

# NORTH LAKE COUNTY PLANNING & ZONING DISTRICT PROPOSED REGULATIONS

## **I. Purpose**

The purpose of the Planning and Zoning District and these zoning regulations is to help guide growth and development in the area, to maintain its rural, residential, and recreational character while allowing for development that is consistent and compatible with the existing pattern of growth and usage and with the needs and desires of the community, to protect and enhance property values and amenities, economic viability, and the natural environment, water quality, and wildlife habitat. These regulations are intended to conform to the Lake County Growth Policy.

## **II. Guidelines for Interpretation and Application**

These regulations are the result of extensive community discussions about the nature of zoning and what regulations are needed to achieve the community's goals. During the planning process, the majority of the property owners expressed the belief that zoning regulations are an important planning tool to help a community meet its needs and prevent conflicts. Some community members also expressed the concern, based partly on experience in other communities, that regulations acceptable when initially adopted could be expanded in the future and become too extensive or burdensome. This concern must be taken into account in future revisions of these regulations, with the objective of ensuring that the original guiding philosophy of this zoning district remain intact over time. Therefore, the consensus of the community is that these regulations should provide only the level of regulation needed to meet the community's goals, consistent with the Lake County Growth Policy, while promoting responsible decision-making by individual property owners and residents.

## **III. Boundaries**

The boundaries of the district are as follows:

North boundary - The Lake-Flathead County line.

East boundary - The Lake-Flathead County line.

West boundary - The highwater mark of Flathead Lake.

South boundary - The south section lines of Sections 20, 21, 22, 25, and 26 of Township 26

North, Range 19 West (south of Woods Bay) **TO BE DETERMINED BY GIS COORDINATES**

the north section lines of Sections \_\_\_\_\_ of Township 25 North, Range 18 West, and the north section lines of Sections \_\_\_\_\_ of Township 25 North, Range 17 West.

(In general terms, the district begins on the north at the county line, extends south to Birch Tree Lane, extends east over Crane Mountain, extends south to the end of West Swan Shore Road, crosses Swan Lake, and extends east to the county line. The district includes the areas known as Woods Bay and Ferndale, including Swan Sites.)

## **IV. Applicability and Permit Requirements**

### **A. Applicability**

1. These regulations shall apply to all lands within the District.
2. Property owners should be aware that other local and state laws may apply to the use and/or

development of their property. It is the responsibility of the property owner to obtain all required state and local permits. For information about permit requirements, property owners should contact:

- a. The Lake County Environmental Health department for compliance with septic, well, and storm water management rules and regulations.
- b. The Lake County Planning Department for compliance with the Lakeshore Protection and Zoning District Regulations.
- c. The Montana Department of Commerce for compliance with state building, electrical, plumbing and mechanical codes.
- d. Local sewer and water districts for compliance with regulations.

3. Covenants for individual properties may provide more restrictive development and use requirements. It is the responsibility of the landowner to comply with all covenants.

## **B. Permit Requirements**

The permitting process is administered by the Lake County Planning Department and Zoning Administrator. Some uses are prohibited and no permit for such uses will be issued by the Planning Department/Zoning Administrator. An application must be completed and submitted with the established review fee to the Lake County Planning Department by the owner or one owner of interest of the subject property. Incomplete applications will be returned.

Permits issued under this section are valid for a maximum of two years from the date of issuance.

These regulations establish two kinds of permits:

**1. Zoning Conformance Permit:** A zoning conformance permit shall be required for any land use or building activity listed as “permitted” in these regulations prior to any work on the property to develop the proposed use. No permit shall be required for structures less than 100 square feet in size, provided they they meet all other requirements of these regulations, including setbacks. No permit shall be required for agricultural or silvicultural uses where such uses are permitted, unless the use includes construction of a structure 100 square feet or more in size, or an impervious surface that is not permitted.

**2. Conditional Use Permit:** A conditional use permit shall be required for any land use or building activity listed as a “conditional use” in these regulations prior to any work on the property to develop the proposed use. To protect the public and ensure conformance with the intended purpose of the zoning regulations, the Board of Adjustment may condition approval of any use subject to reasonable measures deemed necessary to mitigate negative impacts.

**3. Hearing Notices:** When a hearing is required, the Zoning Administrator shall place notice of the proposal in the local newspaper and shall notify by mail all adjoining property owners within fourteen (14) days of the Board of Adjustment Hearing on the application.

## **C. Existing Uses**

Nothing in this regulation shall be construed to prevent or prohibit the use of any legally existing

building, structure, lot, or premises in use at the time of adoption of these regulations. An existing use of property is a specific use of a building, structure, lot, or premises which was ongoing at the time of adoption of these regulations **(date to be specified)**. Such a use is permitted; however, it is considered a nonconforming use if it does not comply with these regulations and the degree of non-conformity shall not be expanded.

The right to such a use shall terminate upon the cessation of the legally existing use (voluntary or otherwise) for a period of 18 months, or at the time the structure(s) housing such use is destroyed. If fire or other natural disaster destroys a non-conforming structure or use, the replacing structure or use may be rebuilt, providing that any nonconformance does not exceed the previous nonconformance. The Board of Adjustment may grant a variance if a literal enforcement of this regulation will result in unnecessary hardship.

**V. District Regulations**

**A. Highway Commercial**

**1. Intent**

The intent is to provide areas centered on neighborhood services and commercial development, maximizing the benefits to the community and to property owners of highway frontage and centrally-located commercial development, while minimizing potential harmful effects of commercial development located in primarily residential areas.

**2. Permitted Uses**

- A. Commercial uses including restaurants and bars, gas stations, grocery and convenience stores, storage facilities, light industrial and manufacturing, hotels and motels, marinas, retail, and professional and personal services. Other commercial uses may be considered as conditional uses.
- B. Single family residential housing, including manufactured housing.
- C. Accessory buildings customary to a single-family residence.
- D. One guest house per lot or tract for private use, which is not less than 200 square feet or more than 1,000 square feet of living area.
- E. Impervious surface area covering up to 29% of the buildable area of the lot.
- F. Home Occupation as defined in Sect. X.
- G. Rental of a primary residence for more than one month (long-term rental)
- H. A separate living facility within a single-family residential structure for family member use or live-in domestic help. This is not intended for creation of facilities for rental purposes.
- I. Business sign in compliance with Sect. IX.
- J. Agricultural and forestry operations. Streamside management practices may apply.
- K. Temporary Dwellings, limited to 90 days per calendar year.
- L. Schools, churches, fire stations and other public safety buildings, parks and public utilities, including county greenbox sites and installations related to water and sewer districts.

### **3. Conditional Uses**

- A. Bed and Breakfast
- B. Expansion of existing business
- C. More than one guest house per tract for private use
- D. A guest house for private use containing more than 1,000 square feet of living area.
- E. Residential multifamily units if the property meets the density requirements.
- F. Duplex unit if the property meets the density requirements.
- G. Any independent rental of more than one dwelling unit on a residential property if the use meets the density requirements for the district and also requires review and approval by the Board of Lake County Commissioners as a subdivision created by rent or lease.
- H. Retreat center and church camp.
- I. Structures over 30 feet in average height.
- J. Industrial use for processing local produce.
- K. Other commercial and light industrial uses consistent with community needs and traffic. Light industrial uses are those that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors, smoke, etc.) extending beyond lot lines, and do not involve materials that are explosive, hazardous, or toxic. Light industrial uses may include timber milling, assembly, manufacturing, fabrication, processing, repairing, packing, storage facilities, warehousing, and distribution.
- L. Heavy industrial uses, including heavy manufacturing, processing, fabrication, assembly of products or materials, and timber milling, that do not meet the definition of light industrial uses.
- M. Impervious surface area covering between 30 and 49 percent of the buildable area of the lot.
- N. Disturbance of slopes greater than 25%. Normal forestry operations governed by streamside management practices and normal agricultural operations are exempt from this requirement. A disturbance is defined as the permanent displacement of soils and other earthen materials. Removal of stumps and hazard trees and burning are not disturbances.
- O. Short-term vacation rental of the property as a whole if a state lodging license is obtained in conjunction with the use. No short-term independent rental or habitation of more than one living unit on a property within the district shall be allowed without approval of the governing body.
- P. Condominium development subject to compliance with all state and local subdivision and sanitation regulations.
- Q. Recreational vehicle campgrounds.
- R. Mobile home parks.
- S. Signs other than those in compliance with Sect. IX.
- T. Gravel operations, in compliance with state regulations.

### **4. Prohibited uses**

- A. Impervious surface area covering more than 49% of the buildable area of the lot. If the lot existed prior to the implementation of the zoning district regulations, a variance to this provision may be considered by the Board of Adjustment provided a written plan is

submitted by a professional engineer demonstrating that concerns with storm drainage can be mitigated.

- B. Development or construction in areas designated as being subject to a flood of a 100-year frequency or within a Federally recognized wetland.

**5. Areas Designated:**

Highway frontage lots in designated areas.

On Hwy 35: COMMUNITY DISCUSSION ON OPTIONS: 1) Designate a commercial area, e.g., from south boundary of district north to the road entering Ridgewood on the west and the north edge of the commercial property adjacent to the highway bridge on the east side, or 2) leave as is: designate as residential, with existing commercial uses grandfathered and future uses subject to the conditional use process.

On Hwy 83, south boundary: corner of 83 and Halverson; north boundary: north edge of former peat moss plant.

**B. Commercial Crossroads**

**1. Intent**

The intent is to provide rural neighborhood services and travelers' supplies on a small scale as well as to provide local consumer amenities within short driving range or moderate bicycling distance to avoid unnecessary congestion at shopping areas.

Areas designated as Commercial Crossroads are to be located within 400 feet of intersections of county road and highways or of two highways at points where traffic congregates.

**2. Permitted Uses**

- A. Commercial uses including restaurants and bars, gas stations, grocery and convenience stores, retail, and professional and personal services. Other commercial uses may be considered as conditional uses.
- B. Single family residential housing, including manufactured housing.
- C. Accessory buildings customary to a single-family residence.
- D. One guest house per lot or tract for private use, which is not less than 200 square feet or more than 1,000 square feet of living area.
- E. Impervious surface area covering up to 29% of the buildable area of the lot.
- F. Home Occupation as defined in Sect. X.
- G. Rental of a primary residence for more than one month (long-term rental)
- H. A separate living facility within a single-family residential structure for family member use or live-in domestic help. This is not intended for creation of facilities for rental purposes.
- I. Business sign in compliance with Sect. IX.
- J. Temporary Dwellings, limited to 90 days per calendar year.
- K. Schools, churches, fire stations and other public safety buildings, parks and public

utilities, including county greenbox sites and installations related to water and sewer districts.

**3. Conditional Uses**

- A. Bed and Breakfast
- B. Expansion of existing business
- C. More than one guest house per tract for private use
- D. A guest house for private use containing more than 1,000 square feet of living area.
- E. Residential multifamily units if the property meets the density requirements.
- F. Duplex unit if the property meets the density requirements.
- G. Any independent rental of more than one dwelling unit on a residential property if the use meets the density requirements for the district and also requires review and approval by the Board of Lake County Commissioners as a subdivision created by rent or lease.
- H. Retreat center and church camp.
- I. Structures over 30 feet in average height.
- J. Animal boarding, including dog kennels.
- K. Other commercial and industrial uses consistent with community needs and traffic.
- L. Impervious surface area covering between 30 and 49 percent of the buildable area of the lot.
- M. Disturbance of slopes greater than 25%. Normal forestry operations governed by streamside management practices and normal agricultural operations are exempt from this requirement. A disturbance is defined as the permanent displacement of soils and other earthen materials. Removal of stumps and hazard trees and burning are not disturbances.
- N. Short-term vacation rental of the property as a whole if a state lodging license is obtained in conjunction with the use. No short-term independent rental or habitation of more than one living unit on a property within the district shall be allowed without approval of the governing body.
- O. Condominium development subject to compliance with all state and local subdivision and sanitation regulations.
- P. Recreational vehicle campgrounds.
- Q. Mobile home parks.
- R. Commercial uses, if the landowner demonstrates to the Board of Adjustment that the property was an active commercial use, and assessed commercially by the Department of Revenue or County Assessor's Office for at least a continuous 5 year period since the time of adoption of the zoning regulations (**date**), and the requested use is reviewed and approved as a variance by the Lake County Board of Adjustment pursuant to Section XV.C.3 of these regulations and Chapter 76, Part 2, MCA.
- S. Signs other than those in compliance with Sect. IX.

**4. Prohibited uses**

- A. Impervious surface area covering more than 49% of the buildable are of the lot. If the lot existed prior to the implementation of the zoning district regulations, a variance to this provision may be considered by the Board of Adjustment provided a written plan is

submitted by a professional engineer demonstrating that concerns with storm drainage can be mitigated.

- B. Development or construction in areas designated as being subject to a flood of a 100-year frequency or within a Federally recognized wetland.
- C. Other industrial uses.

**5. Areas Designated:**

No areas are currently designated Commercial Crossroads.

**C. Waterfront Residential**

**1. Intent**

The intent is to preserve residential use of areas along the lakeshore and river front, recognizing necessary and appropriate ancillary uses but prohibiting uses with a potentially harmful effect on either the residential character of the area or on water quality.

**2. Permitted Uses**

- A. Single family residential housing, including manufactured housing.
- B. Accessory buildings customary to a single-family residence.
- C. One guest house per lot or tract for private use, which is not less than 200 square feet or more than 1,000 square feet of living area.
- D. Impervious surface area covering up to 29% of the buildable area of the lot.
- E. Home Occupation as defined in Sect. X.
- F. Rental of a primary residence for more than one month (long-term rental).
- G. A separate living facility within a single-family residential structure for family member use or live-in domestic help. This is not intended for creation of facilities for rental purposes.
- H. Business signs in compliance with Section     .
- I. Agricultural and forestry operations. Streamside management practices may apply.
- J. Temporary Dwellings, limited to 90 days.
- K. Schools, churches, fire stations and other public safety buildings, parks and public utilities, including county greenbox sites and installations related to water and sewer districts.

**3. Conditional Uses**

- A. Bed and Breakfast
- B. Expansion of existing business
- C. More than one guest house per tract for private use.
- D. A guest house for private use containing more than 1,000 square feet of living area.
- E. Mobile homes
- F. Short term rentals limited to 30 days.
- G. Duplex unit if the property meets the density requirements.
- H. Any independent rental of more than one dwelling unit on a residential property if the use meets the density requirements for the district and also requires review and approval by

- the Board of Lake County Commissioners as a subdivision created by rent or lease.
- I. Retreat center and church camp.
  - J. Structures over 30 feet in average height
  - K. Industrial use for processing local produce.
  - L. Impervious surface area covering between 30 and 49 percent of the buildable area of the lot.
  - M. Disturbance of slopes greater than 25%. Normal forestry operations governed by streamside management practices and normal agricultural operations are exempt from this requirement. A disturbance is defined as the permanent displacement of soils and other earthen materials. Removal of stumps and hazard trees and burning are not disturbances.
  - N. Short-term vacation rental of the property as a whole if a State-license is obtained in conjunction with the use. No short-term independent rental or habitation of more than one living unit on a property within the district shall be allowed without approval of the governing body.
  - O. Condominium development, subject to compliance with all state and local subdivision and sanitation regulations.
  - P. Waterfront restaurants and bars.
  - Q. Clustered docks. This use refers to a cluster or concentration of docks or slips, and should not be construed to permit funneling, where multiple owners of non-waterfront property jointly own or are allowed to use a waterfront lot for waterfront access.
  - R. Cluster development.

#### **4. Prohibited Uses.**

- A. Residential multi-family units
- B. Impervious surface area covering more than 49% of the buildable area of the lot. If the lot existed prior to the implementation of the zoning district regulations, a variance to this provision may be considered by the Board of Adjustment, provided a written plan is submitted by a professional engineer demonstrating that concerns with storm drainage can be mitigated.
- C. Development or construction in areas designated as being subject to a flood of a 100-year frequency or within a Federally recognized wetland.
- D. Other industrial uses.
- E. Recreational vehicle campgrounds.
- F. Mobile home parks
- G. Commercial uses, unless the landowner demonstrates to the Board of Adjustment that the property was an active commercial use, and assessed commercially by the Department of Revenue or County Assessor's Office for at least a continuous 5 year period since the time of adoption of the zoning regulations (date), and the requested use is reviewed and approved as a variance by the Lake County Board of Adjustment pursuant to Section XV.C.3 of these regulations and Chapter 76, Part 2, MCA

#### **5. Areas Designated:**

All property within the district directly fronting a lake or river.

**D. Residential/Agricultural/Forest Uses**

**1. Intent**

The intent is to promote residential use of areas not fronting water, recognizing necessary and appropriate ancillary uses, and to promote appropriate agricultural and forest uses, while prohibiting uses with a potentially harmful effect on both the residential character of the area and on water quality.

**2. Permitted Uses**

- A. Single family residential housing, including manufactured housing.
- B. Accessory buildings customary to a single-family residence.
- C. One guest house per lot or tract for private use, which is not less than 200 square feet or more than 1,000 square feet of living area.
- D. Impervious surface area covering up to 29% of the buildable area of the lot.
- E. Home Occupation as defined in Sect. X.
- F. Rental of a primary residence for more than one month (long-term rental)
- G. A separate living facility within a single-family residential structure for family member use or live-in domestic help. This is not intended for creation of facilities for rental purposes.
- H. Business sign in compliance with Section IX.
- I. Agricultural and forestry operations. Streamside management practices may apply.
- J. Duplex units if the property meets the density requirements.
- K. Temporary Dwellings, limited to 90 days.
- L. Residential cluster development.
- M. Schools, churches, fire stations and other public safety buildings, parks and public utilities, including county greenbox sites and installations related to water and sewer districts.

**3. Conditional Uses**

- A. Bed and Breakfast
- B. Expansion of existing business
- C. More than one guest house per tract for private use
- D. A guest house for private use containing more than 1,000 square feet of living area.
- E. Residential multifamily units if the property meets the density requirements.
- F. Any independent rental of more than one dwelling unit on a residential property if the use meets the density requirements for the district and also requires review and approval by the Board of Lake County Commissioners as a subdivision created by rent or lease.
- G. Retreat center and church camp.
- H. Structures over 30 feet in average height.
- I. Industrial use for processing local produce.
- J. Impervious surface area covering between 30 and 49 percent of the buildable area of the lot.
- K. Disturbance of slopes greater than 25%. Normal forestry operations governed by streamside management practices and normal agricultural operations are exempt from

this requirement. A disturbance is defined as the permanent displacement of soils and other earthen materials. Removal of stumps and hazard trees and burning are not disturbances.

- L. Short-term vacation rental of the property as a whole if a State-license is obtained in conjunction with the use. No short-term independent rental or habitation of more than one living unit on a property within the district shall be allowed without approval of the governing body.
- M. Condominium development subject to compliance with all state and local subdivision and sanitation regulations.
- N. Other light industrial uses consistent with community needs and traffic. Light industrial uses are those that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors, smoke, etc.) extending beyond lot lines, and do not involve materials that are explosive, hazardous, or toxic. Light industrial uses may include timber milling, assembly, manufacturing, fabrication, processing, repairing, packing, storage facilities, warehousing, and distribution.
- O. Heavy industrial uses, including heavy manufacturing, processing, fabrication, assembly of products or materials, and timber milling that do not meet the definition of light industrial uses.
- P. Recreational vehicle campgrounds.
- Q. Mobile home parks.
- R. Commercial uses, unless the landowner demonstrates to the Board of Adjustment that the property was an active commercial use, and assessed commercially by the Department of Revenue or County Assessor's Office for at least a continuous 5 year period since the time of adoption of the zoning regulations ( date ), and the requested use is reviewed and approved as a variance by the Lake County Board of Adjustment pursuant to Section XV.C.3 of these regulations and Chapter 76, Part 2, MCA.
- S. Gravel operations, in compliance with state regulations.

**4. Prohibited Uses.**

- A. Impervious surface area covering more than 49% of the buildable area of the lot. If the lot existed prior to the implementation of the zoning district regulations, a variance to this provision may be considered by the Board of Adjustment provided a written plan is submitted by a professional engineer demonstrating that concerns with storm drainage can be mitigated.
- B. Development or construction in areas designated as being subject to a flood of a 100-year frequency or within a Federally recognized wetland.

**5. Areas Designated:**

All property within the district not specifically designated otherwise.

**E. Swan Sites  
Boundary**

The district consists of Swan Sites Subdivisions, Numbers 1, 2, 3, 4, 5 and 7 that are contained in portions of Sections 10, 11,12, 13 and 14, Township 26 North, Range 19 West, P.M.M., Lake

County, Montana.

### **Permit Requirements**

A permit shall be required for any land development and building construction of permanent structures greater than 100 square feet.

### **District Regulations**

#### **A. Permitted Uses**

1. Single family residential housing, including manufactured housing.
2. One guest house per individual lot, which is not less than 200 square feet or more than 1,000 square feet of living area.
3. Accessory buildings customary to a single-family residence.
4. Coverage of 29% or less of the buildable area of the lot with impervious surface area.
5. Rental of a primary residence for more than one month (long-term).

#### **B. Conditional Uses**

1. On Lots 1, 2, 3, and 4, Swan Sites No. 3, customer service type businesses such as grocery stores, gas and service stations, gift shops, restaurants, professional offices or other similar type businesses, but excluding manufacturing type businesses. As a portion of this section, the applicant may ask for one business sign -detached from the structure- that is: minimally lighted, unanimated, 64 square feet in size (or less) and of natural non-reflective colors. Development of businesses on any of these lots shall utilize techniques to reduce impacts on adjoining lots.
2. Temporary dwellings
3. One guest house per individual lot, more than 1,000 square feet of living area but not more than 1,000 square feet of total floor area (footprint).
4. Single-wide mobile houses older than 10 years on non-water front lots.
5. Double-wide mobile homes older than 10 years on all lots.
6. Single family residential structures from 500 to 999 square feet of ground floor area.
7. Coverage of 30 to 49 percent of the buildable area of any lot with impervious surface area.

### **Sub-Units**

Because of the variation in the existing land-use patterns within the district, the area is divided into sub-units to allow for variations in such elements as setbacks and densities.

Outlined below are the sub-unit-specific regulations.

#### **A. Sub-Unit One - Swan Sites No. 1 & 7**

##### **1. Land Division:**

- a. The original Lots 36-59 may be subdivided one time, upon review and approval by State and local government.
- b. No further subdivision of Lots 1-35 and Lots 60-180.
- c. Lots 1-5 of Swan Sites #7 (Amended Plat of the Airport on Swan Sites #1) may be subdivided one time, into lots of not less than 2 acres each, upon review and approval by State and local government

##### **2. Setbacks:**

- a. From the lake, river or stream in compliance with Section VI:

50 feet for Lots 1-35, Lots 128-165, and Lots 172-180  
20 feet for Lots 60-100 and 166-171.

- b. From the front property line, other than lake lots: 20 feet.
- c. From side property line: 10 feet.
- d. From rear property line: 20 feet.

B. Sub-Unit Two - Swan Sites No. 2

1. Land Division:

- a. No lot within this unit may be further divided.

2. Setbacks:

- a. From Swan Lake, Swan River and Loon Lake in compliance with Section VI: 70 feet.
- b. From side lot line: 10 feet.
- c. From any other lot line not bordering the lake or side boundary: 20 feet.

C. Sub-Unit Three - Swan Sites No. 3

1. Land division:

- a. The original lots 1-26 may be subdivided one time, upon review and approval by State and local government.

2. Setback: 20 feet from any property line.

D. Sub-Unit Four - Swan Sites No. 4

1. Land Division:

- a. All original lots may be subdivided one time, upon review and approval by State and local government.

2. Setback:

- a. 20 feet from any property line.

E. Sub-Unit Five - Swan Sites No. 5

1. Land Division:

- a. All land development within this sub-unit shall not exceed one dwelling unit per 5 ½ acres. The density requirement shall not be construed as a minimum lot size requirement. Development that provides for lot sizes to be less than the density limitation may be allowed provided that the overall (average) density of the subject parcel shall not exceed the required density per acre.

2. Setback:

- a. 20 feet from any property line.

**Property Construction Guidelines**

- 1. Wood shake roofing shall be prohibited on construction of new structures. Once the wood shakes decay and need replacement they shall be replaced with fire retardant roofing materials. This does not include treated wood shake roofing materials.
- 2. All structures erected within this district shall have the exterior construction completed within two years from the date such construction commences.
- 3. No travel trailer, recreational vehicle or other similar structure shall be placed on a lot for

the purposes of renting, leasing or bartering.

### **Vegetative Buffer Strips**

#### **A. Intent**

The intent of this section is to provide for the development of lake and stream front properties while maintaining the chemical, physical, and biological integrity of Swan Lake, Loon Lake, Johnson Creek and the Swan River. This section is intended to complement the Lake County Lakeshore Protection Regulations, which govern development from the high water mark of Swan Lake to 20 horizontal feet inland.

#### **B. The width of the buffer strip shall be the following:**

##### **1. Sub Unit 1(A) setbacks:**

30 feet for Lots 1-35, 128-165, and 172-180

10 feet for Lots 60-100 and 166-171

##### **2. Sub Unit 2 (B) setbacks:**

50 feet

#### **C. Lake and River Access**

##### **1. Footpaths shall be a maximum of six feet wide**

2. Footpaths shall not run in a straight line directly to the water. Instead, they should meander in an “S” shape to avoid the channelization of runoff.

3. Footpaths and boat access ways must include features that spread runoff from the hard surface into the vegetative buffer strip without channelizing the runoff, which causes the ground surface to erode.

##### **4. Boat accesses shall be seeded or mulched to reduce erosion.**

#### **D. Permitted Features and Activities**

Within the buffer strip, permitted features include walking paths, boathouses, boat ramps and boat rail systems, as governed by the Lake County Lakeshore Protection Regulations.

Landscaping and the planting of vegetation in the buffer strip are permitted and shall incorporate every feasible step to minimize erosion. Restoring an altered area to vegetative buffer is encouraged.

All vegetative buffers that exist within 50 feet of the high water mark at the time of the adoption of these regulations shall be managed as vegetative buffers according to these regulations.

#### **E. Prohibited Activities**

1. Except as necessary to access boat ramps and maintain docks and other recreational facilities, all driving of motorized vehicles in the buffer zone is prohibited to prevent soil compaction and erosion.

2. Except as permitted under the Lake County Lakeshore Protection Regulations, the construction of impervious surfaces is prohibited.

3. Removing a buffer strip that exists at the time of adoption of this regulation is prohibited.

4. Removing vegetation that exceeds the stipulations described above is prohibited.

F. Long-Term Maintenance

1. Buffer strips must be maintained so that channelization of storm water runoff does not occur.
2. All foot paths and boat ramp accesses must be maintained to minimize erosion. Eroded areas or areas with bare soil shall be seeded or mulched.
3. Fertilizers, pesticides and herbicides shall not be used in the buffer strip to prevent nutrients and other chemicals from entering the water.

**F. Lower Bug Creek**

**Boundary**

**North:** At the point where the common range line of Range 18 and Range 19, P.M.M., intersect at the high water mark of Swan Lake.

**East:** Low water mark of Swan Lake.

**West:** The common range line of Range 18 and Range 19.

**South:** The common township line between Township 25 and 26.

**District Regulations**

A. Permitted Uses:

1. Single family residential.
2. One guest house.
3. Agricultural and forestry operations.

B. Conditional uses:

1. Cluster development on tracts that do not border the lake.
2. Home occupations.
3. A second guest house.
4. Common lake access.

C. Density

1. Lake front lots shall be a minimum of 3 acres in size and contain a minimum of 200 feet of frontage.
2. Lots which do not border the lake shall be a minimum of 10 acres in size.

D. Structures

1. Satellite dish antennae shall be set back as far as possible so they are not visible from the lake or lakeshore.
2. Wood shake roofing shall be prohibited on construction of new buildings. Existing buildings with wood shake roofing may be repaired or remodeled utilizing wood shakes, provided that new shakes are coated with fire retardant materials.

3. Setbacks:

The required setbacks for buildings shall be:

- a. 50 feet from the lake;
- b. 50 feet from any public road; and
- c. 50 feet from property lines.

4. A reasonable variance shall be granted to allow construction of a residence on lots that exist at the time zoning is adopted which cannot meet the setbacks in the zoning,

provided that no residence shall be closer than 20 feet to the lake and that adequate storm drainage is assured.

#### E. Common Lake Access

Due to the unique nature of the Lower Bug Creek area with regard to the size and amount of individual lakeshore ownership, common lake access may be allowed as a conditional use for secondary lots, provided that the access shall be a minimum of 200 feet of lakefront, except an additional 50 feet of lakefront shall be added for each dwelling unit in excess of one that utilizes the access. No structures requiring water or sewer facilities shall be placed on a common lake access.

#### F. Cluster Development

Cluster development which allows for lot sized to be less than the required minimum may be allowed for lots that do not border the lake, provided that the overall density of the subject parcel shall not exceed the required density per acre. However, such use may only be allowed as a conditional use.

Cluster development is prohibited on lakefront lots.

#### G. Zoning Conformance Permit

No permit shall be required for structures less than 100 square feet in size, provided they are not located within 20 feet of the mean annual high water mark of Swan Lake, and provided they meet all other requirements of these regulations.

#### H. Home Occupations:

##### Review Guidelines:

A use that is determined to be a home occupation under the terms of the zoning regulations may be allowed as a conditional use, and the following guidelines shall be considered by the Board of Adjustment:

- a. The use of the residential property for a home occupation must be clearly incidental to its use for residential purposes.
- b. The home occupation shall be conducted entirely within the residence, but the total floor area used for the home occupation shall not exceed 1200 square feet.
- c. The outside appearance of the building or premises used for the home occupation shall be substantially similar to the appearance of other residential properties in the area.
- d. A home occupation shall not require any employees beyond the owners that utilize the structure as their residence.
- e. The on-premise sale or demonstration of goods, products, or wares to the public or private consumers shall be prohibited.

#### **G. Historic Kootenai Lodge (aka Kootenai Lodge Estates)**

##### **Boundary**

Kootenai Lodge Estates, (a.k.a. The Historic Kootenai Lodge Condominium Subdivision)

located in Section 11, and Section 14, Township 26 North, Range 19 West, P.M.M., Lake County Montana, according to the map or plat thereof on file in the office of the Clerk and Recorder of Lake County, Montana.

## **Permit Requirements**

No permit shall be required for structures less than 100 square feet in size, provided they are not located within 80 feet of the high water line of Swan Lake or River, and provided they meet all requirements of the Zoning District.

## **District Regulations:**

### **A. Land Use Restrictions**

#### **1. Permitted Uses**

- a. Individual dwelling units are for residential purposes only.
- b. The renting of a dwelling unit if the rental period is no less than 30 continual days within each rental period.

#### **2. Prohibited Uses**

- a. No dwelling unit or any part of the zoning district shall be used at any time for any business, trade, manufacture or other commercial purpose.
- b. The use of any homes or facilities for short term rental (less than 30 days) including bed and breakfasts, hotels, motels, rooming houses, boardinghouses, tourist homes and outfitting and guide facilities, as defined in Montana Code Annotated Title 50, Chapter 51, is prohibited.
- c. No dwelling unit or any facilities shall be used for access by nonresidents of the Historic Kootenai Lodge (a.k.a. Kootenai Lodge Estates) Subdivision to Swan Lake and/or Swan River.
- d. Ownership of dwelling units on a fractional or interval basis.

### **B. Development Restrictions**

1. No portion of the zoning district shall be further subdivided.
2. Only 42 dwelling units, one community center/lodge with food service (Kootenai Lodge), pool facility, the barn to be used as a maintenance facility for the units, and a not-for-profit museum are permitted within the zoning district.
3. Boat slips for use by the dwelling units within the district shall be limited to a total of 24 upon review and approval of a lakeshore construction permit. Allocation and use of the slips shall be determined by the Unit Owners Association's Board of Directors or similar appropriate body.

### **C. Building setbacks**

#### **1. Swan Lake and Swan River**

All new structures shall be located a minimum of 80 feet from the high water mark of Swan Lake and the Swan River. Lake-related structures permitted by Lake County are exempted from this portion of the regulation.

#### **2. Johnson Creek**

No new structures shall be located within the 100-year floodplain of Johnson Creek or within 80 feet of either side of the stream, whichever is greater.

**3. Eastern District Boundary**

All new structures shall be located a minimum of 50 feet from the eastern district boundary.

**4. Northern and Southern District Boundaries**

All new structures shall be located a minimum of 20 feet from the northern and southern district boundaries.

**Vegetation Buffers**

1. All existing vegetation within the setbacks required by the zoning and as defined on the final subdivision plat shall be maintained as defined herein in order to protect water quality, wildlife habitat, and to provide a visual buffer of the subdivision from the lake/river, adjacent properties, and the County roadway. At the time of the subdivision review and approval, the setback along Swan Lake consisted of a grassy lawn and old growth trees and may be maintained as such.

The modification of any buffer shall consist of a mixture of native trees, shrubs, native grasses and forest duff/leaf litter. Examples of areas that do not qualify as buffer strips include grass lawns, orchards or more than 80% of landscaped areas where the understory has been modified. (Note: Native vegetation is typically better adapted to area soils, rainfall and temperatures and will require no fertilization and less long-term maintenance than nonnative vegetation. It also provides high quality habitat to native wildlife species.)

2. The height and width of the berm along the northern property boundary shall be maintained.

3. Within the buffer strip, permitted features include walking paths, boat ramps and boat rail systems, as governed by the Lake County Lakeshore Protection Regulations or permitted by the Lake County Conservation District. Landscaping and the planting of vegetation in the buffer strip is permitted and shall incorporate best management practices to minimize erosion. The clearing of vegetation, as described below, is also permitted.

4. In order to promote a healthy and effective buffer strip, the clearing of vegetation shall be limited to the following:

- a. Removal of dead, windblown, damaged or diseased trees and branches.
- b. Maintenance of landscaping with a variety of species and sizes.
- c. Removal of live trees only to minimize fire danger provided that at least 75 percent of the trees  $\geq 8''$  in diameter at breast height are maintained.
- d. Within the Eastern property boundary setback, vegetative disturbance shall also be permitted the purpose of constructing roads and utilities.
- e. Within the waterfront buffers, removal of vegetation is limited to that necessary to create a winding footpath, defensible space around a home, boat access or to remove noxious weeds and plants such as poison ivy.
- f. Vegetation required for modification of existing structures, shall be limited to only those structures outside the required setbacks.

g. Pruning of live tree branches is permitted provided that at least the top two-thirds of an individual tree's canopy is maintained.

#### **5. Waterfront Pedestrian Access**

- a. Footpaths shall not exceed six feet in width.
- b. Footpaths shall not run in a straight line directly to the water. Instead, they should meander and be designed to avoid the channelization of runoff.
- c. Footpaths and boat access ways must include features (e.g., shallow stone trenches) that spread runoff from the hard surface into the vegetated buffer strip without channelizing the runoff, which causes the ground surface to erode.

#### **6. Prohibited Activities:**

- a. Except as necessary to access maintain the lawn, boat ramps and maintain docks and other recreational facilities, all driving of motorized vehicles in the buffer zone is prohibited to prevent soil compaction and erosion.
- b. Except as permitted under the Lake County Lakeshore Protection Regulations, the construction of impervious surfaces is prohibited.
- c. Removing a buffer strip that exists at the time of adoption of this regulation is prohibited.
- d. Removing vegetation that exceeds the stipulations described above is prohibited.
- e. Fertilizers, pesticides and herbicides shall not be used in the buffer strip to prevent nutrients and other chemicals from entering Johnson Creek, Swan Lake and Swan River.

#### **7. Long-Term Maintenance:**

- a. Buffer strips must be maintained so that channelization of storm water runoff does not occur.
- b. All foot paths and boat ramp accesses must be maintained to minimize erosion. Eroded areas or areas with bare soil shall be seeded or mulched.

### **VI. Setbacks – Structures**

A. Setbacks for buildings shall be measured from the projection of the structure, including foundation walls, eaves, and attached decks, walkways and patios that ends closest to the applicable property line, right-of-way, road surface or water, and shall be a minimum of:

1. 50 feet from the high water mark of Flathead Lake, Swan Lake, or Swan River with required vegetative buffer.
2. 100 feet from the centerline of Hwy 35, Hwy 209, or Hwy 83, or 50 feet from the right-of-way, whichever is greater, except that in highway commercial areas, the setback shall be      from the centerline or      from the right-of-way, whichever is greater.
3. 20 feet from other property lines except that on lots already existing when zoning was adopted which contain an average width less than 200 feet, the setback shall be 10% of the lot width, provided that no structure shall be located closer than 10 feet to a property line.
4. Agricultural activities that involve spraying must take into account uses of adjacent properties and maintain a safe setback distance to minimize accidental spraying of

adjacent properties.

- B. Structures shall not be located on slopes which exceed 25 percent. Structures, for the purpose of this restriction, shall not include stairways, walkways, or other access related improvements. A reasonable variance shall be granted to allow construction of a residence on lots that exist at the time zoning was adopted which cannot meet this requirement, provided a written plan is submitted by a professional engineer demonstrating that concerns with fire protection and access, slope stability, soil erosion and storm drainage can be mitigated.
- C. Accessory structures shall meet all setback requirements, except as described in C. below.
- D. The Lake County Lakeshore Protection Regulations govern all lake front property in the District, including lake-related improvements and other structures, and must be complied with.
- E. Structures shall not exceed 30 feet in average height as measured from the natural grade, unless as permitted under Section V.

## **VII. Setbacks - Buffers**

Setbacks from lakes, rivers, and perennial streams and related areas and requirements for vegetative buffers in such areas are established by state and county regulations, including subdivision regulations, Lakeshore Protection regulations, flood plain regulations, and others, which must be followed.

The required setbacks for buildings shall be measured from the projection of the structure, including foundation walls, eaves, and attached decks, walkways and patios that ends closest to the applicable property line, right-of-way, road surface or water.

A vegetated buffer strip at least 50 feet wide is required of all new construction after adoption of these regulations, along all waterbodies, including lakes, ponds, rivers, and intermittent and perennial streams, creeks, and wetlands. The buffer strip shall be located on the waterward side of all impervious surfaces except those governed by the Lake County Lakeshore Protection Regulations, and shall be measured from the highwater mark of the waterbody to the closest impervious surface.

If a Zoning Conformance Permit is required, a buffer strip is required. A buffer strip design plan, including the different types of vegetation, storm water runoff control measures, and scaled sketches, shall be reviewed as part of the Zoning Conformance Permit process.

A variance from the above regulation may be granted in the following two circumstances:

- a. For those lots created prior to the adoption of these regulations, a reasonable variance may be granted by the Lake County Board of Adjustment where compliance would result in unnecessary hardship due to the physical conditions and limitations of the property. However, a variance shall not allow for adverse impacts to the environment.
- b. In order to protect homes from fire danger, the width of the buffer strip may be reduced so that a defensible space around the home may be created and maintained.

## **VIII. Outdoor Lighting**

All new and replacement nighttime outdoor lighting must direct its light downward and be side-shielded to prevent glare beyond the boundary of the subject property.

## **IX. Signs**

New business signs are permitted as set out below. Note that the regulations in the Swan Sites and Kootenai Lodge subunits may differ.

A. In Highway Commercial areas and other properties designated Commercial as a conditional use:

1. Detached signs located at a place of business may be up to 32 square feet in sign area, and may extend up to 15 feet in height above the average elevation of the natural ground level at the site.
2. Signs attached to a place of business may be up to 16 square feet in sign area, and may extend up to 30 feet in height above the average elevation of the natural ground level at the site, but no higher than the highest point of the roofline.
3. Signs which are not located at the place of business may be up to 16 square feet in sign area, and may extend up to 15 feet in height above the average elevation of the natural ground level at the site.
4. Adjacent businesses are encouraged to cluster their signs in a single structure.

B. For Home Occupations:

1. Detached signs located at a place of business may be up to 4 square feet in sign area, and may extend up to 10 feet in height above the average elevation of the natural ground level at the site.
2. Signs attached to a place of business may be up to 4 square feet in sign area, and may extend up to 10 feet in height above the average elevation of the natural ground level at the site.
3. Signs not located at the place of business are permitted only as a conditional use, based on need to direct traffic to the home because of its location.

C. Signs, if illuminated, shall be lighted by continuous, stationary, shielded external light sources, directed to illuminate only the sign as to not be obtrusive to adjacent landowners.

Internal illumination is not permitted. Neon signs are permitted within buildings but not on the exteriors of buildings. Signs shall not rotate, move, flash, change or blink, except if utilized by a government agency for public safety or information.

D. Real estate “for sale” signs are permitted anywhere in the district, on the property for sale or at intersections to direct traffic to the property for sale.

E. Portable signs may be used only for special events, up to two weeks at a time, four times a year.

F. Setback requirements for structures also apply to signs. Signs may not be erected in rights-of-way along roads.

## **X. Home Occupations**

### **A. Intent:**

The intent is to preserve and protect the use of home occupations in residential areas, which are both common and an essential ingredient in the local economy, while limiting potential harmful impacts on the surrounding neighborhood.

### **B. Determination:**

The decision as to whether a use is a home occupation or a commercial use under the zoning regulations shall be made by the Zoning Administrator and that decision may be appealed to the Board of Adjustment. Uses that do not qualify as home occupations may be commercial or industrial uses, where allowed as a permitted or conditional use.

### **C. Review Guidelines:**

A use determined to be a home occupation under the terms of the zoning regulations is a permitted use. A use determined to be commercial, rather than a home occupation, may be permitted as a conditional use, and the following guidelines shall be considered by the Zoning Administrator and Board of Adjustment:

1. The use of the residential property for a home occupation must be clearly incidental to its use for residential purposes and not change the character of the property or neighborhood.
2. The home occupation must be conducted within the residence or an accessory building. In considering whether a use is a home occupation or a commercial use, the total square footage and its proportion to the size of the property may be considered.
3. The home occupation shall not generate pedestrian or vehicle traffic in excess of that which is characteristic of the surrounding neighborhood. Vehicle traffic would not generally be increased by more than two (2) vehicles at a given time or by more than ten (10) all day. Occasional events that generate greater traffic, such as a holiday open house at a craft business or a class offered in a mechanic's or cabinetmaker's shop, do not prevent characterization as a home occupation, as long as the events are not so frequent or of such a nature that the use no longer qualifies as a home occupation under Sect. 1.
4. Regular use of employees is a factor in determining whether a use is a home occupation or a commercial use.
5. Kennels and animal boarding operations are commercial uses, not home occupations.

### **D. Standard Conditions**

The following conditions apply to all home occupations:

1. Any need for parking generated by the conduct of such home occupation shall be met off the street and confined within the property.
2. No equipment or process shall be used in the home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property. Noise above such limits is allowable if intermittent and not constant, e.g., noise from saws, drills, or other power tools, and only during normal daytime business hours.
3. Vehicle or equipment repair shall be conducted only in enclosed buildings.
4. Outdoor storage shall be screened from public view by any effective combination of the placement of buildings, landscaped buffers, and screening fences or walls.
5. Outdoor display of products is limited to business hours.

## **XI. Density**

### **A. ADOPT CURRENT DENSITY AS DESCRIBED BY MAP & REGS.**

The density requirements shall NOT be construed as a minimum lot size requirement.

Subdivision development which provides for lot sizes less than established by these regulations acres may be allowed provided that the overall density of the subject parcel shall not exceed the required dwelling unit density per acre.

B. Transfer of development rights between existing tracts is not allowed. All divisions of land must contain the acreage to meet the density requirement within the existing tract of record.

C. All land divisions shall result in parcels that are able to be developed in conformance with the requirements of the zoning regulations.

D. Although the density regulations in effect at the time these regulations are adopted define a unit as a building or structure served by a piped water system, it is the intent of these regulations to allow construction of a shop or garage with a bathroom separate from the primary residence, in all land use classifications except in subunits where prohibited by existing regulations.

## **XII. Land Division**

All land divisions shall conform to the requirements of the North Lake County Zoning Regulations, Lake County Subdivision Regulations, Lake County Growth Policy, and the Lake County Sanitation Regulations, and any other applicable laws.

## **XIII. Exemptions for Agricultural/Silvicultural Activity and Sale of Produce**

It is recognized that an integral part of the character of the North Lake County area is the operation of market gardens, orchards, vineyards, tree farms, forest management, and similar agricultural and silvicultural uses. Nothing in the zoning ordinance shall prohibit the normal operation of these activities. The following conditions apply to this exemption:

1. Roadside stands for the sale of produce grown in the local area are a permitted use.

The purpose is to allow local landowners engaged in agricultural activities the opportunity to sell local produce on properties within the district.

2. On-site facilities on agriculturally maintained properties for camping and housing for agricultural workers on a seasonal basis are permitted uses, provided such facilities comply with all federal, state, and local public health requirements.

3. Signs that advertise market gardens, fruit stands, or other aspects of the agricultural activities are a permitted use provided they are in place only on a seasonal basis. These signs shall not exceed 32 square feet in area if onsite, and shall not exceed 16 square feet of sign area if off site.

4. Zoning Conformance Permits are not required for these activities.

## **XIV. Storm Drainage**

A. For each new structure or impervious surface area, it is the landowner's responsibility to manage all storm run-off without causing damage or harm to the natural environment, water quality, or adjacent property, both during and after construction.

B. All applications for a zoning conformance permit shall contain a stormwater management plan. \*\*Note: some properties have Montana DEQ and/or Lake County Environmental Health Department approvals, which outline specific requirements of the stormwater management plan. Stormwater management plans previously approved by these agencies may be adequate for these requirements.

C. All stormwater management plans shall be reviewed for substantial compliance with any

existing approval or the adopted standards of the State of Montana Department of Environmental Quality.

D. The total impervious surface coverage (the area of the roof, overhangs, attached decking, paved driveways and walkways, etc.) shall be calculated to design the appropriate stormwater technique, and the required size of collection tanks/infiltration chambers.

E. Stormwater techniques used should include rain gutters and associated discharge pipes. The type of tank or infiltration system should meet the following guidelines/ requirements:

a. The system shall use the best methods for managing stormwater based upon soil types and the degree and amount of slopes.

b. The perforated pipe method with infiltration trenches/chambers are often the best method, dependent upon soil type and slope.

c. Dry wells and other bored, drilled, driven shafts, or dug holes that are deeper than their widest surface dimension are discouraged, as these types of subsurface infrastructures are considered “Class V injection wells” by the EPA, and require permitting from that agency.

d. All discharge of stormwater must be outside the following setbacks for waterfront and surface waters: 25 feet from Swan Lake, 50 feet from Swan River, and 50 feet from Flathead Lake and/or other surface waters.

e. Where slopes are an issue, it is preferred that all stormwater is retained inland of the structure on all waterfront lots.

f. Retention swales may be used for stormwater management of impervious surface coverage created by hard-surfaced driveways. However, these swales should not be within 50 feet of any lake, river, or other surface waters.

F. The storm water management plan may be required by the zoning administrator to be written by a registered professional engineer or other qualified professional, prior to the granting of a conditional use permit or variance. The zoning administrator will consider such factors as slope, soil type, vegetative cover, the percentage of impervious surface area, and the intensity of the proposed development project when determining if a management plan is required and assessing a plan’s adequacy.

## **XV. Administration**

### **A. Reviewing Authority**

The Lake County Board of Adjustment and the Lake County Planning Department administer these regulations. All permit applications shall be filed with the Lake County Planning Department. The Lake County Board of Adjustment has been created by the Lake County Board of Commissioners and shall have the authority to hear and decide upon appeals, conditional uses, and variances in accordance with Sect. 76-2-223, MCA, and these regulations. Where Board review and action is required, the Lake County Board of Adjustment shall review the application.

### **B. Interpretation**

The Lake County Planning Director shall be designated as the Zoning Administrator with the responsibility to implement the Zoning Regulations. Any interpretation or decision by the zoning administrator concerning the Zoning District and Regulations may be appealed to the Board of Adjustment by any landowner within the District.

### **C. Appeals and Variances**

**1. General Requirements:** An application for all variance requests and appeals shall be obtained from the Lake County Planning Department, completed and submitted by at least one owner of interest of the subject property not later than 28 days prior to a regularly scheduled meeting of the Board of Adjustment. The applications shall be accompanied by a fee in the amount set by the Lake County Board of County Commissioners.

**2. Appeal:** A person may file an appeal when aggrieved by a decision or interpretation of the zoning administrator, based on an allegation that the zoning administrator made an error in interpretation of these regulations which specifically affects the appellant, by delivering a notice of the appeal to the zoning administrator within 28 days of the date of the decision being challenged.

a. The Zoning Administrator shall notify the Board of Adjustment of the appeal and deliver the case file to the board of adjustment at least seven (7) calendar days prior to the next regularly scheduled meeting.

b. An appeal under the terms of these regulations stays all proceedings in the matter appealed from unless the zoning administrator certifies to the board of adjustment hearing the application that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted by the board hearing the appeal or by a court of record on application and notice to the zoning administrator from whom the appeal was taken and on due cause shown.

c. The Board shall either affirm or reverse the decision of the administrator. The decision shall be in writing and contain the basis for the decision on each appeal, and a detailed summary of the facts and basis supporting the determination.

d. A person aggrieved by a decision of the board of adjustment may file an appeal with a court of record as provided by law within thirty (30) days of date of the decision by the board.

**3. Variance:** In addition to the application, the following information shall be submitted:

a. A plan of the site for the variance proposal addressing all elements necessary to evaluate the request. These may include location of buildings, parking and loading area, traffic access and traffic circulation, open spaces, easements, existing and proposed grade, landscaping, utilities, water and sewer services, signs, stormwater management plan, and such other information as the Zoning Administrator may require.

b. A narrative statement discussing the proposed use, the hardship peculiar to the property, and how the request is the minimum means to alleviate the hardship. It should also evaluate the effects of the proposal on neighboring properties and the public, which includes consideration of the compatibility of the proposal with other properties in the district and the relationship of the proposed use to the intent of the Zoning District.

c. Standards for evaluation:

1. Hardship: Certain circumstances exist or arise wherein an unnecessary hardship is created through strict adherence to the provisions of these regulations. There is hereinafter provided provisions for the granting of a variance from the provisions

of these regulations, so that the public welfare is secured and substantial justice can be done to those so affected.

2. Review: The Board shall review the particular facts and circumstances of each proposed variance. Findings are required to be made by the board for approval of a variance. No variance shall be granted unless the board finds all the following conditions are met or found to be not pertinent to the particular case:

a. Strict compliance with the terms of these regulations will limit the reasonable use of the property; and deprive the applicant of rights enjoyed by other properties similarly situated in the district.

b. The hardship is the result of lot size, shape, topography or other circumstances over which the applicant has no control.

c. The hardship is peculiar to the applicant's property.

d. The hardship was not created by the applicant.

e. The hardship is not economic (when a reasonable or viable alternative exists).

f. Granting the variance will not adversely affect the neighboring properties or the public.

g. The variance requested is the minimum variance which will alleviate the hardship.

d. Hearing Notices. The Zoning Administrator shall place notice of the variance proposal or appeal in the local newspaper and written notice shall be sent by regular mail to all landowners adjoining the property to which the conditional use is proposed within 14 days of the Board of Adjustment hearing.

#### **D. Grievance**

An aggrieved landowner within the district may appeal the decision of the Zoning Administrator to the Board of Adjustment or a decision of the Board of Adjustment to a Court of Record provided that the appeal is filed in 30 days or less of the issuance of the decision to be contested.

#### **E. Violation**

Where the administrator finds any building or structure is erected, constructed, reconstructed, altered, or converted, or any building or structure of land is used in violation of this Regulation, or a person is violating any of the provisions within the zoning district regulations, a notice of non-compliance shall be issued in writing to the person responsible for such violations, as well as the property owner. The notice of violations shall indicate the nature of the violation and ordering the action necessary to correct it. The notices shall also order discontinuance of illegal buildings or structures or of illegal additions, alterations, or structural changes.

If the person in violation chooses to appeal the notice of non-compliance, the person may file an appeal with the Board of Adjustment as set forth in this section. If the party in violation does not comply with the notice within 30 days or file an appeal with the Board of Adjustment within such a period, the Administrator shall forward the notice of non-compliance to the Lake County Attorney.

The County Attorney may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, or use to restrain, correct,

or abate such violation, to prevent occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. A violation of the Zoning Regulations is a misdemeanor and shall be punishable by a fine not exceeding \$500.00 or imprisonment in the county jail not exceeding 6 months or both.

## **XVI. Amendment**

### **A. Mandatory Review**

The Zoning Regulations shall be reviewed by the Lake County Planning Board 5 years after adoption and every 5 years thereafter. The Planning Department staff shall work with the Advisory Council to review the regulations and prepare any recommendations for revision. The Planning Board shall conduct a public hearing and submit a written finding to the Board of Commissioners which addresses the applicability of the zoning regulations to the current land use, development, social, economic, and environmental situation in the district. The Planning Board may propose amendments to the zoning regulations.

### **B. Amendment Procedure**

The zoning regulations may be amended in whole or in part by the affirmative vote of the Board of Commissioners after a public hearing is held in accordance with 76-2-205 MCA. A proposal to amend the zoning may be initiated by any landowner within the district, the Lake County Planning Board or Planning Department staff. However, prior to taking any action to amend the regulations the Commissioners shall solicit a recommendation on the proposed action from the Lake County Planning Board. When considering an application for amendment to the provisions of these regulations or the official zoning map, the planning board and the board of commissioners shall be guided by and consider the criteria identified in state law Title 76, Chapter 2 MCA.

#### **1. Procedures:**

- a. Requests to amend the text of these regulations may be initiated by providing the Zoning Administrator with the proposed amendment and the applicable review fee in compliance with county requirements.
- b. An owner of record or his authorized agent shall sign the application for amendment. In the event that an application filed by a real property owner in the area involved includes any property other than owned by the applicant, before the application will be accepted for processing, a petition in favor of the request signed by the real property owners representing at least sixty five percent (65%) of the land area to be included in the application must be submitted. The petition shall bear the property owners signatures and addresses, the legal description and land area of each property represented in the petition, the total land area represented by the petition and the total land area of individual properties included in the application.
- c. The applicant shall provide the names and addresses of all property owners adjoining the proposed amendment area.
- d. After acceptance by the zoning administrator, the completed application shall be transmitted to the planning board for their review and evaluation at a public hearing.
- e. The planning staff shall set a public hearing date and publish a public notice in compliance with state law.

- f. The planning board shall consider the application and make a recommendation to the Board of Commissioners to grant, amend or deny the application.
- g. Upon receipt of the recommendation of the Planning Board, the Board of Commissioners shall render a decision to grant, amend or deny the requested amendment based on the results of the public input, the staff report and findings of the Planning Board.
- h. Should the proposed amendment be adopted by resolution in compliance with state law, the Zoning Administrator shall incorporate the amendment into the appropriate section or paragraph of these regulations.
- i. In the event that an application to amend these regulations is denied by the Board of Commissioners or the application for amendment is withdrawn after the hearing of the Planning Board, the Zoning Administrator shall have the authority to refuse to accept another application for any similar amendment within one year from the date of hearing of the previous application before the board.

**2. Amendments To Official Zoning Map (Rezoning):** An amendment proposing changes in the official zoning map shall follow substantially the same procedures as provided for above, with the following additional requirements to be adhered to:

- a. In the event that an application filed by a real property owner in the area involved includes any property other than owned by the applicant, before the application will be accepted for processing, a petition in favor of the request signed by the real property owners representing at least sixty five percent (65%) of the land area to be included in the application must be submitted. The petition shall bear the property owners signatures and addresses, the legal description and land area of each property represented in the petition, the total land area represented by the petition and the total land area of individual properties included in the application.
- b. If property outside the zoning district is to be annexed into the district, it shall be adjoining and all proposals shall expand or compliment the existing subunit of the zoned property.
- c. In the event that the Board of Commissioners grants the application to amend or rezone, they shall notify the zoning administrator of their action and he shall be responsible for updating the official zoning map. The updating shall include the posting on the face of the official zoning map the date and the number of the resolution or ordinance amending the map.
- d. In the event that an application to amend (rezone) is denied by the Board of Commissioners or that the application is withdrawn after the planning board hearing, the zoning administrator shall have the authority to refuse to accept another application for any similar amendment within one year from the date of the hearing of the previous application before the board.

**XVII. Advisory Council** These regulations authorize creation of the North Lake County Advisory Council, to review applications and other land use matters, for the purpose of facilitating communication between the local community, and the Planning Department, Planning Board, Board of Adjustment, and Board of County Commissioners, and for updating

these regulations. The purpose and operation of the Advisory Council are set out in more detail in the attached bylaws. (See Bylaws)

## **XVIII. Definitions**

**ABUT (ADJOIN):** To physically touch or border upon; or to share a common property line.

**ACCESS (PHYSICAL):** Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.

**ADJOINING LANDOWNER (IMMEDIATELY ADJOINING OR ADJACENT PROPERTY OWNER):** The owner of record of a Lot of land that is contiguous, at any point, and land that is separated from the Lot by a road, watercourse or deeded right-of-way.

**AGRICULTURE:** The historic or current use of land for the production, keeping or maintenance, for sale, lease or personal use, of plants, animals useful to man, including but not limited to: forages and sod crops, grains and seed crops, dairy animals and products, livestock of all kinds, bees and apiary products, trees and forest products and fruits of all kinds. This does not include land used for mineral extraction.

**BED AND BREAKFAST:** The definition in the state licensing act shall apply.

**BUFFER (LANDSCAPED):** An area of land adjacent to roads, trails, waterways, and/or recreation sites where disturbances of vegetation are not permitted or are limited by a use agreement, easement, deed restriction or similar document. Landscaped buffers are intended to separate and partially obstruct the view between land uses, block noise, serve as a visually attractive boundary, or all three.

**BUFFER (VEGETATED):** An area of vegetated land generally located on the waterward side of impervious surfaces where disturbances of vegetation are not allowed or are limited by a use agreement, easement, deed restriction or similar document. Vegetated buffers are meant to protect water resources by stabilizing stream banks, minimizing soil erosion, helping to control water temperature and exclude noxious weeds, and intercepting nonpoint source pollution from surface and stormwater runoff. Vegetated buffers enhance wildlife habitat, scenic resources and recreational resources. Mowed lawns are not considered vegetated buffers. Introduction or preservation of exotic, noxious and/or invasive vegetation should be avoided. Vegetation typically consists of trees, shrubs, forbs and perennial grasses with at least 50% of the species mixture native to the area.

**BUILDABLE AREA:** That portion of a lot which is outside of any required building setbacks, has a slope of less than 30 percent (or 25 percent where required by locally specific zoning regulations), is free from wetlands, is outside of a 100-year floodplain and upon which a building

may be lawfully constructed.

**CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].

**COMMERCIAL:** Enterprises involving wholesale trade, retail trade, professional services and/or personal services.

**COMMERCIAL KENNELS:** Establishments where greater than six dogs or domestic animals more than one year old are housed, groomed, boarded, trained or sold.

**CONDITIONAL USES:** Uses that may be allowed, but that require additional review. Conditional uses add flexibility by allowing potentially adverse uses of property when certain conditions are met. The Board of Adjustment may choose to place additional conditions to minimize any adverse effects it might have on surrounding properties.

**CONDOMINIUM:** The ownership in common with others of a parcel of land and certain parts of a building together with individual ownership in fee of a particular unit or apartment in such building.

**COVENANT (RESTRICTIVE COVENANT):** An agreement, or restriction, in writing of two or more parties by which any of the parties pledges to the other that something is done or shall be done with regard to the use of real property.

**DEFENSIBLE SPACE:** An area surrounding a building or roadway where measures are taken to reduce the chances of a fire spreading to or from the building and to reduce the threat to life and/or property from fire. Typical measures include tree thinning and removal of other flammable debris and fuel.

**DENSITY:** The average number of residential, commercial or industrial units per acre. Density is distinct from minimum lot size.

**DEQ:** The Montana Department of Environmental Quality.

**DISTURBANCE:** A disturbance is the permanent displacement of soils and other earthen materials. Removal of stumps and hazard trees and burning are not disturbances.

**DRIVEWAY:** A vehicular accessway that is constructed and maintained to provide physical access to the primary dwelling unit or building site on one lot.

**DWELLING UNIT:** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation facilities for use solely by one family. All rooms comprising a dwelling unit shall have access

through an interior door to other parts of the dwelling unit.

**EASEMENT:** An interest in land owned by another that entitles its holder, who can be a person, governmental entity or other, to a specific limited use. An easement may also limit the landowner's right of use of the land.

**FINDING OF FACT:** A written conclusion or determination based on evidence made in support of a decision.

**FLOOD:** The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA].

**FLOODPLAIN, 100-YEAR:** The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100-year frequency [76-5-103 (10), MCA].

**FLOODWAY:** The channel of a watercourse or drainage and those portions of the adjacent overbank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

**FRACTIONAL OWNERSHIP:** Legal ownership and title possession to a home and property share within the Historic Kootenai Lodge (a.k.a. Kootenai Lodge Estates) Zoning District by multiple parties that are not related by lineage or marriage. This in no way prohibits unit ownership by a limited liability company or similar entity.

**FUNNELING:** the use of a waterfront lot for waterfront access by multiple owners of non-waterfront property who jointly own or are allowed to use the lot.

**GOVERNING BODY:** The governing authority of a county, city, town or consolidated local government organized pursuant to law. In the case of Lake County, the Board of Lake County Commissioners is the governing body.

**GROWTH POLICY:** An official public document adopted and used by a local government as a general guide for development and conservation decisions. It is not a regulation; rather, it is an official statement of public policy to guide growth and change. The required and optional elements of a growth policy are listed in Title 76, Chapter 1, Part 6, MCA. This term has the same general meaning as the terms master plan, general plan and comprehensive plan.

**GUEST HOUSE:** An accessory building designed for use and occupancy on a short term basis by the guests of the occupants of the primary residence. A guesthouse shall not be utilized for sale or rental purposes. Guest houses shall not exceed one per tract and shall not be less than 200 square feet or more than 1,000 square feet of living area.

**HEIGHT (AVERAGE BUILDING HEIGHT):** The average building height of a structure is computed by determining the average of the sum of the highest points on each major side of a

structure. For the purposes of determining average building height, all structures shall have a maximum of four major sides. The highest point of a side shall be measured from the top of the highest component on that side to the average ground elevation on that side. The highest point shall not include typical extensions above a roofline such as chimneys or antennae. The ground elevation shall be measured from the lower of (1) the grade prior to construction or (2) the grade after construction, exclusive of filling, berming, mounding or excavating.

**HIGH WATER MARK:** For the purposes of these regulations, the Zoning Administrator shall determine the approximate location of the high water mark by a visual identification of coloration and debris along the shoreline, caused by standing water.

**HISTORICAL AND CULTURAL RESOURCE:** Any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American or Tribal history, architecture, archaeology, biology, or anthropology. This term includes fossilized plants, sites, and monuments, which are rare and critical to scientific research or have a potential to address specific research questions.

**HOME OCCUPATION:** Any occupation carried on entirely within a residence or accessory building by the occupants thereof, which is clearly incidental to the use of the property for residential purposes and does not change its residential character, is conducted in such a manner as to not give any outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term, except for signage as allowed under these regulations, and does not infringe upon the rights of neighboring residents to enjoy a peaceful occupancy of their homes.

**HOMEOWNERS (OR PROPERTY OWNERS) ASSOCIATION:** A private, nonprofit corporation of homeowners or property owners, established according to state law for the purpose of owning, operating and maintaining various common properties.

**IMPERVIOUS SURFACE AREA:** The part of the build able portion of a lot that is covered with manmade improvements. This includes but is not limited to such items as a house, garage, shed, decks and hard surfaced driveways and parking areas.

**INDUSTRIAL USE:** Any manufacturing, production or assembly of goods or materials, including any onsite waste disposal area directly associated with an industrial use. This term includes junkyards and similar facilities or uses. This term does not include manufacturing, production, or assembly that may be allowed as a home occupation under a conditional use.

**INTERVAL OWNERSHIP:** Legal ownership and title possession to a home and property share within the Historic Kootenai Lodge (a.k.a. Kootenai Lodge Estates) Zoning District by multiple parties that are not related by lineage or marriage whereby each party uses the facilities during different portions of the year. This in no way prohibits unit ownership by a limited liability company or similar entity.

**LAKE:** A body of standing water and the area within its lakeshore, including adjacent wetlands, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least six months in a year of average precipitation of such averages are determined by the United States Geological Survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats. The lakes within Lake County are Flathead Lake, Swan Lake and Lake Mary Ronan.

**LAKE FRONTAGE:** For the purpose of administering these regulations, lake frontage shall be based on the linear feet of lake frontage of the lot or tract to be developed as well as any adjoining undeveloped lots under the same ownership. Lot ownership is measured at the high water mark.

**LAKESHORE PROTECTION ZONE:** The lake, lakebed and the land area which is within twenty (20) horizontal feet of the parameter of the lake and adjacent wetlands when the lake is at the mean annual high water elevation, all work in this area requires a Lakeshore Construction Permit.

**LANDOWNER:** All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a lot for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the lot under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms “property owner,” “landowner,” and “owner” mean both the seller and the purchaser under a contract for deed.

**LOT:** A parcel, plot, tract or other land area created by subdivision for sale, rent, or lease.

**MATERIAL** (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria, bringing the proposal out of conformance with the Lake County Growth Policy, zoning or subdivision regulations, or impacting the public’s opportunity to provide meaningful comment.

**MEAN ANNUAL HIGH WATER MARK:** The average of the highest elevation of a water body in each of at least five consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. The highest elevation caused by operation of a dam or other impoundment counts towards the establishment of the mean annual high water elevation. When the mean annual high water mark cannot be readily determined, the governing body may permit the high water mark to be a mutually agreed upon line that impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area waterward of this line may include distinctive marks such as those caused by erosion, prevention of terrestrial vegetation or other distinct vegetation pattern, discoloration, etc.

**MOBILE (MANUFACTURED) HOME:** A detached residential dwelling unit, which may

consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

**MOBILE (MANUFACTURED) HOME PARK:** A tract of land that provides or will provide spaces for two or more mobile homes.

**NATURAL ENVIRONMENT:** The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.

**NONCONFORMING USE:** A lawful use of a building, other structure or land, which predated the adoption of the zoning use regulations now in effect, and which would not be a use authorized in the district designation currently applied to that site.

**OPEN SPACE:** Land that is essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the enjoyment of owners and occupants of land adjoining or neighboring such open space. This includes land that is intended to be preserved due to significant natural resources, wildlife habitat, viewsheds, irrigated or prime agricultural land and other similar features. This does not include land used for mineral extraction.

**PARK:** Land that is specifically dedicated for outdoor recreational purposes for use by residents in a subdivision or the general public. The land is typically free of structures but may contain historic structures, recreational or community facilities.

**PERMITTED USES:** Designated uses that are specifically allowed, without additional review..

**PERSON:** Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

**PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.

**PLANNING DEPARTMENT:** The Lake County Planning Department.

**POND:** An inland body of water smaller than a lake.

**PRIMARY RESIDENCE:** The permanent or main residential dwelling on a property zoned for

single family residential use.

**PROHIBITED USES:** Designated uses that are specifically not allowed.

**PUBLIC HEALTH AND SAFETY:** The prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.

**PUBLIC HEARING:** The official hearing at which a subdivision application is considered and the public is invited to provide testimony. The procedure follows the steps described in Chapter 7 of the Lake County Growth Policy. Public notice shall be provided as required by 76-3-605, MCA.

**PUBLIC MEETING:** A meeting open to the public at which a subdivision application is considered and the public is invited to provide testimony. The procedure follows the steps described in Chapter 7 of the Lake County Growth Policy although the public notice requirements of 76-3-605, MCA do not apply.

**PUBLIC ROAD OR STREET:** A road or street is public if its right-of-way has been dedicated or acquired for public use, or it is considered prescriptive for use by the general public by the governing body, and is maintained by Lake County.

**RECREATIONAL VEHICLE:** A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

**RECREATIONAL VEHICLE PARK:** A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.

**SLOPE:** The degree of deviation of a surface from horizontal measured from the natural grade. For the purposes of these regulations, slope is expressed in percent and may be averaged across a specific, limited area or physical feature such as a road or segment of road, a building site (or buildable area), a building envelope, lot or an entire subdivision. To calculate the average slope of an area of interest, slope calculations shall use the smallest contour interval available or as required by the reviewing agency (typically 5 feet or less, depending on the size of the area and level of accuracy required). The average slope may be calculated using the following formula:

$$S\% = 0.0023 \times I \times L$$

A

Where:

S = Average natural slope of an area (%)

I = Contour interval of map in feet

L= Total length of the contour lines within the area (feet)

A= Area in acres

0.0023 = Constant which converts square feet into acres.

**SETBACK:** The minimum distance by which any building or structure must be separated from a road, property line, easement or other identified physical, conceptual or biologic object. Setback and buffer distances are measured on a horizontal plane from foundation walls, and all extensions of the house including eaves, attached decks, walkways over 5 feet in width and patios.

**SILVICULTURE:** The branch of forestry that is concerned with the cultivation of trees.

**STORMWATER:** The accumulation and flow of water from a precipitation event, including snowmelt, that runs off surfaces rather than absorbing into the soil.

**STREAM TYPES:** For the purposes of these regulations, stream types are defined as follows:

a. **Ephemeral:** An ephemeral stream flows only for hours or days following a major rainfall or snow melt event. Ephemeral streams or channels are generally described as drainages in these regulations and are distinct from intermittent streams.

b. **Intermittent:** An intermittent stream ceases to flow for weeks or months each year.

c. **Perennial:** A perennial stream has a continuous flow in parts of its bed all year round during years of normal rainfall.

**SUBDIVISION:** A division of land or land so divided which creates one or more Lots containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the Lots may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA].

**SWALE:** A drainage channel or depression designed to direct or contain surface water flow.

**TEMPORARY DWELLING:**

a. Establishment of travel type or single wide mobile home for a construction period not to exceed two calendar years.

b. A temporary structure that may be used on seasonal basis provided that the structure shall not remain on the lot for more than five consecutive months. The travel trailer shall be removed from the lot for a period of at least 30 days in order to activate a new five-month period. The number of travel trailers, used as dwellings, shall not exceed two per single lot. These structures may not be rented.

TOPOGRAPHY: General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

TRACT OF RECORD: An individual Lot of land, irrespective of ownership, that can be identified by legal description, independent of any other Lot of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(17)(a), MCA].

VARIANCE: Relief from a regulation standard where strict enforcement of the standard would create a hardship upon the landowner, based on conditions of the property or a change in circumstances which occurs after purchase of the property.

WETLANDS: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. When making a wetland determination, the environmental characteristics used are vegetation, soil, and hydrology. Greater than 50% of the vegetation present must be considered hydrophytic. Hydric soil must be present. The hydrology requirement is satisfied when an area is saturated within 12 inches of the surface at some time during the growing season of the prevalent vegetation. Unless an area has been altered or is a rare natural situation, wetland indicators of all three characteristics must be present during some portion of the growing season for an area to be a wetland.

WILDLIFE: All birds, mammals, amphibians, reptiles and fish that are not domesticated or tamed.

WILDLIFE HABITAT: Land and water that provides food and shelter for wildlife.

Definitions of any terms not defined here should be drawn from the Lake County Subdivision Regulations or state law, if applicable.

**XIX. Maps** (maps of district and subunits to be attached)

DRAFT

## NORTH LAKE COUNTY ADVISORY COUNCIL BY-LAWS

### I. PREAMBLE:

The North Lake County Planning & Zoning District Advisory Council (NLCAC) shall be governed by the provisions of all applicable Montana statutes and Lake County ordinances, regulations, and resolutions, as well as the Lake County Growth Policy.

**Authorization:** In accordance with Section 76-2-201, et seq, MCA, the Lake County Commissioners create the North Lake County Planning & Zoning Advisory Council.

### II. STATEMENT OF PURPOSE:

The NLCAC shall act in an advisory capacity for official Lake County land use decision-making boards and Lake County Commissioners concerning applications and proposals for growth and development projects within the North Lake County, Montana Planning and Zoning District.

The Council shall act as a liaison between North Lake County residents and landowners, and the County. The Council will represent the concerns and issues of the residents and landowners, and solicit, form, and present recommendations to county officials and boards, including the Planning Department, Planning Board, Board of Adjustments, and Commissioners, using community input to provide information on issues of interest and concern to the community. The Council will provide leadership and expertise in supporting community efforts to promote sound and orderly growth and development that serves the best interests of the community and the environment.

### III. DEFINITIONS:

**Agenda:** The Agenda for each NLCAC meeting, consistent with the “Order of Business” section of these Bylaws, shall be posted a minimum of 72 hours prior to each meeting at the same locations identified elsewhere in this document.

**Application:** Applications, for the purpose of NLCAC meetings, shall include applications for subdivisional approval, conditional use permits, variances and zoning changes.

**Commission:** Board of County Commissioners, Lake County, Montana.

**LCPD:** Lake County Planning Department.

**NLCAC, Council, or Advisory Council:** North Lake County Planning & Zoning District Advisory Council.

**NLCPZD or District:** “North Lake County Planning & Zoning District” shall mean that geographic area with boundaries defined in the North Lake County Planning & Zoning District jurisdiction and identified on maps on record in the Lake County Planning and Zoning office.

MCA shall refer to the Montana Code Annotated.

#### **IV. JURISDICTION:**

The NLCAC shall have advisory oversight and representation in the North Lake County Planning and Zoning District. The Council's recommendations are advisory, not regulatory. The District is defined as follows:

**INSERT LEGAL DESCRIPTION OF BOUNDARIES**

#### **V. MEMBERSHIP:**

The Council shall consist of seven appointed voting members, as follows:

1. two members will live or own property within the District in Ferndale (the area east of the top of Crane Mountain east to the county line);
2. two members will live or own property within the District in Woods Bay (the area west of the top of Crane Mountain to Flathead Lake);
3. one member, living or owning property anywhere within the District, will be appointed at large;
4. one member will be a representative of the Montana Department of Natural Resources and Conservation (DNRC). This member is not required to live or own property within the District; and
5. one member will be a representative of the agriculture (including orchards) or timber industries. A member employed by a landowner with land in the District is not required to live or own property in the District.

There is no minimum residency requirement for members who are required to live or own property within the District.

Members will be appointed by the Lake County Commissioners for a three-year term, using an application process established by the County. With the initial formation of the Council, terms will be staggered as follows: two for one year, two for two years, and three for three years. Ferndale seats shall be designated as "Ferndale Seats #1 & #2"; Woods Bay seats shall be designated as "Woods Bay Seats #1 and #2"; the At-Large Seat shall be so designated. The remaining two seats shall be designated as the "DNRC Seat" and the "Agriculture/Timber Seat." Initial appointments shall be as follows:

1. one year initial appointment: DNRC Seat; Agriculture/Timber Seat;
2. two years' initial appointment: Ferndale Seat #1; Woods Bay Seat #1; and
3. three years' initial appointment: Ferndale Seat #2; Woods Bay Seat #2; At-Large Seat.

All subsequent appointments for each seat shall be for three years, unless a Council member is appointed to fill a seat vacated prior to its term's completion. (See "Vacancies," below.)

Terms shall run with the calendar year, from January 1 through December 31.

Service on the Council shall be voluntary. There shall be no financial remuneration for services.

Any Council member who is unexcused and misses three consecutive regularly scheduled monthly meetings, or a total of five regularly scheduled monthly meetings in a calendar year, shall vacate the position and not be eligible to reapply for one year. Members may participate by telephone, teleconference, videoconference or other electronic means, and will be considered to have been present for the meeting.

Vacancies occurring on the Council shall be filled within 30 days whenever possible. Appointments shall be made by the County Commissioners as the governing body. Members appointed to complete a prior member's term will be appointed for the remainder of that term.

Members may be reappointed to successive terms.

#### **VI. LIMITED COMMITTEE MEMBERSHIPS:**

No member of the NLCAC may serve simultaneously on the Lake County Planning Board or Lake County Board of Adjustment.

#### **VII. CODE OF ETHICS:**

The holding of public office is a public trust. Council members are official appointees and shall carry out their duties for the benefit of the residents and landowners of the North Lake County Planning and Zoning District.

No NLCAC member or any person acting on NLCAC's behalf shall accept any gift of any economic value to the recipient related to specific Council business, or use Council business or information to benefit his or her personal economic interest.

Council members shall declare any conflict of interest due to financial or personal interest in any matter before NLCAC and shall recuse themselves from the Council discussions and vote. The recusing Council member shall leave the Council table or seating area during such discussions. The Council member may provide written or oral comments as a member of the public.

A member may not abstain from voting without declaring a conflict of interest.

#### **VIII. OFFICERS:**

**Chair:** The Chair shall be elected every two years by the Advisory Council members from within the Advisory Council membership. The Chair will preside over all meetings, call special meetings as needed, direct the work of the Council, and serve as a voting member. The DNRC Seat representative is not eligible to serve as Chair or any other officer.

**Vice Chair:** A Vice Chair shall be elected every two years by the Advisory Council members from within the Council membership. The Vice Chair shall act as Chair in the Chair's absence and serve as a voting member.

**Secretary/Treasurer:** A Secretary/Treasurer shall be elected every two years by the Advisory Council members from within the Council membership. The Secretary/Treasurer shall be responsible for financial reports, maintaining files, records, and correspondence pertaining to the business of the Council, and preparing agendas and minutes or recommendations, including recommended conditions (if applicable). The Secretary/Treasurer shall insure that both a copy of the draft minutes (so labeled) and a cover page with NLCAC recommendations and recommended conditions (if applicable) for each application are sent to the planning office for distribution to the Planning Board, Board of Adjustments, or Commissioners, as appropriate, in a timely fashion upon completion of each NLCAC meeting. In addition, the Secretary/Treasurer will insure that a copy of the final *approved* minutes (so labeled) for each NLCAC meeting are also forwarded to the planning office for distribution, in a timely fashion following the meeting at which they are approved.

The Council may appoint a volunteer from outside its membership to act as Assistant Secretary to take minutes of meetings and perform other functions as needed, with the exception of financial reporting. If an Assistant Secretary is appointed, that person is not a voting member of the Council, and will serve in a volunteer support position only. Minutes of each meeting shall be timely forwarded to members, the Planning Board or Board of Adjustment, Planning Department staff, and the public. Until approved by the Council at the next meeting, the minutes shall be marked "Draft." The Secretary/Treasurer will provide a financial report to the NLCAC on a quarterly basis and submit a roster of NLCAC members and their contact information to the County Planning Office whenever a change NLCAC membership occurs.

#### **IX. SUBCOMMITTEES:**

NLCAC may appoint subcommittees from time to time, for review of regulations or as otherwise required.

Subcommittees may report to the NLCAC in writing or orally. Minutes of a subcommittee meeting shall suffice as a formal report unless otherwise requested.

#### **X. LEGAL ASSISTANCE:**

Legal assistance may be provided to the Council by the County Attorney.

#### **XI. MEETINGS:**

All meetings shall operate under Robert's Rules of Order ("Informal Procedure for Small Boards") and shall be open to the public. Ground rules will be the same for each meeting, and

shall be posted in a prominent place for the public to review at each meeting. The Chair has authority to modify the ground rules for special purposes.

Public Notice will be provided by posting the Agenda at the Bigfork Post Office if allowed, Bob's Market bulletin board, Bigfork Harvest Foods bulletin board, and on the NLCAC Website at least 72 hours prior to the meeting.

A quorum shall consist of a simple majority of the total Advisory Council.

**SCHEDULING: TO BE SET IN CONJUNCTION WITH PLANNING DEPT, TAKING INTO ACCOUNT THE TIMELINES FOR CONSIDERATION OF APPS AND PLANNING BD AND BD OF ADJUSTMENT MEETINGS**

The Council shall meet on the \_\_\_\_\_ of each month at 4:00 p.m.

Special meetings may be called by the Chair or a simple majority of Council members at any time, provided the Council members and the public receive at least 72 hours' notice. Public notice of special meetings shall be provided as for regular meetings.

The Secretary/Treasurer shall provide Council members, Planning Department staff, and if possible, the public (at agenda posting locations), with a Council agenda at least five working days prior to the regularly scheduled meetings.

NLCAC may hear planning staff presentations by teleconference call, videoconference, or other electronic means, as an alternative to the staff member's physical presence. NLCAC members may also participate by conference call or other electronic means.

All meetings shall be held in compliance with Montana's open meeting laws.

There shall be no voting by proxy.

If expenses are incurred, e.g., for copy costs, an annotation to the minutes will be made in conjunction with the Secretary/Treasurer's financial report.

## **XII DUTIES:**

1. Solicit and encourage input from the community at large (including those who live outside the NLCPZD) as well as adjoining landowners, through the public meeting process, on land use applications and on other issues of local concern.
2. Review and give recommendations and recommended conditions (if applicable) on all North Lake County area applications and pre-applications pending with the Lake County Planning Department.
3. The Council will forward its recommendations on all reviewed applications in a timely

fashion to the Planning Department for distribution to the Planning Board, Board of Adjustments, or County Commissioners, by written letter or memo, comprised of the draft minutes of the meeting and a cover sheet summarizing the public comment and outlining the Council's recommendation, including any recommended conditions.

4. Communicate regularly with the residents and landowners of the District through printed media, community meetings, and any other means deemed necessary or desirable in order to obtain the opinions, comments, and suggestions regarding issues of concern to the North Lake County community.

5. Review and offer amendments, at a minimum of every five years or more often as needed, to the North Lake County Zoning Regulations and these Bylaws to keep them current, improve efficiency, and address problems. The Council will consult yearly with the Planning Director to discuss any needed changes to the process. These Bylaws may be amended, pursuant to proper notice, at any time by a simple majority vote of the whole Council and concurrent approval of the Lake County Commissioners.

6. As needed, a Council member will attend meetings of the Planning Board, Board of Adjustment, County Commissioners, or other entities where the application is presented to represent the Council, summarize public comment, and present the recommendation and any recommended conditions.

### **XIII ORDER OF BUSINESS:**

The order of procedure for NLCAC meetings should be as follows, but may be adjusted in the Chair's discretion to accommodate the needs of persons present:

- 1) Call to Order;
- 2) Adjustments in Agenda items as scheduled;
- 3) Approval of Minutes;
- 4) Public Comment Period;
- 5) Chair to share any written comment received;
- 6) Opportunity for oral comments;
- 7) Pre-application/Previews of projects;
- 8) Application Submittal by LCPD: read by Chair:
  - i) Staff summary of each application;
  - ii) Report by the applicant and presenters;
  - iii) Comments by Public Agencies;
  - iv) NLCAC members may ask questions at any time;
  - v) Open to public comment both in favor or opposed;
  - vi) Close public comment on that item;
  - vii) Staff response to all issues presented;
  - viii) Response by applicant and presenters;
  - ix) The Chair may invite new written or oral comment or questions.
- 9) Committee Action

- i) Discussion among Committee members;
  - ii) Summarize public comment and explain how such comment factors in the decision;
  - iii) No further public input unless initiated by Council member;
  - iv) Request motion, second, any further discussion, Chair states motion, vote;
  - v) Chair restates the decision as official recommendation including conditions, if applicable.
- 10) Proceed as above for each additional agenda item.
  - 11) Close of LCPD applications.
  - 13) Committee Reports.
  - 14) Old Business:  
Update on old applications/decisions
  - 15) New Business
  - 16) Announcements
  - 17) Adjourn the meeting.

**Follow-up on Applications:**

The Secretary/Treasurer will send the draft minutes to the planning office for distribution, with a cover page summarizing public comment with NLCAC recommendations and any recommended conditions for each application.

A Council member or designate will follow up on the County actions taken on applications so NLCAC may communicate with the community to keep them informed.

**XIV PROCEDURES AND CONDUCT OF OFFICIAL MEETINGS:**

To ensure the meeting is conducted in an orderly, fair and timely fashion, the following rules shall be followed:

- 1. Public comments should be limited to a maximum of 3 minutes per person on a one-time per agenda item basis, or as modified in the Chair’s discretion.
- 2. Comments both in favor of and opposed to the application will be heard simultaneously.
- 3. The public and applicants shall at all times address comments and questions to NLCAC. The Council in turn will involve the appropriate LCPD staff person and/or presenter as needed.
- 4. Council review of written comments not included in the packet of information shall, if possible, be distributed prior to the start of the meeting.

**XV APPLICATIONS AND PUBLIC MEETINGS:**

Activities of such a scale that they require a public hearing before a public board such as the Lake County Planning Board, Lake County Board of Adjustment or Lake County Commissioners shall first be addressed at a regular meeting of NLCAC. Typical activities would

include subdivisions, amendments to the NLCAC zoning district map or regulations, major lakeshore variances, and the like.

Applicants are encouraged to preview their applications to NLCAC at any time, in advance of completing their formal application, to inform the public and Council of their proposal and obtain early comment, without affecting the time lines for their applications.

1. Reviews: The Lake County Planning Department staff will provide the members with physical or electronic copies of materials, by the \_\_\_\_\_ of each month, for review. All reviews will be concurrent with other steps in the application process, and do not extend the total time for review of an application. NLCAC will review the materials and invite public comment at the regular public meeting. Applicants are encouraged to participate in the public review meeting, to provide information and obtain community input. The Planning Department will advise NLCAC of the time frame for NLCAC's response.

A. Subdivision pre-applications: NLCAC will review applications for subdivision approval during the pre-application phase. The Planning Department will provide the preapplication letter and materials.

B. Subdivision applications: NCLAC will review subdivision applications after the formal application is submitted. The Planning Department will provide the application and any other related materials.

C. Material Amendments: NLCAC will review any "material amendments" to the final plat applications, as determined by the Planning Department. The Planning Department has discretion to refer an item to NLCAC for consideration of whether a change to a final plat is material amendment. The Planning Department will provide all related materials.

D. Applications to the Board of Adjustment: The Planning Department will provide the application and any other related materials.

E. Other review: NLCAC may review the agenda for upcoming Planning Board, Board of Adjustment, and Board of County Commissioners' meetings to determine whether any items not within the four review steps outlined above warrant community review through the Advisory Council process.

2. Schedule: Each December, NLCAC will notify the Planning Department of its anticipated meeting calendar for the forthcoming year.

3. Site Visits: With applicant/landowner consent, NLCAC members may physically visit the property involved. No more than three members may visit at a time, to avoid the presence of a quorum, unless the visit is treated as a meeting with proper notice given and minutes taken.

4. Public Meetings: The Council will address applications at its next regularly scheduled

meeting, or a special meeting. See Order of Business.

5. Recommendations: Based on the site visit and input received at its meetings, NLCAC shall forward a written recommendation and any recommended conditions to the Planning Department for distribution, with a copy to the applicant, within five days following the NLCAC meeting. The recommendation and any recommended conditions shall become a permanent part of the file for the application, and will be included in all further reports by the Planning Department to the Planning Board, Board of Adjustment, County Commissioners, and other entities.

6. Both the draft minutes of the NLCAC meeting and a cover sheet outlining the Council's recommendations and any recommended conditions (if applicable) for each application will be submitted to the planning department.

#### **XVI AMENDMENTS:**

Pursuant to proper notice, these Bylaws may be amended at a regular meeting by a majority vote of the Council members. All amendments proposed must be in writing and be approved by a simple majority of the Council before being submitted to the Lake County Board of Commissioners for consideration and adoption.

After one full year of operation, the Council will review these Bylaws and its operations with the Planning Department director, at a public meeting, to consider any revision of these bylaws and the Council's procedures.

#### **XVII SEVERABILITY:**

If any provision of these Bylaws or any section, sentence, clause, phrase or word or the application thereof shall be held contrary to law, such portion is severable from the remainder of these Bylaws, without affecting the remainder.

#### **XVIII ADOPTION:**

The foregoing Bylaws were introduced before an approved by the Lake County Board of Commissioners on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, and were adopted by the NLCAC on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.