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COMMISSIONERS REPORT  
HISTORIC KOOTENAI LODGE CONDOMINIUMS MAJOR SUBDIVISION  
APRIL 14, 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 held a public hearing on the proposal at its April 13, 2005 meeting. **At the conclusion of the public hearing, the Planning Board recommended (5-4) conditional approval of the subdivision to the Lake County Commissioners who are scheduled to consider this proposal on April 19<sup>th</sup> at 1:30 in the large conference room in the Lake County Courthouse.** The Commissioners are required to take final action on or before to the review deadline of May 5, 2005.

B. Project Personnel

Owner:	Mark and Debi Rolwing
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.

After the March 9<sup>th</sup> public information meeting the developer submitted information regarding their own analysis of the density along the Swan River and Swan Lake. Upon reviewing the information submitted by the developer, the County's GIS technician recalculated the density using the most up to date data available. The density in the immediate area is as follows:

- The current density in the above mentioned area excluding the Kootenai Lodge

property is 1.2± 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 1.3± acres per dwelling unit.

A copy of the developer's analysis of the density along the Swan River and Swan Lake can be found on page 50.

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 Department's 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 57 condominium units on the 40.9± acre project site. This would provide a density of 0.7 of an acre per dwelling unit on the project site. The original proposal submitted to the Planning Department indicated 5 of the 10 existing structures would be used for single-family residential use. The remaining 5 existing structures would be converted to duplex units. An additional 50 single-family residential homes would be constructed to make 65 total dwelling units on the property.

On March 29<sup>th</sup> the developer submitted a revised project that reduced the number of condominium units from 65 to 57. Of the 10 existing residential structures that will remain the revised proposal indicates 4 will be converted into duplex units. An additional 43 new single-family residential structures are proposed in addition to a clubhouse. The revised project also calls for moving the existing barn, located in the field north of Johnson Creek, approximately 370 feet to the northeast in an area currently undeveloped with a number of pine trees. All of the existing structures will be remodeled and/or be expanded to some degree. The new units have an average footprint of approximately 2,600 square feet.

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 two variances from the County road standards. These include utilizing an existing bridge over Johnson Creek which does not meet the width requirement and allowing an existing gateway at the southern entrance to the project site, which also does not meet the width requirement. 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 57 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 Kootenai Lodge. 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 amended 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

The consultants for the project have provided the following background information

on the property and the developer's 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 2<sup>nd</sup> 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.

On March 9<sup>th</sup> the Planning Department received a letter from Barbara Pahl, Director of the Mountains/Plains Office of the National Trust for Historic Preservation. Her letter states the mission of the National Trust for Historic Preservation is to provide leadership, education and advocacy to save America's diverse historic places and revitalize communities. The National Trust for Historic Preservation is concerned with the proposed density and would encourage the developer to reduce the density of the new development in a way that will preserve historic open spaces and vistas. The letter concludes by stating, "We fully support the rehabilitation of this property. However, due to the significance of this property and its high level of historic integrity, we encourage the redevelopment plans to be scaled back into a smaller footprint and include a more sensitive placement of newly constructed buildings."

On March 28<sup>th</sup> the Planning Department received a letter from Mr. Charles Siemon of Siemon and Larson, P.A., a consultant for the developer. The intent of the letter is to address the comments from the Montana Historical Society and the Mountains/Plains Office of the National Trust for Historic Preservation. To briefly summarize the letter the developer believes the draft covenants and restrictions provide for the rehabilitation of the existing historic structures and the construction of new structures in a fashion which would be consistent with the Secretary of the Interior's standards. The developer believes the only economically feasible way to rehabilitate the historic structures is to convert them to upscale residences. He feels that constructing additional units designed and located to respect and reinforce the significance of the Kootenai Lodge, cabins and grounds, will ensure the long term stewardship of the rehabilitated structures.

Although the Planning Department has received a number of letters concerned with the historic character of the property and potential loss there of, Montana subdivision law and Lake County Subdivision Regulations do not require the Planning Department to evaluate and recommend potential mitigation measures for subdivisions that may have the potential to impact historic sites or historic structures.

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 developer was asked to provide information regarding the proposed sewage disposal system for the planning review process. Comments received from the Flathead Lake Biological Station and U.S. Fish and Wildlife Service have

recommended the off-site sewer treatment facility should utilize a tertiary treatment facility instead of the proposed Level II system. However, the type of system to be used is ultimately up to the qualified professionals at the Department of Environmental Quality.

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

**On April 13, 2005 a majority of the lot owners under the Ridge subdivision covenants submitted an amendment of the Declaration of Covenants, Conditions and Restrictions for “The Ridge” subdivision to the Lake County Commissioners. The Board of County Commissioners signed the amendment of declaration on April 13<sup>th</sup> and it was recorded in the Lake County Clerk and Recorders Office, document number 457496. The amendment states, in part, that no sewage disposal system may be constructed in The Ridge Subdivision which serves residences or subdivisions which are located outside of The Ridge Subdivision. Therefore, the proposed off-site sewer facility proposed on Lot 4 of The Ridge to serve the condominium units on the Kootenai Lodge property would be prohibited at this time.**

**It is the position of Lake County that the covenants for the “Ridge Subdivision” be amended to state the use of an off-site sewer treatment facility is allowed under “The Ridge” covenants. As a recommended condition of approval the amendment to the covenants will need to be provided to the Lake County Planning Department prior to recording the plat.**

In order to address the Montana’s 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.

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 waiver 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).

Upon reviewing the developer's request to waive the parkland requirement, the Planning Board has deemed it unnecessary as the revised proposal, with the setbacks to the lake, river and creek provide an area which exceeds the minimum requirement for land set aside for parkland. In this case, the 7.5% parkland dedication requirement on the 40.9 acre project site equals an area of 3.06 acres. Information submitted by the project engineer indicates the revised project proposal, with the setbacks along the lake, river and creek total 8.9± acres. This area exceeds the minimum requirement and approval of the proposed subdivision would comply with the parkland requirement.

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 revised preliminary plat indicates 60-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

roads branching off to provide legal and physical access to the condominium units. Information provided by the project engineer indicates the road length on the original plan equaled 7,357 linear feet or 1.393 miles. The revised road network contains 6,219 linear feet of roadway or 1.177 miles. This equates to a 15.5% reduction in roadway and impervious surface area on the 40.9 acre project site. 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. Section IV-A-8.1(b) requires that all streets and easements within Lake County be dedicated to the public.

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.

The amendment to the environmental assessment states the developer 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 approximately 1.6 miles. The northern entrance has also been realigned with Kelley Drive, as requested by the Lake County Road Supervisor.

The developer has also requested two variances in conjunction with the proposed development. The 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 48 and 49 of this report.

The planning board and governing body shall consider each requested variance at the public meeting or hearing on the preliminary plat. The governing body may grant variances from Chapter IV, Design and Improvement Standards, of these regulations when, because of the particular physical surroundings, shape, or topographical conditions of a specific property, strict compliance would result in undue hardship and when it would not be essential to the public welfare. The governing body shall not approve variances unless it makes findings based upon the evidence in each specific case that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. 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;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not in any manner place the subdivision in non-conformance with any adopted zoning regulations or growth policy.

In the consideration of the variance requests, and the developers written statement describing the facts of hardship upon which the request is based, staff suggests that the historical and cultural value of the gate and bridge are not reasoning enough to meet the criteria for granting the variance. Maintaining the water quality of Johnson Creek is of importance in considering limiting conditions on the property, but since permitting procedures are in place to reduce impacts associated with bridge construction, there appears to be no undue hardship that would prohibit conformance with either standard. Whether granting of the variance request to allow the bridge would be essential to public welfare is at question.

Gate: The fact that the fire department has stated that they could maneuver their vehicles through the 15.5 foot wide gate helps in ensuring that if the variance were granted it would not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties. If the gate were allowed to be utilized, Planning staff has recommended as a condition of approval that a second entrance be constructed either next to the existing gate or in alignment with Wapiti Drive, with one being used for ingress and the other for egress. Replicating the existing gate would only further enhance the unique features of the property. One-way roadways with a minimum 15-foot driving surface would adequately address any concerns regarding limitations of the ingress/egress in emergency situations.

Bridge: Along the same reasoning, a second bridge could also be constructed over Johnson Creek to provide one-way travel in each direction while maintaining the

existing bridge. Although permits would be required by the Lake Country Conservation District prior to any construction. Staff feels that there is a more compelling argument to allow the use of the existing bridge without further expansion due to the potential for negative water quality impacts to Johnson Creek based on the comments from the state and federal agencies. If there is adequate ingress/egress for the units on each side of the creek, the existing bridge would be adequate for minimal use associated with the residents of the subdivision and no variance would be necessary. Further, it would most likely slow traffic within the subdivision to increase safety for pedestrians.

**At the April 13<sup>th</sup> public hearing the Planning Board recommended granting both of the variances however, pursuant to recommended condition number 15, have required the owner to construct a second entrance. The second entrance would need to be a minimum of 15 feet wide unless two way travel is preferred, in which case the minimum driving surface shall be 26-feet. The second entrance would need to be constructed either next to the existing gate or in alignment with Wapiti Drive.**

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 CenturyTel 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.

A letter from the U.S. Fish and Wildlife Service has some concerns regarding stormwater runoff from storage of snow piles and surface drainage from all travel ways. As discussed in Section 5.d of the Findings of Fact, a recommended condition of approval will require the developer to include the Services comments upon submitting an application to the Department of Environmental Quality for stormwater review.

#### H. Easements

The preliminary plat indicates internal roadways within a 60-foot road easement that would accommodate the proposed primary access to the condominiums within the subdivision. This is consistent with Lake County Subdivision Regulations, Section IV-A-8.6, which requires roads that access more than 6 lots 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 revised preliminary plat the water main line is located within the 60-foot 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 revised preliminary plat the sewer main, as well as the sewer force main, are located within the 60-foot 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 44 new structures on the property and remodel or place additions on 10 of the existing dwellings on the property. The revised preliminary plat and information submitted March 29<sup>th</sup> indicates approximately 146 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. This equates to the removal of 16.8% of trees with diameter of 10 inches or greater from the 40.9 acre project site. This would leave approximately 714 trees with a diameter at breast height of 10 inches or greater on the property should the project be approved and built as proposed.

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 revised preliminary application states the developer also plans to build all new structures at least 80 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 small walking paths. The amendment to the environmental assessment states that 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.

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 24<sup>th</sup> meeting. To date, the Planning Department has received comments from Montana Fish, Wildlife and Parks, the Flathead Lake Biological Station and the U.S. Forest Service, all of which are agencies represented on the Technical Advisory Group. A discussion of these comments can be found in the Wildlife Habitat section of this document.

As stated in Section 7-II-3 of the Lake County Growth Policy, the term natural environment also includes scenic views. A concern of planning staff as well as some neighboring property owners is the visual impact the proposed development may have from the lake, river and surrounding lands. As indicated in Section I.C of the

commissioners report, the property is fairly undeveloped with large expanses of grassy fields, especially the area north of Johnson Creek. The revised proposal would place five houses between Johnson Creek and the northern property boundary. An email received from Land Solutions, a consultant working for the developer, indicates the height of the five homes along the Swan River, from north to south, would be 32 feet, 28 ½ feet, 38 ½ feet, 34 ½ feet and 38 ½ feet. In order to address concerns regarding impacts to the viewshed the developer has proposed to enhance the existing buffer vegetation along Swan River. A copy of the proposed enhanced buffer plan can be found on page 51. The amendment to the environmental assessment indicates 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.

The consultant has indicated in the amendment to the environmental assessment that 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.

Current vegetation along the Swan River consists of a mixture of pine and aspen trees ranging in size from roughly 30 feet to upwards of 70 feet or higher. The vegetation in this part of the property is not as densely wooded however than the vegetation along Johnson Creek. The Planning Board was concerned that even with the existing vegetation and proposed additional landscaping, buildings at 38 ½ feet in height at 80 feet from the high water line of Swan River would present a potential significant impact to the viewshed from the Swan River.

**The majority of existing zoning districts around Swan Lake and Flathead Lake as well as many covenants placed on subdivisions throughout the County have a maximum height for structures between 25 and 30 feet from the average ground elevation. The Planning Board recommended restricting the new and remodeled structures on the property to a maximum height of 30 feet. By restricting the building height to 30 feet the potential impacts to the viewshed along the Swan River and lake would be lessened. The Planning Board also felt that by restricting the height, in case of fire the volunteer fire department could be handle structural fires.**

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 80 feet from any water body and the existing vegetation within the Johnson Creek and Swan River buffers will be maintained with the exception of creating 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.

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.

The U.S. Forest Service letter states that the Forest Service has no jurisdictional authority on private land development but they suggest the following setback: 300-foot buffer from Johnson Creek and the Swan River and 150 feet from the ordinary high water mark of Swan Lake. The Forest Service acknowledged adjustments are made occasionally to the width of the riparian buffer if the following goals are achieved. These goals include preventing surface erosion from reaching the stream, providing adequate shade, maintaining root strength of trees to keep stream banks stable, maintaining adequate interaction of the stream with its floodplain, protecting sensitive riparian plants and to provide an undisturbed wildlife travel corridor.

The U.S. Fish and Wildlife Service provided comments and recommendations regarding the proposed project may have on fish and wildlife in a letter dated March 31, 2005 to Land Solutions LLC. The letter states that, "The Swan River watershed provides important habitat for several fish and wildlife species that are currently listed as threatened under the Endangered Species Act, including bull trout, grizzly

bear, Canada lynx and bald eagles.” The letter continues, stating the proposed project has the potential to impact these species as well as others unless measures are taken to minimize the projects impacts. A summary of these recommendations are as follows:

- Maintain an average riparian buffer width of one site-potential tree height (PTH). The PTH is defined as the average maximum height of the tallest dominant tree growing at the riparian site.
- Along fish bearing streams the first 50 feet serve as a riparian reserve with no activity whatsoever. Within the remaining buffer only light management activity should occur.
- Retain all live trees and snags within the riparian zone unless human safety is a factor.
- Application of fertilizers and pesticides should be prohibited within all riparian zones.
- Broadcast burning within the riparian zone should be prohibited.
- Private pond development should be prohibited.
- Storage piles for snow should be stored away from nearby water bodies and surface drainage from all travel ways should use appropriate “best management practices” to avoid sediment delivery to nearby streams.
- A tertiary treatment facility should be used rather than the proposed Level II system.
- Use “bear resistant” containers for garbage disposal.
- Adopt recommendations for “Wildsmart Communities” or Bear Smart Communities” into the proposed covenants.
- Retain trees that may function as perch, roost or nest sites for bald eagles.
- Retain as much natural vegetation as possible and work with native landscaping.
- Prohibit the use of birdfeeders, except during the winter, to prevent attracting bears or other wildlife.

The Flathead Lake Biological Station recommended an 80-foot buffer along the Swan River in order to protect it from storm water runoff. The Biological Station

felt that by increasing the buffer to 80 feet additional foot traffic would be dispersed and the nutrient absorption function of the buffer would be increased.

K. Noxious Weeds

The developers have requested the Lake County Weed Department conduct an initial site assessment of the property. The Planning Department received a letter from the Lake County Weed Department on March 2<sup>nd</sup>. The Weed District stated that the property is relatively weed free at this time. The Weed District indicated the following weeds might show up when the ground is disturbed; Canadian Thistle, Spotted Knapweed, Meadow Hawkweed Complex and Musk Thistle. As a recommended condition of approval, before filing a final plat the developer will need to develop a comprehensive weed management plan.

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 57 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 24<sup>th</sup> 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 was forwarded to the Sheriff's Office for comment.

A subsequent response from the Sheriff stated, "While it is true that the Ferndale area shows a relatively low percentage of calls when it is compared to the calls which are handled countywide, it should be noted that the percentage of calls which occur in Ferndale are consistent with the population of the area." The letter continues saying that the intent of the comments from the Sheriff's Office is to make the citizens aware that the department is operating under manpower and budgetary constraints. Therefore, in the event of an emergency requiring law enforcement, the person might have to wait several hours before a deputy can arrive on scene.

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.

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 24<sup>th</sup> 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 requested the condominium units be numbered and visible for day and night emergency responders. This is already addressed in the proposed covenants for the subdivision. They also requested a helispot be designated for the subdivision. In the amendment to the environmental assessment the developer has indicated that a helispot is proposed to be located in the area of the off-site drainfield contingent upon discussions regarding the covenants for The Ridge

subdivision. A

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 24<sup>th</sup> 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 was forwarded to Mr. Nelson for comment. Upon reviewing the consultant's letter Mr. Nelson did not see an impact if the developer committed to utilizing a hauler during construction or remodeling of the condominium units and contract directly with BFI or another contractor to collect and haul the household waste.

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

As stated in the amendment to the environmental assessment the following changes are proposed for the covenants:

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.

The above described activities prohibited in item number 1 would fall under Montana Code Annotated Title 50, Chapter 51, Public Accommodations. Public Accommodations are required to be licensed by the County and includes the renting or leasing of a private home or condominium on a daily or weekly basis. By placing a restriction on such activities as a condition of approval, the use would not be allowed unless the owners wanted to amend the approval statement for the subdivision.

**The Planning Board recommended the covenants be amended as follows to comply with the written testimony of the qualified biologists from Montana Fish, Wildlife and Parks and U.S. Fish and Wildlife Service and remove the right to expand language found in the draft set of covenants.**

- 1. Private pond development should be prohibited.**
- 2. Storage piles for snow should be stored away from nearby water bodies and surface drainage.**
- 3. Adopt recommendations for “Wildsmart Communities” or Bear Smart Communities”.**
- 4. Prior to construction of the units the owner shall obtain a building notification permit from the Lake County Planning Department.**
- 5. Remove the right to expand language under section 1.3 in the draft set of covenants.**

**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**

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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.**



This photo was taken looking north along Sunburst Drive. The Project Site is on the left side of the picture.