

INTRODUCTORY STAFF REPORT
HISTORIC KOOTENAI LODGE CONDOMINIUMS MAJOR SUBDIVISION
MARCH 2, 2005

I. GENERAL INFORMATION

A. Review Period

This proposal constitutes a major subdivision as defined by state law. The allotted time for the preliminary review of such subdivisions is 60 working days. The Lake County Planning Board, at its regular monthly meeting on March 9, 2005, will hold an informational work session regarding this proposal. The Planning Board will then hold a public hearing on the proposal during its April 13, 2005 meeting. At the conclusion of the April 13th hearing, the Planning Board will make a recommendation to the Lake County Commissioners. The Commissioners are required to take final action on or before to the review deadline of May 5, 2005.

B. Project Personnel

Owner:	The Mark and Debi Roling Revocable Trust
Developers:	The Milhous Group
Surveyor:	Billmayer Engineering
Environmental Consultant:	Dave DeGrandpre, Land Solutions LLC
Consultant/Sanitarian:	Billmayer Engineering

C. Property and Area Description

The property is located approximately eight miles southeast of Bigfork with portions of the property located on the northeastern shore of Swan Lake and the eastern shores of the Swan River. The subject parcel contains 40.9± acres and contains approximately 2,400 feet of shoreline. The property is legally described as Tract B of Amended Plat of Lot 128, Swan Sites Subdivision Number 1, located in the SW ¼ of Section 11, the NW¼ of Section 14 in Township 26 N, Range 19 W.

The property is bordered to the north, south and east by residential tracts of land within the Swan Sites Subdivision. The tracts of land vary between 0.9± of an acre to 3.3± acres. To the west, the property is bordered by the Swan Lake and Swan River. Across the lake and river from the subject property are tracts of land within Swan Sites Subdivision Number 2, also residential tracts of land. These tracts of land vary in size from 1.3± acres to 1.6± acres.

Swan Lake and the Swan River provide seasonal recreational uses including canoeing, boating and fishing. Both the Swan River and Swan Lake provide habitat for rainbow trout, brook trout, mountain whitefish and bull trout, which is listed as threatened under the Endangered Species Act. Although Swan Lake provides critical habitat for the previously mentioned fish species, Swan Lake has been identified by the Department of Environmental Quality as a threatened waterbody. Further discussion of this can be found under Section II.I of this document.

The subject property is currently developed with 23 structures: 10 are dwelling units with bedrooms/kitchens (6 have been updated, restored and are currently in use), the former main lodge has been restored and contains 5 bedrooms, a building has been updated to include a recreation center/gym and workshop, and two dining halls (1 of which has been restored), and the original barn with 4 accessory buildings. All of the dwelling units are located in the southern half of the property along Swan Lake with the barn and storage buildings located in the northern half of the property. A gravel surfaced roadway and bridge over Johnson Creek provide access to most of the structures on the property.

The topography of the property is, for the most part, level with some gentle slopes located in the southern portion. Johnson Creek runs east to west through the property with both sides of the creek corridor densely vegetated with trees and underbrush. Outside of this creek corridor are two meadows that provide a park like setting for the property owners and visitors. The shoreline area along the Swan River, north of Johnson Creek, has not been altered substantially and contains significant natural vegetation along the river. The lakeshore along Swan Lake, south of Johnson Creek, has been significantly altered to allow for lawns and views of the lake from the existing cabins.

The property is located outside of the Swan Sites Zoning District however the property is completely surrounded by this zoning district. In looking at the proposal during the pre-application process the Planning Department felt it necessitated some review of how the proposed density compared to the established density pattern of the area. The Planning Department analyzed the density of existing lots along the river and lake within the Swan Sites Subdivision and Swan Landing Subdivision to determine the overall density in the immediate area of the Kootenai Lodge based on the number of lots and the acreage associated with each lot. A cursory review of the density in the immediate area provided the following figures:

- The current density in the above mentioned area excluding the Kootenai Lodge property is 1.39 acres per dwelling unit.
- The current density in the above mentioned area including the Kootenai Lodge property with the current number of dwelling units on it is 1.52 acres per dwelling unit.

As part of the planning process, Lake County has historically tried to work with developers to create parcels that are consistent with development patterns in the area in which they are proposed. The intent of this is to provide fair and reasonable equity to all property owners. Although the property is not located within the Swan Sites Zoning District it is surrounded by the district. The purpose of the Swan Sites Zoning District is stated as follows, “The purpose of the zoning is to help guide growth and development in the area, to maintain the rural character of the area and allow for development that is consistent and compatible with the existing pattern of growth, to

protect and enhance property values and amenities, and to protect and enhance the natural environment and water quality.” In the Planning Departments opinion in order to maintain the character of the area for which one of the purposes of Swan Sites Zoning District seeks to ensure, the Planning Department recommended in the pre-application letter to the developer that a subdivision density closer to one acre per dwelling unit on this property would be more appropriate to maintain the existing pattern of growth in the area.

D. Project Description

This division is intended to create 65 condominium units on the 40.9± acre property. This would provide a density of 0.6 of an acre per dwelling unit. The original proposal submitted February 9th indicated using 10 of the existing structures for single family residences and proposed 55 new structures for single family residential use. The revised proposal submitted February 25th indicates 5 of the 10 existing structures to be used for single family residential use. The remaining 5 existing structures would be converted to duplex units. All of the existing structures will be remodeled and/or be expanded with an average footprint of 3,300 square feet after the remodel/expansion. An additional 50 new condominium units are proposed through out the remaining property for a total of 65 condominium units. The new units have an average footprint of approximately 2,600 square feet. The proposal also includes construction of a clubhouse, which would be adjacent to the proposed pool.

The bridge crossing Johnson Creek and three of the existing residential structures in the southwest portion of the property appear to be located within the Zone-A flood hazard area for Swan Lake as designated on the Flood Insurance Rate Map of Lake County. A Zone-“A” flood hazard classification means that in the event of a F.E.M.A. predicted 100-year flood event, the dwellings would be inundated with flood waters. A development permit would be required from the Lake County Board of County Commissioners and Floodplain Administrator for any construction involving road crossings, buried utility lines, or any modifications to the existing structures within this floodplain.

In order to achieve this development density the developer has proposed constructing an on-site water system and an off-site sewer treatment facility to serve all of the units. Further discussion of the water and sewer facilities can be found under Section II.C of this document.

To provide physical and legal access to the sites, a number of internal roads are proposed. The proposal requests three variances from the County road standards. These include utilizing an existing bridge over Johnson Creek which does not meet the width requirement, allowing an existing gateway at the southern entrance to the project site, which also does not meet the width requirement and allowing road intersections which do not meet the requirement for 90 degree angle intersections. Further discussion of this can be found under Section II.E of this document.

II. DESIGN ELEMENTS

A. Lots/ Building Sites

The proposed subdivision would create 65 condominium units. The Lake County Subdivision Regulations, Appendix M, define a condominium as follows: “A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units.”

The condominium footprints range in size from approximately 1,300 square feet to approximately 13,800 square feet. The proposal includes adding on to several of the existing cabins adjacent to Swan Lake and placing new structures throughout the entire property. As stated in the property and area description, the property itself is nearly level throughout with some slopes in the southern portion of the property. The new condominium units are shown outside the floodplain and outside the surface water buffers proposed in the developer’s environmental assessment. The Floodplain Provisions of the Lake County Subdivision Regulations Section IV-A-4, state: “Land located in the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA, or land deemed subject to flooding as determined by the governing body shall not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health, or property.”

B. Historic Significance

Under Section D of the environmental assessment the consultant provided the following background information on the property and the developers proposal to preserve the historic character of the property:

The Kootenai Lodge property was developed and used as a seasonal retreat by Anaconda Mining Company executives Cornelius Kelly and Orvis Evans and their families from the early 1900s through the 1920s. In 1921 the two families constructed a 14,000 square foot lodge designed by noted Spokane architect Kirkland Cutter. The result was a luxurious summer retreat which was used to entertain business associates and corporate executives. At its peak, the Lodge was a local landmark, visited by the rich and famous, and a significant source of local economic activity.

The property is only one of two in Lake County listed on the National Register of Historic Places. It contains 23 structures in various stages of repair. Most of the buildings were built in the Adirondack camp style of the 1920s.

The developer intends to restore 10 of the existing buildings and construct new ones in accordance with design guidelines (first draft included in the CC&Rs) that maintain the history and character of the property. The proposal states that existing buildings will be modified, but because the historic value of the buildings is one of their greatest allures, the developers have indicated that they would like to maintain the character of the buildings to a large extent and that development of the site will

meet all state and federal historic preservation requirements.

The consultant solicited comments from the Montana State Historic Preservation Office regarding development of the site while maintaining its historic character. Pete Brown, Historic Architecture Specialist with The Montana Historical Society responded with a letter dated February 2nd in which he provided general comments for the developer to consider for how to sensitively integrate modern infill construction with historic buildings within historic landscapes. These comments consisted of scale and form of the building, a general design philosophy for the new structures, architectural details being based on existing historic buildings and landscaping suggestions. The final comment stated, “Historically open spaces and vistas should remain open and unobstructed.”

Lake County Planning staff contacted Mr. Brown regarding this last comment on open spaces and vistas. A subsequent email from Mr. Brown states in part, “The current plan with 55 new buildings and associated roads and paths would undoubtedly infill historically open spaces, and obscure historic vistas. The cumulative effect of this new development would impact the natural landscape and historic feeling of the property. Setting and feeling are two qualities necessary for a property to be listed on the National Register of Historic Places, and significant loss to them would likely render such a property no longer worthy of listing.”

Mr. Brown also noted in his email that due to the fact that the project will not receive any government funding, or permits, the Montana Historical Society can only voice their opinions, and do not have any legal jurisdiction in this case.

C. Water Supply/Sewage Disposal

The developers have proposed a new public water system to serve the condominium units. The water system will be owned and operated by the Condominium Owners Association. The water system will utilize two proposed on-site wells supported by pumping facilities located in an on-site pump house.

The application indicates domestic water demand by the residents and support services combined with the site landscape irrigation requirements yields a peak daily total water demand of approximately 1,400 gallons per day (GPD) per dwelling unit.

This equates to a peak daily water demand of 91,000 GPD. Based on these figures, the application concludes the peak instantaneous water demand (maximum hourly) is estimated to be 380 gallons per minute (GPM).

According to the environmental assessment groundwater in the Swan River/Lake valley floor alluvium is plentiful. It states, “A number of wells are documented within 0.5 miles of the project boundaries. For the 10 closest wells the average yield was 55 GPM with an average depth of 128 feet below ground surface (BGS). The static water level in these wells varied from 30 to 50 feet BGS. Generally these are wells developed to support single family or non-public multi-user water systems.

Drilling was suspended when an adequate water source was encountered. In the Swan Basin this occurred at a relatively shallow depth when drilling in alluvium. The measured discharge primarily reflects the limitations of the pumping systems which are designed to produce only the quantity of water for the intended use and not necessarily the capacity of the aquifer.” Preliminary calculations by the consultant conclude that in order to provide for an adequate water supply two wells are needed.

The wells would need to be at least 300 foot deep with an eight-inch diameter well. The consultant estimates this would produce a yield of 200 gallons per minute, which would be adequate for the public water supply serving the proposed condominiums.

The proposed condominium project would utilize an on-site conventional sewer system, which will collect the sewage and convey it to a common lift station site. The lift station and associated forcemain is proposed to convey sewage approximately 5,000 feet south within the Sunburst Road right-of-way to an off-site level II wastewater treatment facility.

The Board of County Commissioners is the only authority with the ability to grant use of public road right-of-way for infrastructure development as passed by Resolution on file in Lake County. In order for the sewer line to be constructed, the developer will need to formally request the use of right-of-way on Sunburst Drive. To date, the developer has not presented any written letter regarding their request or a letter stating that the County Commissioners will at least consider the proposal.

The wastewater treatment facility is proposed to be constructed on lot 4 of The Ridge Subdivision, a 60-acre parcel. The consultant has indicated this site was selected for the treatment and disposal site due to the remote lateral separation from Swan Lake, an anticipated distance of greater than 500 feet. Desirable soil characteristics and considerable vertical separation from the disposal site ground elevation to the ground water table below were also contributing factors for the site selection. Treated effluent is proposed to be applied to the soil via subsurface absorption beds. These beds would then receive a pressurized dose of effluent through a grid of lateral distribution lines laid in subsurface absorption trenches.

The “Ridge Subdivision” has existing covenants (document number 437240 of the Lake County Clerk and Recorder Office) which list the purpose, use and activities allowed on the Lots within the division. The use of the properties for an off-site public sewer treatment facility on Lot 4, as proposed, is not directly mentioned in the covenants. It is the position of the Lake County Planning Department staff that, at this time, it appears the covenants for the “Ridge Subdivision” must be amended to state the use of an off-site sewer treatment facility is allowed or, substantial evidence should be provided by the developer to demonstrate that the use is allowed and would not be challenged by a majority of the parties subject to the existing covenants.

In order to address the States' non-degradation requirement for surface waters the proposed sewer system layout and topographic siting of the absorption field were analyzed using standard mathematical models for nitrate dilution and phosphorus absorption. Based on this preliminary analysis the consultant concluded that the proposed treatment process and absorption field siting render a sewage treatment system that will be ruled "non-significant" by the Montana Department of Environmental Quality (MDEQ).

Upon completion of the proposed sewer facility the developer is proposing to create a public sewer district. The sewer facilities would then be owned, operated and maintained by the Lake County / Kootenai Lodge Sewer District, as specified in 7-13-2201 through 7-13-2351, Montana Code Annotated. The creation of this entity would be coordinated to be in place to assume the operational control of the wastewater treatment facility as it is placed in service.

In brief, the process to form a public sewer district would require the developer to present a petition to the Board of County Commissioners signed by registered voters within the boundaries of the proposed district equal in number to at least 10% of the registered voters of the territory included in such proposed district. The Commissioners would then hold a hearing on the proposed petition. The Board of County Commissioners then makes any changes in the proposed boundaries within the county that are considered advisable and defines and establishes the boundaries. Upon the final determination of the boundaries of the district, the Board Of County Commissioners is required to give notice of an election to be held in the proposed district for the purpose of determining whether or not the district is to be incorporated.

As is typical with all major subdivisions of this type, if the proposal receives preliminary approval, the water supply and sewage disposal systems will then be reviewed by the Montana Department of Environmental Quality for conformance with local and state requirements.

D. Parkland

The Lake County Subdivision Regulations Section IV-A-16.1, require a parkland dedication or cash in lieu of parkland for a subdivision that provides permanent multiple spaces for condominiums. The requirement is either common area for the park, which equals 7.5% of the land area within the proposed subdivision, or a cash donation equal to the value of undeveloped land to the County Parkland Fund.

The developer is requesting the governing body waive the parkland dedication requirement as set forth in Section IV-A-16.1.f for the following reasons:

- a.) The land and facilities to be managed as common area will be more than sufficient to meet the needs of the future residents; and
- b.) The area facilities to be managed as common area vastly exceed the area required

- to be dedicated; and
- c.) The preliminary plat application and CC&Rs provide long term protection of wildlife habitat, natural, cultural and historical resources; and,
- d.) The area of land to be subdivided is reduced by an amount equal to or exceeding the area of the dedication required under the Lake County Subdivision Regulations and the Montana Subdivision and Platting Act.

In their application the developer provides the following comments regarding the waver request, “The property boasts approximately 2,400 feet of Swan Lake and Swan River shoreline that will provide opportunities for swimming, boating and fishing. The developer intends to build a clubhouse, an Olympic size swimming pool and refurbish the tennis courts on the property. Additionally, the curvaceous road network is designed to compel relatively slow vehicle speeds in order to provide a safe and attractive walking area for pedestrians. Finally, approximately 70 percent of the property will be managed in common by the condominium unit owners association. That land can be used by all unit owners for recreational purposes.”

Section IV-A-16.1.f of the subdivision regulations state the local governing body shall waive the park dedication requirement if:

- 1)
 - a) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
 - b) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);
- 2)
 - a) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic value; and
 - b) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(1), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or
- 3) The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

E. Roads/Access

Road access to the property is provided by Sunburst Drive, a county maintained roadway approximately 22-feet wide, via South Ferndale Drive, also a county maintained roadway approximately 22-feet wide. The 41-acre site accesses Sunburst

Drive by two existing approaches. One access is located approximately 160 feet south of the intersection of Sunburst Drive and Kelley Drive, in the northern portion of the property. The other is a gated approach currently the primary access to the existing dwellings; it is located approximately 700 feet south of the intersection of Wapiti Lane and Sunburst Drive. The existing internal roadway is a loop road from these approaches on Sunburst Drive. The road is graveled and approximately 12 feet wide. It serves the dwellings in the southern portion of the property, crosses Johnson Creek and provides access to the existing barn and storage areas in the northern portion of the property.

The proposed road network shown on the preliminary plat indicates 40-foot road right-of-ways with roads within the right of way 26-feet in width. One main loop road, River Run Loop, is proposed to run the entire length of the property with smaller loop roads or cul-de-sacs off of it. The Lake County Subdivision Regulations Section IV-A-8.6, require roads that access more than 6 lots to have a 26 foot driving surface within a 60 foot right-of-way.

The Lake County Growth Policy, Section 7-II-5, Effect on local services, states a subdivision proposal may have an unacceptable effect on local services if it requires services that are not available in location, condition or capacity to serve the development. If the developer can demonstrate the proposed effect the subdivision will have on the existing roads and proposes an acceptable provisions to pay for or share payment for improvements to the roads impacted by the proposal, the proposal is likely to be viewed as having an acceptable effect on local services.

Lake County Road Supervisor Bob Smith stated in his January 24, 2005 letter that the north entrance to the property should be aligned to meet Sunburst at the Kelley Drive intersection. Regarding Sunburst Drive, the Road Supervisor stated that it may require improvements to meet the needs of the proposed development and that widening of Sunburst Drive to a 26-foot width should be considered in conjunction with the sewer line installation. The letter concludes by stating that the intersection of South Ferndale and Highway 83 should be reviewed from an engineering perspective to serve the expected traffic.

The Montana Department of Transportation (MDT) comments on the proposed subdivision state that the subdivision as proposed will not require a systems impact review and will not have a significant impact on Highway 83. The letter does say, however, that although MDT does not have particular concern with this proposed subdivision they do have concern for that area of Highway 83 in general, due to the impact that other subdivisions using these accesses will impose when at full build out.

Section E.2 of the environmental assessment states that “the developer is willing to contribute a proportionate share for any public improvements to Sunburst Drive that Lake County wishes to undertake. It also notes that the current property owners, who use the area as a seasonal retreat, contributed over \$4,000 to a 1991 Road

Improvement District while most of the other contributions ranged from \$100 to \$300.”

In an attempt to determine potential traffic impacts to surrounding roads, the environmental assessment provides potential trips generated from the proposed subdivision at full build out. Using the 7th edition of *Trip Generation*, published by the Institute of Transportation Engineers, the environmental assessment provides vehicle trips per day based on both single-family dwellings and for recreational homes. The environmental assessments analysis of total trips per day is based on a the assumption that only half of the proposed condominiums will be used as a single family residence while the other half will be used on a seasonal basis. This is based on the assumption that the proposed use of the property is to continue its heritage as a seasonal recreational retreat.

The environmental assessment concludes that, “if at full build out, all of the units were occupied at a given time, 33 of the units were full-time residences and 32 of the units were seasonal residences, on such a weekday there could be an additional 417 vehicle trips and on such a Saturday there could be an additional 432 vehicle trips.” However, the environmental assessment goes on to state, “it seems unlikely that all of the residences would be occupied on a given day so the above figures are likely to be exaggerated.”

The roads section of the environmental assessment ends by reiterating that the developer is willing to contribute to roadway improvements so long as the assessed dollar figure is proportionate to the anticipated impacts. The environmental assessment refers to *Dolan v. City of Tigard* and *Nollan v. California Coastal Commission* for the U.S. Supreme Court’s decisions supporting this concept and states, “It should also be noted that the high-value homes are likely to generate substantial tax revenues for Lake County and because a large portion of them are likely to be seasonal, the owners may not require as much in the way of public expenditures for school facilities, road maintenance, etc. as they contribute to the tax base.”

The developer has also requested three variances in conjunction with the proposed development. Two of the requested variances seek to maintain the existing road width of the gateway at the southern entrance of the property and the existing width of the bridge over Johnson Creek. The interior road width of the gateway is 15.5 feet and the stone bridge is 12 feet wide. The variance request is seeking a reduction to the Design and Improvement Standards of the Lake County Subdivision Regulations, which require driving surfaces within major subdivisions to be 26 feet wide. The consultants reasoning for the variances can be found on pages 20 and 21 of this report.

The developer is seeking a third variance from Section IV-A-8.4 of the Lake County Subdivision Regulations which states, “Streets must intersect at 90 degree angles,

except when topography precludes, and in no case must the angle of intersections be less than 60 degrees to the center line of the roadway being intersected.” The developer is requesting a variance from the 90-degree angle standard in three locations: 1. The southeastern intersection of Evans Drive and River Run Loop; 2. The western intersection of Quarter Horse Spur and River Run Loop, and 3. The eastern intersection of Johnson Creek Trail and River Run Loop where the roads meet at the eastern entrance to the property. The consultants reasoning for the variances can be found on pages 22 and 23 of this report.

F. Utilities

There are existing electrical and telephone services along Sunburst Drive and to the existing dwelling units on the property. Both the Flathead Electric Cooperative and Century/Tel have stated they can extend service to the future lots in accordance with their current policies and demonstration of such would be required prior to final plat approval.

G. Stormwater Management:

The developer has proposed the following stormwater management both during construction and after for the proposed project:

Drainage from streets would be collected along the roadway via proposed swales and culverts, which would discharge to a drainage system that would include stormwater detention and storage onsite. The typical roadway would be a 26-foot wide asphalt surface. Runoff would be collected for disposal onsite with extreme flood flow discharging into natural drainage swales. Stormwater runoff would be channeled to common disposal areas.

During construction straw bales and filter socks are proposed to be placed periodically in the roadside drainage swales to help prevent the transport of sedimentation offsite. Temporary silt fences would be constructed along the streambank and shoreline to prevent sedimentation from entering state waters. After construction, revegetation is proposed to enhance disturbed areas. If preliminary plat approval is obtained, the formal stormwater drainage plan would be required to be submitted to the Department of Environmental Quality (DEQ) as part of the subdivision review process.

Stormwater runoff would be discharged to state waters following treatment. As proposed, treatment would consist of number of subsurface vaults with skimmer siphons to remove both particles of higher and lower specific gravities than water. Heavy solids would settle out in the sump basins of the chambers and the lighter liquids, such as petroleum products, would be trapped on the water surface and absorbed by petroabsorbing pads. The system is proposed to be maintained on a yearly basis to ensure proper filtration treatment.

H. Easements

The preliminary plat indicates internal roadways within a 40-foot road easement that would accommodate the proposed primary access to the condominiums within the subdivision. Again, the Lake County Subdivision Regulations Section IV-A-8.6, roads that access more than 6 lots are required to have a 26 foot driving surface within a 60 foot right-of-way.

The water lines are proposed to be extended from the pump house adjacent to the proposed pool. As shown on the preliminary plat, a 10-foot utility easement is located along the water main line where the main line is located outside of the road easement. No easements have been provided from the main line to the individual structures for water hook-ups.

The sewer lines are proposed to be extended from the sewer lift station located just south of the bridge on Johnson Creek. As shown on the preliminary plat, a 10-foot utility easement is located along the sewer main line where the main line is located outside of the road easement. No easements have been provided from the main line to the individual structures for sewer hook-ups.

The preliminary plat and plans show an existing 10-foot wide easement for electrical distribution lines located north of Johnson Creek. The easement runs from the property boundary along Sunburst Drive west terminating just before the bridge on Johnson Creek.

Section IV-A-14. 7. of the Lake County Subdivision Regulations states, "Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body."

I. Natural Environment

Pursuant to Section 7-II-3 of the Lake County Growth Policy, the term natural environment encompasses a number of things, including, but not limited to, ground water, surface water, wetlands, scenic views and air quality. A subdivision proposal may have an unacceptable effect on the natural environment if, after qualitative and quantitative review, it is found likely to jeopardize the existing environmental quality in an area. The following Lake County Subdivision Regulations are applicable in this case to help mitigate impacts to the natural environment.

IV-A-2. Natural Environment

The design and development of subdivisions must provide satisfactory building sites that are properly related to topography, and must preserve the natural terrain, natural drainage, existing topsoil, trees and natural vegetation to the extent possible.

IV-A-21. Buffer Strips Along Waterways

The subdivider will define buffer strips along streams, rivers, or lakes by identifying buffer strip width and a plan for protection of vegetation within the buffer strip. The

plan shall promote infiltration of run-off and wildlife habitat. The buffer strip plan will be included in the required information for review and be incorporated in the covenants for the proposed division.

The proposed project would place 51 new structures on the property and remodel or place additions on 10 of the existing dwellings on the property. The preliminary plat submitted February 25th indicates trees on the property with a diameter of 10 inches or greater. The preliminary plat indicates approximately 170 trees with diameters of 10 inches or greater will need to be removed in order to construct the proposed new structures, new roadways and expand the majority of the existing dwellings.

Swan Lake is currently listed as a “threatened waterbody” by a study conducted by the Department of Environmental Quality (DEQ). According to DEQ’s *Water Quality Protection Plan and TMDLs for the Swan Lake Watershed*, A “threatened waterbody” is defined as a waterbody or stream segment for which sufficient credible data, and calculated increases in loads, show that the waterbody or stream segment is fully supporting its designated uses, but threatened for a particular designated use because of: (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the non degradation provisions, or reasonable land, soil, and water conservation practices; or (b) documented adverse pollution trends.

In order to maintain the existing water quality and fish habitat along the property, the developer proposes to construct stormwater retention devices that would trap nutrient-bearing sediments and remove hydrocarbons before they reach surface or groundwater. These devices would be engineered to comply with all adopted standards and would be required to be reviewed and approved by DEQ prior to installation. They are also proposing to pave the road surfaces and no new stream crossings have been proposed, although the existing bridge crossing needs minor improvements to meet the load capacity for a fire truck. Additionally, during construction the developer would line the water bodies with hay bales and silt fences to ensure stormwater runoff does not degrade water quality.

The preliminary application states the developer also plans to build all new structures at least 50 feet from any water body and maintain the existing vegetation within the Johnson Creek and Swan River buffers. Vegetation removal in these areas would only be allowed for fire protection and the clearing of small walking paths. According to the environmental assessment, a 50-foot structural setback from the water’s edge, combined with the existing buffer vegetation, is deemed sufficient to protect wildlife/fish habitat and water quality for the following reasons:

- ✓ The land is relatively flat along the water bodies, allowing for nutrient bearing stormwater to percolate into the soil before reaching surface water;
- ✓ The soils along the shorelines are not exposed and particularly erosion prone;
- ✓ The fairly dense mixture of trees and shrubs will help to keep water

- temperatures cool;
- ✓ The approximately 80-foot wide buffer along Johnson Creek, which currently allows deer and other wildlife to travel to and from Swan Lake/River under cover, is not proposed to change substantially; and
- ✓ The water quality is currently high.

The developer is proposing an additional step in order to protect water quality by constructing a Level II, nutrient reduction, municipal-type sewer system off site for this and eventually other properties along the lakeshore. The application states the developer intends to build at least 10 percent excess capacity into the system for landowners along Swan Lake to tap into. The application states, “At present, 48 other lots border the proposed force main and many of the very small lots along Swan Lake would have the potential to tap into the system.” According to the environmental assessment some of these and other nearby lots currently contain septic systems of questionable function. By building a well constructed and maintained sewage treatment and disposal system, and by allowing nearby small-lot landowners to tap into the system, the developers believe they will be taking a major step to improve water quality and providing important infrastructure to the citizens of Lake County.

In an effort to obtain comments on how the proposed subdivision complies with the Water *Quality Protection Plan and TMDLs for the Swan Lake Watershed* Lake County Planning staff sent a copy of a portion of the proposal to the Swan Lake Water Quality Technical Advisory Group. The Group discussed the project at its February 24th meeting. To date, the Planning Department has not received comments from any of the agencies represented on the Technical Advisory Group except Montana Fish, Wildlife and Parks as explained in the following section.

J. Wildlife Habitat

Pursuant to Section 7-II-4 of the Lake County Growth Policy a subdivision proposal may have an unacceptable effect on wildlife and wildlife habitat if it is to develop land that wildlife inhabit and does not include measures to prevent human-wildlife conflict or ensure wildlife will continue to inhabit the area.

This section continues by stating that if the proposal includes measures to limit the potential impacts and complies with all applicable federal, state, local and tribal requirements, the proposal is likely to be judged as having no significant impact to wildlife and wildlife habitat. Mitigation measures include, but are not limited to, preserving vegetative cover along riparian corridors, requiring significant building setbacks from bodies of water, reducing development density in areas of important habitat, and developing covenants that educate lot buyers and reduce the potential for human-wildlife conflict.

As stated in the Application for Public Review, the developer acknowledges the general area in which the property is located is home to deer, bear, mountain lion and

other wildlife. The developer also states that with the exception of the Johnson Creek corridor, most of this property does not have the extensive vegetative cover that provides food and shelter for wildlife. The developer has proposed the following steps to protect water quality associated with fish habitat, and limit the potential for human/wildlife interaction:

- Building sites and roadways are located to maintain as many old-growth trees as possible.
- All new structures will be at least 50 feet from any water body and the existing vegetation within the Johnson Creek and Swan River buffers will be maintained with the exception of clearing for fire protection and walking paths.
- Stormwater management techniques as discussed in Section II.G of this document.
- An off-site sewer treatment facility as discussed in Sections II.C and II.I of this document.
- In the draft set of CC&Rs they propose to prohibit attractants such as salt licks and bird feeders, feeding of wild animals, require the indoor storage of pet food, require all pets be contained or on leashes and require all garbage to be stored in wildlife resistant containers.

The developer states in Section 9.D in the Application for Public Review that, “When those steps are taken, it is anticipated that this proposal is likely to have very little impact on wildlife and wildlife habitat.”

A subsequent letter from Scott Rumsey, Regional Fisheries Biologist, Montana Fish, Wildlife and Parks, states that buffers along the Swan River and Swan Lake need to be a minimum of 50-feet. He added that due to the threatened status of bull trout and water quality of Swan Lake and the resource importance of Johnson Creek and the Swan River, it’s critical that these waters and their associated habitats be protected and enhanced. He strongly recommended the County and other governing bodies enact a riparian management strategy for this project and suggested the Finley Point Zoning District Buffer Strip Regulations, Chapter XI, as an adequate template with a few exceptions. Chapter XI of the Finley Point Zoning District is attached on pages 24 through 26.

In his letter Mr. Rumsey also recommends that the buffer strip along Johnson Creek be reestablished to at least the 100-year floodplain width or 100 feet on either side of the stream, whichever is greater. He cites the alteration of the stream channel thus narrowing the 100-year floodplain, the significance of the Johnson Creek fishery, and providing an adequate area for natural stream function during times of flooding and winter stream channel icing events which may cause the stream to migrate out of its existing channel as reasons for the requested setback.

Another letter sent by Thomas Litchfield, Area Wildlife Biologist, Montana

Department of Fish, Wildlife and Parks, stated that his chief concern is the protection and safety of the people who will live there and conflicts with the wildlife that will frequent the area. He indicates that in the past five years the Department has investigated incidents involving bears and mountain lions. To reduce these potential conflicts he suggest the covenants include a number of brochures issued by Fish, Wildlife and Parks to inform future owners of wildlife in the area and strategies to prevent human-wildlife conflicts. He did state that overall the covenants for the proposed subdivision are better than most from a wildlife perspective.

Regarding the buffer along Johnson Creek, Mr. Litchfield recommended the buffer width be increased due to the potential for walking paths along the creek and the fact that a high density subdivision could easily impact the effectiveness of the riparian buffer strip at the stated 100-foot width (50-feet on either side of the creek as stated in the developers proposal). He also points out the need for fire protection clearing within the riparian buffer strip should not be a major consideration. He states that, "Rarely can a riparian bottom and its associated vegetation be implicated in being a conduit for wildfire." Other factors stated in his letter that preclude fire protection thinning within the riparian buffer include the uplands of the riparian corridor in a park-like setting, the surrounding development pattern being residential in nature and the lake and river along one side of the property.

K. Noxious Weeds

The developers have requested the Lake County Weed Department conduct an initial site assessment of the property. Although to date no plan has been prepared for review, the property has been well maintained and is unlikely to contain numerous noxious weeds.

L. Other Service Providers

In his reply for comment on the proposal, the Lake County Sheriff stated that due to budgetary and manpower constraints, he only has two deputies on duty per shift to respond to calls for the entire county. He also noted there have been occasions when one emergency caller had to wait while a deputy responded to another emergency call. The Sheriff states that his office will respond to emergency calls, but it may be some time before a deputy may arrive and some non-emergency calls might not be addressed at all, depending on the current workload. Because adding 65 new residences in this area, an hour away from Polson, would spread the available resources thinner than they already are, the sheriff feels that some sort of notice should be given to prospective buyers so they don't have unrealistic expectations.

The consultant responded to the Sheriff's comments in a letter dated February 24th to the Lake County Planning staff. The consultant cites information provided by the Lake County Sheriff's staff that indicates less than 100 calls were received from the Ferndale area according to the total calls received by the Sheriff's Department in 2003 (accurate numbers were not available for comparison for 2004), with most of these calls falling under the suspicious activity category. The consultant also

provides figures for future taxes based on the sale value of the condominiums and indicates the future residents will be paying more into the Sheriff's budget than what they would require in services. A complete copy of the consultant's letter has been forwarded to the Sheriff's Office for comment.

The Assistant Chief of the Ferndale Volunteer Fire District responded to the request for comment on the proposal and has recommended the following conditions to meet the needs of the fire department.

- A stand pipe with a 2 ½ inch fire department connection at Sunburst and Johnson Creek with another 2 ½ inch standpipe connection at Johnson Creek, preferably at the south end of the stone bridge. This was proposed in the application as requested.
- If a community well is used and a domestic water system is to be utilized then a 2 ½ inch minimum fire department connection would be plumbed in and identified. This was proposed in the application.
- Addressing standards. This was proposed in the application as requested.
- Due to the projects location in relation to the Ferndale Fire Department, a future station is needed in the area. It is the Assistant Chief's recommendation that at 50% build out the developer provide a building site large enough for a 40-foot by 50-foot fire station. The application does not address this request.

Swan River School and Bigfork High School provide the public education to residents in this area. As discussed in the environmental assessment, according to Swan River School Principal Peter Loyda, the proposed project was discussed with the school board and the board members and they did not see any problems with serving the potential future students.

Similarly, Bigfork School District Superintendent Russell Kinzer, stated that despite all of the recent subdivision activity in the Bigfork area, there has been little impact to the schools. He stated that if the units in this subdivision cost more than \$300,000, there would likely be little impact on the school district. As stated in the consultants letter to the Planning Department dated February 24th the units in the proposed subdivision are likely to be priced at a minimum of \$750,000 with many priced higher than \$1 million.

The Bigfork Postmaster responded to the proposed subdivision by stating that mail delivery sites will need to be located at the entrances to the subdivision at Sunburst Drive. The Postmaster went on to state, "The developer will be responsible for providing Centralized Box Units (CBU) to accommodate the potential deliveries, concrete pads, poured to USPS specifications of sufficient dimension on which to install the CBU's and turn out areas of adequate size in which to locate these mailbox units." The developers have stated that they would comply with this request.

The Bigfork Fire/EMS Department has not responded to the proposed subdivision to date. In a letter from the consultant to the Planning Department staff the consultant noted that he mailed a request for comment on January 14th and still has not received a response. The consultant stated in his letter to the Planning Department that he will continue to attempt to solicit comments from the Bigfork Fire/EMS Department and forward their letter to the Planning Department as soon as the responses are received.

Mark Nelson, Program Manager of the Lake County Solid Waste District responded to the proposed subdivision by stating that the proposed development could adversely affect the Solid Waste District by increasing the pressure on the already limited resources of the Ferndale container site. Mr. Nelson cites the following concerns in his letter:

- Increased waste
- Potential for construction and demolition debris being dumped at the Ferndale site in violation of County policy.
- Additional traffic to the site when the egress onto Highway 83 is potentially inadequate.
- Additional costs associated with the increase in use of the site.

The consultant responded to the Program Managers of the Lake County Solid Waste District comments in a letter dated February 24th to the Lake County Planning staff. The consultant indicated the developers would be contracting with a private hauler both during and after construction. The hauler would take construction debris to the regional landfill in Missoula or the Lake County Transfer Station in Polson during the construction period. After construction, the consultant indicated the unit owners association can contract directly with BFI or another contractor to collect and haul the household waste in the same manner. The developers believe these methods of waste disposal, coupled with Lake County's \$135 annual household solid waste fee, would adequately address Mr. Nelson's concerns. A copy of the consultant's letter has been forwarded to Mr. Nelson for comment.

M. Covenants

A draft set of covenants has been submitted for the division. The covenants address a number of issues including the formation and by-laws of a homeowners association (HOA) to manage the covenants and road maintenance. Other covenants include:

- Downward pointed and side shielded outdoor lighting;
- Design review guidelines
- Limiting the number of pets per unit and pet containment
- House number to be visible from the roadway
- Trash containment
- Prohibiting wildlife attractants and the feeding of wildlife
- No parking on the roadways

To: Lake County Planning Board

From: Dave DeGrandpre, Land Solutions, LLC

Date: February 7, 2005

Re: Request for entrance gate and bridge width variances on the Historic Kootenai Lodge Condominium project

The Milhous Group would like to redevelop the historic Kootenai Lodge property while preserving many of the features that make the site unique. Two of unique features are the southern entrance gate and the one-lane stone bridge that crosses Johnson Creek, as shown in the photos below. The stone gateway and bridge were likely constructed prior to 1930, although the metal work on the gate appears to be a more recent addition. Local lore has it that during the late 1920s the owners hired stone masons from Bavaria to build the bridge, stone walls and fireplaces around the property. The stone was reportedly salvaged from the construction work on Going to the Sun Road in Glacier National Park.



The interior of the gateway is 15.5 feet wide and the stone bridge is 12 feet wide. The Design and Improvement Standards of the Lake County Subdivision Regulations require driving surfaces within major subdivisions to be 26 feet wide. Therefore, the Milhous Group requests two variances from the 26-foot wide standard in order to maintain these unique features of the property as it is redeveloped.

Criteria for Granting Variances

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Assistant Chief of the Ferndale Volunteer Fire Department, Marvin L. Eaves, recently assessed his department's ability to maneuver emergency response vehicles through the gate and across the bridge. In his January 20, 2005 letter of review, Mr. Eaves stated he has determined that emergency response vehicles can fit through both the gateway and across the bridge with little difficulty. Mr. Eaves requested an

engineer's report on the load bearing capacity of the bridge and the project engineer, Jay Billmeyer, has stated that with the addition of a six inch reinforced concrete deck, the bridge can support a full water tender. Mr. Eaves also recommended there be signage erected notifying drivers of the single lane and the developers would gladly meet that condition. Finally, vehicle turnouts, as shown on the preliminary plat, are proposed to be located on both sides of the bridge for one car to wait while another travels across it.

It is also important to consider that if the bridge has to be replaced, it will take a great deal of work to both remove it from the banks of Johnson Creek and to install a new, larger bridge. Such work would be likely to have some negative water quality impacts, regardless of the precautions taken to prevent them. Leaving the bridge in tact will result in no negative water quality impacts.

Finally, granting the variances in no way nullifies the intent and purpose of the regulations because any potential questions relating to smooth traffic flow and public health, safety and welfare have been answered. Additionally, granting the variances will have no impact on other adjoining properties.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of these regulations is enforced.

The need for the variances is based on the historical and cultural value of the gate and bridge. These features are monuments and landmarks and they are important reminders of Montana's past. They are also hand crafted, beautiful and well constructed and it would amount to a cultural hardship to remove them if no compelling health or safety reason exists.

3. The variance will not cause a substantial increase in public costs.

Granting the variances will not cause any increase in public costs.

4. The variance will not in any manner place the subdivision in non-conformance with any adopted zoning regulations or growth policy.

There are no zoning regulations that impact the property and no growth policy goals or objectives that will be violated if the gateway and bridge remain in their current states.

To: Lake County Planning Board

From: Dave DeGrandpre, Land Solutions, LLC

Date: February 25, 2005

**Re: Request for intersection alignment variance on the Historic Kootenai Lodge
Condominiums project**

Section IV-A-8.4 of the Lake County Subdivision Regulations states, "Streets must intersect at 90 degree angles, except when topography precludes, and in no case must the angle of intersections be less than 60 degrees to the center line of the roadway being intersected." The Milhous Groups requests a variance from the 90-degree angle standard in three locations: 1. The southeastern intersection of Evans Drive and River Run Loop; 2. The western intersection of Quarter Horse Spur and River Run Loop, and 3. The eastern intersection of Johnson Creek Trail and River Run Loop where the roads meet at the eastern entrance to the property. Below is an evaluation of the variance request according to the criteria found in Section VII-B-1 of the Lake County Subdivision Regulations.

Criteria for Granting Variances

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The purpose of the request is to provide a smooth, angular design with a country lane, summer camp feel. The design will keep traffic speeds low and provide for adequate visibility at all intersections. Granting the variance in no way nullifies the intent and purpose of the regulations because the intersections will result in smooth traffic flow and not compromise public health, safety and general welfare. Additionally, granting the variance will have no impact on other adjoining properties.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of these regulations is enforced.

The request for variance is based on the wish to provide a rural, summer camp aesthetic to the future residents and to provide for a traffic flow that will keep vehicle speeds down to a minimum. Admittedly, the mild topography on the property does not require the intersections to be designed at alternate angles but The Milhous Group believes the proposed design will help to maintain the historic feel of the property better than perpendicular 90-degree angles would. No intersection angles are proposed to be less than 60 degrees.

3. The variance will not cause a substantial increase in public costs.

All of the roadways are proposed to be constructed and maintained privately and therefore granting the variances will not cause any increase in public costs.

4. The variance will not in any manner place the subdivision in non-conformance with any adopted zoning regulations or growth policy.

There are no zoning regulations that impact the property and no growth policy goals or objectives that will be violated if the road intersections are constructed as proposed.

Finley Point Zoning Regulations

Section **XI. Buffer Strips:**

Intent:

The intent of this section is to provide for the development of shoreline properties while maintaining the chemical, physical, and biological integrity of Flathead Lake. This section is intended to complement the Lake County Lakeshore Protection Regulations, which govern development from the highwater mark of Flathead Lake to 20 horizontal feet inland.

Rationale:

Because vegetative buffer strips have been shown to minimize the soil erosion that results from residential development, contribute organic matter that is a source of food and energy for the aquatic ecosystem, enhance scenic and recreational resources, provide riparian wildlife habitat, and remove pollutants delivered from storm water runoff, the following regulation has been added to the Finley Point Zoning Regulations:

A vegetated buffer strip at least 50-foot wide is required of all newly developed and subdivided lakefront properties as of December 2000. The buffer strip shall be located on the waterward side of all impervious surfaces except those governed by the Lake County Lakeshore Protection Regulations, and shall be measured from the highwater mark of Flathead Lake to the closest impervious surface.

Procedure:

A buffer strip design plan, including the different types of vegetation, storm water runoff control measures, and scaled sketches, shall be reviewed as part of the Zoning Conformance Permit process.

Design:

Vegetation

- A. Buffers shall consist of a mixture of trees, shrubs, native grasses and forest duff/leaf litter. Examples of areas that do not qualify as buffer strips include grass lawns, orchards or landscaped areas where the understory has been modified. (Note: Native vegetation is typically better adapted to area soils, rainfall and temperatures and will require no fertilization and less long-term maintenance than non-native vegetation. It also provides high quality habitat to native wildlife species.)
- B. A diversity of tree species and size classes that are representative of undisturbed forest stands shall be maintained.
- C. In order to promote a healthy and effective buffer strip, the clearing of vegetation shall be limited to the following:
 - 1. Removal of dead, windblown, damaged or diseased trees and branches.
 - 2. Replacement of lawns or other modified landscaping with a variety of species and sizes to increase the buffering capacity of the area.
 - 3. Removal of up to one-half of the live trees to improve the scenic view and to minimize fire danger provided that at least 75 percent of the trees $\geq 8''$ in

- diameter at breast height are maintained.
4. Removal of vegetation less than four feet in height is limited to that necessary to create a winding footpath, defensible space around a home, boat access or to remove noxious weeds and plants such as poison ivy.
 5. Pruning of live tree branches is permitted provided that at least the top two-thirds of an individual tree's canopy is maintained.
- D. Areas with a slope of 25 percent or greater are too steep to be effective as a treatment buffer and shall be left undisturbed if fully vegetated. If the area has been modified, restoration of the area by the creation of a buffer strip is encouraged.

Lake Access

- A. Footpaths shall not exceed six feet in width.
- B. Footpaths shall not run in a straight line directly to the water. Instead, they should meander and be designed to avoid the channelization of runoff.
- C. Footpaths and boat access ways must include features (e.g., shallow stone trenches) that spread runoff from the hard surface into the vegetated buffer strip without channelizing the runoff, which causes the ground surface to erode.
- D. Boat access shall be seeded or mulched to reduce erosion.

Permitted Features and Activities:

Within the buffer strip, permitted features include walking paths, boathouses, boat ramps and boat rail systems, as governed by the Lake County Lakeshore Protection Regulations. Landscaping and the planting of vegetation in the buffer strip is permitted and shall incorporate every feasible step to minimize erosion. Restoring an altered area to a vegetative buffer is encouraged. The clearing of vegetation, as described above, is also permitted.

All vegetative buffers that exist within 50 feet of the highwater mark at the time of the adoption of these regulations shall be managed as vegetative buffer according to these regulations.

Prohibited Activities:

- A. Except as necessary to access boat ramps and maintain docks and other recreational facilities, all driving of motorized vehicles in the buffer zone is prohibited to prevent soil compaction and erosion.
- B. Except as permitted under the Lake County Lakeshore Protection Regulations, the construction of impervious surfaces is prohibited.
- C. Removing a buffer strip that exists at the time of adoption of this regulation is prohibited.
- D. Removing vegetation that exceeds the stipulations described above is prohibited.

Long-Term Maintenance:

- A. Buffer strips must be maintained so that channelization of storm water runoff does not occur.
- B. All foot paths and boat ramp accesses must be maintained to minimize erosion. Eroded areas or areas with bare soil shall be seeded or mulched.
- C. Fertilizers, pesticides and herbicides shall not be used in the buffer strip to prevent nutrients and other chemicals from entering Flathead Lake.

Variance:

A variance from the above regulation may be granted in the following two circumstances:

- A. For those lots created prior to December 2000, a reasonable variance may be granted by the Lake County Board of Adjustment where compliance would result in unnecessary hardship due to the physical conditions and limitations of the property. However, a variance shall not allow for adverse impacts to the environment.
- B. In order to protect homes from fire danger, the width of the buffer strip may be reduced so that a defensible space around the home may be created and maintained.