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MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

SWAN LAKERS, a Montana non-profit corporation, and BRADLEY WIRTH, an individual,

Plaintiffs and Petitioners,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, a body politic and a political subdivision of the State of Montana, THE MILHOUS GROUP, a corporation,

Respondents.

Cause No. DV-06-105/consolidated with Cause No DV 05 143

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT- STATUTORY CLAIMS

INTRODUCTION

This matter arises out of the Lake County Commissioners' (Commissioners) approval of the Kootenai Lodge Subdivision proposed by Milhous and Associates (Milhous) of Boca Raton, Florida. The development originally proposed 59 units on a 41- acre tract adjacent to Swan Lake and the Swan River, as it leaves the lake. The development poses serious environmental and public safety risks, which were not addressed during the planning process.

In Montana, subdivision of property is a privilege, not a right. That privilege is conferred by the governing body, if a developer meets the procedural requirements of the Montana Subdivision and Platting Act (MSPA) and local subdivision regulations, and if the governing body decides that the impacts of the development are acceptable in view of its constitutional obligations to protect the environment. As detailed below, the Commissioners May 10, 2005, approval of preliminary plat for Kootenai Lodge failed to comply with the MSPA and Lake County Subdivision Regulations (LCRS) and other aspects of Montana law. In addition to this brief, Swan Lakers file separate briefs on (1) the constitutional issues that pertain to both the original and revised plats, and (2) remaining issues pertaining to the revised preliminary plat issued in April, 2006.

BACKGROUND ON THE PROPOSED DEVELOPMENT

Petitioner Swan Lakers, Inc. has over 245 registered members. The organization was formed in part because of intense local opposition the Kootenai Lodge project, and the organization's membership has opposed the development as it has been presented since the outset. This Court previously ruled that Swan Lakers had standing to pursue this matter. The Milhous Group is a land development corporation based in Boca Raton, Florida. Neither Paul