

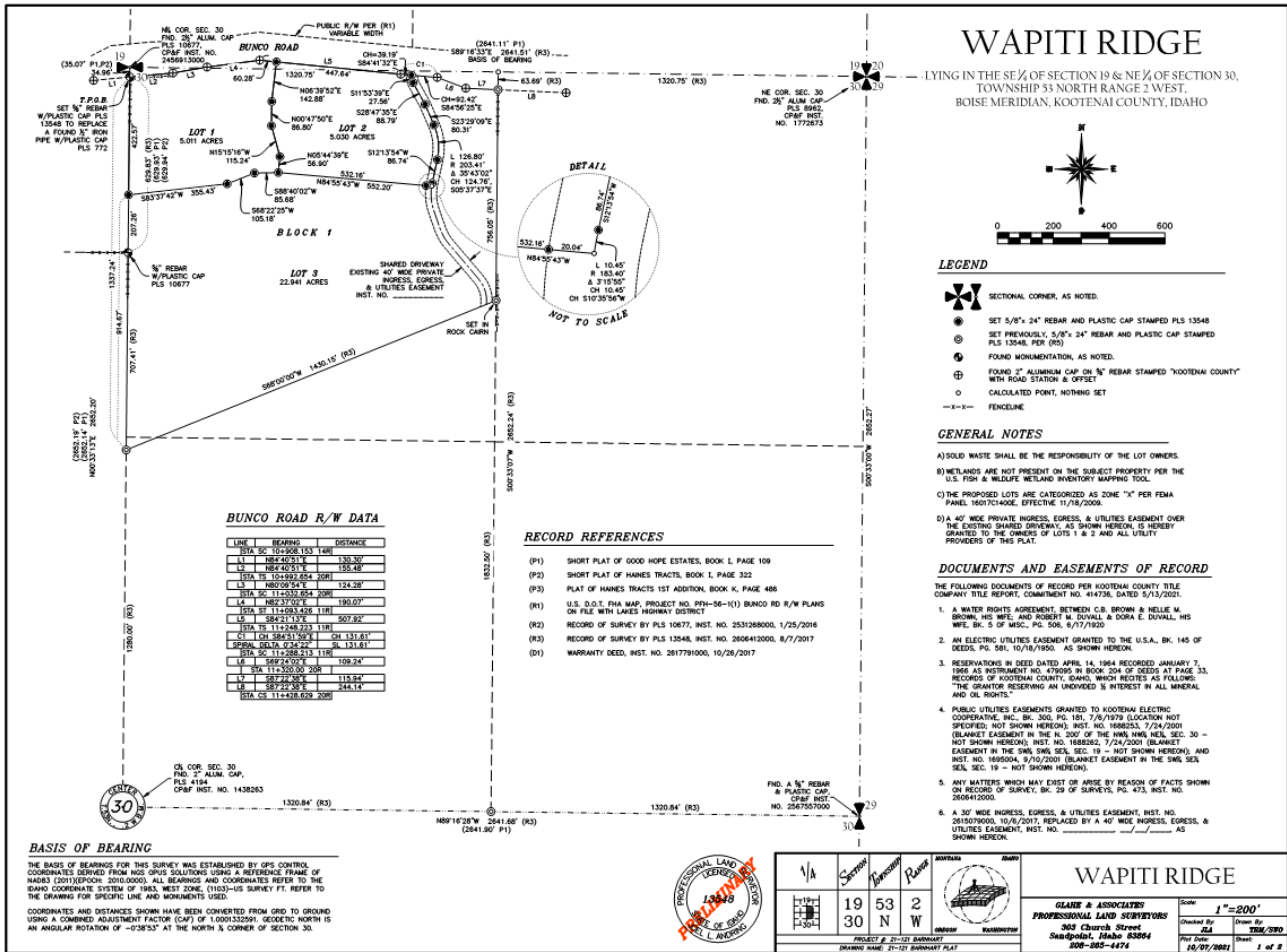
BEFORE THE COMMUNITY DEVELOPMENT DIRECTOR OF KOOTENAI COUNTY, IDAHO

IN THE MATTER OF THE APPLICATION OF)
 ALEX AND SALLY BARNHART FOR THE)
 APPROVAL OF WAPITI RIDGE, A THREE-LOT)
 MINOR SUBDIVISION ON 32.982 ACRES IN)
 THE RURAL ZONE)

CASE NO. MIN21-0110
 ORDER OF DECISION

I FINDINGS OF FACT

1.01 **Proposal.** The Applicant is proposing a three (3) lot minor subdivision on approximately 32.982 acres in the Rural zone.



Draft Plat

- 1.02 **Applicant/Owner.** Alex and Sally Barnhart, 13700 E. Bunco Road, Athol, ID 83801.
- 1.03 **Applicant Representative.** Joel L Andring, Glahe Land Surveyors, 303 Church Street, Sandpoint, ID 83864.
- 1.04 **Location and Legal Description.** The subject parcel is located approximately 0.50 miles east of the intersection between E. Bunco Road and N. Lewellen Creek Road and is described as TAX#25013 [S2-SE SEC 19] 1953N02W, [W2-NE SEC 30] 3053N02W Sections 19 and 30, Township 53 North, Range

02 West, Boise Meridian, Kootenai County, State of Idaho. The parcel number is 53N02W-30-0800 and the AIN is 123244.

- 1.05 **Zoning.** The subject property is located within the Rural zone. This is a land use classification for a district suitable for rural uses, such as rural residential uses and agricultural pursuits, including farming and forestry. The minimum lot size for the Rural zone is five (5.00) acres.
- 1.06 **Comprehensive Plan.** According to the Kootenai County Comprehensive Plan, the land use designation for the subject parcel is Country. The primary purpose of this designation is to protect open space and to promote both: (1) agricultural activities that are compatible with rural residential development; and (2) residential subdivisions that allow residential and non-residential uses. The secondary purpose is to promote economic activities that minimize environmental impacts and do not require a full range of services.
- 1.07 **Lot Sizes.** Proposed Lot 1 will consist of 5.011 acres, Lot 2 will consist of 5.030 acres and Lot 3 will consist of 22.941 acres. All lots will meet or exceed the minimum lot size of five (5.00) acres for the Rural zone.
- 1.08 **Existing Structures.** The subject parcel is currently developed with a residence, sheds and pole building. A majority of the structures are to remain on proposed Lot 1, with only a shed to remain on proposed Lot 2. Proposed Lot 3 is currently vacant. The Applicant provided a built features map which includes setback information for the structures closest to the newly proposed property lines. All structures will continue to meet the setback requirements for the Rural Zone as a result of the minor subdivision.
- 1.09 **Surrounding Land Use and Zoning.** The subject parcel is surrounded by properties zoned Rural. Neighboring parcels of land vary in size from 5 to 55 acres. A majority of neighboring parcels are residential in nature with single-family residences and accessory structures.
- 1.10 **Area of City Impact.** The subject property is not located within an Area of City Impact.
- 1.11 **Physical Characteristics.** According to the narrative, the soil types consist of 13% Bonner gravelly silt loam, 27% Moscow loam, and 59% Skalan-Rock outcrop complex. The vegetation is approximately 60% trees with underbrush and 40% open areas with grasses. The majority of the three-lot subdivision has slopes less than 15%. This is confirmed by the topographic/slope category map that was submitted with the application. According to the narrative, a drone equipped with LiDAR and GPS was used to create the slope and topo maps. Wildlife likely consists of small mammals and deer. The subject parcel is not located over an aquifer, not located within a floodplain and no wetlands or streams are present.
- 1.12 **Water Service.** Domestic water for each lot will be provided by an individual wells. The existing residence is served by a shallow, surface water spring. According to the narrative, this water source will be replaced by a drilled well. It is intended that there be three wells serving the existing residence and two new parcels. According to his Hydrogeologic Evaluation dated August 27, 2021, James S. De Smet, P.E., P.G., concludes, *“Most wells surrounding the subject property are developed in granitic bedrock and are moderately productive. Given the setting, there is no data to suggest that the proposed wells will not obtain at least 5-gpm for a 4-hour duration or a minimum of 1500-gallons/day (1.07 gpm). If the wells produce less than 5 gpm, then storage will be required. As an alternative, drilling deeper or drilling addition wells should be considered to meet the Kootenai County requirements. Based on the estimated drawdown it does not appear that three wells on the 32± acre parcel will adversely affect each other or nearby wells. Based on the PHD evaluation, soils on the proposed lots are suited to conventional and alternative subsurface septic disposal systems. The existing home is already served by an existing septic disposal system and the addition of two additional septic disposal*

systems should not be a problem. Setbacks from the septic site to the proposed well, property lines, etc. according to the requirements of the TGM should be easy to meet given large parcel sizes.”

1.13 **Sewage Disposal.** Effluent discharge will be treated via individual septic and drainfields. In a letter dated December 9, 2021, Corey Koerner, Environmental Health Specialist for Panhandle Health District, provided a list of requirements the Applicant will need to meet prior to plat recordation. This has been included as Conditions of Approval in this report. **(Reference Condition 6.03)**

1.14 **Access.** Proposed Lots 1 and 2 each have an existing approach onto E. Bunco Road, however, the Applicant proposes to only retain the approach for Lot 1 and abandon the existing approach for Lot 2. Lots 2 and 3 will then gain access via an existing common driveway which also provides common access to two parcels located south of the subject parcel, Parcel #'s 53N02W-30-1400 and 53N02W-30-1600.

In a letter dated January 18, 2022, Eric Shanley, Director of Lakes Highway District, provided a list of requirements that the Applicant will have to comply with prior to final plat recordation. These requirements are listed as Conditions of Approval in this report. **(Reference Condition 6.07)**

In an email dated January 26, 2022, Community Development staff confirmed that two access points onto E. Bunco Road would be supported by Lakes Highway District.

1.15 **Fire Protection.** The subject site is located within the Timberlake Fire Protection District. In comments received December 02, 2021, Cory Thatcher on behalf of Timberlake Fire District provided a list of requirements the Applicant will have to comply with at the time of building permit application. **(Reference Condition 6.04)**

In a follow-up email dated January 11, 2022, Cory Thatcher on behalf of the Timberlake Fire District stated, *“Went out to 13894 E Bunco rd yesterday and as I suspected I can't tell either the width or road bed makeup. If you need a definitive answer I can let you know in the springtime.”* A photograph of the existing conditions taken during the fire district's inspection is depicted in Exhibit PA-05.

1.16 **Kootenai Electric Cooperative.** On December 8, 2021, Kelly Machado on behalf of Kootenai Electric Cooperative approved the project.

1.17 **Bonneville Power Administration.** On December 2, 2021, Alynette Brauner Farley on behalf of the Bonneville Power Administration (BPA) confirmed the proposal does not affect the BPA right of way.

1.18 **Kootenai County Community Development-Building Division.** On December 3, 2021, Bob Ankersmit on behalf of the Kootenai County Building Division provided the following comment: Any new construction on these proposed lots will be required to meet all construction code requirements as adopted by Kootenai County at the time of building permit application. IRC §R403.1.7.1, §R403.1.7.2 require specific ascending and descending slope setbacks for structures on or near slopes exceeding 33%. §R403.1.7.4 has provisions for engineered alternate methods. The Slope Category Map as submitted appears to indicate some areas exceeding 33% slope. If future construction is proposed to be in close proximity to a 33% slope, a foundation design from an Idaho licensed engineer will be required as an alternate method of slope setback compliance. Such alternate engineered foundation design must consider material type, height of slope, slope gradient, load intensity, and erosion characteristics of the slope material as determined by field observation. These requirements are referenced in Conditions of Approval. **(Reference Condition 6.02)**

1.19 **Public Comment.** Community Development received one (1) comment in opposition to the request.

Exhibit Key

A = Applicant		S = Staff		PA = Public Agency	
A-01	Narrative	S-01	Aerial Image	PA-01	Panhandle Health District
A-02	Initial Plat	S-02	Assessor Parcel Info	PA-02 PA-03	Lakes Highway District
A-03	Slope Category Map	S-03	Assessor Parcel Map	PA-04 PA-05	Timberlake Fire District
A-04	Title Report	S-04	Comprehensive Plan Map	PA-06	Bonneville Power Administration
A-05	Notarized Authorization	S-05	Vicinity Map	PA-07	Kootenai Electric Coop.
A-06	Photos & Key	S-06	Zoning Map	PA-05	KCCD Building Division
A-07	Hydrogeologic Evaluation				
A-08	Contour Map				
A-09	Built Features Map				

II COURSE OF PROCEEDINGS

- 2.01 On June 22, 2021, Community Development staff met with the Applicant for a pre-application conference to discuss a potential minor subdivision process on the subject parcel.
- 2.02 On October 7, 2021, Community Development received an application for a three-lot Minor Subdivision known as “Wapiti Ridge.” The matter was assigned Case No. MIN21-0110.
- 2.03 Kootenai County Community Development issued a notice on this application, Case No. MIN21-0110, for public review. On December 2, 2021, notice was mailed to adjacent property owners within 300 feet of the project site. On December 7, 2021, a Notice of Application for Minor Subdivision was published in the *Coeur d’Alene Press*. Based on signed affidavits in the file, the requirements for public notification have been met.
- 2.04 The public comment period for this application began on December 7, 2021 and ended on January 5, 2022.

III APPLICABLE LEGAL STANDARDS**3.01 Kootenai County Code Title 8, Chapter 2, General Zoning Designations and Uses.**

Article 2.2 specifies minimum lot sizes, open space, setbacks, parking requirements, and the types of land uses that are permitted in the Rural zone.

Kootenai County Code Title 8, Chapter 6, Land Division and Plats.

Chapter 6 establishes the subdivision regulations for major and minor subdivisions providing for purposes, descriptions, applicability, application requirements, approval procedures, design, improvement and maintenance standards, general provisions and administration of the Code.

Article 8.6.3, Minor Subdivisions, outlines the application requirements, design standards, notice requirements, approval procedures, and the required findings that are to be considered in determining approval or denial of the request.

Article 8.6.7, Design and Maintenance Standards, delineates the minimum on-site design requirements for minor subdivisions.

Kootenai County Code Title 8, Chapter 8, Administration and Enforcement.

Article 8.8.5, Hearings on Appeals and Request for Reconsideration, outlines the standards for requesting an appeal and reconsiderations.

- 3.02 *Idaho Code* §50-1301-§1333, Plats; §67-6521, Actions by Affected Persons; §67-6535, Approval/Denial Requirements; § 67-8003, Regulatory Takings Analysis; §74-204, Notice of Meetings.

Idaho Code §50-1301-§1333 governs platting and the vacation of plats. These sections include requirements for monumenting, for the size, form, and required elements of a plat, for the naming of the plat, for the owner's certification, and for dedications, recording, and the placing and lifting of sanitary restriction. The County Surveyor is required to check the plat and to certify on the plat that it is in compliance with these sections of *Idaho Code*.

Idaho Code §67-6521 defines "affected person," states that an affected person may request a hearing on any permit authorized under Chapter 65, outlines the actions the Board may take, and provides for judicial review, if requested, within 28 days after all remedies have been exhausted under local ordinances.

Idaho Code § 67-8003 states that an owner of real property that is the subject of a final decision on this application has the right to request a regulatory takings analysis. Any such request must be submitted to the Kootenai County Community Development within twenty-eight (28) days from the date of mailing of the final decision on this application.

Idaho Code §74-204 provides general requirements for meeting notices such as the Commissioner's weekly deliberations.

Idaho Code § 67-6535 requires that the approval or denial be accompanied by a reasoned statement that explains the express criteria and standards considered relevant, the relevant contested facts, and the rationale for the decision based on the applicable provisions of the Comprehensive Plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. This section also requires any applicant or affected person seeking judicial review of a final decision for failure to identify the nature of compliance or noncompliance with express approval standards, or for failure to explain compliance or noncompliance with relevant decision criteria, to first file a request for reconsideration with Community Development within fourteen (14) days of the date of this decision. Any such request must identify the specific deficiencies in the decision for which reconsideration is sought.

The decision of the Director may be appealed in accordance with the provisions of Chapter 8, Article 8.5 of the Kootenai County Code.

IV STAFF ANALYSIS

Through the application process and Department review, it has been determined that this application meets the requirements for a minor subdivision process. Agencies with jurisdiction have reviewed the request and provided comments, outlining requirements for purposes of mitigating impacts associated with this request.

According to the definitions in Kootenai County Code Title 8, Article 9.1, a common driveway is a driveway that provides legal and physical access from a public or private road to between two (2) and four (4) parcels of land. The existing driveway travelling southward from E. Bunco Road currently provides access to two unplatted parcels to the south, Parcel #'s 53N02W-30-1400 and 53N02W-30-1600. This driveway will also

provide access to Lots 2 and 3 of the proposed subdivision. Therefore, the existing driveway will continue to be categorized as a common driveway as it will serve a total of four parcels.

Pursuant to 8.4.201.B, common driveways are required to meet the following criteria:

1. All driveways and common driveways shall be constructed in accordance with the standards set forth in the then-current International Fire Code as adopted pursuant to Title 7, Chapter 1 of this code.
2. The fire protection district with jurisdiction shall determine whether a driveway or common driveway complies with the standards set forth in the then-current International Fire Code.
3. For parcels located outside of a fire protection district, the Director shall make this determination. The Director may seek a recommendation from any fire protection district entirely or partially located within Kootenai County as to whether a newly constructed private road complies with the standards set forth in the then-current International Fire Code.

Furthermore, in accordance with Kootenai County Code Section 8.6.707.B.2, common driveways are a required infrastructure improvement and shall be constructed or covered by an appropriate financial guarantee, prior to final plat recordation. Pursuant to Kootenai County Code Section 8.6.709, a site disturbance permit will be required for subdivision improvements, the installation of which shall be completed by a design professional.

Kootenai County requested Timberlake Fire District to provide comments on the existing conditions of the common driveway and to confirm whether any improvements would be necessary for the driveway to meet International Fire Code standards. However, due to inclement weather during the winter months, Timberlake Fire District was unable to confirm whether the common driveway meets International Fire Code. Therefore, Kootenai County will require the Applicant to provide written confirmation from Timberlake Fire District prior to plat recordation. If improvements are required, the County will request Timberlake Fire District to provide a detailed list of those improvements, for which site disturbance permit will be required with plans prepared by a design professional in accordance with 8.6.709 of the Kootenai County Code. If improvements only include resurfacing the road, a design professional plan will not be required. **(Reference Conditions 6.05 and 6.06)**

Applicant will be required to record a Common Driveway Maintenance Agreement concurrently with the final plat in accordance with 8.6.710. **(Reference Conditions 6.08)**

The Applicant has demonstrated there are suitable locations within the proposed subdivision for future development, such as a driveway and building site, where the natural grade is less than 15% slope. Therefore staff concluded a conceptual engineering, conceptual site disturbance plan or geotechnical analysis were not required at time of minor subdivision application pursuant to Kootenai County Code 8.6.302.B.10, 11 and 12. However, because there are areas of natural slope that exceed 15% according to the Applicant's slope category map, the County will require the Applicant to place a note on the face of the final plat requiring a site-specific geotechnical report should a future property owner request to develop in areas of slopes of 15% or greater. **(Reference Condition 6.09)**

In conclusion, staff has determined that the proposed lots will be of reasonable utility and livability, compatible with the surrounding residential development in the area.

V CONCLUSIONS OF LAW AND FINDINGS

- 5.01 All requirements set forth in the Kootenai County Code Title 8 have been met, or will be met, as a result of the Conditions of Approval being imposed.
- a. The applicant has provided information sufficient to determine whether the application complies with the relevant requirements of this chapter. *A complete application for Minor Subdivision was provided.*

- b. The plat meets the requirements of subsection 8.6.302(C) of this article and Title 50, Chapter 13, *Idaho Code*. *At the time of recordation, the final plat will meet all Kootenai County and Idaho Code requirements.*
- c. The project and the lots comply with the requirements of this chapter. *The project meets Kootenai County Code requirements and the lots meet the minimum lot sizes for the Rural zone.*
- d. The plat, the project and the lots are in compliance with other applicable provisions of this code without variances, or with such variances to, or deviations from, requirements or standards as may be approved by the Director. *The plat, the project and the lots are in compliance with other applicable provisions of the Code and do not require any variances or deviations from the requirements.*
- e. The plat, the project and the lots meet the requirements of all agencies with jurisdiction and those providing services. *The project, plat and the lots meet or will meet all applicable agency requirements and those providing services with Conditions of Approval.*
- f. The subdivision design and proposed uses are compatible with existing homes, businesses and neighborhoods, and with the natural characteristics of the area. The subdivision creates lots of reasonable utility and livability, capable of being built upon without imposing an unreasonable burden on future owners. Areas not suited for development have been designated as open space. *The subdivision design and proposed residential uses are compatible with the existing homes and the surrounding neighborhood and with the natural characteristics of the area. The Applicant has demonstrated the subdivision creates lots of reasonable utility and livability, capable of being built upon without imposing an unreasonable burden on the future owners.*
- g. Negative environmental, social and economic impacts have been or will be mitigated. Driveway construction and disturbance of terrain, vegetation and drainage ways will be minimized and will not result in soil erosion. The design has adequately addressed site constraints or hazards. *Site constraints and hazards have been or will be addressed at the time of development.*
- h. Services and facilities which will serve the subdivision are available and adequate. On- and off-site improvements, or payments in lieu of such improvements, that are roughly proportional, both in nature and extent, to the impact of the proposed development have been made in order to mitigate the impacts of the subdivision so that it does not compromise the quality or increase the cost of services. *Agencies with jurisdiction and those that will provide services to the project site have reviewed the request and provided comments and requirements.*
- i. Any trails or sidewalks included on the plat have been designed in a manner which establishes or adequately contributes to a transportation system for bicycles and pedestrians that is safe, efficient and minimizes traffic congestion. *Trails or sidewalks are not included as part of this request.*
- j. The sanitary restrictions will be lifted prior to recordation. *Panhandle Health District has stated they will lift the sanitary restrictions on the face of the final plat when the Applicant complies with their requirements.*
- k. If any land, shared infrastructure, or improvements will be privately maintained, documents establishing the maintenance organization have been approved by the Director and are ready to be recorded with the plat. *An existing common driveways will serve proposed Lots 2 and 3. A maintenance agreement will be required as a Condition of Approval.*

- l. Any required conservation easements or other documents have been approved by the Director and are ready to be recorded with the plat. *This request does not propose a conservation design subdivision. Conservation easements are not required.*
- m. Public notice and an opportunity for interested parties to comment on the application have been given in accordance with the applicable provisions of Idaho Code and this title. *Public notice was provided and the public was given an opportunity to provide comment on the request.*
- n. The common driveway will provide legal and physical access to four (4) or fewer parcels. *The common driveways will provide legal and physical access to four or fewer lots.*
- o. A road through the land proposed for subdivision is not appropriate or necessary to provide access to private lands lying adjacent to or beyond the subdivision. *The existing common driveway serving proposed Lots 2 and 3 currently provides access to two parcels south of the proposed subdivision. Therefore, it is not appropriate or necessary for a road to provide access to adjacent parcels of land.*
- p. Access through the land is not now necessary, nor will it be necessary in the future, to provide continuity of public roads with functional grades and design. *Access through the land is not now necessary, nor will it be necessary in the future, to provide continuity of public roads with functional grades and design.*
- q. The lots being created will not be further subdivided, and no additional access to the driveway will be allowed, until it is constructed in accordance with this chapter and with the *Standards* or any variance, exception or deviation from the *Standards* which has been approved by the Highway District with jurisdiction. *Any further subdivision of the lots will require approval by the County. Until such time, the lots being created will not be further subdivided and no additional access to the driveway will be allowed, until it is constructed in accordance with this chapter [Kootenai County Code Title 8 Chapter 6 Article 6.7] and with the Standards or any variance, exception or deviation from Standards which has been approved by the Highway District with jurisdiction.*

VI ORDER OF DECISION

Based on these Findings of Fact and Conclusions of Law and for the reasons stated above, the subdivision **Case No. MIN21-0110, Wapiti Ridge**, is hereby **APPROVED**, with the following conditions:

- 6.01 The terms and conditions placed on this approval shall run with the land and remain valid upon a change of ownership, or until the approval expires. The Applicants, or future assigns having an interest in the subject property, shall fully comply with the conditions placed on this approval. This approval is based on the information presented in the application, plans, and exhibits as part of the request including **A-01, Narrative and A-02, Initial Plat**. The approval is limited to that request.
- 6.02 Any new construction on these proposed lots will be required to meet all construction code requirements as adopted by Kootenai County at the time of building permit application. IRC §R403.1.7.1, §R403.1.7.2 require specific ascending and descending slope setbacks for structures on or near slopes exceeding 33%. §R403.1.7.4 has provisions for engineered alternate methods. The Slope Category Map as submitted appears to indicate some areas exceeding 33% slope. If future construction is proposed to be in close proximity to a 33% slope, a foundation design from an Idaho licensed engineer will be required as an alternate method of slope setback compliance. Such alternate engineered foundation design must consider material type, height of slope, slope gradient, load intensity, and erosion characteristics of the slope material as determined by field observation.
- 6.03 The Applicant shall comply with all requirements of Panhandle Health District as stated in **PA-01**.

- 6.04 The Applicant shall comply with the requirements of Timberlake Fire District as stated in **PA-04** at the time of building permit application.
- 6.05 Prior to plat recordation, the Applicant shall provide Community Development written confirmation from Timberlake Fire District that the existing common driveway serving Lots 2 and 3 complies with the standards of the International Fire Code.
- 6.06 If improvements to the common driveway are required by Timberlake Fire District, the District shall provide a detailed list of improvements, such as necessary widening, installation of pull-outs or turn-arounds, etc. The Applicant shall then submit a site disturbance permit application with plans prepared by a design professional to address the required improvements. Note: A design professional plan will not be required if improvements only require resurfacing of the road. Upon approval of the site disturbance permit, the Applicant shall install necessary improvements OR provide a completion agreement and financial guarantee consistent with Kootenai County Code 8.6.711, prior to plat recordation.
- 6.07 Prior to plat recordation, the Applicant shall comply with all requirements of Lakes Highway District as stated in **Exhibit PA-02**.
- 6.08 The Applicant shall record a Common Driveway Maintenance Agreement concurrently with the final plat. The maintenance agreement shall also address, specifically, the cleaning and maintenance of culverts, ditches, and drainage swales to reduce the risk of flood damage. The agreement shall be referenced on the face of final plat.
- 6.09 The Applicant shall place a note on the face of the final plat requiring a site-specific geotechnical report should a future property owner request to develop in areas of slopes of 15% or greater. The geotechnical report shall be provided prior to the issuance of a building permit or site disturbance permit.
- 6.10 For subdivisions recorded prior to as-built approval of required infrastructure, a statement must be included on the plat that non-infrastructure building or location permits may be issued upon recordation of a final plat, but no certificates of occupancy will be issued until all infrastructure improvements are complete and approved by all agencies with jurisdiction and providing services.
- 6.11 Any and all other easements, claims of easements and restriction agreements of record shall be shown on the face of the plat.
- 6.12 Pursuant to Section 8.6.304 of the Kootenai County Code Title 8, the Plat shall be recorded within one (1) year from the signing of this Order, unless an extension is approved.



David Callahan, Community Development Director

February 3, 2022

Date