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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, v. BONNER COUNTY BOARD OF COMMISSIONERS, Respondent.	Case Nos. CV09-22-1232 CV09-22-1717 **RESPONSE TO INTERVENOR'S MOTION FOR RECONSIDERATION/PETITION FOR REHEARING**
TRICORE INVESTMENT, LLC Intervenor.	

Michael Budig, Todd Brinkmeyer, John Stockton, and Priest Lake Cabin Owners' Association (collectively "Petitioners"), respectfully file this Response to Intervenor Tricore Investment, LLC's (Tricore) Motion for Reconsideration/Petition for Rehearing.

BACKGROUND

Tricore's motion presents the question whether divisions of land must comply with certain provisions of state law, specifically the written-decision requirement of the Local Land Use Planning Act (LLUPA) found in Idaho Code § 67-6535. Broadly, this case concerns the division of land by Tricore. Less than a week after dividing 3 contiguous parcels into 26 lakefront lots and 3 back lots via quitclaim deeds,[1] Tricore simultaneously submitted two Minor Land Division Applications ("MLD Applications") to divide the adjacent, contiguous back lots into 8 parcels. *See* R. 1-4; Carter Decl. Ex. A (Mot. to Consolidate Dec. 19, 2022). The County recognized that the two MLDs served one unified development, the "Warren Beach Project," and Staff conditionally approved both on January 24, 2022. R. 40-41, 91, Carter Decl. Ex. C (Mot. to Consolidate Dec. 19, 2022).

The Bonner County Board of Commissioners (Board) approved both MLDs on consent agendas, but at different times: MLD 143-21 on June 21, 2022, R. 61–62, and MLD 144-21 on October 11, 2022. Carter Decl. Ex. D (Mot. to Consolidate Dec. 19, 2022). Following the denial of motions for reconsideration, Petitioners petitioned for judicial review on MLD 143-21 on September 9, 2022 and moved to augment the record on December 13, 2022. On December 19, 2022, Petitioners petitioned for judicial review of MLD 144-21 and moved to consolidate the two petitions. After oral argument on the motions to augment and consolidate on June 22, 2023, the Court issued a decision on July 7, 2023, vacating the MLDs and remanding them to the County because the County had not provided a written decision under Idaho Code § 67-6535. Mem. Decision & Order on Pets. for Judicial Review (July 7, 2023) (Memorandum Decision).

[1] *See* Carter Decl. Ex. B (Dec. 13, 2022).

The County petitioned for rehearing, conceding that the MLD process did not comply with certain provisions of LLUPA but requesting additional argument on the issue of whether the MLDs are subject to LLUPA in the first place. Tricore moved for reconsideration, arguing that the Memorandum Decision deprived it of due process and that the approval of the MLDs was "ministerial" rather than "quasi-judicial" and thus was not required to be approved with a written decision and is not subject to judicial review under LLUPA. The Court issued a briefing schedule on Tricore's motion for reconsideration. Briefing Schedule on Intervenor's Mot. for Recons. (Aug. 14, 2023).

The key question before the Court at this time is whether the MLDs are subject to LLUPA. If they are, then the Court's prior decision must stand because the County and Tricore have conceded that the MLD Applications were not approved by written decision under § 67-6535.[2] As explained in more detail below, the MLDs are subject the written-decision requirement of § 67-6535 and are subject to judicial review under LLUPA, § 67-6521. As such, the Memorandum Decision must stand.

ARGUMENT

1. The County and Tricore concede that LLUPA procedures were not followed. Accordingly, if the MLDs are subject to LLUPA, the Memorandum Decision must stand.

In the County's Brief, it concedes that it did not comply with LLUPA: "In essence, the Court remanded the MLDs in question because the County did not create written findings of fact and conclusions of law sufficient to satisfy the requirements set forth in [LLUPA]. If MLDs were subject to LLUPA, the County would take no issue with this line of reasoning." County's Mem.

[2] If the Court concludes that the MLDs are not subject to judicial review under LLUPA, it doesn't mean that the MLD applications can't be challenged; it just means that they must be challenged by a civil action rather than a petition for judicial review. *See Burns Holdings, LLC v. Madison Cnty. Bd. of Cnty. Comm'rs*, 147 Idaho 660, 663–64 (2009) (land-use decisions not reviewable under LLUPA "may be scrutinized by means of collateral actions such as declaratory actions").

in Supp. of Pet. for Reh'g at 2 (Aug. 2, 2023) ("County's Br."). And the County expressly states that it did not comply with the written-decision requirement in Idaho Code § 67-6535: "If MLDs were subject to review under LLUPA, they would certainly fail to meet this standard." *Id.* at 8 (emphasis added). Tricore "joins and incorporates by reference" these arguments, so it too concedes that the MLDs cannot stand if they are subject to LLUPA. Mem. in Supp. of Intervenor, Tricore Investment, LLC's Mot. for Recons./Pet. for Reh'g at 2 (Aug. 3, 2023) ("Tricore's Br.").[3]

Accordingly, the Court faces a threshold, dispositive question: are the MLDs subject to LLUPA, specifically the written-decision requirement in Idaho Code § 67-6535 and judicial review under Idaho Code § 67-6521(1)(a)(i)? If the MLDs are subject to Idaho Code § 67-6535, the County and Tricore concede that the County's approvals "fail to meet this standard." And if the MLD Applications are subject to judicial review under Idaho Code § 67-6521(1)(a)(i), these petitions are the proper vehicle to decide the merits of that question. If the MLDs are subject to both these provisions, then the Memorandum Decision must stand. As explained in detail below, MLDs are subject to LLUPA, including § 67-6535 and § 67-6521(1)(a)(i). Accordingly, in light of the County's and Tricore's concessions, the Memorandum Decision was correct and should not be reconsidered.

2. The MLD applications are applications authorized pursuant to LLUPA and are therefore subject to Idaho Code § 67-6535. The County does not have the authority to exclude the MLDs from § 67-6535.

Idaho Code § 67-6513 requires each county to adopt an ordinance "for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329,

[3] To avoid confusion, Petitioners refer to the party that spent the most time in its brief on a particular issue. Because Tricore has affirmatively incorporated the County's arguments, the references to the County's arguments in this brief apply with equal force to Tricore.

Idaho Code." (emphasis added). Under this authority, Bonner County promulgated Title 12, Chapter 6, entitled "Subdivisions," of the Bonner County Code. Chapter 6's procedures for "Subdivisions" include the streamlined proceedings for MLDs. The County agrees with this proposition: it argues that it adopted its MLD ordinance pursuant to I.C. § 67-6513's authorization and Idaho Code § 50-1301's provision that counties may adopt their own definition of subdivision. County's Br. at 7 ("The County utilized the authority set forth above" to define "subdivision" and "MLDs" in the County's code. (emphasis added)).

Idaho Code § 67-6535 requires that counties provide written findings of facts and conclusions of law with respect to "any application required or authorized pursuant to this chapter." (emphasis added). "This chapter" refers to LLUPA. Taking the County at its word, the MLD applications are "applications for subdivision permits" authorized under § 67-6513 and are therefore applications authorized pursuant to LLUPA. Accordingly, by the plain language of Idaho Code § 67-6535, the County's approval of the MLD applications must be by written decision. *See* Idaho Code § 67-6535(2).

That the written-decision requirement in Idaho Code § 67-6535 applies to 4-lot applications to divide land, even when eligible for streamlined proceedings pursuant to a county-specific ordinance passed under § 67-6513, is confirmed by *Terrazas v. Blaine County*, 147 Idaho 193, 202 (2009). There, an application to divide land was processed under short plat subdivision procedures under Blaine County Code—a "streamlined version of the standard subdivision application procedures"—because "the proposed subdivision involved no more than four lots." *Id.* at 196. The Court applied LLUPA, including I.C. § 67-6535(b),[4] to the county's

[4] I.C. § 67-6535(b) is the predecessor to what is now re-numbered as I.C. § 67-6535(2). The language is identical, with the exception that § 67-6535(b) applied to "any application provided for in this chapter" while the current version, § 67-6535(2), applies to "any application required or authorized pursuant to this chapter." The amended language does not change the analysis.

approval of the application, finding that the board's "detailed written opinion" was "[i]n compliance" with the statute because it explained the "rationale for the denial and the applicability of the facts to the relevant criteria and standards." *Id.* at 202.

This Court's Memorandum Decision is consistent with—and indeed compelled by—*Terrazas*. In *Terrazas*, the Court applied the written-decision requirement of Idaho Code § 67-6535 to a 4-lot land-division application processed under a county ordinance using less-than-full-blown subdivision procedures. This Court correctly took the same approach in the Memorandum Decision—it applied Idaho Code § 67-6535 to the 4-lot MLD Applications processed under the Bonner County Code as minor land divisions. The Court's approach is fully supported by *Terrazas*. The Court should not accept the County and Tricore's invitation to do otherwise.

As noted above, in this case the County concedes that the MLD Applications were not approved in an adequate written decision under § 67-6535(2). County's Br. at 8. The County argues that this is okay because its ordinances reflect a "deliberate effort to carve MLDs out of the ordinary subdivision review process, including judicial review under LLUPA." County's Br. at 7. Stated another way, the County argues that its MLD ordinance purposefully does not comply with LLUPA; the intent of the ordinance is not to comply with LLUPA but rather to exempt MLDs from the statute altogether.[5] County's Br. at 7. This argument is not persuasive.

First, this argument is inconsistent with *Terrazas*, in which the Supreme Court applied § 67-6535(b) to a 4-lot land-division application authorized by county ordinance. In the course of doing so, the Supreme Court characterized the application as a "subdivision application" under LLUPA that was subject to § 67-6535(b). *See Terrazas*, 147 Idaho at 197. The county's short-

[5] Petitioners do not cast aspersions on the County here. The County appears to have a good-faith belief that it has the legal authority to exempt MLDs from LLUPA. The Petitioners do not believe the County's position is correct as a matter of law.

plat ordinance did not exempt the 4-lot land-division application from § 67-6535(b) or from judicial review. The Court should take the same approach here.

Second, the County's argument places the statutory scheme on its head. Counties do not have the authority to, by ordinance, define what is and what is not subject to the written-decision requirement of LLUPA. The opposite is true: the statute dictates what counties can and cannot do, and establishes the standards by which applications authorized by LLUPA must be processed. Idaho Code § 50-1301(18) allows counties to define "subdivision" differently than the 5-lot division of land set forth in the statute. This allows counties to adopt more streamlined processes for certain divisions of land. But the authority to define "subdivision" statute does not let the counties exempt themselves from core LLUPA requirements such as the written-decision requirement in Idaho Code § 67-6535.

Stated another way, a land-division application that is defined by ordinance to be something other than a "subdivision" does not change the fact that the land-division application is nonetheless an "application required or authorized pursuant to [LLUPA]" and is therefore subject to § 67-6535. *See* Idaho Code § 67-6535(2) ("The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement . . . ." (emphasis added)).

Third, whatever power the County may have by statute or by ordinance, it cannot exempt itself from the requirements of due process. As the Court correctly noted in its Memorandum Decision, the written-decision requirement of Idaho Code § 67-6535 has constitutional dimensions: due process "requires that parties be afforded a meaningful opportunity for judicial review. Idaho Code § 67-6535 gives effect to this component of due process." *Jasso v. Camas Cnty.*, 151 Idaho 790, 796 (cleaned up, emphasis added); Memorandum Decision at 13–14. The

County cannot, by ordinance, exempt itself from LLUPA's codification of due-process requirements.

The County also argues that, if the Court's Memorandum Decision stands, it will be in a "dilemma" because the County does not have a LLUPA-compliant procedure for reviewing the MLD Applications on remand. County's Br. at 7 n.3. This is no real dilemma at all—the County must conform its ordinances to the requirements of state statute and due process. And the sooner the better! The County cannot use its failure to adopt a LLUPA-compliant ordinance as an argument against a judicial decision that requires compliance with LLUPA.

In any case, Petitioners believe that the County overstates its dilemma. While the Bonner County Code does not explicitly require that the Board approve an MLD application in a written decision, it does not prohibit the Board from doing so. This would be relatively easy—instead of simply signing off on Staff's recommendation, the Board would need to explain, in writing, how the MLD Applications meet the standards set forth in the MLD ordinance.

In addition, § 67-6535 does not require revisions to the County's substantive MLD ordinance. Section 67-6535(2) merely requires that the County "articulate in writing both (1) the facts found and conclusions reached and (2) the rationale underlying those findings and conclusions." *Jasso*, 151 Idaho at 794. In other words, the County does not need to change the standards for Minor Land Divisions; it must merely explain, in written decision supported by a reasoned statement, how the standards in the existing ordinance apply to the MLD Applications. This is a core due-process requirement that should be expected of local officials acting in a quasi-judicial capacity. Other agencies do it all the time, as does the County itself in a variety of other contexts. The benefits of a written decision are well-recognized and cannot be lightly dismissed by the County or the Court. *See, e.g.*, *Jasso*, 151 Idaho at 794 ("The requirement of

meaningful administrative findings serves important functions, including facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administration consideration, helping parties plan their case for rehearing and judicial review and keeping within their jurisdiction." (cleaned up)).

In sum, the MLD applications are subject to LLUPA under the plain language of Idaho Code § 67-6535 itself and under *Terrazas*. The County cannot exempt itself from LLUPA through ordinance, particularly as to the written-decision requirement of § 67-6535 which is a component of due process. Because the County and Tricore have conceded that the County's approval of the MLD Applications did not comply with § 67-6535, the Court's Memorandum Decision is correct and must stand.

3. The MLDs are subject to judicial review under LLUPA.

LLUPA provides judicial review of several listed decisions, including 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." § 67-6521(1)(a)(i) (emphasis added). The MLD Applications at issue here are applications for subdivisions. If not, they are at least "similar applications." Accordingly, the County's approvals of the MLD Applications are subject to judicial review under Idaho Code § 67-6521(1)(a)(i).

As discussed above, Idaho Code § 67-6513 requires 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." (emphasis added). The Bonner County MLD ordinance was adopted under Idaho Code § 67-6513 and § 50-1301. County's Br. at 7 ("The County utilized the authority set forth above" to define "subdivision" and "MLDs" in the County's code.). The MLD Applications are, therefore, "applications for subdivision permits" under § 67-6513 and "application[s] for a subdivision" subject to judicial review under § 67-6521(1)(a)(i).

Stated another way, the MLD Applications are "application[s] for a subdivision" under § 67-6521(a)(i) because they are authorized by a statute that requires ordinances governing "applications for subdivision permits." *See* Idaho Code § 67-6513. Accordingly, the County's approval of the MLD Applications are approvals of subdivision applications reviewable under § 67-6521(1)(a)(i).

Caselaw confirms this point. In *Terrazas*, the Idaho Supreme Court reviewed a 4-lot land-division application, which was processed under a county's "streamlined" procedures, in a petition for judicial review under LLUPA. 147 Idaho at 196–97 (4-lot land-division application initially processed under short plat subdivision procedures under county code was subject to a petition for judicial review under LLUPA as a "decision regarding a subdivision application"). In doing so, the Court repeatedly referred to the 4-lot land-division application as a "subdivision application." *Id.* at 196 ("This appeal arises from a petition for judicial review concerning a county board's denial of a subdivision application." (emphasis added)); 197 ("The decision regarding a subdivision application is a decision granting a permit, I.C. § 67-6513, and is therefore subject to judicial review." (emphasis added)); 198 ("The Board was empowered to enact ordinances regulating the procedure and standards for subdivision applications." (citing I.C. § 67-6513) (emphasis added)).[6]

The Court used the same approach here. The MLD Applications—which are, like the applications in *Terrazas*, applications for a 4-lot division of land—are subdivision applications subject to judicial review.

[6] *Terrazas* was decided before § 67-6521 was amended to list the types of permits subject to judicial review. However, the Court in *Terrazas* described the 4-lot land-division application at issue as a "subdivision application," which is the same language used in the current version of § 67-6521. If in *Terrazas* the 4-lot land-division applications was properly characterized as a "subdivision application," the 4-lot land-division applications at issue in this case must be as well.

Even if the MLD Applications weren't applications for a subdivision under Idaho Code § 67-6521(1)(a)(i), they are "similar applications" and subject to judicial review all the same. *See* Idaho Code § 67-6521(1)(a)(i) (authorizing judicial review of "an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter" (emphasis added)). The MLD Applications each divide land into 4 lots. This is "similar" to the statutory definition of a subdivision, which is the division of land into 5 lots or more. Idaho Code § 50-1301(18).

In addition, in this case the Court is faced with two 4-lot land-division applications that were filed on the same day, by the same party, on immediately adjacent property owned by the same landowner. *See* R. 1-4; Carter Decl. Ex. A (Mot. to Consolidate Dec. 19, 2022); R. 40-41, 91, Carter Decl. Ex. C (Mot. to Consolidate Dec. 19, 2022); Carter Decl. Ex. B (Dec. 13, 2022). The MLD Applications, viewed together (as they should be) address substantially the same policy issues as an application for the division of land into 5 or more lots (or 11 or more lots, for that matter): what are the impacts to infrastructure, services, adjacent property owners, and aspects of the environment? If any applications are "similar" to subdivision applications under the statute, it would be these MLD Applications. Accordingly, even if the Court concludes that the MLD Applications are not "application[s] for a subdivision," they are "similar applications" and subject to judicial review. *See* Idaho Code § 67-6521(1)(a)(i) (authorizing judicial review of 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").

The County and Tricore argue that the MLD applications aren't "application[s] for a subdivision" under Idaho Code § 67-6521 because the County Code defines a "subdivision" as dividing property into 11 lots. County's Br. at 7. Petitioners disagree with this argument, as

explained above. Regardless, Idaho Code § 67-6521 authorizes judicial review of both "application[s] for a subdivision" and "similar applications." Judicial review of the MLD Applications as "similar applications" is therefore authorized even if the County and Tricore were correct in arguing that the MLD Applications are not themselves "application[s] for a subdivision."

The County notes that the Idaho Supreme Court has not definitively established what applications constitute "similar applications" under LLUPA. County's Br. at 8. Petitioners agree—the Supreme Court has addressed the issue only once, concluding that building permits are not "similar applications" subject to judicial review under § 67-6521. *Arnold v. City of Stanley*, 162 Idaho 115, 117 (2017). But the lack of extensive jurisprudence on the issue need not concern the Court. The Court has more than enough authority to support the proposition that the MLD Applications are "similar applications" subject to judicial review under LLUPA.

First, in *Terrazas* the Supreme Court characterized a 4-lot land-division application as a "subdivision application." *Terrazas*, 147 Idaho at 197. The MLD Applications are also 4-lot land-division applications and, as such, are properly treated as subdivision applications subject to judicial review just as in *Terrazas*.

Second, the MLD Applications are more similar to subdivisions than the building permit at issue in *Arnold*. First, a 4-lot land-division application is just 1 lot shy of a statutory subdivision. *See* Idaho Code § 50-1301. On its face, an application to divide land into 4 lots is similar to an application to divide land into 5 lots. And, as explained above, even if all 4-lot land-division applications are not sufficiently similar to a 5-lot land-division application, these MLD Applications are. Viewed together, as they should be, the MLD Applications divide land into 8

lots and present policy issues that are similar to an 8-lot division of land, which is a subdivision as defined by statute.

Third, in *Arnold* the Idaho Supreme Court noted that "LLUPA does not authorize or require building permits." 162 Idaho at 117. The Court further observed, "Throughout the entire LLUPA, building permits are only mentioned once," and the provision that mentions buildings permits "does not purport to authorize or require building permits" but instead merely mentions them in the context of future acquisition maps. *Id.* By contrast, LLUPA expressly requires and authorizes subdivision applications and mentions them by name in Idaho Code § 67-6513 and § 67-6521(1)(a)(i). Idaho Code § 67-6513 (requiring each county to pass an ordinance "for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code"); Idaho Code § 67-6521(1)(a)(i) (authorizing judicial review of, among other things, a county's decision regarding "an application for a subdivision").

Accordingly, the fact that *Arnold* is the only Idaho Supreme Court case that directly addresses the issue of "similar applications" does not prevent the Court from holding that the MLD Applications are similar. If anything, *Arnold* confirms that the MLD Applications at issue in this case are, in fact, "similar applications required or authorized pursuant to this chapter" subject to judicial review under Idaho Code § 67-6521(1)(a)(i).

Tricore argues that approvals of the MLD applications were "ministerial" and therefore aren't subject to judicial review. Tricore's Br. at 12-16. Not so. First, Idaho Code § 67-6521 provides for judicial review based on the type of application that is approved or denied, not based on whether the County's approval is more properly classified as "ministerial" or "non-ministerial." So Tricore addresses the wrong question altogether.

Second, in making this argument Tricore relies on BCRC § 12-660(A)'s provision for "ministerial review" by Staff. However, BCRC § 12-661(D) provides for "possible approval" by the Board. (emphasis added). "A ministerial act is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts." *State v. Thiel*, 158 Idaho 103, 109 (2015) (cleaned up) (holding statutory mandate that magistrate "shall" allow prisoner 5 days off upon recommendation of sheriff rendered the magistrate's act ministerial). The County Code does not—and cannot—make the Board's non-delegable duty to consider and decide whether to approve a subdivision application a "ministerial" act. *See* I.C. § 67-6504 (authorizing certain powers to be delegated to planning and zoning commissions, but "excluding the authority to . . . finally approve land subdivisions"); *Terrazas*, 147 Idaho at 198 ("Under Idaho law, county boards are vested with the exclusive, non-delegable, authority to finally approve subdivision applications.").

Because the approval by the Board was "possible," rather than mandatory, the Board's action was not ministerial. And the Board's actions in approving a subdivision application could never be ministerial because final approval is a statutory, non-delegable duty. The Board's approval of the MLD Applications was not ministerial. Tricore's argument fails on this basis, as well.

If the Court concludes that the MLDs are subject to LLUPA, this compels upholding the Memorandum Decision since the County concedes that LLUPA standards were not followed. There's no need for additional briefing on this question: the Court's conclusion flows directly from a binding concession made by the County and Tricore. Accordingly, a determination that the MLDs were subject to LLUPA is dispositive on the merits.

4. Tricore and the County have been provided a sufficient opportunity to address the threshold, dispositive issue during these reconsideration proceedings.

Tricore argues that the Memorandum Decision was made without adequate opportunity for Tricore to make its arguments. Due process is not "rigid;" it requires procedure that ensures "a person is not arbitrarily deprived of his or her rights." *In re Cook*, 168 Idaho 153, 159–60 (2021). An adequate opportunity to make arguments in a case can be provided during reconsideration. *See id.* (any defect in not receiving the full time provided by rule to respond was remedied by consideration of litigant's "arguments at the motion for reconsideration stage").

Tricore's argument that it was deprived of due process is not persuasive, at least as to this stage of the proceedings. This reconsideration process has provided Tricore an adequate opportunity to address the threshold question of whether the MLDs are subject to LLUPA. After the Memorandum Decision, Tricore moved for reconsideration on July 20; it submitted briefing on August 3; and under the Court's Order Tricore will have the opportunity to file a reply brief and potentially present oral argument. During this round of briefing, Tricore has the benefit of the County's brief on its Petition for Rehearing, as well as the Court's Memorandum Decision and this Petitioner's brief. This provides ample opportunity for Tricore to address the arguments related to the threshold question. Given Tricore's and the County's concessions that the MLD process did not follow Idaho Code § 67-6535, this threshold question is dispositive if the Court determines that the MLDs are, in fact, subject to LLUPA. No further process is required.

The County affirmatively decided that it would not take a position in the case.[7] Nonetheless, the County submitted a petition for rehearing that asserted its position related to the

[7] "[T]he Board of Commissioners has instructed me not to substantively defend the decision that is at issue now." Tr. 5:15-18 (Mr. Wilson) (June 22, 2023).

In fact, the County and Tricore took affirmative steps in furtherance of judicial review. The County compiled two records, determined objections to the record, and filed them with the Court. Tricore and Petitioners went through two rounds of briefing and two hearings on motions to supplement the records. These steps make sense only in the

question of whether the MLDs are subject to LLUPA. In the course of this briefing, the County made the binding concession that LLUPA procedures were not followed when approving the MLDs. County's Br. at 2, 8. This in turn compels the conclusion that, if the MLDs are subject to LLUPA, the Memorandum Decision must stand. And the County is authorized, pursuant to the Court's briefing schedule, to file a brief related to Tricore's motion for reconsideration. This provides a sufficient opportunity for the County to provide its arguments on this threshold question.

All that said, if the Court goes beyond the threshold question of whether the MLDs are subject to LLUPA, Petitioners would not object to an additional briefing period on the merits, if the Court determines that it is necessary, so long as the Memorandum Decision remains in place pending the further proceedings. During the merits briefing—again, if deemed necessary—Petitioners reserve the right to present all arguments, including that the approval of the MLDs violated the MLD ordinance itself.

CONCLUSION

For these reasons, Petitioners respectfully request that the Court deny Tricore's Motion for Reconsideration.

DATED September 1, 2023.

GIVENS PURSLEY LLP

By */s/ Preston N. Carter*
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context of a petition for judicial review. Having taken these steps—and having induced Petitioners and the Court to expend considerable time and effort in pursuit of them—it is peculiar to now argue that the Court has been engaged in the entirely wrong process all along. Surely a meritorious argument to this effect would've been raised sooner.

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, I caused to be served a true and correct copy of the foregoing document to the person(s) listed below by the method indicated:

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