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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.

TRICORE INVESTMENT, LLC

Intervenor.

Case No.: CV09-22-1232
Case No.: CV09-22-1717

REPLY MEMORANDUM IN SUPPORT OF INTERVENOR, TRICORE INVESTMENT, LLC'S MOTION FOR RECONSIDERATION/ PETITION FOR REHEARING

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COMES NOW BRENT C. FEATHERSTON of FEATHERSTON LAW FIRM CHTD. for and on behalf of the Intervenor, Tricore Investment, LLC ("Tricore") and hereby submits the following Reply Memorandum in Support of Motion for Reconsideration/Petition for Rehearing, as follows:

I. INTRODUCTION

Tricore provides this Reply Brief to the Petitioners' Response to Motion for Reconsideration/Petition for Rehearing regarding the Court's Memorandum Decision remanding to the County of Tricore's minor land division applications.

A review of the Petitioners' Response recalls the adage attributed to the Nazi propogandist, Joseph Goebbels- "Repeat a lie often enough and it becomes truth". Petitioners persist in their argument that the Court should disregard the plain words found in both Idaho Code and Bonner County ordinance, so as to accept Petitioners' interpretation of what the law is and what is a "subdivision". However, the threshold question is not the application of LLUPA to the MLD's, but whether the Court erred in issuing the Decision without opportunity to all parties as provided by rule, statute and basic principals of due process. While Tricore's Motion/Petition raises the legal errors in the Court's Decision requiring further factual findings in a quasi-judicial proceeding, the first act by the Court should be to vacate its decision and provide the opportunity to be heard in brief and argument.

Petitioner's Response mischaracterizes the arguments and positions taken by Tricore and the County in their respective Petition/Motion and misstates or mischaracterizes the plain words and meaning of Idaho law. They continue to advance the theory that the Bonner County Minor Land Division ordinance is either unlawful under the

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Local Land Use Planning Act ("LLUPA") or falls under LLUPA and that the County unlawfully approved the MLDs when they are really "subdivisions". These are arguments that should have been provided after the Court had settled the record, decided whether to consolidate the two (2) pending Petitions in Bonner County Cases CV09-22-1232 ("1232") and CV09-22-1717 ("1717") and after opportunity to brief and argue the legal issues.

Petitioners' Response in the Background states the "two MLDs served one unified development" referring to it as the Warren Beach Project. This has been the Petitioners' argument all along that the Bonner County MLD statute is somehow illegal or in violation of LLUPA, though Petitioner they have not mounted a direct challenged to the County ordinance, just that the Court should deem this a "subdivision" process even though the County properly defined MLD's as exempt from the subdivision process. Instead, Petitioner seek to challenge the ministerial or administrative approval of MLD 143-21 and MLD 144-21 ("MLD") as being subject to quasi-judicial procedures because an MLD is really a "subdivision" or "similar application".

Had the Court permitted the opportunity, Tricore would have addressed the arguments now made in the motion/petition, by argument and briefing after the settlement of the record. Tricore and the County were not permitted that opportunity.

The fact that Tricore has raised the legal distinction between a ministerial or administrative approval of an MLD and LLUPA's oversight of subdivision does not equate, as the Petitioners argue, to conceding that the MLDs in question are in violation of LLUPA, simply that it LLUPA does not apply as example of why the Court's Decision was in error and should be vacated.

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To the contrary, LLUPA provides a statutory definition of what constitutes a subdivision, but expressly authorizes counties to define subdivisions by local ordinances. Bonner County has done just that. The MLDs are an exception to the definition of subdivision.

It is disingenuous at best for the Petitioners to assert that the County and Tricore have conceded that the MLDs are in violation of LLUPA. The ordinance permitting MLDs as an exception to subdivisions is entirely consistent with LLUPA's express empowerment of Bonner County the autonomy to define what is a subdivisions subject to LLUPA and what is not. Regardless, the express "ministerial" and "administrative" processing of MLD's provided in the County ordinance takes it out of the quasi-judicial procedures that LLUPA and the caselaw state must result in decisions supported by factual findings, the basis for the Court's Decision that Tricore requests be vacated.

Petitioners have not mounted a direct challenge to the legality of the County's MLD ordinance, choosing to file this judicial review or appeal of the MLD approvals arguing they should be treated as though they are subdivisions. As such, Petitioners are bound by the legal authority that permits the County to implement its own subdivision ordinances and exceptions thereto.

That Tricore and the County are left to raise these arguments in response to the Court's Memorandum Decision is evidence that the Court erred in its decision by not allowing the record to be settled and permitting development of these arguments before issuing a decision on the merits.

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Finally, in the Background section, the Petitioners argue that "the key question before the Court at this time is whether the MLDs are subject to 'LLUPA'". Response, p. 2 of 15.

Tricore disagrees. The key question before the Court is whether it violated the Respondent and Intervenor's due process and procedural rights to be heard on these issues by this Decision and that the decision does not comport with the plain language of LLUPA and Idaho caselaw. Respondents and Intervenor should be afforded an opportunity to fully review, brief and argue these issues rather than having to file the Petition/Motion for Reconsideration/Rehearing in reaction to the Court's Decision. The Petitioners, not Tricore of the County, bear the burden in a Petition for Judicial Review.

II. ARGUMENT

A. The County and Tricore did not concede that LLUPA procedures were not followed.

Again, the Petitioners misstate the arguments presented on the Motion/Petition by the County and Tricore. Following the Court's Memorandum Decision, Tricore and the County are left to make their arguments to the Court of why its Memorandum Decision to reverse and remand for factual finding is in error, without the benefit of following the procedures required by Court rule.

The Petitioners' Response argues that the Court should simply make the "threshold dispositive" ruling of whether the MLDs are subject to LLUPA. Petitioners' argument conveniently brushes aside the preliminary requirements of due process and I.R.C.P. Rule 84, and flips the burden from Petitioners to Respondent and Intervenor in the context of their Petition for Rehearing/Motion for Reconsideration. Tricore was entitled to the opportunity to respond to what the Court considered to be the lack of factual finding before

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the Court issued its Decision. Petitioners' argument that the Court should now simply shift the burden to Tricore and the County to establish this "dispositive" issue of whether LLUPA applies, is unfair and prejudicial to their procedural due process rights. Further, the fact that LLUPA does not apply was argued by Tricore and the County in reaction to and simply to demonstrate the error in the Decision remanding the matter for factual findings.

Petitioners' argument is that the Court should affirm its Memorandum Decision if it determines that LLUPA applies to the MLD without further opportunity to settle the record, establish a briefing schedule and hear oral argument from the interested parties Tricore and Bonner County. From this premise, Petitioners then argue that the MLD applications are subject to LLUPA and the County acted outside of its authority when excluding the MLDs from Idaho Code § 67-6535. The premise and the procedure are erroneous. The Court must vacate its Decision and proceed according to the requirements of court rules and due process.

B. The MLD applications are not subject to LLUPA and are not subject to Idaho Code § 67-6535 and the County does have authority to exclude MLD from definition of a subdivision.

In this section of Petitioner's Response, they simply perpetuate their argument that is transparently found within the transcript of proceedings before Bonner County as well as in their Petition and briefing on their Motion to Consolidate and Motion to Augment , that argument being: Petitioners' interpretation of what is a subdivision should require application of LLUPA to the MLDs.

The Petitioners' arguments are a thinly veiled attempt to challenge Bonner County's adoption of the MLD ordinance as being violative of LLUPA. This challenge is

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not raised in the Petition for Judicial Review in 1232 and 1717 and Idaho law would preclude them from challenging it in this context. The Court must reject this argument.

"This Court has stated that there are three general restrictions that apply to ordinances enacted under the authority conferred by this constitutional provision: '(1) the ordinance or regulation must be confined to the limits of the governmental body enacting the same, (2) it must not be in conflict with other general laws of the state, and (3) it must not be an unreasonable or arbitrary enactment.'" *Hobbs v. Abrams*, 657 P.2d 1073, 1075, 104 Idaho 205, 207 (Idaho,1983); quoting: *State v. Clark*, 88 Idaho 365, 374, 399 P.2d 955, 960 (1965).

Petitioners' Response seeks to interpret the MLD ordinance as a subdivision and therefore subject to the provisions of LLUPA, specifically, Idaho Code § 67-6535. They do this by stating that LLUPA specifically applies to any application "required or authorized pursuant to this chapter" and argue that MLDs are " 'applications for subdivision permits' authorized under § 67-6513 and are therefore applications authorized pursuant to LLUPA." Response, p.4.

It is through this circuitous argument that Petitioners conclude that the "approval of the MLD applications must be by written decision".

Further, Petitioners argue the case of *Terrazas v. Blaine County*, 147 Idaho 193, 202 (2009). The premise that even a "streamlined proceeding" pursuant to County specific ordinances requires written decisions under Idaho Code § 67-655. *Terrazas* is distinguishable for the simple reason that Blaine County adopted a subdivision ordinance that included the processing of no more than four (4) lot subdivisions as "a streamlined" process. However, it is clear throughout the decision that the process in question is, in

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fact, a subdivision process placing it squarely within the defined parameters of LLUPA, distinguishable from this matter. BCRC 12-611 defines "subdivisions" as any division of land into eleven (11) or more lots, and more importantly states that "subdivision" shall not include: … "Minor Land Divisions." BCRC 12-611.

This renders *Terrazas* inapplicable to this case and further puts Petitioners in the position of arguing that the words of LLUPA that empower the County to define what is not a "subdivision" somehow do not mean what they say. The Court must vacate its Decision and as a matter of law, the Petitioners' petitions must be dismissed.

C. The MLDs are not subject to judicial review under LLUPA.

Without waiving the due process and procedure arguments, Tricore pointed out to the Court in its briefing that MLDs are exempt from LLUPA and therefore do not require the quasi judicial proceedings that the Court's Decision was premised upon. MLDs are, by definition, approved though an administrative or ministerial process. This is what distinguishes the MLDs from the procedure discussed in *Terrazas* and the cases supporting the Court's Decision, which addressed subdivision application.

Despite this obvious distinction addressed in the preceding section, Petitioners still argue that the MLDs are subject to judicial review under LLUPA and that the Court's decision should therefore stand.

The Petitioners insist in their Response that whether the MLDs are subject to Judicial Review under LLUPA is dispositive to the Court's ruling on the Motion to Reconsider/Petition for Rehearing. That is not accurate. For reasons set forth in the following section, the Court was obligated to provide the parties an opportunity to be heard before entering its Memorandum Decision pursuant to the terms of Rule 84 and pursuant to

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principles of due process, but the inapplicability of LLUPA procedures and the fact that MLDs are administrative or ministerial, not requiring findings of fact, is fatal to the Petitions filed here.

Petitioners' continued reference to LLUPA and Idaho Code § 67-6501 set seq. bears closer scrutiny.

Idaho Code § 67-3503 provides that every county "shall exercise the powers conferred by this chapter". As set forth in the Intervenor's Memorandum in Support of the Motion/Petition, Bonner County has explicitly defined subdivisions as a division of eleven (11) or more lots, parcels or divisions excepting from that definition Minor Land Divisions.

Bonner County exercised its authority under LLUPA specifically found in Idaho Code § 67-6503 and § 67-6513 to autonomously define what is a subdivision application and the procedure for processing such application. In doing so, it excluded MLD's from that definition. The County, if you will, opted to exercise the right given by LLUPA to opt out of its subdivision definition and to further define that MLDs are not subdivisions.

The County's elected body is provided that right by LLUPA but also has the recognized right to enact zoning ordinances in its capacity as a "local legislative body". *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 511, 567 P.2d 1257, 1262 (1977).

The County's right under LLUPA and Idaho case law cited above to determine its zoning regulations and to define what is or is not a subdivision is codified and recognized by long-established caselaw.

In this instance, the LLUPA provision authorizing county autonomy on this subject found at Idaho Code § 67-6513 references the Court to Idaho Code § 50-1301 through 50-1329.

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Idaho Code § 50-1301 provides in pertinent a presumptive definition of a subdivision being the division of a tract into five (5) or more lots, parcels or sites, but also recognizes that "counties may adopt their own definition of subdivision in lieu of this definition." I.C. § 50-1301 (2023).

Petitioners argue that the MLDs must fall under the requirements of LLUPA but ignore that minor land divisions do not even fit the statutory definition of a subdivision of a tract of land being divided into five (5) or more lots, contained within LLUPA. BCRC 12-611 defines minor land divisions as four (4) or fewer lots or parcels from a division of land. MLD 14321 and 14421 were processed pursuant to BCRC 12-611 and resulted in four (4) or fewer lots.

The MLDs in this instance and as defined in BCRC 12-611 do not fit the LLUPA definition of a subdivision, a division of a tract of land into five (5) or more lots. Petitioners argue "the MLD applications are 'applications for a subdivision' under § 67-6521(1)(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)". Response, p. 9 of 15.

It is this sort of circular logic by the Petitioners that has led to the filing of two (2) Petitions for Judicial Review of MLD approvals that are ministerial or administrative by definition and that are exempt from the statutory and County definition of a subdivision. The Petitioners' argument is that because LLUPA authorizes a county to define subdivisions differently than the statute and Bonner County exercised its authority that somehow the

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MLDs are now subdivision applications because the County's authority is derived from said statute that authorizes the County to opt out and self-define what is or is not a subdivision.

As the County and Tricore's briefs note, subdivisions are defined by Bonner County as divisions of eleven (11) or more lots, while MLDs are defined as divisions of four (4) or fewer lots.

Petitioners also reiterate the holding of *Terrazas* as if it is relevant stating that it "confirms this point". *Terrazas* is neither on point, nor relevant, to the analysis. By definition, Blaine County enacted a "short plat subdivision procedure" that permits the subdividing of up to four (4) lots in a "streamline" application process.

The first distinguishing feature of *Terrazas* is the fact that Bonner County ordinance defines its own version of a short plat as the division of land into five (5) to ten (10) parcels, a process not at issue here, and applies same or similar procedural requirements as a subdivision while specifically excluding minor land divisions from the short plat subdivision or full subdivision found in BCRC 12-611.

The second way in which *Terrazas* is distinguishable is simply by reviewing the factual recitation in *Terrazas*. *Terrazas* involved a subdivision (short plat) that went through public hearing resulting in findings of fact and conclusions of law and a decision denying the subdivision due to the implications of the MOD.

Petitioners' repeated quotes of the *Terrazas* case where it refers to "subdivision applications" as being similar is unavailing. Clearly, Blaine County's ordinance created a short plat subdivision process that bears no resemblance to the administrative and ministerial MLD process that Bonner County at issue in this case.

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The Petitioners seem to argue that simply because an Idaho Supreme Court case had a similar number of lots and used the word "subdivision", that it is dispositive.

Petitioners Response from page 9 through 13 attempts to correlate the *Terrazas* case to this case. Petitioners' argument appears to be either that all small land divisions must be defined as subdivisions or "similar applications" subject to judicial review under LLUPA or that the Court should interpose the *Terrazas* decision in this case simply because it involved a four (4) lot short plat subdivision process under Blaine county's specific ordinance. Petitioners seem to confuse Blaine County's ordinance with Bonner County.

It is misleading and disingenuous for the Petitioners to state that the "Supreme Court characterized a four (4) lot land division application as a 'subdivision application' in *Terrazas*". Response, p. 11 of 15. This was neither a holding or a sweeping interpretation of the LLUPA application to "small" land divisions, it was specific to the facts of *Terrazas* and Blaine County subdivision ordinance.

The Petitioners' use of *Terrazas* is misleading in the context of the Blaine County subdivision ordinance and its short plat procedure that permits a four (4) lot subdivision but subjects them to the quasi judicial proceedings that do not apply to Bonner County MLDs.

Petitioners make a second point that the MLD applications are similar to subdivisions because they are four (4) lot land divisions "just one lot shy of a statutory subdivision". Response, P. 11 of 15. Again, Petitioners should be reminded that statute and ordinances say what they say and are not subject to Petitioners' creative interpretation. The Petitioners' argument seems to be that a minor land division is "close enough" to the short plat or full subdivision numbers to be called a "similar application".

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Idaho Code § 73-113 mandates that "(1) the language of a statute should be given its *plain, usual and ordinary meaning*. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect *without engaging in statutory construction*. The literal words in a statute are the best guide to determining legislative intent …. (3) words and phrases are construed *according to the context and approved usage of the language*." I.C. § 73-113(1) and (3) (2023).

The foolishness of the Petitioners' argument is obvious. When the ordinance says four (4) lots, it means four (4) not five (5) or almost five (5). And whether it is "just one (1) lot shy" of the statute's subdivision definition of five (5) doesn't transform it into five (5) and make it a subdivision, even if Bonner County had not defined subdivision as eleven (11) lots or tracts. The Court is not permitted to engage in this sort of sophistry and interpretation of a statute. The statute and, in this case, the County ordinance, says what it says and means what it means. There is no further interpretation allowed or required.

Third, Petitioners persist in their argument that "similar applications" as discussed in *Arnold* mandate this Court's conclusion that the "MLD applications at issue in this case are, in fact, similar applications required or authorized pursuant to this chapter." Response, p. 12 of 15, citing I.C. § 67-6521(1)(a)(i). Again, this is contrary to the statutory rules of construction of words and phrases and a stretch at best to apply the holding of *Arnold* to this case. "The LLUPA does not authorize or require building permits." *Arnold v. City of Stanley*, 394 P.3d 1160, 1162, 162 Idaho 115, 117 (Idaho, 2017)[holding that LLUPA does not apply to building permits allowing for judicial review]

Finally, Petitioners argue in this section that the MLD approvals, as ministerial decisions, is somehow not the point. Petitioners argue that the language of the MLD

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ordinance makes Bonner County Board approval possible rather than mandatory taking it out of the ministerial act category. This is not true. The ordinance, on at least two (2) occasions, refers to the processing and approval of MLDs as "ministerial" or "administrative" and that the Director of the Planning and Zoning Department for Bonner County is to conduct a ministerial review of the application, forward the matter to the County Commissioners for "possible approval" . While the County Commissioners' "possible approval" implicates that it could be rejected, this is true of any application or action that calls for a ministerial or administrative approval, as it should be. For example, if the Planning Department or Director were to review and forward the matter to the County Commissioners, but the County Commissioners were to determine that their employees, the Director or staff, incorrectly forwarded the matter for approval and/or overlooked some criteria, this would implicate the County's ability (if not obligation) to reject the MLD or return it until compliant.

On the other hand, as was the case in these applications, where both the County employee or agency director reviews and refers the matter to the County as appropriate for approval, the County Commissioners' decision to approve by ministerial or administrative act the staff review and forward of the MLD does not require discretion and is therefore ministerial if the MLD complies with the criterion. *Saviers v. Richey*, 529 P.2d 1285, 1287, 96 Idaho 413, 415 (1974)[a clear legal right to act or approve is ministerial]

To accept Petitioners' argument would leave the County able to engage in arbitrary denial of an MLD application that otherwise fits the criterion. In other words, if the MLD application fits the criteria according to the staff view and the County Commissioners concur, then the applicant is entitled to the clear legal act of ministerial or administrative approval of the MLD application. This is the case regardless of whether the County Commissioners

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entertain the oppositions (in this case Petitioners') request for reconsideration leading to the ultimate filing of these Petitions for Judicial Review.

To hold otherwise, would be to nullify the County's authority under LLUPA to define its own ordinances and procedures and to further nullify the legal rights of landowners to make application for and receive administrative approval of minor land divisions where the applicant landowner fits the criteria. This would be the definition of an arbitrary or capricious act by the Commissioners.

For the reasons set forth above, the MLDs are not subject to LLUPA procedure and therefore the Court's decision remanding under LLUPA for further actual findings should be vacated. Furthermore, should the Court desire additional briefing, it is appropriate to follow the procedures and requirements of due process and Rule 84 of the Idaho Rules of Civil Procedure and set this matter for additional briefing and oral argument rather than to let the Court's sua sponte Memorandum Decision stand as issued.

D. Tricore was not provided any opportunity to address what the Court considered to be dispositive issues before issuing the Decision.

Petitioner's Response asserts the Tricore and the County had "adequate opportunity…to make its arguments". Response, p. 14

This begs the question- when and where? The last hearing on this matter was June 22, 2023 on Petitioner's Motion to Consolidate, Motion to Augment and Motion for Scheduling Order. In that hearing, no mention was made of the Court's intent to issue a Memorandum Decision on the merits and remand. How could Tricore have known the Decision was coming given that the June 22nd hearing was, in part, to establish a briefing schedule and hearing for arguments on the very merits of the case? The Court issued its

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Memorandum Decision and Order on Petitions for Review just two (2) weeks later on July 7th without affording any opportunity for Tricore to be heard.

Put differently, if the purpose of the hearing on June 22nd was to allow Tricore the opportunity to argue the issues the Court addressed on July 7th, how was Tricore or its counsel supposed to know that at a hearing on motions for scheduling order and to address the fundamental, preliminary process of determining and settling the record on appeal from the County's decision and whether the two (2) Petitions should be consolidated?

Petitioners' Response argues that Tricore is now afforded the opportunity to be heard in the context of its Motion for Reconsideration/Petition for Rehearing. That is not how due process works or what IRCP Rule 84 provides.

Rule 84 "addresses judicial review of the actions of state agencies…or actions of a local government". IRCP Rule 84 (a)(1). The burden of proving an agencies actions are unlawful is on the Petitioners, not Respondent County or Intervenor Tricore. Petitioners' argument that Tricore now has adequate opportunity to argue its position on petition for rehearing shifts that burden from the Petitioners to Respondent/Intervenor, without due process or compliance with rule 84.

Rule 84 further requires that the record of the agency decision be prepared and lodged and settled before setting a briefing schedule and argument that would permit a fair and meaningful opportunity to respond to the issues by Respondent and Intervenor. The "settling" of the record is the process after lodging of the record and transcript when parties can file objections to the record to be considered by the Court when arguing and briefing the merits. IRCP, Rule 84 (3).

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Thereafter, the Court may rule on motions to augment the record. IRCP Rule 84 (3)(l)(2023) This was the purpose of the motions heard on June 22nd that were immediately followed by the Court's issuance of a Memorandum Decision without benefit of argument or briefing. As a result, the Intervenor (and County) are left to resort to motions to reconsider/rehearing to reestablish their opportunity to be heard, in the first instance.

It is clear that Rule 84 mandates the right to be heard on the merits after the settling of the record and ruling on motions, such as the motion to augment and to consolidate.

> **(p) Briefs and Memoranda.** Briefs and memoranda must be in the form and arrangement and filed and served within the time provided by the Idaho Appellate Rules unless otherwise ordered by the district court; provided that such briefs may be typewritten and copies may be photo copies. Only one original signed brief need be filed with the court and copies must be served on all parties.
>
> **(q) Oral Argument.** Oral argument may be heard by the district court after notice to the parties in the same manner as notice of hearing of a motion before a trial court under these rules.
>
> **(r) Other Procedural Rules.** Any procedure for judicial review not specified or covered by these rules must be in accordance with the appropriate rule of the Idaho Appellate Rules to the extent not contrary to this Rule 84.

I.R.C.P. Rule 84(3) (2023)

Rule 84 requires the application of the Idaho Appellate Rules where 84 does not specify by rule. IAR 34 mandates the filing of briefs and specifies the format, length and time for such filing, all of which occurs after settling of the record on appeal. IAR 34 (2023). IAR 37 mandates briefing and oral argument on every appeal unless ordered or agreed otherwise:

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> **(a) When Appeal Submitted on Briefs.** There shall be oral argument in all appeals at such time and place scheduled by the Supreme Court, unless (1) all parties stipulate to submit the appeal upon the briefs and such stipulation is approved by order of the Supreme Court; or (2) the Supreme Court orders that the appeal will be submitted upon the briefs without oral argument, in which case any party may file a written objection to the order for submission on the briefs within twenty-one (21) days of the date of the order, setting forth the reasons for which the party desires oral argument. Any such objection to submission on the briefs shall be determined without oral argument.
>
> I.A.R. Rule 37(a) (2023)

Tricore was not afforded this opportunity, at all. This violates both the aforementioned rules and Tricore's due process rights.

"Procedural due process requires that there must be some process to ensure that the individual is not arbitrarily deprived of his rights in violation of the state or federal constitutions." *Cowan v. Board of Com'rs of Fremont Cnty*., 148 P.3d 1247, 1256, 143 Idaho 501, 510 (Idaho,2006); quoting: *Aberdeen–Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999) [holding that due process rights were not violated in Planning hearing when board limited public comment speaking times and evidence submission]

The operative issue is whether a party is given a "meaningful opportunity" to be heard at a "meaningful time" in the process of decision making and in a "meaningful way". *Castaneda v. Brighton Corp*., 950 P.2d 1262, 1266, 130 Idaho 923, 927 (Idaho,1998); citing: *Sweitzer v. Dean*, 118 Idaho 568, 573, 798 P.2d 27, 32 (1990). Tricore was provided no opportunity to provide any argument (let alone meaningful) prior to the Court's Decision.

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Petitioners argue that the County "affirmatively decided it would not take a position in the case". Response, p. 14 of 15 That is false as the County also filed a Petition for Rehearing and briefing essentially arguing similar issues raised by Tricore as to why the Court's Decision is in error. Further, it is Tricore's property rights and interests that are implicated by the Court's Decision without notice and opportunity to be heard.

III. CONCLUSION

The Intervenor, Tricore, seeks rehearing or reconsideration of the Court's Memorandum Decision. Tricore respectfully asserts that the Court's Decision was made without due process, in violation of Court Rules, Appellate and IRCP Rule 84, and is erroneous as a matter of law. The Decision was made without a meaningful opportunity to be heard on the matter.

Petitioners' suggestion that further briefing be held with the Court's Decision remaining in place is error as a matter of law. Petitioners bear the burden in this Petition for Judicial Review, not Tricore or the County. To the contrary, the County's approval of these MLDs carries the "presumption" of validity until Petitioners demonstrated that an error occurred following briefing and argument that is required.

As such, Tricore requests the Court dismiss the Petitions as improper attempts to challenge the ministerial approval of the MLDs or, at minimum, vacate the Court's Memorandum Decision issued July 7, 2023 until further briefing

Tricore requests the opportunity to present oral argument and further authority or briefing as provided by court rule.

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DATED this 8th day of September, 2023.

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By 
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CERTIFICATE OF MAILING

I hereby certify that on the 8th day of September, 2023, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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