

HISTORIC KOOTENAI LODGE CONDOMINIUMS

MITIGATION RESPONSE

**PRESENTED BY
THE MILHOUS GROUP**

APRIL 22, 2005

LANDSCAPE BUFFER ALONG NORTH PROPERTY LINE

Issue

Concern has been raised about the visual impact of the proposed the Historic Kootenai Lodge Condominiums on adjacent properties to the north.

Mitigation Response

While homes along the Swan Lake waterfront are very often separated by little or no landscape buffers, the Milhous Group is willing to provide a twenty (20) foot landscape buffer comprised of low berms and landscape material to screen the new buildings from the adjacent residences. *See Exhibit A (p. 14).*

SHERIFF'S DEPARTMENT CAPACITY TO SERVE THE HISTORIC KOOTENAI LODGE CONDOMINIUMS

Issue

Sheriff Barron has advised the County Commission that he currently has limited service capacity in the Swan Lake area and needs additional officers. The implication of his testimony is that the Historic Kootenai Lodge Condominiums will only make matters worse.

Mitigation Response

The Historic Kootenai Lodge Condominiums have been designed to be a secure, private community. It is also important to mention that there will be a care taker on site which will limit the probability of burglaries and other illegal activities, which should help to limit any impact to the Sheriff's resources

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

Mr. Gnose also estimates that an average of 70% of a person's property tax revenue funds the public school system, 15% funds state programs and 15% funds county programs. Therefore, based on the above assumptions, Lake County alone can expect to gain between \$85,500 and

\$106,875 annually (in 2005 dollars) at full build out to provide service to the future residents. In addition, the school system will receive in excess of \$490,000 per annum.

According to Sophie Seegers of the Lake County Sheriff's Office, in 2003 the Sheriff's Office received 27,786 calls. She felt a safe estimate of the calls coming from the Ferndale area in 2003 was 100, or less than 0.4 percent of the total calls. (Ms. Seegers did not have an accurate number of total calls in 2004 available for comparison.) In a February 23, 2005 email message, she wrote, "There are relatively few crimes against persons, and quite a few more property crimes. Most of the calls in the area would fall into the suspicious activity category. That could easily lead into the discovery of burglaries or other crimes, but most of the time those type(s) of calls turn out to be relatively benign." As you can imagine, it is less costly for the Sheriff's Office and the court system to deal with suspicious activity calls than crimes against persons such as assaults or domestic violence.

According to the Lake County Commissioners' Office, the Sheriff's current budget is \$2,167,871. \$100,000 in annual tax revenue represents 4.6 percent of his total budget, yet the area only demands less than one-half of one percent of his office's calls and arguably a smaller amount of his office's resources based on the types of calls received from this area. Admittedly, not all of the tax revenue generated from the Kootenai Lodge project will help to fund the Sheriff's office. However, a large portion of the revenue generated from this development could be directed to the Sheriff's office if the County Commissioners believe his needs rank higher than other priorities.

In addition, the Milhous Group is prepared to make a mitigation offer in the form of a one time cash payment in the amount of \$50,000 to be paid at the time of recording the final plat to supplement available revenues prior to the time that tax revenues began to increase.

PARK LAND DEDICATION

Issue

Initially the Milhous Group understood that they would be required to obtain a waiver of the park land dedication requirement in the County's subdivision code. Subsequently it was determined that the land set aside for passive and active recreation for the owners of units in the Historic Kootenai Lodge Condominiums was more than sufficient to satisfy the requirement of the Code. A question has been raised as to whether the required park land is to be open to the general public.

Mitigation Response

During the review of this subdivision there has been discussion regarding whether park land is required for the use of the public at large or for the future residents of this subdivision. The Lake County Subdivision Regulations and the Montana Subdivision and Platting Act section 76-3-621, MCA consistently refer to park land being set aside for the use of residents within the subdivision,

not the general public. For example, Section 76-3-621(5)(a) states, “In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks *to serve the subdivision.*” (Emphasis added.) Also see 76-3-621(6)(a)(i), as discussed below, for confirmation that the parkland dedication is intended only to serve the future subdivision residents unless the governing body has formally adopted a park plan that establishes the needs and procedures for use of park funds. Lake County has not adopted a park plan that establishes needs and procedures for handling park funds, so a park for public use cannot be required of the developer under Montana law.

The Milhous Group has asked for the park land dedication requirement to be waived according to the provisions of section 76-3-621(6), MCA. This section states:

“The local governing body shall waive the park dedication requirement if:

- (a) (i) 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 (ii) 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) [in this case, 4.944 acres];
- (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical or natural resources; agricultural interests; or aesthetic values; and (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in section (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).” [again, 4.944 acres.]

The preliminary plat contains 8.98 acres in the area of the clubhouse and pool and 80-foot setbacks from the Swan Lake, the Swan River, and Johnson Creek alone. This equates to 21.94 percent of the entire property, which is double the park land dedication requirement. Approximately 75% of the property will be left in open space and available for the use of all residents and 83% of the trees will remain. The property also has approximately 2,400 feet of lake and river frontage and the proposal includes a swimming pool and clubhouse equipped with recreational equipment. Clearly, this proposal provides for the land area, facilities and amenities necessary for the recreational needs of the persons who will reside in the development.

SETBACK ALONG SUNBURST DRIVE

Issue

Several of the new cabins appear to be located on or near the edge of the right of way along Sunburst Drive. The issue is whether the buildings should be set back from the right of way line to maintain the character of the area.

Mitigation Response

The Milhous Group is prepared to provide a twenty (20) foot setback for all buildings along Sunburst Drive. See Exhibit A, p. 14. The Milhous Group submits that this setback, in the context of the existing vegetation located in the western seventeen (17) feet of the right-of-way of Sunburst Drive, substantially mitigates any potential adverse impacts on Sunburst Drive and the properties immediately to the east.

Within the 20-foot structural setback from Sunburst Drive, The Milhous Group will install a mixture of ponderosa pine, Douglass fir and paper birch trees at a spacing of 4 per 100 lineal feet. 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. Between the trees, redosier dogwood and mountain alder shrubs will be planted to fill in any gaps. These shrubs grow up to 12 feet in height and spread horizontally. All of the above tree and shrub species are native to the area and many already exist and are flourishing on the property. It is also important to note that an extensive vegetative buffer already exists along most of Sunburst Drive.

DOCKS & WATER SAFETY

Issue

There is concern that the Historic Kootenai Lodge Condominiums will increase lake usage which could result in unsafe conditions.

Mitigation Response

The existing regulations allow marina slips per each twenty (20) linear feet of lake front. The Kootenai Lodge property has more than 1,350 feet of lake frontage which translates into an entitlement to sixty-seven (67) marina slips. The Milhous Group has already agreed to limit the number of docks to twenty-four (24) slips, which substantially mitigates the impact of the redevelopment of the Historic Kootenai Lodge Condominium on the recreational value of the lake.

As additional mitigation, the Milhous Group proposes to provide every owner of a unit in the Historic Kootenai Lodge Condominium with a reliable navigational chart of Swan Lake which identifies no wake zones, areas used for swimming and rafting and navigational hazards. To the extent that additional restrictions are needed to protect the safety of swimmers and boaters, the Milhous Group submits that such restrictions should be applied to all users of Swam Lake, not just the owners of units at the Historic Kootenai Lodge Condominium.

DENSITY

Issue

Density has been the subject of considerable concern during the public hearing process, primarily related to the compatibility with the proposed Historic Kootenai Lodge Condominiums and surrounding properties. Additional concerns relate to impact on local roads and lake access and use.

Mitigation Response

The proposed density of the Historic Kootenai Lodge Condominiums is based on a number of considerations. First, the density was calculated to provide sufficient revenue to support the rehabilitation of the historically and architecturally significant buildings on the site. The practical reality is that the cost of rehabilitation generally exceeds the value of the rehabilitated structures. That is why the Federal Government provides historic rehabilitation tax credits only for rehabilitation of income producing property, primarily commercial properties. Unfortunately, the market study for the redevelopment of the Kootenai showed that it is not economically feasible to redevelop the Kootenai Lodge property as a qualifying income producing property use and that only a for-sale product was viable. Consequently, rehabilitation of the existing buildings of significance must be supported by income generated by the balance of the project. This is a common practice, where historic properties are allowed uses not otherwise permitted or increased density in order to support rehabilitation.

... because it is not economically feasible to convert the buildings to income producing real estate, historic preservation tax credits are not available.

Second, the Kootenai Lodge Property is not zoned. That is a matter of considerable significance in the market place because the value of land is based to a significant degree on what is permitted as of right under applicable regulatory environment. The reality is that the Kootenai Lodge Property has significant economic value in its un-zoned condition which is independent of the historic values which the County and the Milhous Group hold dear. As a result, the economics of the redevelopment of the property must support both high rehabilitation costs and the value of the land based on existing regulatory conditions.



Finally, the character of the Kootenai Lodge and its immediate environment are important considerations. New development must respect and reinforce the character of the existing structures and landscape. The pattern of improvements at the Lodge is not one of a large lot subdivision. In point of fact, the essential character of the Lodge which justified listing on the National Register of Historic Places is a relatively small portion of the overall site. While the land area to the north of Johnson Creek and the land on the east side of the existing drive is a part of the historic district, the “treasure” of the Kootenai Lodge – the images which define its character – is the land, trees and buildings along the lake to the southwest of the existing drive along the Lake. The actual pattern of structures and landscape in this area is nine (9) residential units and six (6) lodge rooms on 4.5 acres of land, a density of one unit per 0.3 to 0.5 acres, depending on how the six (6) rooms in the lodge are considered.

A review of the preliminary plat for the Historic Kootenai Lodge Condominiums shows that the new units have been carefully planned to reflect the physical character and spatial distribution of buildings of the existing Lodge, at a density which ranges from the relatively intense distribution in the area where the existing lodge and cabin buildings are located to an average of one unit per 0.88 acres on the balance of the property.

In the area of the existing lodge buildings, the existing ten (10) structures will be converted into fifteen (15) residential units, resulting in effectively the same net density as currently exists, depending on how the lodge units are considered. In the area to the north of Johnson Creek, twenty-three (23) new residential units will be constructed on 17.4 acres of land, a density of one unit per 0.76 acres of land with only five (5) of the units located on the river front. In the area south of Johnson Creek, excluding the area of the existing lodge and cabins, nineteen (19) residential units will be constructed on 19.02 acres of land, a density of one unit per acre of land. When viewed in this perspective, it should be obvious that the only area which differs significantly in intensity of use from the range of lots in the surrounding area which is the area of the existing lodge buildings which reflects the character which is the treasure of the Kootenai Lodge.

In the final analysis, much has made during the public hearings about density as parties for and opposed to the Historic Kootenai Lodge Condominiums manipulate the available data to serve

their own purposes. The Milhous Group respectfully submits that the critical issue of compatibility is not, however, simply a matter of math. The number of units is one element of community character, however, the location, spacial distribution and character of the units is of equal importance. The immediate vicinity of the Kootenai Lodge is not a uniform community of one plus acre lots. The raw data shows that there are 176 lots which front on the Swan Lake and Swan River to the north and south of the Kootenai Lodge property. Of those 176 lots, 68 are smaller than one unit per 0.75 acres of land and a total of 98 lots have an acreage of one (1) acre or less. (The location of those lots of 1 acre or less is identified in Exhibit B on page 15) This data makes it obvious that a range of densities from the Kootenai intensity (0.3 - 0.5) to one (1) unit per 0.88 acres to one (1) unit per acre is compatible with the area because more than one-half (1/2) of the total existing lots already have that character.

Nor can there be any reasonable concern about the service demands of the proposed Historic Kootenai Lodge Condominiums. The record evidence shows that potable water to serve the project's needs is readily available from a well drilled to an aquifer below 165± feet. And, based on the demographics of likely purchasers (affluent, seasonal residents) the only impact the proposed Historic Kootenai Lodge Condominiums will have on educational facilities is to provide additional tax revenues. Concerns about additional traffic – the number of trips generated by the various densities which have been suggested – e.g. 29 and 50 units – is insignificant in comparison to the proposed traffic from fifty-seven (57) units and the capacity of the existing roads. Nevertheless, the Milhous Group has agreed to widen and apply a 2½ inch asphalt mat on Sunburst Drive along its entire length to the benefit of all of the residents of the area.

With regard to waste water treatment, the Historic Kootenai Lodge Condominiums will be served by a community system which will treat effluent at an off-site location away from Swan Lake. The record evidence shows that the treated effluent discharged off-site will be equal to the discharge of twenty-nine (29) homes on standard septic tanks and will be discharged away from the Lake at a site with substantial soil depth to adsorb phosphorous. The Milhous Group believes that the proposed off-site community treatment system represents a substantial improvement over the waste water disposal systems serving the existing units along the Swan Lake and River. Moreover, the Milhous Group has agreed to design the system so that other property owners in the area, if they wish, may connect to the system.

Lastly, the Milhous Group has already committed substantial support for improved fire and emergency services to the area by agreeing to provide a site for a new fire station and a heliport. And, while the sheriff has used occasion of the Historic Kootenai Lodge Condominiums to underscore his desires for additional funding, the number and character of the units proposed will not diminish the level of service currently available to the area of the Swan Lake. It should be noted that the seasonal nature of the Historic Kootenai Lodge Condominiums and the demographics of likely purchasers mean that the days of actual occupancy of the condominium units would be one-seventh (1/7) of the days of occupancy of thirty-five (35) year-round residents. More importantly, the net tax revenues which will be generated by the Historic Kootenai Lodge Condominiums would allow the County to allocate additional funding to the Sheriff to better meet existing and future service demands.

The Milhous Group's original analysis indicated that sixty-five (65) units was a prudent and appropriate density given all of these considerations and the costs and market risks associated with the conversion of the Lodge structures to residential uses. Nevertheless, when staff and the public questioned the density, the Milhous Group carefully reconsidered its plans and reduced the density to fifty-seven (57) units. Under the revised plan, forty-two (42) new cabins will be placed on approximately 36.42 acres of land, a pattern of development of one (1) unit for approximately 0.9 of an acre. In other words, the Milhous Group has already mitigated with regard to the density concerns.

... the Milhous Group has already mitigated with regard to the density concerns.

OFF-SITE WASTE WATER TREATMENT LOCATION

Issue

Concerns have been raised with regard to the availability of off-site waste water treatment, primarily because of the recent amendment of the covenants and restrictions for the Ridge Subdivision.

Mitigation Response

The Milhous Group submits no additional mitigation is necessary or appropriate for several reasons. First, it remains possible that further amendments to the covenants and restrictions can be negotiated or otherwise accomplished. However, in the event that required modifications cannot be accomplished, the Milhous Group is confident that appropriate alternative sites are available and that off-site waste water treatment is economically and legally feasible. More importantly, the Milhous Group submits that no additional mitigation is required because in the event that Lot 4 is ultimately not available for the planned treatment facility, the preliminary plat approval will have to be amended with appropriate public consideration of any alternative location.

STORMWATER MANAGEMENT

Issue

Concern was raised as to how storm water would be managed to avoid contaminants entering into surface waters.

Mitigation Response

The environmental assessment describes the storm water management practices which will be employed to manage storm water on the Historic Kootenai Lodge Condominiums site. The following is a summary description of the proposed storm water management system.

Storm Water Management for the Historic Kootenai Lodge Condominiums will be in accordance with Montana Department of Environmental Quality (MDEQ) Circular 8, Montana Standards for Subdivision Storm Drainage. All final plans and specifications will be submitted for formal approval to the Montana Department of Environmental Quality. The submission of plans to the Montana Department of Environmental Quality will include a summary of the basic design, general layout of drainage patterns and drainage structures, detailed plans and specifications and an engineering report. The engineering report will identify the extent of the storm drainage including delineation of the drainage areas, estimates of peak flows and provisions for detaining or retaining these flows. The engineering report will also address the fate of most common contaminants in the water quality profile. Design goals will analyze pre-development and post-development hydraulic and nitrogen loading to state waters.

Construction Storm Water Management Plan:

The Construction Storm Water Management Plan will be in accordance with Montana DEQ Storm Water Best Management Practices (BMP's) to minimize or eliminate the potential for pollutants and sediment to reach surface waters through storm water runoff. We will obtain a General Permit for Storm Water Discharges Associated with Construction Activity.

The plan will utilize vegetative buffer strips, silt fences, straw bale dikes, minimizing clearing, temporary sediment basins and temporary seeding. Construction materials will not be stored near any waterways. When construction is complete, a vegetative cover will be established that is capable of providing erosion control equivalent to pre existing conditions at the site.

Long Term Storm Water Management Plan:

The Long Term Storm Water Management Plan will utilize permanent and structural Best Management Practices (BMP's) to collect and filter storm water from structures, roadways, driveways, drainage swales and landscaping. The Long Term Storm Water Management Plan will include the use of multi-media filtration, sediment traps and basins, vegetative buffer strips, tree and

shrub planting.

The proposed filtration system is a multi-media filtration design combined with pre-settling sedimentation containment and overflow by-pass protection. Water flow enters the filtration units and is directed into a pre-settling sedimentation chamber that collects heavy sediments and debris passing through the system. Water then passes through transition inlets at the top of the sediment chamber into the filtration chamber. The primary media, Sorb-44, traps hydrocarbons through adsorption to a hydrophobic cellulose material. The secondary media is a special blend of activated carbon (AC-10) that removes remaining hydrocarbons as well as a variety of other organics, and metals and other contaminants from the runoff. Water then passes through the bottom of the treatment chamber into the catch basin. Treated storm water discharge is then dispersed on site utilizing subsurface soil absorption trenches (exfiltration to the soil profile).

The filtration units are designed to trap contaminants contained in the “first flush” from storm events while allowing overflow protection to eliminate flooding during heavy wet weather events, and:

- Removes hydrocarbons, metals, sediments and other organic chemical compounds
- Satisfies structural BMP requirements for NPDES and MDEQ
- Dual media filtration system provides consistent removal efficiencies between change-outs
- Utilizes pre-settling sediment chambers prior to treatment chambers

The proposed filtration system as the first step in the Long Term Storm Water Management Plan is an effective pre-treatment Figure S-1.

Placement of sod over imported topsoil will extend the depth of the active root zone and increase the nitrogen uptake by plants within the landscaped area. This improvement of plant nitrogen consumption combined with prudent fertilization practices will render a net reduction of the nitrogen loading on state waters as a result of development activity.

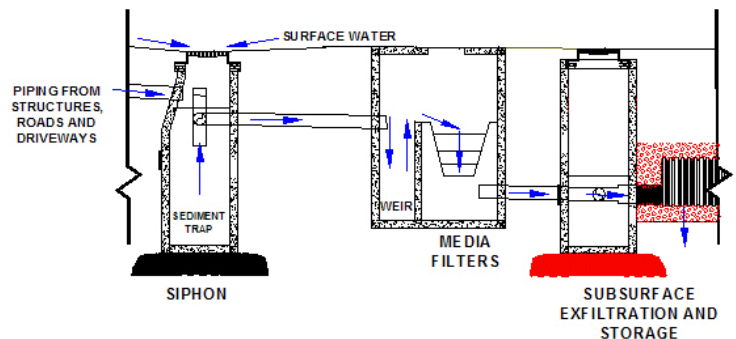


FIGURE S-1 STORM DRAINAGE

Legal Status of Proposed Off-site Waste Water Treatment Facility

Issue

Question was raised as to whether proposed off-site waste water treatment facility is truly public so that access to public rights of way will be available.

Mitigation Response

The proposed off-site waste water treatment facility will be established as a county sewer district under the Montana Statutes as follows:

Name of Entity:

Kootenai County Sewer District

Type of Entity:

The Kootenai County Sewer District will be chartered by the Montana Secretary of State as a County Sewer District, pursuant to 7-13-2201, MCA, *et seq.*

“Public” Nature of Entity:

A County Sewer District by definition [§7-13-2201(3), MCA] is a “unit of local government” to “be treated as a municipality.”

Eligibility/Authority for County Sewer District to Use County Roads:

§7-13-2101, MCA, entitled, Authority to Permit Construction of Utility Mains, authorizes the County Commissioners to permit the use of its right-of-ways for sewer mains/lines to public entities such as cities, towns, and municipalities.

§7-13-2219, MCA, entitled, Power to Construct Works Across Roads and Other Obstacles, authorizes a County Sewer District to “construct sewer mains/lines across streets, avenues and highways.”

§7-13-2220, MCA, entitled, Right-of-Way Across State Lands, grants a County Sewer District the right to “locate, construct and maintain District works over and through any lands which are the property of the State and the District has the same rights and privileges relating to the right-of-way as are granted to municipalities.”

Authority to Provide Service to Other Land Outside the Kootenai Lodge Historic Subdivision:

Although the initial District boundaries for the Kootenai County Sewer District will be the boundary of the Kootenai Lodge Historic Subdivision, §7-13-2341, MCA, provides the express authority to a County Sewer District to expand its service district boundary to include other land upon the petition of the land owner.

Public Benefit of Facility:

The Milhous Group has designed the waste water treatment facility to provide treatment to property in the vicinity, in addition to the Kootenai Lodge property:

a) Sewer Conveyance Facilities

Although 4" transmission lines are more than adequate to serve the Kootenai Lodge property, the system is designed for 6" lines and lift stations adequate to handle the flows in the 6" lines.

b) Sewer Treatment Facility

The land that will be conveyed for the treatment site by the Milhous Group to the Kootenai County Sewer District will have sufficient land for both the modular treatment expansion and the land application component.

In summary, the increase in both transmission line size and the design size of the lift stations, together with the ability to expand treatment by modular additions, coupled with the additional land for application, has the combined result of the capacity to treat approximately 180 Equivalent Dwelling Units (EDU's) which will result in the sewage treatment available capacity of approximately 123 EDU's over and above that to be used by the Historic Kootenai Lodge development.

Recognizing the increasing cost of private septic systems (reported by the Lake County Sanitarian) to range in cost from \$5,000.00 to \$15,000.00, together with the often unattainable alternative to drain field siting on the many very small existing tracts in the Swan Lake area, utilizing the Kootenai County Sewer District treatment facility may not only be economically feasible, but, indeed, in many instances, the only realistic alternative to a new or failing private septic system.

SETBACKS FROM JOHNSON CREEK

Issue

The Milhous Group has requested that the setback along Johnson Creek be reduced from 100 feet to 80 feet.

Mitigation Response

The Milhous Group continues to believe that eighty (80) feet on either side of the Creek – a one hundred-sixty (160) foot wide corridor – is sufficient to protect wildlife use of the creek corridor. The Milhous Group plans to locate all new buildings at least eighty (80) feet from Johnson Creek and outside of any established FEMA flood plain. There will be no removal of vegetation from the eighty (80) foot buffers except for the placement of small pedestrian paths.

The Historic Kootenai Lodge Condominiums proposal exceeds all building setback requirements of the surrounding Swan Sites Zoning District. According to the zoning regulations, the development of lots in Swan Sites I must include 20-foot setbacks along Johnson Creek and there is no requirement for vegetation maintenance. This results in a 40-foot stream corridor directly to the east of the property. The 80-foot setback and vegetative buffer will provide a 160-foot, densely vegetated wildlife corridor, which is four times what is required just to the east of the property.

FRACTIONAL OWNERSHIP

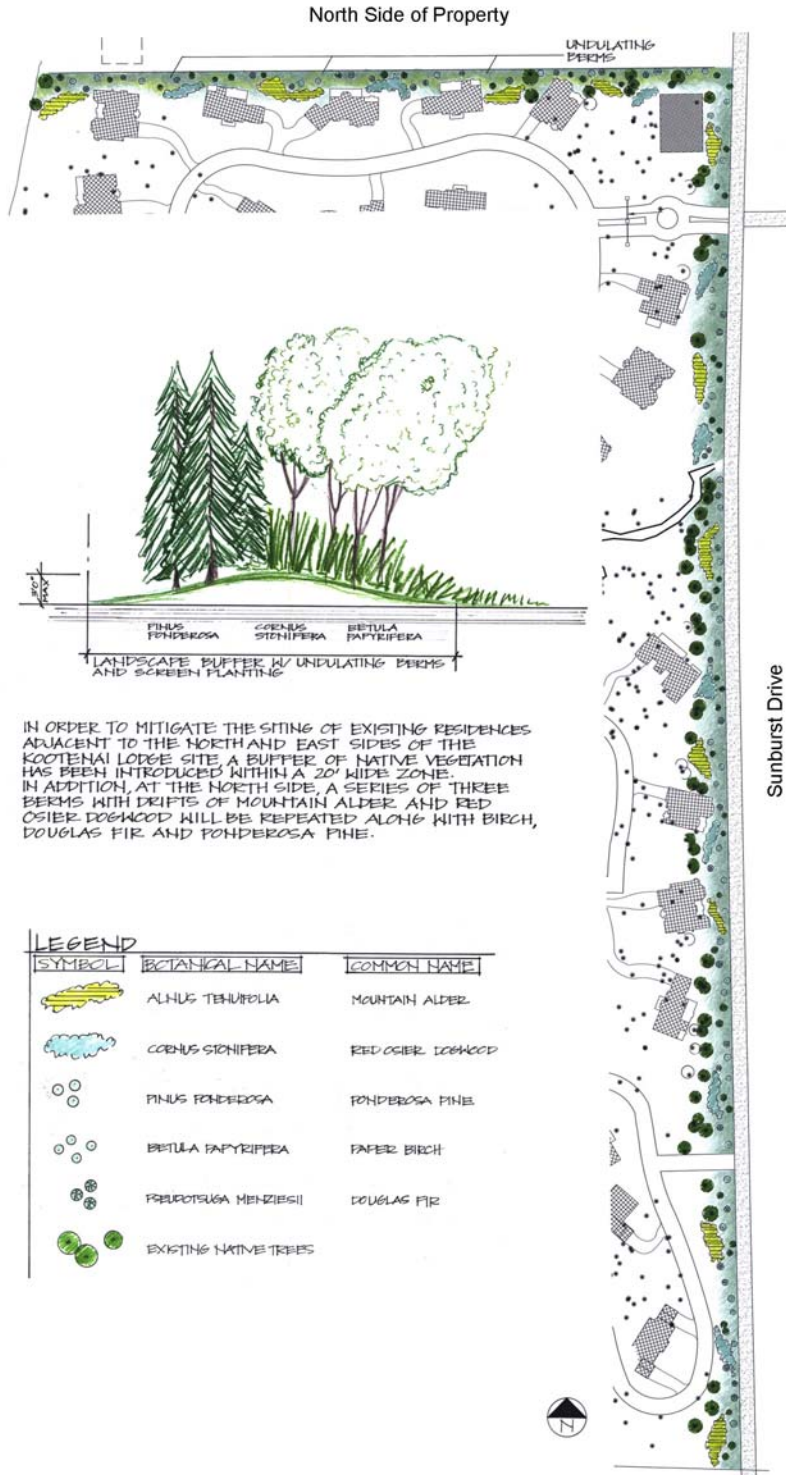
Issue

A concern has been raised that the individual units in the Historic Kootenai Lodge Condominiums will be made into fractional interests.

Mitigation Response

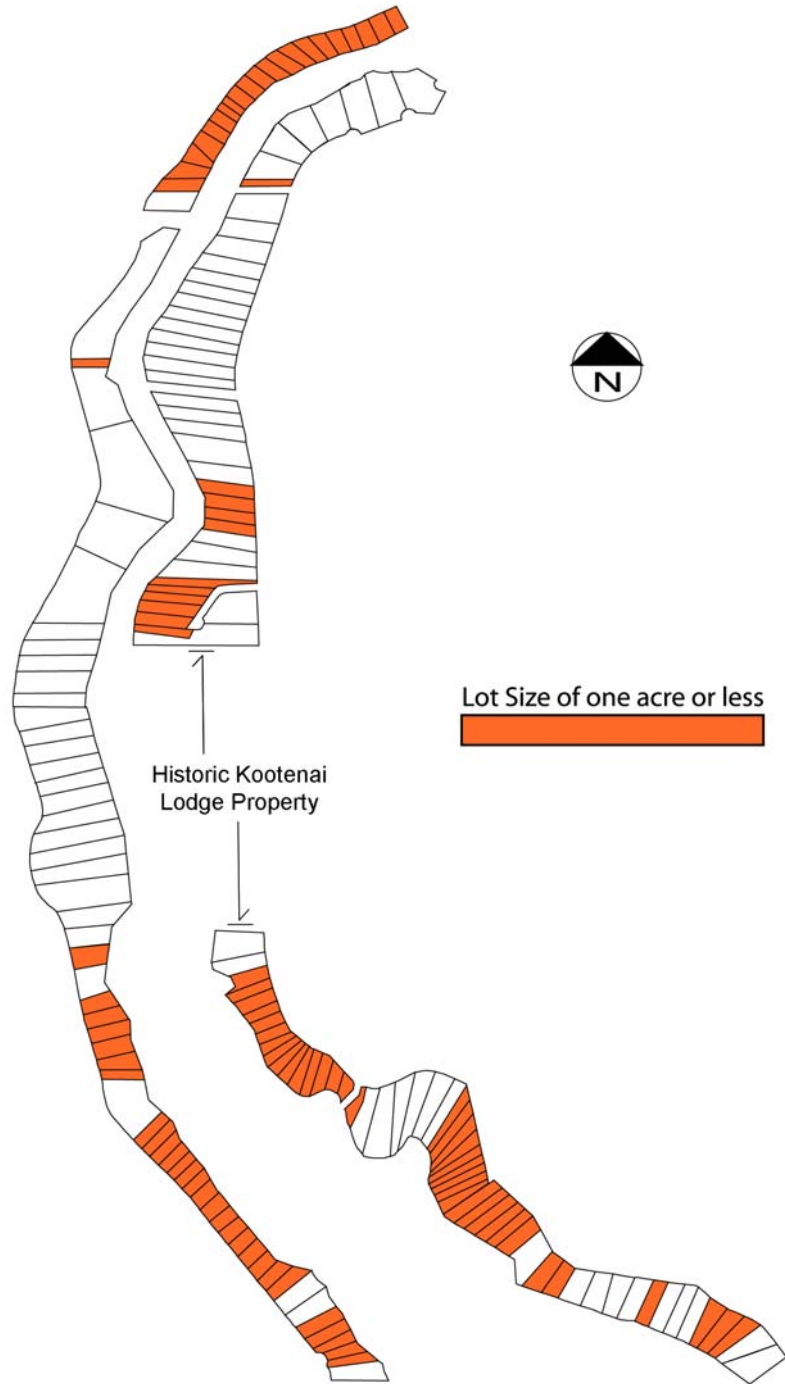
The Milhous Group previously agreed to include a prohibition against fractional ownership in the Covenants and Restrictions for the Historic Kootenai Lodge Condominiums and hereby restates its intent to prohibit fractional ownership interests in the Covenants and Restrictions.

EXHIBIT A: PROPOSED LANDSCAPE BUFFERS



Historic Kootenai Lodge Condominiums

EXHIBIT B: SIZE AND CHARACTER OF AREA LOTS



Historic Kootenai Lodge Condominiums