

RECOMMENDED FINDINGS OF FACT  
HISTORIC KOOTENAI LODGE CONDOMINIUM MAJOR SUBDIVISION  
APRIL 14, 2005

In reviewing the Historic Kootenai Lodge Condominium Major Subdivision preliminary plat application, the Lake County Planning Board finds the following:

**1. Relevant evidence relating to public health, safety and welfare**

As described below and in the commissioners report, the revised proposal includes a number of steps to limit impacts to public health and safety including improving the access roadways leading to the project site to current County standards. The developer has also shown dry hydrants on the revised preliminary plat along Johnson Creek as requested by the Ferndale Volunteer Fire Department. In addition, the Bigfork Fire and Ambulance Service's requests have been addressed by the developers in their proposal for a helispot to be located in the area of the off-site drainfield as well as providing the Ferndale Volunteer Fire Department with land on the same site to accommodate a future fire station in the area.

The preliminary plat shows proposed condominium units 28, 35, 36 and 57 indicates the units will either be on the property line, proposed unit 35, to approximately 45 feet from the property line, proposed unit 57. The Planning Board is recommending a 20-foot building setback along this portion of the property in order to allow for future expansion of the road and road right-of-way. In addition to providing the expansion of future road right-of-way, the 20-foot building setback will provide a vegetative buffer from the new condominium units to the road and existing homes.

**2. The Environmental Assessment**

The environmental assessment provided by the developers addresses the questions listed in Appendix C, Part III, Information Required For Environmental Assessment Under The Subdivision And Platting Act. A further evaluation of the remarks made within the environmental assessment can be found in Sections 1, 3, 4 and 5 of the Findings of Fact and in the commissioners report.

**3. The Lake County Growth Policy**

The Lake County Growth Policy is a general policy document that meets the requirements of 76-1-601, MCA and was adopted on August 19, 2003.

As stated in the Introduction portion of the Lake County Growth Policy, "This document is an update to the 1988 General Plan, which is now called a growth policy, in accordance with 76-1-601 Montana Code Annotated. A growth policy is a land use planning document that is designed to guide and facilitate future growth and development in ways that limit the negative impacts of growth. It is not a regulatory document, but instead provides a framework and rationale for developing procedures,

policies and working on specific projects that are intended to guide future population growth and development in a cohesive and intelligent manner.”

The last sentence of the Growth Policy states, “Lake County is growing and will continue to develop. The Lake County Growth Policy is intended to help guide and manage that change while protecting the resources and values that give us a great quality of life and make our home a very special place.”

The developer has stated in Section I, Land Use, of the Environmental Assessment for this project and in the amendment to the Environmental Assessment, submitted March 29<sup>th</sup> to the Lake County Planning Department, that the proposed subdivision meets the following goals and objectives contained in the Lake County Growth Policy. These are as follows:

**Chapter 1, Goal 2**

Aid the formation and expansion of public infrastructure so that facilities are available for population growth and economic development to take place in a cost-effective manner.

**Chapter 4, Objective 1A**

Encourage the formation, development and expansion of public sewer and water systems, particularly close to the vulnerable aquifers below Arlee and Pablo, and potentially in areas around the perimeter of area lakes and in the Ferndale area.

The Developer is proposing to construct a sewer treatment facility, which upon completion, would be turned into a public sewer district to serve the proposed division and would allow for the potential of additional hookups for lots with failing systems along Swan Lake. The developer contends that this would be a positive infrastructure for the community.

It is the opinion of Planning staff that if a public sewer treatment facility is to be considered it should contain enough land and the proper infrastructure to accommodate future expansion. In order for it to be truly “public” and benefit more than one individual the facility should be designed to benefit the entire area in the future, not only lots within the proposed division and potentially those along the lake from the southern edge of the project site south to the sewer site. The maximum number of properties in the area can be easily determined since the lots within Swan Sites Zoning District, The Ridge subdivisions, and the LaMontana Vista subdivision all have limitations on future land division.

**Chapter 1, Goal 3**

Capitalize on and protect Lake County’s natural resources in order to attract and guide high quality development.

**Chapter 4, Goal 1**

Protect surface and groundwater resources before, during and after development

**Chapter 4, Goal 5**

Protect important wildlife habitat and migration corridors.

The proposed development has been revised to increase the buffers areas along the Swan River, Swan Lake and Johnson Creek and limit disturbance in these areas. The revised project has also reduced the number of proposed dwellings and the amount of roads needed to serve those dwellings.

Although the revised project, would seem more in line with the above goals, the Lake County Planning Board contends the developer has not provided enough of a buffer from Johnson Creek to adequately protect this natural resource as provided by the recommendations of the qualified biologists of Montana Fish, Wildlife and Parks and, therefore, would not meet the above state goals unless further mitigation is required. Further discussion of this can be found under Section 4.d.

**Chapter 4, Goal 9**

Protect the area's scenic resources, which are an integral part of our high quality of life and an economic asset.

Through the reduction of the number of dwellings originally proposed, 65, with the new proposal, 57, the developer has stated that this will require the removal of approximately 146 trees with a diameter at breast height of 10 inches or greater. This will leave approximately 860 trees (over 83 percent) with a diameter at breast height of 10 inches or greater on the property. The developer has proposed additional trees and landscaping along the Swan River and throughout the development in order to ensure the high quality visual environment is maintained. The developer contends that the combination of substantial new vegetation along the river and maintenance of the majority of the trees on the rest of the property, the view of the new development will be buffered from surrounding landowners and therefore would comply with this goal.

In order to fully comply with the above stated goal the Planning Board has recommended a buffer setback along Sunburst Drive. A further discussion of the recommended setback and potential impacts to the viewshed along the lake and river can be found under Section II.I of the commissioners report and Section 4.d of the Findings of Fact.

**Chapter 5, Goal 4**

Require developers to pay for the impacts of their projects on public infrastructure and services.

**Chapter 6, Goal 2**

Ensure that police protection, ambulance, fire safety and school district concerns are addressed and measures are implemented to protect residents and property in all areas of Lake County.

In order to mitigate any impacts to the existing roadway network in the vicinity of the subdivision, the developer has proposed 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.

As stated previously in Section 1, Relevant evidence relating to public health, safety and welfare, the developer has proposed infrastructure improvements and land off site in order to comply with the requests from the Ferndale Volunteer Fire Department and Bigfork Fire and Ambulance Service.

Given past precedent in mitigating impacts to public infrastructure, as well as fire and ambulance services, the Planning Board agreed that the measures proposed by the developer would be sufficient to mitigate or off-set potential impacts.

Regarding the Sheriff's comments, the developer believes the county tax revenue to be generated by the development will more than cover the costs of servicing the future residents as discussed in the amendment to the environmental assessment and in Section II.L of the commissioners report. The developer is also willing to put a statement notifying future owners of slow response time and a lack of police resources on the final plat if necessary. The Planning Board has recommended as a condition of approval that the owner file a statement with the plat to notify future property owners of the slow response times.

### **Chapter 2, Goal 3**

Encourage housing that maintains traditional development patterns and protects property values and natural resources.

### **Chapter 4, Goal 7**

Protect and encourage the prosperity of the area's cultural resources.

The developer contends that 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. The developer has also indicated in the amendment to the environmental assessment that in order to utilize the existing structures on the property, a higher dwelling unit density than the surrounding area is required. The developer believes this is a trade off that will result in the most desirable of a number of potential options for the property and area as a whole because it will generate so few impacts.

A letter from the Salish-Pend d'Oreille Cultural Committee states the Committee has concerns that, "A development of this scale in the area, completely out of proportion to all existing developments in the Swan Valley, would dramatically change the cultural, economic, environmental, and social character of the area." The letter also raises

questions regarding the proposed wildlife mitigation proposed by the developer and potential impacts the project may have on plants and animals in the area. The letter concludes by stating, “Our cultural survival is tied to the well-being of the plants we use for food and medicine, to the animals and fish we rely upon spiritually and materially, to the protection of the land itself. When these things are damaged, we are damaged.”

Planning staff would note that the Cultural Committee commented on the original proposal as submitted on February 9<sup>th</sup> to the Lake County Planning Department. The revised proposal does address some of the Cultural Committees concerns regarding wildlife impacts. At the public hearing the Planning Board recommended as a condition of approval the development be amended to adhere to the recommendations of the wildlife biologist from Montana Fish, Wildlife and Parks, U.S. Fish and Wildlife Service and Flathead Lake Biological Station who commented on the proposal.

### **Chapter 3, Goal 7**

Find a balance between the rights of the individual and the common good. Protect the private property rights of landowners and respect their wishes to get enjoyment and economic return out of their land and investments. At the same time, ensure that the enjoyment and value of neighboring land is not unreasonably compromised by development projects.

### **Chapter 3, Goal 8**

Protect the natural resources and the character of the different parts of Lake County.

The policy statement for the Land Use Chapter of the Lake County Growth Policy states, “Lake County will strive to facilitate growth and development while attempting to maintain the high quality of life and sense of community that residents feel by balancing the property rights of individuals and the good of the community.”

The Lake County Planning Department has received well over a hundred letters, emails and faxes concerning the proposed project with the chief concern raised being the proposed density of the subdivision. The letters claim that the proposed project (65 dwellings units at the time creating a density of one dwelling unit per 0.6± of an acre on the 40.9 acre project site) was not in conformance with the surrounding character of the community.

The developer submitted a revised proposal on March 29<sup>th</sup> that reduced the number of units from 65 to 57 units. This provides a density of one dwelling unit per 0.7± of an acre. The amendment to the environmental assessment states that, “the developer 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 amendment to the environmental assessment further states, “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 the revised proposal the developer believes that they have a right to develop the Kootenai Lodge property in a reasonable manner and in doing so respectfully request conditional approval of the preliminary plat application.”

Five of the nine Planning Board members agreed that impacts the subdivision proposal may have would be adequately mitigated through the conditions of approval and therefore recommended conditional approval of the proposed subdivision.

4. Chapter Seven, Section II of the Lake County Growth Policy defines the primary review criteria Lake County uses to review subdivisions as described below.

**The primary review criteria for subdivisions**

**a. Effect on agriculture**

Pursuant to the United States Department of Agriculture (USDA) and Natural Resource Conservation Service 7.5 minute Quadrangle map for the area of the project site, two soil classes cover the 41± acre site. These soils include Glaciercreek, a gravely silt loam covering approximately 37± acres, and Half Moon, a silt loam covering approximately 4± acres in the northern most portion of the 41± acre project site. The accompanying soil survey information for the USDA Quadrangle map indicates both of the soil classes found on the project site are poorly suited to cultivated crops because of their short frostfree period.

In addition to the soils present on the property the surrounding area is developed with single family residential lots. The Swan Sites subdivision number 1 surrounds the project site to the north, south and east. Along the western property line lies Swan Lake and Swan River. Swan Sites Subdivision number 1 is within the Swan Sites Zoning District, created April 7, 1994. The Zoning District maintains the single-family residential land use in the surrounding area and, to date, numerous lots are already developed with homes. Therefore, due to the existing soil conditions on the property and surrounding land uses, the proposed subdivision will not have a significant impact on agriculture in Lake County.

**b. Effect on agricultural water users facilities**

According to the application submitted by the developer the Kootenai Lodge property has a number of historic, seasoned water rights. Usages of these water rights vary from commercial and residential to irrigation and power generation. Points of diversion range from on-site extraction by well to off-site surface water from surrounding Johnson and Schmidt creeks. Below is a tabulation of water rights in the Roling’s name (current owner of site as of 2/8/05) and will be transferred to the developer with the intended real estate transaction. The water rights that will be available to the Kootenai Lodge development site strictly for irrigation purposes, as stated in the environmental assessment, include:

**IRRIGATION**

76K 40317	JOHNSON CREEK	20-Aug-1896	196
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76K 40318	JOHNSON CREEK	11-Oct-1906	95	
76K 40319	JOHNSON CREEK	1-Aug-1914	170	
76K 40320	SCHMIDT CREEK	22-Nov-1923	69.7	
<b>SUBTOTAL</b>			<b>530.7</b>	<b>GPM</b>

Pursuant to the Lake County Growth Policy a subdivision proposal may have an unacceptable effect on agricultural water user facilities if it does not comply with the irrigation provisions of the Lake County Subdivision Regulations and, at a minimum, it fails to set up a reasonable mechanism for delivering irrigation water to the lots, does not include sufficient easements for ditch and system maintenance, or is likely to result in the disruption of service to downstream users.

The proposed subdivision intends to create 57 condominium units over the 41± acre property. The number of units, in addition to the required roadways, would leave very little room for irrigation of any type of crop on the property and, as stated in the effect on agriculture Section of this document, the soils are not conducive for growing crops. The purpose of this Section is to address potential impacts to surrounding irrigated farmland, where farming operations depend on irrigation water for survival of their crops or livestock. The majority of irrigated farmland in Lake County is located in the Polson area south to the County line.

The project site is not within an irrigation district and no irrigation water is currently used on the property. The surrounding land uses are residential and no farms are depending on the water which flows in Johnson Creek in the area of the subdivision. Therefore, the proposed subdivision will not have a significant impact on agricultural water user facilities in Lake County.

**c. Effect on local services**

According to the Lake County Growth Policy, the term local services refers to sewer, water, roads, telecommunications, schools, electrical utilities and solid waste disposal services.

As discussed in the commissioners report, Section II.C, 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.

As discussed in the commissioners report, Section II.C, 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 force main 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. Further discussion of the off-site level II wastewater treatment facility can be found in Section 5.d of this report.

Road access to the property is provided by Sunburst Drive via South Ferndale Drive. Both of these roads do not meet current County standards for width. The developer

has proposed to widen both roads, South Ferndale from its intersection with Highway 83 west to the intersection with Sunburst Drive, and Sunburst Drive, from its intersection with South Ferndale south to the southern edge of the Kootenai Lodge property to current County standards. This would include a 26-foot driving width in addition to road shoulders and drainage ditches. The developer has also proposed to seal the roadways with a 2.5-inch asphalt mat. The internal roadway serving the proposed condominium units would be served by roads meeting County standards, this includes a 26-foot wide driving surface within a 60-foot road right-of-way. Because the internal roadways are proposed to be built and maintained using private funds they would not impact the ability of the Lake County Road Department to meet existing demands. However, the roads outside of the subdivision will experience wear and tear due to the increased traffic this proposal will generate. Therefore, in order to mitigate future road impacts as a condition of approval the Planning Board recommended the condominium owners waive their right to protest the formation of a road improvement district.

Program Manager of the Lake County Solid Waste District stated 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. In order to address the above concerns the developers have indicated they would be contracting with a private hauler both during and after construction. The Program Manager of the Lake County Solid Waste District agreed that if the waste removal was contracted for hauling he would not have any concerns with impacts to the Ferndale container site.

The telephone, school, electrical power, health care providers have stated they can and will serve the future residents of the subdivision. Based on the project proposal, the impacts of this subdivision on local services are expected to be minimal.

**d. Effect on the 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. Swan Lake and the Swan River are located along the western edge of the project site and Johnson Creek, a perennial stream, flows from east to west through the project site and empties into the Swan River.

The current condition of the property is a park like setting with 23 structures including 10 cabins and numerous outbuildings. The closest building to Johnson Creek is an old shed approximately 30'x20' which is situated a few feet from the creek bank. Along Swan Lake the closest cabin is approximately 20 feet from the high water mark with other cabins between 40 feet to upwards of 140 feet from the high water mark.

The proposed development would place 43 new residential structures and one

clubhouse on the property. The new residential structures are proposed a minimum of 80 feet from the high water mark of Swan Lake and along the Swan River. The new residential structures are also proposed a minimum of 80 feet from Johnson Creek. Of the nine existing structures along Swan Lake, eight are to remain, seven of which are proposed to be expanded.

In an effort to address the water quality concerns associated with the project, the developers have proposed a number of measures. These measures include an off-site Level II wastewater treatment system, an 80-foot building setback in which existing vegetation would be maintained except for clearing of small walking paths. The developer has also proposed enhancing the existing vegetation along the Swan River.

Other measures to insure water quality as noted in the environmental assessment are adherence to DEQ standards for lot and roadway stormwater management, paving of the primary roadway and a reduction in the number of condominiums from 65 to 57 which, in turn, has reduced the linear feet of the roadway by 15.5% from the original proposal.

Scientists from Montana Fish, Wildlife and Parks, U.S. Fish and Wildlife Service and Flathead Lake Biological Station have all reviewed the subdivision proposal and submitted detailed letters of review. The revised project complies with the majority of the measures suggested by these agencies in order to protect water quality. As stated above, the revised project has the new residential structures located a minimum of 80-feet from Swan Lake, the Swan River and Johnson Creek. The setback would meet the recommendations of the Flathead Lake Biological Station in regards to setbacks from the Swan River. However, the 80-foot setback is not in accordance with the recommended setback from Montana Fish, Wildlife and Parks as discussed in the commissioners report, Section II.J. Therefore, it would appear if the subdivision is developed as proposed, it is likely to have a negative impact on the natural environment. The Planning Board has recommended that in order to mitigate the potential negative impact to water quality, as a recommended condition of approval, the setback along Johnson Creek be expanded to the 100-year floodplain width or 100 feet on either side of the stream, whichever is greater, as recommended by Montana Fish, Wildlife and Parks. With the increased setback in place along with the other quality protection measures presented by the developer, the Planning Board feels the proposed subdivision would not have a significant impact on water quality.

As discussed in Section II.I in the commissioners report, approximately 146 trees will have to be removed. However, as the amendment to the environmental assessment states, over 83 percent of the current trees on the property will be retained and other trees and landscaping will be added in order to ensure the high quality visual environment is maintained. The developer feels that 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.

Although the developer has gone to great lengths to maintain as many large trees as possible, several of the proposed condominium units, proposed units 28, 35, 36 and

57 as shown on the revised site plan, vary between being placed on the property line, proposed unit 35, to approximately 45 feet from the property line, proposed unit 57. In order to buffer the development from surrounding lands and maintain a tree corridor along Sunburst drive, the Planning Board has recommended the plat be amended to provide a 20-foot setback along the eastern property line from Johnson Creek to the southern edge of the property. Within this proposed corridor there are a number of existing large and small pines and fir trees to buffer the new development from the road and neighboring residents. A picture of this area can be found on page 52.

**e. Effect on wildlife and wildlife habitat**

This property is located in an area that is developed with single-family residential tracts. The property has large fields and a tree lined stream with the majority of the property undeveloped at this time.

The developer has proposed efforts to mitigate impacts to wildlife and wildlife habitat include setbacks along the Swan River, Swan Lake and Johnson Creek as discussed above, reducing the number of condominiums units on the property, a stormwater management plan, a level II off site sewer treatment facility and amending the draft set of covenants as recommended by Montana Fish, Wildlife and Parks and the U.S. Fish and Wildlife Service.

A number of letters received by the Planning Department on the proposed project had concerns regarding the impacts the proposed subdivision would have bull trout, bald eagles, deer, elk and grizzly bears. Letters from the Montana Fish, Wildlife and Parks and the U.S. Fish and Wildlife Service have recommended setbacks and amendments to the covenants in order to mitigate any potential impacts. The letters are summarized in Section II.J of the commissioners report.

Planning staff contacted Fish, Wildlife and Parks on March 18<sup>th</sup> to discuss potential impacts the project may have on bald eagles. Fish, Wildlife and Parks indicated the closest known bald eagle nest is located to the west approximately one mile. Due to the location of the bald eagle nest, Fish, Wildlife and Parks felt the proposed subdivision would not have an impact of bald eagles living in the vicinity.

The Planning Board has recommended a number of conditions, based on input from the biologists at Montana Fish, Wildlife and Parks, U.S. Fish and Wildlife Service and Flathead Lake Biological Station, in order to mitigate potential impacts the proposed subdivision may have on wildlife and wildlife habitat. These are discussed in Sections II.I, II.J and II.M in the commissioners report and in Section 4.d of the Findings of Fact.

**f. Effect on public health and safety**

The developer has proposed to mitigate impacts the proposed project may have on public health and safety by addressing the requests of local service providers as discussed in Section II.L of the commissioners report and Section 1 and 3 of the

## Findings of Fact.

A number of letters received by the Planning Department on the proposed project had concerns regarding the impacts the proposed subdivision would have on service providers like the fire department and Sheriff's Office. At this time Lake County does not have provisions for an impact fee requirement in place, which would condition subdivision approvals upon payment of a per lot or condominium unit fee to the fire and police departments, in order for these service providers to pay for more personnel and equipment. Until such an impact fee is established subdivision proposal need only to work with the service providers and address their concerns on a case by case basis. As stated in the commissioners report and findings of fact, the developer has proposed a number of items in conjunction with the input from police, fire and ambulance services.

Concerns were also raised by neighboring residents and the Planning Board regarding the increase in the number of boat docks on the project site. This increase in boat docks correlates directly with the increase in boat traffic. Neighboring residents concerns stemmed from the fact that this portion of the lake is shallow and can be difficult to navigate to deep waters located south of the project site. In order to address these concerns the developer has restricted the development to a maximum of 24 boat slips to be provided for homeowners to tie up boats on the property. In order to construct these slips the developer will need to obtain a lakeshore construction permit through the Lake County Planning Department.

The revised project includes improving 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. As stated in the commissioners report, Section II.E, South Ferndale Drive and Sunburst Drive do not meet current County standards for the number of lots each of the roads serve. Improving these roadways to meet or exceed current County standards would mitigate impacts the additional traffic would have on the existing roads.

As discussed in Section II.I of the commissioners report, the Planning Board has recommended that all new and modified structures on the property not exceed a maximum height of 30 feet. The Planning Board recommended this condition based partly of views but more importantly to allow the volunteer firefighters to better handle structural fires which may occur in the future.

The Planning Board also recommended amending the draft set of covenants to remove the right to expand language found in section 1.3 of the covenants. The purpose of removing this language is to prohibit further use of the Kootenai Lodge lakeshore by other lot owners outside of the Kootenai Lodge subdivision. The Planning Board recommended this because a major concern of homeowners in the area was the increased boat traffic the proposed subdivision would create. By prohibiting other lot owners outside of the Kootenai Lodge from using the property as a boat launch, the majority of the Planning Board members felt that this would be

appropriate to address boat traffic concerns along the lake.

Based on all of the factors described above and reflected in the recommended conditions of approval, the proposed subdivision is likely to have a limited impact on public health and safety.

**5. Whether the plat conforms to the provisions of:**

**a. The Montana Subdivision and Platting Act**

The preliminary plat itself would conform to all the provisions of the Montana Subdivision and Platting Act if the condominium units, roadway and utility easements/rights-of-way proposed to serve the units on the property are clearly delineated on a plat recorded with the County Clerk and Recorder and meet all applicable design standards of Montana Code Annotated, Title 70, Chapter 23.

**b. The Lake County Subdivision Regulations**

The plat itself conforms with the Lake County Subdivision Regulations in terms of form and content and Lake County has a procedure in place to ensure compatibility with State surveying requirements. Two variances have been requested as discussed in Section II.E of the commissioners report. Should the variances be approved they would be the only deviation from the Lake County Subdivision Regulations.

Proper legal and physical road access can be provided and, with the recommended conditions of approval, the threats to public health and safety, the natural environment and wildlife and wildlife habitat have been sufficiently mitigated.

The application itself is incomplete at this time because the Montana Department of Environmental Quality Local Government Joint Application Form fails to carry the current property owner's signature or the responsible officer of the corporation offering the property for sale. Pursuant to Section II.B.2 of the Lake County Subdivision Regulations, the subdivider is required to submit a completed copy of the Montana Department of Environmental Quality Local Government Joint Application Form. As of April 7, 2005, the Lake County Clerk and Recorder's Office has Mark and Debi Rolfing as the current owner of Tract B of Amended Plat of Lot 128, Swan Sites Subdivision Number 1(project site) as stated in document number 437240 of the Lake County Clerk and Recorder's Office. The owner's signature on the Montana Department of Environmental Quality Local Government Joint Application Form is required for the Department of Environmental Quality (DEQ) to process a subdivision application. Therefore, as a recommended condition of approval, the Planning Board has required that prior to commencing activities in furtherance of satisfying any conditions required for final plat approval, the record owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale shall sign the Montana Department of Environmental Quality Local Government Joint Application Form and submit

evidence of the same to Lake County Planning Department staff.

**c. Zoning Regulations**

The property is not zoned.

**d. Other regulations in effect in the area of the proposed subdivision.**

Other regulations in effect include the Swan Sites Zoning District, the Lakeshore Protection Act, the Sanitation in Subdivisions Act and floodplain permit requirements for work within a floodplain.

As discussed in the commissioners report, Section I.C, the property is surrounded by the Swan Sites Zoning District. The proposed project would create a higher density than what is currently allowed within the Swan Sites Zoning District (0.7± an acre per dwelling unit as compared to the Swan Sites Zoning District which currently provides an average density of approximately 2.5 acres per dwelling unit throughout the entire District) and allow for duplexes on the project site, currently prohibited in the zoning district.

In the amendment to the environmental assessment the consultant provides the following methodology for why the proposed density should be considered. He states, “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.”

Planning staff would agree with the first part of the consultant’s interpretation of the density bonus allowances in past subdivisions approved by Lake County. It has been the policy of the Planning Board and Governing body to allow a 40% density bonus to mitigate density impacts if the developer was willing to place a minimum of 60% of the land in open space. The majority of the density bonuses granted through subdivision review have been provided in conjunction with farmland or open space set aside.

There are numerous subdivision approvals that could be cited as precedence in this regard. For example, in the last year the Lake County Planning Board has recommended approval of the following subdivision which utilized a density bonus based on land set aside:

- Jerry Johnson Major Subdivision – The property is located approximately four miles east of St. Ignatius at the corner of Foothills Road and Mission Creek Road. This in an unzoned area of Lake County where land use is predominantly agricultural with large acreages. Historically, a 20 acre dwelling unit density has

been maintained by the Planning Board and Board of Commissioners to mitigate the impacts of dense residential development in this portion of the county to protect agricultural and wildlife resources. Therefore, the property owner utilized the above referenced density bonus provision by restricting development on 85± acres and subsequently was allowed to create 7 lots by clustering the residential development on 15± acres of the least productive land.

Regarding the consultants suggestion that due to the provision of a public good to the surrounding community in the proposal to construct a public sewage disposal facility, that the 40% density bonus should be applied to the 41± acre project site. Planning staff contends that this would not reflect past precedent and therefore recommends the Planning Board not accept this line of reasoning for warranting a density bonus to this proposal.

To defend this argument, staff would offer the following as an example. During the Planning Board review and approval of the View Point Subdivision of property owned by Neil and Randa McAlpin, located in an unzoned area south of Highway 35 approximately one mile east of the Polson City limits, the developer was informed that due to the location of the property and the zoning applied to adjacent properties within the growth area of the City of Polson, that his division would be subject to an overall 5 acre dwelling unit density. The Planning Board recommended approval of the subdivision and allowed for a cluster of residential properties less than 5 acres. A density bonus was granted provided the owner revise the proposal to include additional land within the vicinity to offset the density. Like the current proposal, this subdivision was proposed with a community water system and shared sewage treatment area to provide service to the clustered lots. The community water and sewer system was not discussed in the staff report as a consideration for allowing a density bonus.

Five of the nine Planning Board members recommended approval based on the proposed 57 unit condominium subdivision would not significantly impact the primary review as defined by state law and in the Lake County Growth Policy provided the recommended conditions of approval are in place.

The Lakeshore Protection Act governs work from the lakebed to 20 feet above the high water mark and Lake County has adopted regulations to carry out its provisions. As indicated in the amendment to the environmental assessment, the developer is proposing a boat access on the property and restricting the number of boat slips to a maximum of 24. If the proposed subdivision is approved and prior to constructing the slips, the developer or homeowners will need to secure a lakeshore construction permit from the Planning Department. Pursuant to Section 5-1 (A) of the Lakeshore Regulations the construction of the docks shall not:

- (1) materially diminish water quality,
- (2) materially diminish habitat for fish or wildlife,

- (3) interfere with navigation or other lawful recreation,
- (4) create a public nuisance,
- (5) create visual impact discordant with the background landscape or aesthetic values of the lakeshore, nor
- (6) significantly alter the natural characteristics of the lakeshore.

Based on the public concern that adding additional units on project site will increase boat traffic in this Section of Swan Lake, in order to comply with item number 4 of Section 5-1 (A) the Planning Board felt it is appropriate to recommend as a condition of approval a maximum of 24 boat slips for the entire property.

The Sanitation in Subdivisions Act, M.C.A. 76-4, governs water supply, wastewater management, solid waste, and stormwater runoff within subdivisions. As stated in the commissioners report, the developer is proposing public water and wastewater systems. The preliminary plats accompanying the application show the approximate locations of the wells and off-site wastewater treatment facility. If the subdivision receives preliminary plat approval, the Montana Department of Environmental Quality will formally review the sanitation proposal under M.C.A. 76-4. This review will include evaluation of water quality, quantity, and dependability. The Lake County Environmental Health Department must provide local health officer approval as part of the sanitation review requirements.

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. A number of neighboring lot owners also have concerns with the location of a sewer facility in close proximity to the lake and wells. Although these comments must be considered as part of the planning review process, whether a tertiary treatment facility would be required is ultimately up to DEQ, which has a separate review process. As a recommended condition of approval, upon submitting an application to DEQ for the sewer treatment facility the developer shall include the letters from the Biological Station, U.S. Fish and Wildlife Service as well as the commissioners report which refers to the neighbors concerns regarding the proposed sewer treatment facility. This would at the very least provide DEQ with concerns from other agencies and neighbors when reviewing the proposal.

As stated in the commissioners report, the developers propose a number of measures meant to prevent water quality impacts associated with stormwater runoff. The measures include containing lot and roadway runoff, BMPs implemented during home and road construction and providing vegetative buffers along the water bodies. If the proposal receives preliminary approval, the developers' formal stormwater management plan would be reviewed and approved by the Lake County Environmental Health Department and DEQ prior to final plat filing.

The floodplain development permit requirements would come into effect when the

developer expands proposed condominium units 40&41, 49&50 and 51&52. A floodplain permit would also be required when the developer constructs water and sewer lines to these structures as well as to cross Johnson Creek. Proper permits from the Lake County Conservation District would also be required for any work within the bed and banks of Johnson Creek

**6. Provision of easements for the location and installation of any planned utilities**

The proposal currently provides adequate easements for utilities and all necessary easements shall be clearly located on the final plat to adequately satisfy these requirements.

**7. Provision of legal and physical access to each parcel**

Sunburst Drive provides access to the project site with an internal road network providing access to the individual condominium units. The interior road network is proposed to comply with the road standards in the Lake County Subdivision Regulations except for two areas, an existing bridge across Johnson Creek and the southern entrance gate. In order for these standards to be reduced, the governing body must find that the request meets the conditions for granting a variance found in Section VIII-B of the Lake County Subdivision Regulations. The developer has indicated he will upgrade two existing County roads leading to the project site, South Ferndale Drive and Sunburst Drive, to current County standards. Therefore, if the variances are adequately addressed, this subdivision would not significantly impact access, traffic or the public roads.

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.
  - Adequate provision for ingress/egress to the County maintained roadway would be provided to each of the units on either side of Johnson Creek if an additional entrance to the southern portion of the property were constructed. The existing south side entrance gate could be maintained with a 15.5-foot driving surface width and utilized in conjunction with the new entrance without impacts to the public health, safety, or general welfare or injurious to other adjoining properties. Leaving the bridge in tact would result in no negative water quality impacts to Johnson Creek. If there is adequate provision to the county roadways from the units on either side of the creek as described above, having a one lane bridge for traffic circulation within the subdivision would not require a variance be granted and would most likely result in traffic speeds more beneficial to public safety.
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.
  - There are no physical factors limiting the ability of the developer to meet the road development requirements of the subdivision regulations. The historical and cultural value of the gate and bridge are not considered a hardship in this

regard.

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, if a secondary ingress/egress is constructed south of Johnson Creek as described in the commissioners report section II.E.

As stated in section II.E of the commissioners report, the Planning Board has recommended approving the variance requests provided the developer comply with condition number 15 of the recommended conditions of approval.

PLANNING BOARD RECOMMENDATIONS  
HISTORIC KOOTENAI LODGE CONDOMINIUM MAJOR SUBDIVISION  
APRIL 14, 2005

After review of the site, proposed roadway, service provider and public agency comments, the application, related submittal information and revisions, the Lake County Planning Board recommends approval of the Historic Kootenai Lodge Condominium Major Subdivision and variance requests for the existing bridge and gate subject to the following conditions:

General Conditions:

1. Prior to commencing activities in furtherance of satisfying any conditions required for final plat approval, the record owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale shall sign the Montana Department of Environmental Quality Local Government Joint Application Form and submit evidence of the same to Lake County Planning Department staff. (*Lake County Subdivision Regulations (LCSR)*)
2. The final plat and plans, specifications, and construction of all improvements shall meet all applicable design standards and requirements of the Lake County Subdivision Regulations, the Montana Subdivision and platting act, and the Montana Code Annotated, Title 70. Property, Chapter 23. Unit Ownership Act -- Condominiums. (*Montana Subdivision and Platting Act(MSPA) andLCSR*)
3. The development of this division shall be in accordance with the general design, information, proposals and agreements provided in the preliminary plat submittal and revisions, except as modified by these conditions. (*MSPA & LCSR*)

Prior to Filing the Plat:

4. A Declaration and Bylaws for the condominium property that meets 70-23-3 MCA shall be filed with the final plat. (*MCA 70-23-3*)
5. The stormwater, water supply and sewage disposal systems and plans shall be reviewed and approved by Montana Department of Environmental Quality (DEQ) prior to final plat filing. Prior to sending the stormwater, water supply and sewage disposal plans to DEQ the consultant shall obtain copies of comments from the Planning Department regarding the sewage disposal system and include these comments in the submittal to DEQ. All approved stormwater management techniques shall be implemented and all stormwater structures shall be installed according to the approved specifications. (*MSPA, LCSR and Findings of Fact Section 5.d*)
6. The proposed sewer facility shall be established prior to filing the final plat as specified in 7-13-2201 through 7-13-2351, Montana Code Annotated. (*MCA 7-13-2201 through 7-13-*

2351 and staff report Section II.C)

7. The sewer line construction plans shall be reviewed and approved by Lake County prior to construction with the public road right-of-way. (*commissioners report Section II.C, Findings of Fact Section 4.c and Lake County Resolution Number 1001*)
8. South Ferndale Drive and Sunburst Drive from Montana Highway 83 to the southern edge of the property shall be widened to current County standards, 26 feet wide with shoulders and drainage ditches, and sealed with a 2.5-inch asphalt mat. Prior to construction, the roadway improvement plans shall be reviewed and approved by Lake County. (*commissioners report Section II.E and Findings of Fact Section 4.c*)
9. The roadways within the subdivision, as shown on the preliminary plat, shall be developed to Lake County standards including a minimum width of 26-foot drivable surface and a minimum of a chip-sealed surface. (*LCSR*)
10. An engineer licensed in the State of Montana shall certify the roadways mentioned in conditions 8 and 9 have been built to Lake County standards and all proposed stormwater management, soil stabilization and revegetation techniques have been implemented during construction. (*commissioners report Sections II.E, II.G and II.J and Findings of Fact Sections 4.c and 4.e*)
11. The owner shall provide a Centralized Box Units (CBU) or require post office boxes as part of the covenants to accommodate mail deliveries. If a CBU is provided it shall be placed on 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." (*commissioners report Section II.L*)
12. The owner shall provide evidence to the Planning Department that the following infrastructure and land set-aside have been completed to the requirements of the Ferndale Volunteer Fire Department: (*commissioners report Section II.L and Findings of Fact Sections 1 and 4.f*)
  - 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, at the south end of the stone bridge.
  - A 2 ½ inch minimum fire department connection to be plumbed in the public water system on-site. The Ferndale Volunteer Fire Department shall approve the site.
  - A building site large enough for a 40-foot by 50-foot fire station on Lot 4 of "The Ridge" subdivision. The location of the site shall be approved by the Ferndale Volunteer Fire Department.
13. The owner shall obtain an amendment of "The Ridge" covenants allowing 1) The off-site sewer facility 2) A lot for a future fire station for the Ferndale Volunteer Fire Department 3) A helispot for the Bigfork Fire and Ambulance Service. A copy of the amended covenants

shall be provided to the Lake County Planning Department. (*commissioners report Section II.C*)

14. An easement for a helispot for the use by the Bigfork Fire and Ambulance Service shall be established in the area of the off-site drainfield. The location of the helispot shall be determined by the owner and the Bigfork Fire and Ambulance Service and a letter submitted to the Planning Department confirming the location and signed by both parties. (*commissioners report Section II.L and Findings of Fact Sections 1 and 4.f*)
15. The plat shall be amended to show a second ingress or egress either next to the existing gate or in alignment with Wapiti Drive. The second entrance shall be constructed with a minimum 15-foot driving surface with one way directional travel unless two way travel is preferred in which case the minimum driving surface shall be 26-feet. (*commissioners report Section II.E and Findings of Fact Sections 7*)
16. A maximum of 24 boat slips shall be permitted for the entire property. A statement shall be placed on the final plat reflecting this condition. (*Findings of Fact Sections 4.f and 5.d*)
17. A private road users maintenance agreement shall be filed with the final plat. (*Findings of Fact Section 4.c*)
18. The developers shall install road and stop signs within the subdivision in accordance with the specifications of Resolution #04-01 prior to final plat filing. (*LCSR and Lake County Resolution Number 04-01*)
19. No new structures except lake related structures permitted by the Lake County Lakeshore Protection Regulations shall be located closer than 80 feet from the high water mark of Swan Lake and the Swan River. Modifications to existing structures within the 80 foot setback is allowed provided the structures maintain the existing lakeshore setback. Within this setback no vegetative disturbance shall take place other than for the construction of walking paths, to modify existing structures and clearing of trees for reasons of health and safety. (*commissioners report Sections II.I and II.J and Findings of Fact Sections 3 and 4.d*)
20. A building setback shall be shown on the final plat along Johnson Creek. The setback along Johnson Creek shall include the 100-year floodplain width or 100 feet on either side of the stream, whichever is greater. Within this setback no vegetative disturbance shall take place other than for the construction of walking paths and clearing of trees for reasons of health and safety. (*commissioners report Sections II.I and II.J and Findings of Fact Sections 3 and 4.d*)
21. The plat shall be revised to accommodate units with a 20-foot building setback along the eastern property line from Johnson Creek to the southern edge of the property. This setback shall be shown on the final plat. Within this setback no vegetative disturbance shall take place other than for the clearing of trees for reasons of health and safety and for construction of roads and utilities. (*Findings of Fact Sections 1 and 4.d*)

22. Covenants shall be filed for the subdivision containing the elements and wording submitted along with the preliminary plat application and shall be modified as stated in the commissioners report and findings of fact. (*commissioners report Section II.M*)
23. The utilities, including electrical power and telephone, from the existing overhead services, shall be installed underground to all lots within the division in accordance with Section IV-A-14 of the Lake County Subdivision Regulations prior to final plat filing. (*LCSR*)
24. The utility easement and the service provider right-to-access statement found in Section IV-A-14 of the Lake County Subdivision Regulations shall appear on the final plat. (*LCSR*)
25. All easements and rights-of-way shall be filed with and shown on the final plats including those easements used to access the property. Proof that the roadways are located within the easements and rights-of-way shall be submitted to the Lake County Planning Department prior to final plat filing. (*LCSR*)
26. The developer shall file a Lake County Weed Board-approved weed management plan and show evidence of having paid the required inspection fee prior to final plat filing. (*commissioners report Section II.K*)
27. The following statement shall be filed along with the final plat: “Law enforcement protection will be provided to the residents of the Historic Kootenai Lodge subdivision as it is afforded to all other citizens of Lake County. Law enforcement resources and personnel are in short supply and calls are prioritized. Lot buyers are hereby put on notice that it could be quite some time before emergency calls are answered, although law enforcement personnel will respond as quickly as possible.” (*commissioners report Section II.L*)

On going conditions:

28. During construction or remodeling of the condominium units the owner shall utilize a hauler to remove the construction waste. After construction the owner shall contract directly with BFI or another contractor to collect and haul the household waste. (*commissioners report Section II.L and Findings of Fact Section 4.c*)
29. Prior to construction involving road crossings, buried utility lines, or any modifications to the existing structures within the floodplain along Johnson Creek or Swan Lake the owner shall obtain a permit from the Lake County Board of County Commissioners and Floodplain Administrator. (*Findings of Fact Section 5.d*)
30. Proper permits from the Lake County Conservation District shall be required for any work within the bed and banks of Johnson Creek (*Findings of Fact Section 5.d*)
31. Prior to construction of the units the owner shall obtain a building notification permit from the Lake County Planning Department. (*commissioners report Section II.M*)

32. Activities which fall under Montana Code Annotated Title 50, Chapter 51 shall be prohibited on the property. (*commissioners report Section II.M*)
33. All unit owners shall waive their right to protest a Road Improvement District (RID) for Sunburst Drive. (*Findings of Fact Section 4.c*)
34. All new and modified structures shall not exceed 30 feet in height. (*commissioner report Section II.I and Findings of Fact Sections 4.f*)

This recommendation for conditional approval is for the creation of 57 condominium units to be developed with 49 single-family structures and 4 multi family structures.