

March 25, 2005

Sean Conrad  
Lake County Planning Department  
104 4<sup>th</sup> Avenue East  
Polson, MT 59860

Re: Response to questions posed by the Planning Board at the March 9, 2005 introductory meeting on the Historic Kootenai Lodge Condominiums subdivision and your March 11, 2005 letter citing staff questions and concerns

Dear Sean:

This letter is intended to address the concerns expressed at the March 9, 2005 introductory Lake County Planning Board meeting and your subsequent letter on the proposed Historic Kootenai Lodge Condominiums subdivision. The Milhous Group has heard the concerns expressed by the Planning Board, staff and public and now offers modifications to the original application in an effort to address those concerns and mitigate all potential impacts. Please consider this an addendum to the environmental assessment and application for preliminary approval. In order to address the stated concerns, I have structured this letter according to the review criteria expressed in chapter seven of the *Lake County Growth Policy*. Because there are no agricultural lands or public irrigation facilities on or in the vicinity of the property, I have omitted those items from this letter.

The major changes to the proposal that are described below include a reduction in the number of homes from 65 to 57, a redesign of the internal roadway network, 60-foot internal roadway easements, off-site roadway re-construction and surfacing, the desire to move, restore and utilize the barn as a museum housing the historic artifacts from the property, an increase in structural setback and vegetative buffer distances from 50 to 80 feet along all water bodies and the installation of a new vegetative buffer along the shore of the Swan River. A conceptual proposal for lake access and a limitation of the number of boat slips for homeowners is also included.

## **NATURAL ENVIRONMENT**

### **Water Quality**

With the exception of additions to a few of the existing structures, The Milhous Group now proposes to locate all new buildings at least 80 feet from all water bodies including Swan Lake, the Swan River and Johnson Creek. An 80-foot distance was chosen based on recent comments submitted by Jack Stanford and Scott Relyea of the Flathead Lake Biological Station. The vegetation maintenance plan within the setback area remains the same with one exception: there will be no removal of vegetation from the 80-foot buffers except for the placement of pedestrian paths. This change is made in response to a

comment put forth by Wildlife Biologist Thomas Litchfield of the Montana Department of Fish, Wildlife and Parks.

Please note that this portion of the proposal exceeds all building setback and shoreline buffer requirements of the surrounding Swan Sites Zoning District. In particular, development on Swan Sites I Lots 1-35 (directly to the north of the property) and Lots 128 to 165 (directly to the south of the property) must incorporate 50-foot setbacks and vegetative buffers along the Swan River and Swan Lake. The development of lots in Swan Sites I (directly to the east of the property) must include 20-foot setbacks along Johnson Creek and there is no requirement for vegetation maintenance. The 80-foot setback and vegetative buffer proposal submitted by The Milhous Group exceeds these requirements even though the property is not encumbered with zoning regulations.

Additionally, the revised road network contains 20,830 fewer square feet of roadway than the original proposal. This equates to a 12% reduction in impervious surface area that will be maintained in vegetation and will work to limit the amount of stormwater generated on the property. All of the above measures are designed to protect water quality in compliance with Goal 1 of the natural resources chapter of the *Lake County Growth Policy*.

### **Sewage Disposal and Density**

As you are aware, a portion of this proposal is to develop a public sewage treatment facility that will provide additional capacity to nearby landowners along Swan Lake. Although the developer will build a limited amount of excess capacity, the system will be constructed to be expanded in the future to aid landowners in utilizing their properties and improving water quality in the Swan Lake watershed by reducing the number of substandard individual sewage disposal systems along the lake.

It is important to note that public sewage disposal systems are very difficult to develop. For example, the recently constructed system in Arlee took over 20 years to develop and a system for the West Shore Sewer District, located along Flathead Lake near Polson, was never developed after many years of effort due to financial constraints. Approval of this proposal will aid in the formation and future expansion of public infrastructure so that population growth and economic development will take place in a manner that does not burden Lake County taxpayers or the degrade the environment. This portion of the proposal complies with Goal 2 of the population and economics chapter and Objective 1A of the natural resources chapter of the *Lake County Growth Policy*.

For responses to the questions posed in your March 11, 2005 letter, please see the newly submitted information from Billmayer Engineering.

In your February 8, 2005 pre-application response letter, you suggested a density of one acre per dwelling unit was appropriate to maintain the character of the surrounding area. The property is approximately 41 acres in size. Lake County has historically granted a 40% density bonus to developers who were willing to conserve land by clustering homes on a property and/or by providing a public good to the surrounding community. Due to

the public benefits to water quality and infrastructure development afforded by this portion of the proposal, The Milhous Group suggests that a slightly higher density is appropriate than is found in the surrounding neighborhood. Forty-one units multiplied by a 40% density bonus awarded for the construction of a public sewage disposal facility equals 16.4 additional units, for a total of 57 living units on the property.

### **Scenic views**

The Milhous Group has responded to your and the public's concerns regarding the protection of scenic views by proposing to enhance the existing vegetative buffer along the shoreline of the Swan River as shown on the attached plan. The enhanced buffer will consist of a mixture of trees and shrubs that are not only meant to limit impacts to off-site scenic views of the property, but also to contain any sediment laden stormwater runoff in the event that it could reach surface water. (Please note this buffer is an addition to the previously proposed stormwater retention and filtration system.)

All of the tree and shrub species shown on the buffer plan are native to the area and many already exist and are flourishing on the property. According to *Plants of the Rocky Mountains* (Lone Pine Publishing, 1998), Douglass fir and ponderosa pine trees can grow to 120 feet tall and 5 feet in diameter. Paper birch trees grow to 60 feet tall and tend to have multiple trunks up to 2.5 feet in diameter each. Mountain alder are deciduous, clumped shrubs that grow from 3 to 12 feet tall and red-osier dogwood are deciduous, spreading shrubs that grow from 1.5 to nine feet tall. Please note that the proposed vegetation essentially lines the shoreline of the Swan River and leaves little grassy area where views from off-site properties and recreational water users would be substantially impacted.

Additionally, although approximately 145 trees will have to be removed (down from approximately 170 in the original design), please note that approximately 860 trees with a diameter at breast height of 10 inches or greater exist on the property. The removal of 145 trees will leave over 83 percent of the current trees on the property and other trees and landscaping will be added in order to ensure the high quality visual environment is maintained. The combination of substantial new vegetation along the river and maintenance of the majority of the trees on the rest of the property will buffer the view of the new development from surrounding landowners, in compliance with Goal 9 of the natural resources chapter of the *Lake County Growth Policy*.

### **Wildlife**

In response to a comment put forth by Thomas Litchfield, the draft covenants will be modified to state that bear proof garbage containers are required instead of wildlife proof garbage containers. Increasing the building setback and buffer width to 80 feet along the water bodies, which results in a 160-foot vegetated wildlife corridor along Johnson Creek, will also help to protect and maintain wildlife habitat as called for under Goal 5 of the land use chapter in the *Lake County Growth Policy*. The additional 60-foot distance and native vegetation will also protect water quality that supports important fish species in waterways along the property. Additionally, a reduction in the number of units should

also help to lessen the likelihood of human-wildlife conflict because there will be fewer people and therefore fewer potential wildlife attractants.

## **LOCAL SERVICES**

### **Roads**

Goal 4 of the public facilities chapter of the *Lake County Growth Policy* calls for developers to pay for the impact of their projects on public infrastructure and services. In order to mitigate any impacts to the existing roadway network in the vicinity of the subdivision, The Milhous Group proposes to rebuild South Ferndale Drive and Sunburst Drive from Montana Highway 83 to the southern edge of the property to 26 feet wide and to seal the roadways with a 2.5-inch asphalt mat. The total distance of the upgrade is a little under two miles. During a March 17, 2005 conversation with Lake County Road and Bridge Department supervisor Bob Smith, he called the offer “generous” and stated he would be willing to support such a plan. Also please note the change in the location of the northern entrance to the property in alignment with Kelley Drive, as previously requested by Bob Smith.

### **Other Services**

There has been much discussion recently regarding the costs of providing services to the future residents of this subdivision. According to David Gnose from the Montana Department of Revenue’s Polson office, a rule of thumb for annual tax revenue generated from each property or unit is one to 1.25% of its market value. The average price of a unit is expected to be \$1 million. Based on these assumptions, the total annual tax revenue generated from the 57 units at full buildout would range between \$570,000 and \$712,500 ( $\$1 \text{ million} \times 57 \text{ units} = \$57 \text{ million}$ ;  $\$57 \text{ million} \times 1\% = \$570,000$ ;  $\$57 \text{ million} \times 1.25\% = \$712,500$ ).

Mr. Gnose also estimates that an average of 70% of a person’s property tax revenue funds the public school system, 15% funds state programs and 15% funds county programs. Therefore, based on the above assumptions, Lake County alone can expect to gain between \$85,500 and \$106,875 annually (in 2005 dollars) at full buildout to provide service to the future residents. The state coffers are likely to see the same increase and the school system is likely to gain between \$399,000 and \$498,750 per year while providing very little in the way of educational services to the future residents.

As stated in the application and public hearing testimony, the target market for the proposed units is made up of predominantly empty nest couples seeking a second or third home. These people can be expected to occupy the homes for only a short period during each year (only three weeks per year on average according to the developers of the Iron Horse community in Whitefish). The home buyers are unlikely to have children in schools and will have little impact on roadway traffic, public health, sanitation, police protection or other services provided by Lake County or any other government entity. Therefore, The Milhous Group respectfully suggests the revenue generated from this project is likely to outpace the costs to provide public services to the future residents.

## **Recreation**

As shown on the revised preliminary plat, there will be a maximum of 24 boat slips provided for homeowners to tie up boats on the property. This is a voluntary restriction proposed by The Milhous Groups based on concerns for public health and safety and the character and water quality of Swan Lake. Please note that the Lake County Lakeshore Protection regulations allow for one boat slip per 20 lineal feet of lake frontage. The property contains approximately 1,350 feet of frontage south of Johnson Creek. Therefore, the property could potentially contain up to 67 boat slips under the current regulations if there is sufficient water depth and other components of the regulations are addressed.

The revised plat also shows a boat launch that could be installed by the developer or the unit owners association. Current water depths (March 2005) range from 3.2 feet at the end of the proposed northern dock to eight feet at the end of the proposed central dock. Billmayer Engineering estimates Swan Lake is currently 2.5 feet below typical high water elevations along the property so it appears this proposal will satisfy all aspects of the Lake County Lakeshore Protection Regulations. However, when a specific dock and boat ramp proposal is put forth it must comply with the applicable regulations and this proposal will be modified if it does not. The bottom line is the developer is willing to put a voluntary restriction on the number of future boat slips in order to address concerns of the Planning Board and the public. This portion of the proposal complies with Goal 9 of the land use chapter of the *Lake County Growth Policy*, which calls for allowing the public to take advantage of local recreational opportunities, in particular to access local lakes and streams.

## **PUBLIC HEALTH AND SAFETY**

The Milhous Group would like to address the Bigfork Fire and Ambulance Service's request for a helispot by proposing it be located in the area of the off-site drainfield. However, this is contingent upon discussions regarding the covenants for The Ridge subdivision and we are working with representatives of The Ridge at present.

Regarding the Sheriff's comments, we believe the county tax revenue to be generated by the development will more than cover the costs of servicing the future residents, as described above and in the application. However, the developer is willing to put a statement notifying future owners of slow response time and a lack of police resources on the final plat if necessary.

These measures and others put forth in the application, supplementary materials and this letter are intended to ensure police protection, ambulance service and fire safety concerns are adequately addressed, as called for under Goal 2 of the local and social services chapter of the *Lake County Growth Policy*.

## **OTHER ISSUES**

### **Historic Preservation**

By reducing the lineal and square footage of roadways and by eliminating nine units, The Milhous Group has provided a greater amount of spacing between the proposed homes, a concern that has been voiced by a number of parties. The proposed home spacing is consistent with the spacing of the existing historic and recently developed residential structures along Swan Lake, which will help to continue the character of the area. Please see the attached letter from Siemon & Larsen, P.A. for a more detailed discussion of this subject.

The Milhous Group now proposes to eliminate the structure located closest to Johnson Creek, which is partially located within a 100-year floodplain, and instead will house and display the historic artifacts from the property in the barn, which will be renovated and moved to the northeastern corner of the property. The foundation of the barn, which consists of cottonwood planks, is deteriorated beyond repair. To continue to utilize the structure requires a new foundation and a number of other improvements.

It is important to note that many of the other buildings on the property are in a state of disrepair and some of the structures have deteriorated beyond repair. Many of the existing residential structures were not constructed with adequate interior space to be used as modern residences with kitchens, more than one bedroom, etc. These structures simply have to be expanded if they are to remain on the property. As stated at the March 9, 2005 introductory Planning Board meeting, to remodel these structures requires an enormous amount of capital. The only way to make a project that will include the existing structures viable is for a relatively high density of development to be permitted on the property. Other potentially viable uses of the property include a casino and hotel complex (which would not trigger subdivision review) or removing the structures and simply dividing the property into individual lots in the manner of the surrounding Swan Sites development.

Please note that nowhere in the Montana Subdivision and Platting Act or the Lake County Subdivision Regulations are historic structures required to be maintained in their existing state. As you are aware, those documents provide the basis for subdivision review and historic preservation is simply not included in either document. However, the *Lake County Growth Policy* contains at least three goals that apply to this portion of the project. Goal 3 of the housing chapter, Goal 8 of the land use chapter and Goal 7 of the natural resources chapter all refer to maintaining traditional development patterns, natural resources and cultural resources. Although the project has a slightly higher density than the surrounding development, it will only increase nearby property values and will mitigate potential impacts to natural and cultural resources. As stated above, to utilize the existing structures requires a higher density than the surrounding area. This is a trade off that will result in the best of a number of potential options for the property and area as a whole because it will generate so few impacts.

### **Covenant amendments**

As discussed during and after the recent Planning Board meeting, the covenants will be revised in a few areas. They include:

1. Fractional and interval ownership will be prohibited and rental will be restricted to a 30-day minimum.
2. The term wildlife proof/resistant garbage containers will be changed to bear proof/resistant garbage containers.
3. The thinning of vegetation within the 80-foot setback distance will only be permitted for pedestrian paths instead of for wildfire protection purposes as well.
4. There will be a limit of 24 boat slips.
5. The use of fertilizers containing nitrogen and/or phosphorus will be prohibited within 100 feet of Swan Lake, the Swan River and Johnson Creek.

### **Lot 4 of The Ridge Subdivision**

The Milhous Group's intention is to develop a portion of Lot 4 of The Ridge subdivision with a public sewage disposal system. If it is necessary for review of the application to proceed, please consider this a request to amend the preliminary approval statement for The Ridge subdivision to allow for use of Lot 4 as a drainfield site to serve the future residents of the Kootenai Lodge property and other landowners.

To date there has been much discussion regarding the applicability of the existing covenants for The Ridge to allow for a public system. As stated in the letter from Siemon & Larsen, P.A. submitted with the subdivision application, The Milhous Group does not believe the covenants must be amended to allow for such a system because it is infrastructure that is secondary to residential use. Further, covenants are a matter of private concern that Lake County has no interest in interpreting or enforcing, directly or indirectly. If Lake County's concerns persist, a condition of preliminary approval for providing offsite treatment in compliance with all applicable standards would ensure effective sewage treatment and disposal and the private parties with a stake in The Ridge covenants will negotiate and come to an agreement among themselves.

### **Conclusion**

Goal number 7 and the subsequent objectives of the land use chapter of the *Lake County Growth Policy* put forth the ideal of finding a balance between the rights of the individual and the common good. The policy statements call for the protection of the private property rights of landowners and respecting their wishes to get enjoyment and economic return out of their land while not unreasonably compromising the enjoyment of neighboring landowners and the value of their properties. The Milhous Group has proposed numerous, substantial measures to mitigate all identified impacts to area landowners, public infrastructure and services, wildlife habitat and the natural and cultural environment. The value of neighboring properties will not be negatively impacted by this development. To the contrary, adjoining property values are only likely to increase with the addition of high end, seasonal housing on the subject property. Because all of the identified impacts will be mitigated by this proposal and because The

Milhous Group has the right to develop the Kootenai Lodge property in a reasonable manner, I respectfully request conditional approval of the preliminary plat application.

Sincerely,

Dave DeGrandpre, Planner  
Land Solutions, LLC