

**BLAINE COUNTY BOARD OF COMMISSIONERS**

PUBLIC HEARING on Oct. 3 @ 1:30 p.m.

<b>REGARDING AN APPLICATION OF:</b> Flying Squirrel Productions LLC for Lateral 75 Ranch Subdivision, re-subdividing Lots 1, 2 and 3, Gregory Ranch Subdivision, a five-lot Phase 1 and six-lot Phase 1B.	<b>STAFF REPORT ON FINAL PLAT</b>
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**REQUESTED ACTION:** Public hearing and consideration of a Phase I and Phase IB final plat application by Flying Squirrel Productions LLC to re-subdivide Lots 1, 2 and 3, Gregory Ranch Subdivision, into five residential lots as part of Phase I; six additional residential lots as part of Phase IB; 5 recreational parcels as well as necessary drain field and private street parcels. The Planning & Zoning Commission recommended conditional approval of the preliminary plat on June 17, 2021. The Board of Commissioners grant preliminary approval on January 4, 2022. The 76.51-acre property is zoned Productive Agriculture (A-20), within the TDR Receiving Area, and with areas of Scenic Highway Overlay District (SHO).

**APPLICABLE REGULATIONS:**

Title 10 (Subdivision Regulations): Chapters 1-5, 10

Title 9 (Zoning Regulations): Chapters 5, and 21A

Title 8 (Comprehensive Plan)

**Background/Summary**

Lots and Parcels. The proposed Lateral 75 Ranch Subdivision would re-subdivide the 3 lots of Gregory Ranch into 24 lots in phases, utilizing transferred development rights through the County’s TDR program.

The multi-phased, proposal for a total of 24 residential lots would require 18 transferred development rights. Currently the applicant holds 13 TDRs. A draft phasing agreement has been submitted and the preliminary plat identified certain lots as Phase “B” or “future phase” lots. Phased subdivisions are allowed. (Morada Farms Subdivision is a recent example of a phased subdivision in which lots in the final phase could be recorded only after the TDRs were obtained.)

The property features an existing water ski lake, developed prior to the platting of Gregory Ranch in 2004. The lake will be a private recreation facility for lot owners and ski club members. The lake is situated within Parcel R-1, which is 1 of 5 “Recreation” parcels. The applicant proposes that the Home Owners Association (HOA) will retain ownership of these parcels.

Employee Dwelling. Not proposed during P&Z Commission review, but proposed to the Board is a 1200 square foot building located on Parcel R1 to be utilized as one or two employee dwelling unit(s). The Board indicated on August 17 that with full notice and consideration of this change by the Board it was not necessary to remand the application back to the P&Z Commission.

## I. GENERAL BACKGROUND

1. **Procedural history:** The Planning & Zoning Commission held public hearings on May 13, June 10 and June 17, 2021, and recommended conditional approval of the subdivision on June 17, 2021. The Board held duly noticed public hearings on August 17, September 14, December 14, and December 21, 2021 and granted preliminary, conditional approval in a decision dated January 4, 2022.
2. **Notice** of this October 3, 2023, public hearing was:
  - i. published in the Idaho Mountain Express on September \_\_\_\_, 2023;
  - ii. sent by first class mail on September \_\_\_\_, 2023 to all property owners within 300 feet of the external boundaries of these lots, plus expanded notice as shown in Exhibit C-10);
  - iii. sent to all political subdivisions including irrigation district and water districts on September \_\_\_\_, 2023;
  - iv. posted on subject property on September \_\_\_\_, 2023 as evidenced by affidavits in file, which is more than seven days prior to the hearing.

► **Finding on Notice:** There is some question about whether notice has been adequately provided. More will be known upon the return of key staff members in this regard on Monday.

Upon motion by Commissioner \_\_\_\_\_, a second by Commissioner \_\_\_\_\_, and by a vote of \_\_\_\_ to \_\_\_\_, the Board finds notice to be in compliance with the applicable regulations, §10-4-3 of the Subdivision Regulations.

3. **Disclosures:** (i.e. conflicts of interest, site visits or *ex parte* communications)?

4. Incorporated by reference are the following exhibits:

**“A” Exhibits—Application Materials**

*[Exhibit A-1 thru A-53 related to the preliminary plat. As a result, the final plat application materials start as Exhibit A-54 and were received on Sept. 7 unless otherwise indicated.]*

**A-54:** Final Plat and Phasing Agreement Memo with draft agreement;

**A-55:** Responses to Preliminary Plat Conditions of Approval;

**A-56:** Draft Final Plat;

**A-57:** Updated Open Space Exhibit;

**A-58:** Landscape Design Plans;

**A-59:** Construction Management Plan;

**“B” Exhibits—Agency Comments**

*[Exhibit B-1 thru B-16 or B/U1 thru 4 related to the preliminary plat. No additional agency comments were solicited.]*

**“C” Exhibits—Additional Information**

*[Exhibit C-1 thru C-19 related to the preliminary plat. As a result, the additional final plat application materials start as Exhibit C-20.]*

**C-20:** Board of County Commissioner’s Preliminary Plat Findings of Fact, Conclusions of Law & Decision.

**“D” Exhibits—Public Comments** [Exhibit D-1 thru D-92 related to the preliminary plat. No public comments have been received on this final plat to this point. If any are received, they will start at Exhibit D-93.]

**II. §10-4-5: FINAL PLAT PROCEDURE**

10-4-5: FINAL PLAT PROCEDURE:

A. Filing:

...

2. Preparation And Filing: The final plat shall be prepared in accordance with Idaho Code, section 50-1301 et seq., and the provisions of this title ... In the event the final plat does not conform substantially to the approved preliminary plat, the administrator shall ...proceed to assign the final plat to the commission agenda ...

...

D. Commission Action: The commission shall be required to act on a final plat only if the Board finds it necessary to remand said final plat to the commission for a recommendation.

E. Board Action: At its next available, adequately noticed, hearing time following receipt of final plat application, the Board shall consider said plat, recommendations from the commission, if any, additional information and comment from the public and public agencies, and improvement bonding. Further, the Board shall determine whether the final plat conforms to the conditions required on the preliminary plat, regulations of this title and other County laws, policies of the Comprehensive Plan and provisions for the public health, safety and welfare. ... The Board shall then vote to approve, modify or deny the final plat application ....

Staff Comment: Further Planning and Zoning Commission review considered necessary? After the review of the specific final plat criteria, the Board can better draw a conclusion about whether a remand to the P&Z Commission is necessary.

1. The Board shall determine whether the final plat conforms to the conditions required on the preliminary plat;

Staff comment: Upon preliminary plat approval, a developer can begin installing infrastructure within a subdivision. Required infrastructure needs to be completed, or security in the amount of 150% in place prior to recording a final plat. To date, no infrastructure has been installed here. The plan is for infrastructure installation to begin this Fall.

See the conditions set below and the update provided by Opal Eng. on the status of the compliance with those conditions, Exhibit A-55. At this stage in the development process, nothing is out of order or identifiable as a problem about the status of compliance with the conditions of approval.

One often not specifically indicated condition or final plat review requirement is that the final plat must be “in accordance with” the preliminary plat as approved. If changes are made, a new finding must be made that the application remains “in accordance with” or “conforms” to and satisfies county regulations. In this case, the final plat includes a number of changes.

The changes are set out in on the first page and a half of the plat application letter (See Exhibit A-54) and include a larger Parcel R-1, relocation of the employee housing and integrating Lot 5 into the row of lots abutting the east side of the lake. Changing, like modest shifting of lot or parcel lines, are not especially unique between the preliminary and final plat stage. Employee housing units can be located on a “lot” but are more commonly placed on a “parcel” set aside for community purposes or uses. In that respect, this change is not especially unique either. Building and zoning requirements, like setbacks from property lines, still need to be satisfied. Provided building and zoning requirements are met for any community housing units, these three changes do not appear to change any of the findings of fact or conclusions of law made on any of the applicable criteria during the preliminary plat approval. If the Board finds this to be true, then these changes could certainly also be found to be in accordance with and conforming to relevant county regulations.

2. *The Board shall determine whether the final plat conforms to:*
  - A. *the . . . regulations of this title and*
  - B. *other County laws [and]*
  - C. *policies of the Comprehensive Plan and*
  - D. *provisions for the public health, safety and welfare.*

Staff comment: The Board needs to determine that the preliminary plat conformed to these four broad criteria. Given the modest nature of the changes and if the Board can conclude under #1 above that, even with these changes, this plat remains in accordance with and conforms to the relevant regulations, then it would also be in accordance with and confirm to these broad criteria which are more specifically set out in preliminary decision.

*The Board shall then vote to approve, modify or deny the final plat application.*

#### **IV. DECISION OPTIONS AND POSSIBLE CONDITIONS**

► **Motion:** I move to approve (or) deny this Phase I and Phase IB final plat application by Flying Squirrel Productions LLC to re-subdivide Lots 1, 2 and 3, Gregory Ranch Subdivision, into five residential lots as part of Phase I; six additional residential lots as part of Phase IB; 5 recreational parcels as well as necessary drain field and private street parcels, finding the application complies (or) does not comply with the applicable criteria set forth under Title 10, Subdivision Regulations and applicable criteria of Title 9, Zoning Regulations, subject to the following conditions:

1. Comply with preliminary plat Conditions of approval unless modified and noted.
2. Comply with possible new conditions in light of the modifications or other circumstances.
3. Incorporate the approved plat notes as shown on the final plat dated Sept. 2023 unless modified and noted.

*The Preliminary Conditions of Approval from the January, 2022 decision including the plat note*

changes from the plat dated 7/28/21 (preliminary Exhibit #A-34, a copy of which can be provided) are reproduced below. The rundown on the status of compliance with those conditions is set out very cleanly and clearly in Exhibit A-55. Please refer to that document as part of your review of these conditions:

1. Record the final plat of phase 1 within 3 years of final approval or seek and be granted an extension at the Board's discretion within that time, with subsequent phases in accordance with the phasing agreement.
2. Pay all county engineer fees, if any, prior to obtaining the final county signatures.
3. Place the standard health department signature note on the face of the final plat.
4. Set out the square footage of each lot on the final recorded plat.
5. Satisfy the monumentation requirements of state law and §10-4-5(H).
6. Comply with the survey requirements of Blaine Co. Resolution #2002-54.
7. Add to the plat an I.C. §50-1334 certificate regarding the type of domestic water system.
8. All utilities noted in 10-5-1.E. must be installed underground to each lot (or a security deposit provided in the amount of 150% of cost) prior to recordation of the final plat.
9. All required development rights shall be obtained through the TDR program prior to recordation of the applicable phase of the plat, as set forth in the phasing agreement. The phasing agreement shall be executed prior to recording the final plat of Phase 1.
10. All internal streets shall be completed (or a security deposit provided in the amount of 150% of cost) prior to recording the final plat of Phase 1. Additionally, all landscaping, berms, landscape irrigation, perimeter fencing and gravel trail (all within the common parcels) shall be completed (or a security deposit provided in the amount of 150% of cost) prior to recording the final plat of Phase 1. Perimeter fencing shall comply with IDF&G recommended wildlife-friendly fencing, except for the solid cedar fence along the southern property boundary near the storage area. Deciduous trees that are 2" caliper or greater and evergreen trees not less than 10' in height shall be installed.
11. A deed of attachment of development right shall be recorded with the Blaine County Recorder indicating the permanent attachment of any development rights to the Receiving Area plat or lots and shall include the names of the initial grantor of each development right affixed or made appurtenant to the receiving parcel, the instrument number of the original deed of transfer, the name of the last grantee of record of each development right affixed or made appurtenant to the receiving parcel, and the serial numbers of the individual certificates for each such development right.
12. The CCRs shall include:
  - a) the 1/2-acre limitation on irrigation by domestic wells;
  - b) a 1/4-acre limitation on irrigation of turf grasses by domestic wells; < this should be added to Plat Note 26.
  - c) a maximum 6,500 gallons per day of water use by domestic well.
  - d) design review requiring:
    - i) the mulching of plant beds,
    - ii) use of native or drought-resistant plants in the landscape,

- iii) *grouping of plants according to water needs,*
  - iv) *use of Firewise landscaping, and*
  - v) *irrigation systems with water-efficient technologies, such as EPA-certified WaterSense labeled controllers, rainfall sensors, and high-efficiency sprinkler nozzles;*
  - e) *use of the existing surface water rights for the irrigation of pasture areas on Lots 18-24 and homeowner common area Parcels R1-R6;*
  - f) *summer month homeowner domestic water meter reporting requirements to the HOA, including availability of records for County to inspect.*
13. *No permanent gates at the entrances of Can Can Road are allowed. The gate at the entrance to Three Bears Way shall be shifted not less than sixty feet (60') from the edge of asphalt on East Glendale Road to discourage an appearance of a gated community from a public thoroughfare. County emergency personnel shall be provided an electronic bypass for the gate to assure access.*
14. *All new dwellings are required to provide conduit for solar power as an energy conservation measure.*
15. *Delivery of surface irrigation water to agricultural users via the canal shall not be impeded.*
16. *To help address existing intersection concerns at State Highway 75 and East Glendale Road, and to assure Lateral 75 Ranch does not require substantial additional public funding to meet the needs created by 24 lots, the applicant shall:*
- a) *Pay voluntary road mitigation fees, in the amount of \$109,344 (per Exhibits C-13 and C18), for East Glendale Road and for future improvements to the East Glendale approach onto Highway 75 as generally depicted in Exhibit C-14 or as revised through refinement of the plan.*
  - b) *Provide a covenant, in a form acceptable to the County Attorney and the applicant, wherein if the County adopts a Development Impact Fee ordinance, the applicant and successors in the 24 lots and common areas would agree to waive any credits (from its payment of road mitigation fees herein and / or the previous owner's pavement of East Glendale Road as part of the Gregory Ranch Subdivision approval) toward fees payable at the time of building permit application.*
  - c) *Show on the plat an easement at the northwest portion of the property, which shall benefit Blaine County and be assignable to ITD, at the discretion of the County, for future improvements to the East Glendale approach onto Highway 75.*
  - d) *Submit applications for final plat according to a phasing plan wherein phase(s) are tied to the completion of the improvements at the East Glendale Road approach to Highway 75: 5 lots allowable in the first phase prior to completion of the improvements; 13 lots allowable in the second phase following completion of improvements or 5 years after preliminary plat approval, whichever is soonest; and 6 lots allowable upon purchase of 5 additional TDRs. The phasing plan and agreement shall be amended to reflect this condition*
17. *Landscaping at corner lots and parcels shall take sight lines for traffic into account.*
18. *The Community Rules or CCR's for Lateral 75 Ranch shall remain consistent with the following provisions, currently included in Article 6 of the (private) Community Rules (and 4.3 in CCR's):*
- *Jet skis and similar water craft are prohibited.*
  - *All boats must be equipped to produce a decibel level of 69 dB or less at a distance of 100 feet as measured perpendicular to the craft operating at a speed of 36 miles per hour.*

- *Each watercraft must be carefully inspected for foreign or invasive species of plants or animals, including mussels, prior to placing the watercraft in the lake. Private entities are responsible for all costs and activities to eliminate or mitigate the species.*
- *If a boat leaks fuel in the lake, the leak will immediately be reported to the HOA Board. The boat or lot owner will be solely responsible for all cleanup, remediation or other action necessary to fully clean up and remove the effects of the spill.*

*The CCR's with regard to these regulations shall not be changed without review, public hearing, and approval by the Board.*

19. *Consistent with the landscape plan, Exhibit A-37, the storage area on Parcel R1 shall include:*
  - a) *a six foot (6') tall screening fence and associated fifty foot (50') wide landscape buffer for a distance of approximately one hundred feet (100') to screen the neighbor's house and increase privacy,*
  - b) *a berm height between the property of approximately five to six feet (5-6'), and*
  - c) *a setback of the gravel area for the storage portion of Parcel R1 of at least fifty feet (50') from the project's southern property line.*

*Screening trees shall be added to the west side of the storage area as follows: (10) conifers with a planting height of at least 10 feet. These improvements shall be installed as part of Phase 1. Storage on the parcel shall be limited to licensed vehicles and trailers unless enclosed in a building.*

20. *Building envelopes shall be shown on the plat consistent with the private open space exhibit, dated 6/14/21, and showing the expanded setbacks along East Glendale Road.*
21. *All recorded easements, consistent with Idaho Code and Blaine County requirements, shall be shown on the final plat.*
22. *In order to avoid penetrating the bentonite (ESS13) seal of the lake, the applicant shall install the liners for the individual lot boat docks up front. Any disturbance to the existing seal of the lake shall be the responsibility of the homeowner causing the disturbance.*
23. *Prior to commencement of on-site infrastructure construction (roads, utilities, landscaping, etc), the applicant shall prepare a construction management plan for review and approval by the county. Subject plan shall comply with SWPP requirements, as administered by DEQ, and address, among other matters, material delivery routes, construction parking areas, lay down yard locations, dust abatement, areas of proposed disturbance, and post-construction weed control plans with due consideration to impacts to neighbors. The use of access roads associated with the construction of the subdivision is subject to County Code, Title 6.*
24. *The employee living quarters on Parcel R1 shall be a maximum of 1200 square feet. A deed restriction shall be recorded ensuring the use of the living quarters by on-site employees (and their household) only.*
25. *Use of the lake shall be private and in no instance may more than one motorized boat be on the lake at a time. Subdivision lot owners and up to a maximum of 15 Wood River Water Ski Club (non-owner) members are allowed to have one motorized boat on the lake at a time, consistent with the safety protocols and CC&Rs of the property.*
26. *All unsold lots shall be left undisturbed other than conducting weed mitigation pursuant to preliminary Plat Note #9. No storage of any kind is permitted on unsold lots.*

27. *In order to achieve a higher level of compatibility with directly adjacent properties and enhance neighborhood character, the building setback buffer measured from the southern East Glendale right-of-way line shall be a minimum of 75' (adjacent to Lots 5-7 and the northern side of Lot 24). The building setback buffer measured from the western East Glendale right-of-way line shall increase to a minimum of 125' (adjacent to Lots 22, 23, and eastern side of 24). The building envelopes shall be adjusted to show these increased setbacks.*

*Approved preliminary plat notes are indicated on the plat dated 7/28/21 (Exhibit A-34). Required additional plat notes and note changes are:*

- a) Building permit applications for new primary residences shall provide evidence that a water meter has been installed on the lot's domestic well, prior to issuance of certificate of occupancy.*
- b) Periodic inspections of individual septic systems, as recommended by the system manufacturer, are required and are the responsibility of the homeowner.*
- c) All new dwellings are required to provide conduit for solar power as an energy conservation measure.*
- d) (Preliminary Plat Note #26 shall be augmented with the following:) Irrigation of turf grasses by domestic wells shall be limited to one-quarter (¼) acre. Total irrigation by domestic wells shall not exceed 6,500 gallons per day. Summer month homeowner domestic water meter reports shall be made available to the HOA and to the County for inspection.*
- e) Existing surface water rights shall be used for the irrigation of pasture areas on Lots 18-24 and homeowner common area Parcels R1-R6.*
- f) All lots within this subdivision may be subject to future Development Impact Fees, adopted by the County pursuant to Idaho Code, Title 67, Chapter 82. Purchasers of lots are hereby notified that such fees may be collected at the time of building permit issuance.*
- g) (Plat note 11 shall be revised as follows:) The greater part of Parcel R1, not less than +/-17.65 acres, and all of Parcels R2-R6 will be "open space, private" as defined by Blaine County Code 10-2-1 (or its successor provision) ("Open Space"). A portion of Parcel R1, not exceeding +/-2.40 acres, will not be Open Space and will be common area that may be used for accessory recreational facilities for private use, including among other uses, an amenity structure, living quarters for persons employed on premises (and the person's family), dock, boat launch, restrooms, parking, and storage. Parcels R1 - R6 will be owned and maintained by the Association. Refer to the CC&Rs for additional information and to instrument # \_\_\_\_\_ for the Parcel R1 employee housing restrictive covenant.*
- h) (Plat note 12 shall be revised to add:) "(including temporary structures such as children's play structures) and hardscape such as at-grade patios or decks" in the final sentence.*