under the requirements of LLUPA because such an application is not a "similar application required or authorized" by LLUPA. *In Re Newton*, Case No. CV26-23-0079 (Jefferson County District Court, November 30, 2023). In that case, Newton purchased a 6.76-acre parcel in Jefferson County. Newton's parcel was only accessible by a private road that serviced 14 other lots. Newton filed an application with the county seeking to divide the parcel to separate out a 1.03-acre lot to build a home for his parents. The county planner denied the application, and the Jefferson County Board of Commissioners denied

Newton's subsequent appeal without a hearing. *Newton,* at *2. At the hearing on Newton's motion for reconsideration, the board again denied Newton's application, finding that the 15 lots on the existing road was a nonconforming use of a private road and that approving Newton's application would be expanding that nonconforming use. Newton filed a petition for judicial review. *Id.*, at *3.

Newton argued that he was entitled to judicial review under LLUPA because he sought to "subdivide" land, and review was permitted under LLUPA's § 67-6521. Jefferson County Code defined a subdivision as "the result of an act dividing any lot, tract, or parcel of land into three (3) or more parts for the purpose of transfer of ownership or development . . ." The county defined a lot split as "[a]ny time an original subdivided parcel of land is divided or partitioned into not more than three (3) parcels, or sites for the purpose of transfer of ownership or development." The district court found that Newton's application was not for a subdivision but for a lot split, which didn't carry the same requirements as a subdivision. *Newton,* at *4. Further, the court found that as Newton's property did not meet either the county's or the state's definition of a subdivision, the matter could not be classified as a judicial review of a denial of a subdivision under I.C. § 67-6521(1)(a)(i). *Id*., at *5. The court found that the phrase "other similar applications" contained in I.C. § 67-6521(1)(a)(i) "is limited by the remainder of the sentence to include only 'other similar applications required or authorized pursuant to this chapter.'" *Id.,* citing I.C. § 67-6521(1)(a)(i) and *Arnold,* 162 Idaho 115, 117, 394 P.3d 1160, 1162 (2017). The Court dismissed the action for lack of jurisdiction, finding that "[a]pplications for a division of land that do not meet the definition of a subdivision are not required, authorized, or even mentioned in LLUPA." *Id.*

Tricore contends that this Court must first determine whether it has subject matter jurisdiction over this matter. Tricore argues that the petition for judicial review in *Newton* was

properly dismissed for lack of subject matter jurisdiction because the land division at issue was not a subdivision application authorized under LLUPA. Tricore cites to a line of cases pertaining to a court's subject matter jurisdiction, including *Troupis v. Summer*, 218 P.3d 1138, 1140, 148 Idaho 77, 79 (Idaho 2009), which held that when subject matter is lacking, judgments of the court are void. Tricore argues that based upon the reasoning in *Newton*, this Court should find that it has no subject matter jurisdiction.

Tricore's next argument is that the MLDs are not subject to LLUPA review because they are not applications required or authorized under I.C. § 67-6521. Bonner County Ordinance No. 557 was the effective ordinance in place at the time the applications were submitted for approval. Ordinance No. 557, also known as BCRC § 12-611[1], reads as follows:

> Section I: Authority
> This Ordinance is adopted pursuant to the authority granted at Chapter 65, Title 67, Idaho Code, and pursuant to the procedural requirements contained at Section 67-6509, Idaho Code.
> . . .
>
> 12-611: SUBDIVISION DEFINED, EXEMPTIONS FROM DEFINITION:
>
> A. 1. "Minor Land Division (MLD) shall mean any division of land into four (4) or fewer lots or parcels.
>
> 2. "Short plat" shall mean any division of land into five (5) to ten (10) lots or parcels.
>
> 3. "Subdivision" shall mean any division of land into eleven (11) or more lots or parcels for the purpose of sale, lease, financing, gift or building construction, whether immediate or future.

Tricore argues that as the County used the authority under I.C. § 50-1301(18) to specifically exempt MLDs from its definition of a subdivision, LLUPA has no application to the MLD

[1] BCRC § 12-611 was amended by Bonner County Ordinance No. 634 on August 12, 2021, three days after the MLD applications in this matter were submitted. The amended code states, in relevant part, that "[a] minor land division shall not be used contiguously to avoid the regular subdivision process." All following references to BCRC § 12-611 will refer to the ordinance enacted through Ordinance No. 557 and in effect during the relevant time frame.

applications here. Tricore disagrees with the Petitioners' argument that LLUPA applies to MLDs because the County's authority to define a subdivision to specifically exclude an MLD is derived from I.C. § 67-6513.

Tricore further argues that MLD applications are not "applications for a subdivision or similar applications required or authorized" pursuant to LLUPA. Tricore again cites to *Newton,* arguing that under I.C. § 73-113, a court must apply a statute's "plain, usual and ordinary meaning" and not engage in statutory construction of a clear and unambiguous statute. Tricore argues that the literal words of I.C. § 67-6521 require the Petitioners to demonstrate that an MLD process is one that is "required or authorized" pursuant to LLUPA.

Tricore contends that the parcels' contiguous nature does not render them a subdivision as BCRC § 12-611, effective on the date of application, did not prohibit the use of contiguous MLDs. Tricore cites to *South Fork Coalition v. Bd. of Comm'rs of Bonneville Cnty*., 117 Idaho 857, 861, 792 P.2d 882, 886 (1990) and *Citizens Against Linscott Interstate Asphalt Plant v. Bonner County Board of Commissioners*, 168 Idaho 705, 717, 486 P.3d 515, 527 (2021), both of which held that an ordinance in effect at the time of the original filing of an application is controlling. *Tricore's Brief*, pp. 14-15.

Tricore next argues that I.C.§ 50-1301(18) authorizes the County to opt out of the written-decision or judicial review provisions of LLUPA by allowing it to adopt its own definition of a subdivision. Tricore cites to *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008) for the proposition that because an MLD application is not named in any LLUPA statute, it is not subject to judicial review under LLUPA. In that case, Highlands sought judicial review under LLUPA of an annexation and rezoning request. The district court dismissed the action, ruling that it had no authority to vacate the annexation and that any issue regarding zoning was not

ripe until an application to rezone in conjunction with a development plan had been presented and denied. *Id*., 145 Idaho at 960, 188 P.3d at 902.

On appeal, the Idaho Supreme Court stated that while LLUPA permits judicial review of some land use decisions, there was no provision granting review of an initial zoning classification applied to annexed property. The court listed the different permits enumerated by LLUPA, noting that there was no mention of permits relating to the initial zoning of land annexed by a city.

> LLUPA also grants the right of judicial review to persons having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development. I.C. § 67–6521. This case does not involve the granting or denial of a permit authorizing development.

Id., 145 Idaho at 961, 188 P.3d at 903.[2] The court held that "[a]bsent any statute granting Highlands the right to seek judicial review of the City's decision to annex and zone Highlands' properties, this appeal must be dismissed because this Court lacks jurisdiction to decide the issues raised." *Id*., 145 Idaho at 962, 188 P.3d at 904. Tricore argues that based on *Highlands* and *Arnold*, LLUPA is limited to only those applications and permits specified within LLUPA. *Tricore's Brief*, pp. 16-17.

In reply, the Petitioners contend that the the MLDs are subject to LLUPA, and therefore the Board's approval of the applications must be vacated for failure to issue a written decision. *Jasso v. Camas Cnty*., 151 Idaho 790, 793, 264 P.3d 897, 900 (2011) (holding that a county board's failure to provide an adequate written decision under I.C. § 67-6535 violated petitioners' substantial rights).

The Petitioners also argue that Idaho is a Dillon's Rule state and that municipalities and counties must have statutory authority to act. The Petitioners cite to *Caesar v. State*, 101 Idaho

[2] I.C. § 67-6521(1)(a) was amended in 2010 to replace the phrase "permits authorizing development" with the phrase "and such other similar applications required or authorized pursuant to this chapter." A*rnold*, 162 Idaho at 117, 394 P.3d at 1162.

158, 160, 610 P.2d 517, 519 (1980), which held that "under Dillon's Rule, a municipal corporation may exercise only those powers granted to it by either the state constitution or the legislature and the legislature has absolute power to change, modify or destroy those powers at its discretion." The Petitioners contend that under Dillon's Rule, the MLD applications are subject to LLUPA because they are authorized by LLUPA and it is irrelevant that they are not specifically named in LLUPA.

Further, the Petitioners argue that *Newton* does not support dismissal. The Petitioners distinguish that case in that it involved an application to divide one parcel into two lots to create a roughly one-acre lot. The Petitioners agree that a 2-lot land division isn't an application for a subdivision or "similar applications" under I.C. 67-6521(1)(a)(i). The Petitioners assert that the division of land in *Newton* did not present issues associated with subdivisions, such as a multi-lot housing developments, and doesn't implicate the same policy concerns as a statutory subdivision. By contrast, the Petitioners contend that the MLDs in this case, involving 4 lots each, are closer to the statutory definition of a subdivision consisting of 5-lots, and therefore constitute a "similar application" under I.C. § 67-6521(1)(a)(i).

A. The MLDs are not subject to LLUPA review.

Recognizing that it is not controlling, the Court agrees with the rationale set forth in *Newton*. Under the authority granted to it by I.C. § 50-1301(18), the County adopted a definition of a subdivision as "any division of land into eleven (11) or more lots or parcels for the purpose of sale, lease, financing, gift or building construction, whether immediate or future." BCRC § 12-611. Idaho Code 50-1301(18) defines a subdivision as "[a] tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future." At issue here are two applications for minor land developments, which were defined at

the relevant time under BCRC § 12-611 as "any division of land into four (4) or fewer lots or parcels."

The Petitioners invite this Court to view the two MLDs as one single application for an 8-lot division. The Court cannot do so. Unlike Bonner County's present ordinance regarding minor land divisions, BCRC § 12-611 contained no prohibitions on contiguous minor land divisions. Under both *South Fork Coalition* and *Citizens Against Linscott Interstate Asphalt Plant*, BCRC § 12-611 is the applicable ordinance for the MLDs. Nothing in BCRC § 12-611 prohibited the County from approving the applications for the two MLDs on the basis of their contiguous nature. Therefore, the Court will view them as separate and distinct from one another.

Each MLD application sought the division of a parcel into 4 lots. The Petitioners sought judicial review as "affected persons" under LLUPA. LLUPA defines an affected person as one who has a bona fide interest in real property that is affected by a decision on an "application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter." I.C. § 67-6521(1)(a)(i). Viewing the MLDs separately, neither MLD meets the definition of a subdivision under BCRC § 12-611 or the statutory definition contained in I.C. § 50-1301(18). LLUPA provides no statutory grant of authority for judicial review of a minor land division.

Further the Court finds that the Petitioners' argument the MLDs are "similar applications" under LLUPA to be unpersuasive. The Petitioners want this Court to interpret the phrase "other similar applications required or authorized pursuant to this chapter" as meaning "similar to other applications required or authorized pursuant to this chapter."

> If the MLD Applications aren't "application[s] for a subdivision," they are "similar applications" subject to judicial review. A statutory subdivision is a land-division application of greater than five lots. See I.C. § 50-1301(18). The MLD Applications

> are 4 lots, as similar as can be. If these aren't "similar applications," it's not clear what would be.

Reply, pp. 6-7. In other words, because the MLDs involve a 4-lot division, which is similar in size to a statutory 5-lot subdivision, the MLDs should be considered similar applications.

However, such an interpretation is inconsistent with the language of I.C. §67-6521(1)(a)(i) and the applications/permits specifically identified in LLUPA. Section 67-6521(1)(a)(i) identifies an application for a subdivision (I.C. § 67-6513), a variance (I.C. § 67-6516), and a special use permit (I.C. § 67-6512). Not specifically mentioned in I.C. §67-6521(1)(a)(i) but authorized in LLUPA are planned unit developments (I.C.§ 67-6515) and building permits (I.C. § 67-6517). These two (and others the legislature may add in the future to LLUPA) are the "other similar applications required or authorized pursuant to this chapter."

"The Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, courts must give effect to the legislature's clearly expressed intent without engaging in statutory construction." *Saint Alphonsus Reg'l Med. Ctr. v. Gooding Cnty*., 159 Idaho 84, 87, 356 P.3d 377, 380 (2015). Applying the plain, ordinary meaning of the words of I.C. § 67-6521(1)(a)(i), and giving effect to all the words of the statute, the Court finds that the applications referred to *must be required or authorized* pursuant to LLUPA – not merely similar to applications required or authorized by LLUPA. The Petitioners' alternate interpretation would impermissibly broaden the statute's meaning to include applications that are similar to, but not required or authorized by, LLUPA.

The Court finds that the Petitioners' reliance on *Terrazas* is misplaced. In *Terrazas*, Blaine County did not attempt to carve out an exception to its subdivision requirements via its short plat ordinance. Blaine County Code § 10-2-1 defined a short plat as "[a] plat of a subdivision of four (4) or less lots." The Blaine County Code stated that "[s]hort plat applications are subject to *all of*

the subdivision requirements of this title, including, but not limited to, the standards of evaluation for preliminary plats." B.C.C. § 10–4–6(D) (emphasis added). Here, the crux of the Board's and Tricore's argument is that the County has specifically excluded a minor land division from its definition of a subdivision, and as a result, LLUPA does not apply. The holding in *Terrazas* does not suggest that the Idaho Supreme Court chose to apply a LLUPA standard because the application for a short plat was similar to the application for a subdivision, as the Petitioners have argued. Rather, LLUPA applied there because Blaine County designated short plats as subdivisions.

Further, the Court does not agree that the County's use of I.C. § 50-1301(18) runs afoul of constitutional principles. The Idaho Constitution provides that "[a]ny county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." Idaho Const. art. XII, § 2. Here, the Court finds that as LLUPA mandates that the County enact ordinances for the processing of subdivision applications under I.C. § 67-6513, I.C. § 50-1301(18) allows the County to adopt its own definition of a subdivision, and BCRC § 12-611 specifically excludes MLDs from the definition of a subdivision. BCRC § 12-611 is consistent with the authority granted to counties per LLUPA and with Article XII, § 2, not in conflict with the state statutes or LLUPA (the general law).

The Court's ruling does not limit the Petitioners' access to the district court under art. V, sec. 20. While an action by the Board does not entitle Petitioners to a direct administrative appeal, it may be challenged by means of a collateral action such as a declaratory judgment action. *Burns Holdings, LLC v. Madison County Bd. of County Comm'rs,* 147 Idaho 660, 664, 214 P.3d 646, 650

(2009) (holding that while a rezone was not then entitled to a direct administrative appeal, it may be the subject of a declaratory judgment action).

B. This Court lacks subject matter jurisdiction.

In *Highlands Dev. Corp*, 145 Idaho at 961, 188 P.3d at 903, the Idaho Supreme Court held that an application for zoning was not subject to judicial review. There, the court stated:

> LLUPA grants the right of judicial review to persons who have applied for a permit required or authorized under LLUPA and were denied the permit or aggrieved by the decision on the application for the permit. I.C. § 67–6519. LLUPA mentions special use permits, I.C. § 67–6512; subdivision permits, I.C. § 67–6513; planned unit development permits, I.C. § 67–6515; variance permits, I.C. § 67–6516; and building permits, I.C. § 67–6517. It does not mention any permit that would relate to the initial zoning of land annexed by a city. LLUPA also grants the right of judicial review to persons having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development. I.C. § 67–6521. This case does not involve the granting or denial of a permit authorizing development.

Subsequent to an amendment in 2010, the phrase "permit authorizing development" contained in I.C. § 67–6521 was replaced with the phrase "such other similar applications required or authorized pursuant to this chapter." *Arnold*, 162 Idaho at 117, 394 P.3d at 1162.

> After the 2010 amendment, petitions for judicial review are limited to the matters identified in Idaho Code § 67–6521(1)(a), I.C. §§ 67–6519(4)(c) and 67–6521(1)(d). Those matters are:
> (i) The approval, denial, or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter;
> (ii) The approval of an ordinance first establishing a zoning district upon annexation or the approval or denial of an application to change the zoning district applicable to specific parcels or sites pursuant to section 67–6511, Idaho Code; or
> (iii) An approval or denial of an application for conditional rezoning pursuant to section 67–6511A, Idaho Code.

Stafford v. Kootenai Cnty., 150 Idaho 841, 847, 252 P.3d 1259, 1265, n.2 (2011). Current Idaho appellate case law does not address the application of the phrase "similar applications required or authorized" by LLUPA. However, rulings in *Arnold* and *Highlands Dev. Corp.* indicate that unless

LLUPA identifies the application or permit at issue, the right of judicial review is not extended. LLUPA does not address minor land division applications as described in Bonner County Code. Therefore, under *Arnold* and *Highlands Dev. Corp*., and in the absence of a statutory grant of authority, the Court lacks jurisdiction to conduct judicial review of this local government's actions under LLUPA. *Neighbors for Preservation of Big & Little Creek Community. v. Bd. of Cnty. Comm'rs of Payette Cnty*., 159 Idaho 182, 187, 358 P.3d 67, 72 (2015).

As the Court has determined that it lacks subject matter jurisdiction, it declines to address the Petitioners' remaining arguments.

V. CONCLUSION AND ORDER

For the reasons stated above, IT IS HEREBY ORDERED

The Petition for Judicial Review is DISMISSED.

DATED: **3/14/2024 12:04:34 PM**

Barry McHugh
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on 3/14/2024, a true and correct copy of the foregoing was sent to the following:

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By JG
Deputy Clerk