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**The Applicant's Response to the Spurgin Ranch Subdivision Executive Summary**

by

**Territorial Landworks, Inc. on Behalf of the Applicant**

for

**The Planning Board & Missoula County Commissioners**

Date Published: 4/03/2017

**Summary:**

The purpose of this report is to respond to the planning department's Executive Summary (staff report) that was provided to the applicant on 3/28/2017. This report first clarifies information found in the introduction (section II). The second part of the report includes a recommended motion along with recommended conditions of approval.

**Response to Introduction:**

The planning dept.'s staff report indicates that this project has not mitigated its impacts to agriculture "in any meaningful way." The staff report introduction also states that "Subdivision impacts to agriculture cannot be mitigated by conditions of subdivision approval." The applicant disagrees with these statements and the planning dept.'s findings and conclusions regarding this topic.

The applicant is proposing a 5.28 parcel of land for the permanent use of agriculture. This parcel represents 26% of the total project size. The planning dept. hosted a meeting with the applicant 3/27/2017. At this meeting the planning dept. informed the applicant that they questioned the usable size of the agriculture lot. The applicant agreed to create an exhibit showing the usable acreage of the lot. See attached Agricultural & Utility Lot Exhibit (Exhibit A).

In addition, the applicant has proposed development covenants that provide notices of the adjacent agricultural activities, notice of agricultural soils, and provisions to encourage the leasing of lots for agricultural activities. The growth policy and the county commissioner's resolution (Exhibit B - Resolution No. .2016-014) reference agricultural notifications as mitigation for agricultural impacts.

Adequate information regarding the above described agriculture mitigation efforts has been provided within the applicant's subdivision application submittal materials. Conditions of approval can be prepared based on the applicant's subdivision application.

The planning dept. has indicated that the agriculture parcel does not confirm to the zoning requirements. This topic was not brought up nor discussed during the subdivision review. The planning dept.'s staff report was provided to the applicant on 3/28/2017. This report was the first time the applicant was made aware of this potential non-compliance issue. The applicant was not aware that common areas need to comply with the residential lot standards. Had this been previously discussed, the applicant could have worked with the planning dept. to come up with a solution. One option would be to propose the parcel in multiple segments. Each segment could be shaped to meet the min. lot vs. width zoning requirements.

The planning dept.'s staff report indicates that the Agricultural & Utility Lot has a "lack of confirmed surface (irrigation ditch) water rights" and a "lack of a proposed well". The subdivision application includes detailed information regarding the existing onsite irrigation ditches. The applicant is proposing to irrigate the parcel via water from the onsite irrigation ditch. The property is currently irrigated with water from the ditch. The property is within the Missoula Irrigation District. The property has been and will continue to be subject to special tax assessments from the District.

The applicant was not asked for any further proof or made aware of any concerns regarding water availability during the subdivision application review process. This concern was first raised at the

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3/27/2017 meeting hosted by the planning dept. Based on the staff report, the planning dept. tried to determine if there were irrigation water rights by contacting the DNRC on 3/23/2017 (planning dept. staff report Attachment B). In this email correspondence, Jim Nave of the DNRC accurately indicated that the planning dept. could review the property taxes to ensure the property is being assessed irrigation taxes. The taxes indicate this property is within the Missoula Irrigation District.

The planning dept. indicates that the proposed agricultural parcel does not meet the standards for parkland dedication. This is inaccurate as the subdivision regulations permit a parkland dedication "waiver" for natural resources and agricultural resources per section 3.10.5.4. (copied below). This project is required to provide 1.06 acres for parkland dedication. The proposed 5.28 acre Agricultural and Utility Lot adequately addresses the requirements of this waiver.

*3.10.5.4 Waiver*

*The governing body shall waive the park dedication requirement if it finds the proposed plat provides long-term protection of critical wildlife habitat, or cultural, historical, and natural resources, or agricultural resources, or aesthetic values which also results in the reduction of the area proposed to be subdivided by an amount equal to or exceeding the area of dedication required by this section.*

**MOTIONS AND CONDITIONS**

**Recommended Motion for Subdivision**

1. **THAT the Spurgin Ranch Subdivision be approved**, based on the subdivision application and **amended** findings of fact in the staff report and subject to the recommended conditions of approval in the staff report.

**Recommended Conditions of Subdivision Approval**

Plat Notes:

1. The following statement shall be shown on the face of the plat, subject to CAPS review and approval prior to final plat approval:

"Acceptance of a deed for a lot within the subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for upgrading and/or maintaining Spurgin Ranch, including but not limited to paving, curbs, gutters, non-motorized facilities, street widening, and drainage facilities and may be used in lieu of their signatures on an SID/RSID petition." (*Missoula County Subdivision Regulations Section 3.4.9.1.A*)

2. The following statement shall be shown on the face of the plat, subject to CAPS review and approval prior to final plat approval:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a community or municipal water system for fire protection purposes." (*Missoula County Subdivision Regulations Section 3.5.11*)

3. The following disclaimer shall be shown on the face of the plat, subject to CAPS review and approval prior to final plat approval:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines

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and other facilities, in, over, under, and across each area designated on this plat as 'Utility Easement' to have and to hold forever." (*Missoula County Subdivision Regulations Section 7.7.1*)

Roads, Access and Utilities

1. A road signage plan in conformance with the MUTCD, including, but not limited to, provisions for temporary signage during construction, permanent signage, and cost of installation to be the responsibility of the subdivider, shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Section 3.3.7.4*
2. The 8' pedestrian sidewalk shall be constructed with an asphalt surface and shall be subject to review and approval by Public Works and CAPS. *Subdivision Regulations Section 3.3.9.2.B.1*

Weeds:

1. The Weed Management Plan shall be recorded with the Covenants or as a Development Agreement, subject to CAPS review and approval. (*M.C.A 7-2-21; Missoula County Subdivision Regulations Section 3.7.12*)
2. A Revegetation Plan for the subdivision shall be signed and approved by the Missoula County Weed District prior to final plat approval. (*Missoula County Subdivision Regulations Article 3.7.11*)

Development Covenants:

1. Installation of interior residential fire sprinklers that meet International Fire Code, NFPA 1, and NFPA 13D standards is required in each new building for the purpose of fire protection. All covenant references to the "County Fire Inspector" shall be amended to read "Missoula Rural Fire District," and all references to "Uniform Fire Code" shall be amended to read "International Fire Code," subject to review and approval of the Missoula Rural Fire District prior to final plat approval. (*Missoula County Subdivision Regulations Section 3.5.3.4 and Appendix E*)

Plat:

1. Should well isolation zone easements be needed to accommodate well arcs within or adjacent to this subdivision, reasonable changes to the final plat shall be permitted, subject to CAPS review and approval prior to final plat approval. Arcs shall be shown with bearings and distances as appropriate. All off-property encroachments shall be verified by written approval of the appropriate landowners. (*Missoula County Subdivision Regulations Sections 3.6.2.4 and 3.7*)

**FINAL PLAT REQUIREMENTS**

With the Commissioners' approval of the subdivision, the preliminary approval applies to the subdivision as proposed on the preliminary plat and in the submittal packet, as amended by any conditions of approval. Community & Planning Services (CAPS) and other applicable agencies will review the following items, in addition to conditions of approval, Subdivision Regulations Section 7.4, and the final plat checklist, prior to final plat approval in order to ensure compliance with the subdivision regulations, other applicable regulations, and the proposed preliminary plat and submittal packet:

Roads:

1. Plans for and installation of the onsite road, as detailed in the Preliminary Road Plan, shall be reviewed and approved by County Public Works, the Missoula County Fire Inspector, and CAPS prior to final plat approval. The road shall be constructed to a 24' unobstructed drivable width, exclusive of shoulder, within a 60' private access easement, maintain a grade of no more than 10%. *Subdivision Regulations Section 3.3.7*

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2. A note shall appear on the face of the plat, subject to review and approval by CAPS prior to final plat approval:

“The use of the agricultural and utility lot will be limited to agriculture and utilities. This lot will be established with an appropriate covenant that restricts all non-agricultural and non-utility uses. Any structures erected on said property, such as a barn, tool shed, outbuilding, well/pump house, or corral, must be intended for agricultural purposes or utility purposes only and used as such. This restrictive covenant shall run with said real property and be revocable only by mutual consent on the owner of said property and the Missoula Board of County Commissioners.”

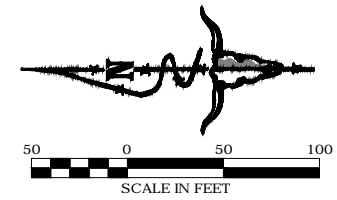
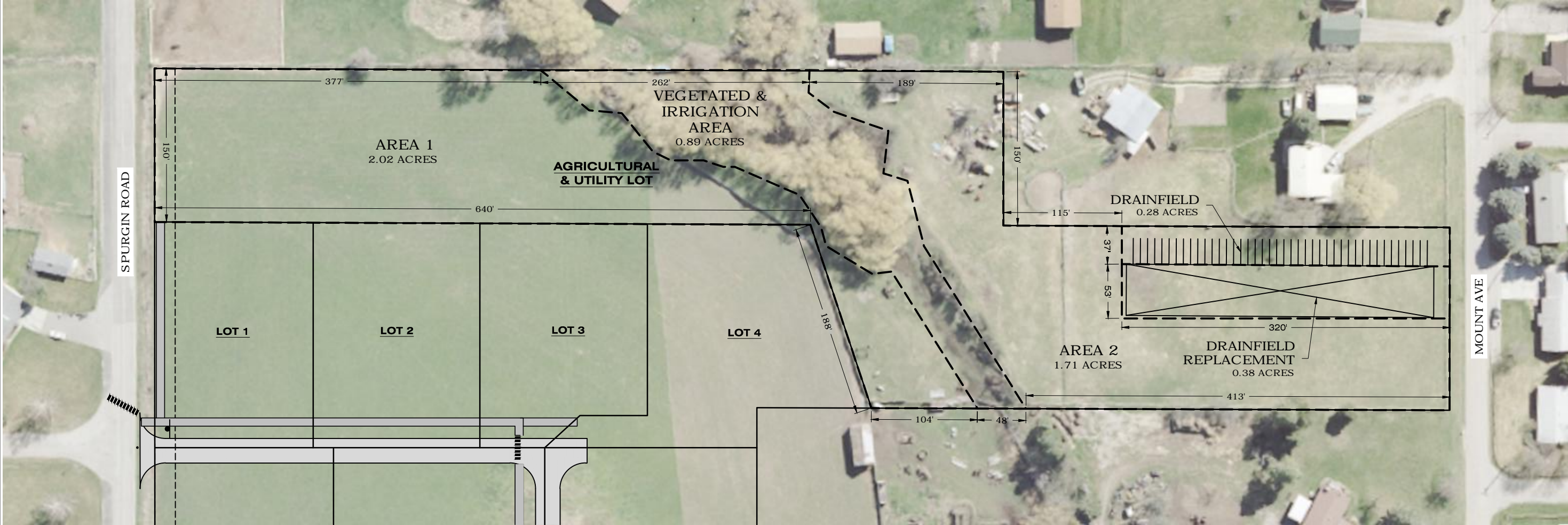
3. The following note shall be on the face of the final plat, subject to review and approval by CAPS prior to final plat approval:

“The purchaser and/or owner of the lot or parcel understands and agrees that road construction, maintenance, and snow removal shall be the obligation of the owner or property owners’ association and that Missoula County is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by Missoula County for maintenance.” *Subdivision Regulations Section 7.6.11*

Pedestrian Access:

1. Plans for and installation of a minimum 8’ wide asphalt pedestrian sidewalk along one side of each private road shall be reviewed and approved by County Public Works and CAPS prior to final plat approval. *Subdivision Regulations Section 3.3.9.2.B.1*

**Exhibit A**



**LEGEND**

AREA 1 =	2.02 ACRES
AREA 2 =	1.71 ACRES
REPLACEMENT AREA =	0.38 ACRES
<b>TOTAL =</b>	<b>4.11 ACRES</b>

**TERRITORIAL LANDWORKS, INC.**  
 Civil Engineering • Surveying • Land Use Consulting  
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 P.O. Box 3851  
 Missoula, MT 59806  
 Ph: (406) 721-0142  
 Fax: (406) 721-9224  
 PLOT DATE: 8/30/2017 1:14 PM

REVISIONS	DATE

DESIGNED: ML  
 DRAFTED: DO  
 CHECKED: ML  
 DATE: 3/30/17

LOCATION: COS 6210 PARCEL A  
 LOCATED IN S. 26, T13N, R20W, P1M1  
 MISSOULA COUNTY, MONTANA  
 PREPARED FOR: SPURGIN RANCH, LLC

PROJECT NAME: SPURGIN RANCH SUBDIVISION  
 SHEET TITLE: AGRICULTURAL & UTILITY LOT

PROJECT NO.: 14-3371  
 SHEET: 1 OF 1

DRAWN LOCATION: T:\ACTIVE PROJECTS\14-3371-SPURGIN RANCH SUBDIVISION\DWG\14-3371-AGRICULTURAL AND UTILITY LOT.DWG

RESOLUTION NO. 2016 - 014

A RESOLUTION TO AMEND THE  
MISSOULA COUNTY SUBDIVISION REGULATIONS

WHEREAS, 76-3-501 M.C.A. authorizes the Board of County Commissioners to adopt subdivision regulations; and

WHEREAS, the Board of County Commissioners has adopted subdivision regulations for Missoula County with amendments; and

WHEREAS, 76-3-501 M.C.A. provides for the revision of subdivision regulations; and

WHEREAS, the County is desirous of amending the subdivision regulations to better serve the public; and

WHEREAS, the Article 3 section in question includes Section 3.1.4, Agriculture; and

WHEREAS, the Request for Commission Action submitted December 8, 2015 includes findings that support amendments to Article 3 related to Agriculture; and

WHEREAS, a public hearing was duly advertised and held by the Missoula Consolidated Planning Board about the amendments to the subdivision regulations on September 1, 2015, September 29, 2015 and October 20, 2015; and

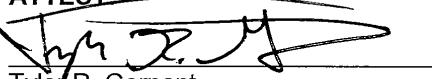
WHEREAS, a public hearing was duly advertised and held by the County Commissioners of Missoula County on December 8, 2015 and January 13, 2016, in order to give the public an opportunity to be heard regarding such proposed subdivision revisions as required by 76-3-503 M.C.A.; and

WHEREAS, the Board of County Commissioners finds, as detailed in their statements during the hearing on January 13, 2016, that the amendments to the subdivision regulations attached hereto are in the public interest;

NOW, THEREFORE, BE IT RESOLVED that the Missoula Board of County Commissioners amends the subdivision regulations as shown in Exhibit A and with any necessary editorial and formatting corrections, effective as of February 15, 2016.

PASSED AND ADOPTED THIS 10<sup>th</sup> DAY OF FEBRUARY, 2016.

ATTEST:

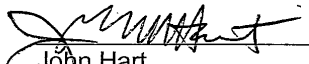
  
Tyler R. Gernant,  
Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS  
MISSOULA COUNTY

  
Nicole Rowley, Chair

  
Jean Curtiss, Commissioner

  
Stacy Rye, Commissioner

  
John Hart,  
Deputy County Attorney



**EXHIBIT A**  
**ATTACHMENT TO RESOLUTION NO. 2016 - 014**

Amendments to Missoula County Subdivision Regulations  
Section 3.1: Natural and Cultural Environment (Agricultural Lands)  
Date Feb. 10, 2016

**ARTICLE 3**  
**GENERAL DESIGN STANDARDS**  
**FOR ALL SUBDIVISIONS**

**3.1 Natural and Cultural Environment**

**3.1.4 Agricultural Lands**

**3.1.4.1 Purpose & Intent** The purpose and intent of this Section is to establish subdivision regulations that work in concert with established non-regulatory strategies and mitigate the impacts of subdivision development on agriculture and agricultural water facilities. These strategies are designed for the following purposes:

- A Preserve Options** Preserve and protect agricultural land, infrastructure, and community for future generations.
- B Statutes** Comply with State Statutes by addressing potential impacts subdivisions may have on agriculture and agricultural water facilities.
- C Goals** Implement goals of the Missoula County Growth Policy.
- D Land Use** Promote land use patterns that accommodate functional agricultural operations and infrastructure.
- E Development** Balance the need for functional agricultural operations with the need to accommodate residential development and growth.
- F Interests** Balance the community's collective interests with the interests of private landowners.
- G Voluntary Efforts** Support voluntary efforts to protect agricultural lands.
- H Existing Operations** Support and enhance existing agricultural operations.

**3.1.4.2 Agricultural Mitigation Standards** All proposed subdivisions shall comply with the following standards:

**A Minimize Adverse Impacts** The subdivider shall design the subdivision to reasonably mitigate potentially significant adverse impacts to agriculture and agricultural water facilities resulting from the subdivision.

**B Offsite Impacts** A proposed subdivision adjacent to agricultural lands, based on maps created by the Natural Resources Conservation Service or adjacent to an agricultural operation must comply with the following standards:

**1 Runoff** Subdivisions shall be designed to prevent stormwater runoff from subdivision lots and roads, and lawn watering from draining into agricultural water facilities or onto agricultural land.

**2 Notification** Provisions shall be included in the Conditions, Covenants and Restrictions or Homeowners' Documents and purchase and sales agreements that notify and educate future lot owners of the potential implications of living adjacent to agricultural operations which include, but are not limited to: exposure to odors, dust and noise, exposure to hazards such as irrigation ditches, ponds, fencing and livestock protection methods, and use of agricultural chemicals and farm equipment. The provisions shall also educate lot owners about the potential impacts they may have on nearby agricultural operations such as domestic animal nuisances, trespass, and traffic. The provisions may include measures to minimize the impacts of development to adjacent to agricultural operations.