

ORDINANCE NO. 1486

AN ORDINANCE AUTHORIZING AND ADOPTING AN AMENDMENT TO THE DEVELOPER'S AGREEMENT FOR THE PLANNED UNIT DEVELOPMENT FOR SPRING PRAIRIE CENTER.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, AS FOLLOWS:

SECTION I. That the Spring Prairie Planned Unit Development, approved on December 3, 2001, shall be, upon execution by the landowner, amended as follows:

E000703

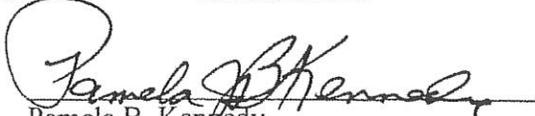
- 2.01E(1)a: General access to the commercial district beginning at West Reserve Drive and ending 1/2 mile south along U.S. Highway 93 shall be limited to no more than 3 approaches. Additional approaches south of the aforementioned area shall also be allowed as approved by the access permitting agency. New approaches onto Reserve Drive, Stillwater Road, and Four Mile Drive shall generally be limited to a minimum spacing distance of 1,300 feet or as otherwise authorized by the access permitting agency.
- 2.01E(3)a: Buildings should not exceed 35 feet above the final grade in the Mixed Residential POD, 40 feet in the Mixed Professional POD and 45 feet in the Mixed Commercial POD. Such height limitation may be exceeded in the mixed commercial POD by issuance of a conditional use permit.
- 2.01e(3)D&E: Ground and wall signs as limited below may be used to identify a single use lease lot or multiple uses within common lot/lease area. Ground signs shall have natural earth tones and not be fabricated primarily of exterior plastic, Plexiglas or similar materials. The ground sign may have internal lighting or sign mounted external lighting. Shielded lighting may be provided from ground-mounted fixtures directed towards the sign face. Ground signs may have a concrete or similar mounting base but in no situation shall the total height of the sign exceed the size and height standards for freestanding signs as specified in Table 1 of Section 27.24.080 (1d) of the Kalispell Zoning ordinance. In addition, freestanding signs shall be capped at 24 feet in total height and 120 square feet in total surface area. There shall be no more than a total of 3 free standing ground signs, one for phase one, one for phase 2 and one for phase 3. The freestanding signs shall be constructed as presented in exhibit 1A and shall only advertise the name of the primary tenant of the phase and the name of the development. Wall signs may have internal lighting and shall not exceed a sign face area as provided in the City of Kalispell Zoning Ordinance.
- 2.01E(3)i: Commercial buildings or combination of buildings on a single lease lot exceeding 60,000 sq. ft. total gross floor area (where no sub-lots have been established) shall be set back a minimum distance from U.S. Highway 93 as follows: Phase 1 – 300 feet, Phase 2 – 225 feet and Phase 3 – 150 feet.

2.02B B The mixed Commercial POD is limited to the following permitted uses;

- 15) Restaurant (deli, bakery, fast food, sit-down, beverage shop, drive through, etc) and incidental casino use. Incidental casino use is limited to 5% of the gross floor space of a fully bonifide, freestanding restaurant facility (as opposed to a gas station–restaurant-casino arrangement for example). The casino floor plan must be visually separate from the primary use of the building as a restaurant. There can be no outside indication of a casino or gaming activity including signage in a window, on the building or the premise and no excessive lighting or attraction to indicate such a use. This includes but not limited to reference to words or symbols associated with the gaming industry such as gambling, gaming, poker, chance, casino, live betting, daily take or pot, card game, dice, \$, etc.
- 20) Other uses which are so like the listed uses in purpose, function, character and effect to be substantially similar to the listed uses. (Excluding those otherwise conditioned or prohibited by this PUD agreement).

SECTION II. This Ordinance shall take effect from and after 30 days of its passage by the City Council.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF KALISPELL, MONTANA, THIS 15TH DAY OF DECEMBER, 2003.


 Pamela B. Kennedy
 Mayor

ATTEST:


 Theresa White
 City Clerk



STATE OF MONTANA }
 County of Flathead } SS
 City of Kalispell

I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the City of Kalispell.

Witness my hand and the seal of the City of Kalispell, Flathead County, Montana, this 1st day of April, 2004
 by Theresa White
 Clerk

Exhibit A

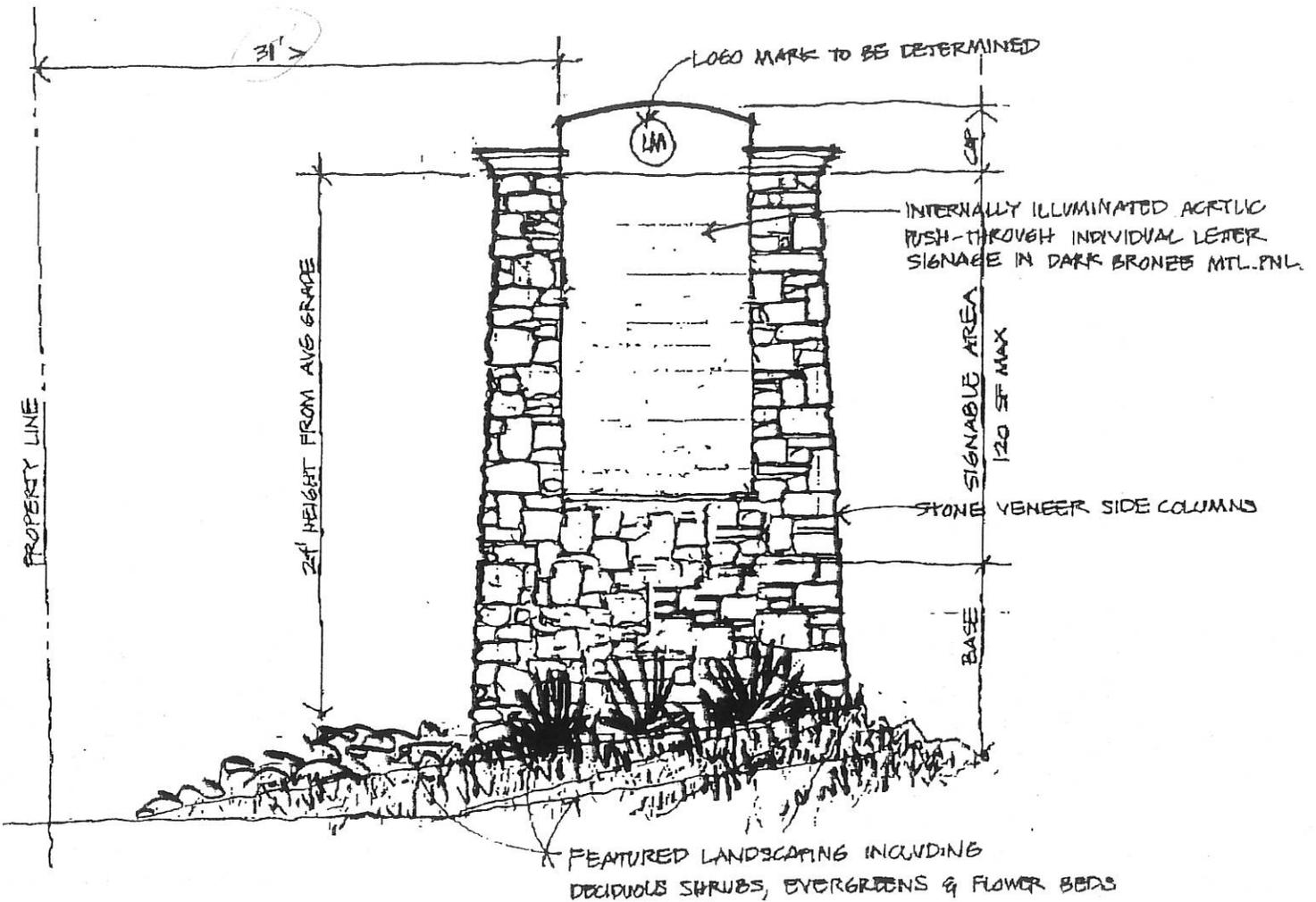
That portion of Section 36, Township 29 North, Range 22 West, Principal Meridian, Flathead County, Montana described as follows:

The Southwest 1/4, the Northwest 1/4 and that portion of the Northeast 1/4 lying westerly of the westerly right-of-way line of U.S. Highway No. 93 as shown on Federal Aid Project Nos. F 5-3(32)115 and F 5-3(24)115, excepting therefrom the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 all in Section 36, Township 29 North, Range 22 West, containing 454.4 Acres of Land, more or less.

EXHIBIT 1A

FREE STANDING SIGN
SPRING PRAIRIE CENTER
DECEMBER 1, 2003

Presented for design purposes (materials, character, and architectural features) and not to portray specific height or location on the property.



AMENDED SPRING PRAIRIE
PLANNED UNIT DEVELOPMENT AGREEMENT

PARTIES AND PURPOSE: This Agreement was originally made and entered into the 3rd day of December, 2001 by and between the State of Montana Department of Natural Resources & Conservation (hereinafter "DNRC"), with its office and principal place of business located at 2250 Highway 93 North; and the City of Kalispell, a municipal corporation (hereinafter "City"), with its office and principal place of business located at 312 - 1st Avenue East, Kalispell, Montana 59901. Pursuant to the request of DNRC, and consensus of the City, by Ordinance 1486 dated the 15th day of December, 2003 and by recommendation of City staff [KPUD-03-01] dated the 13th day of November, 2003 the Agreement is hereby amended as follows:

WITNESSETH:

WHEREAS, The State of Montana Department of Natural Resources & Conservation is the owner of certain real property located in Flathead County, Montana, which is further described in Exhibit "A" attached hereto and made a part hereof, and which hereinafter is referred to as the "Subject Property"; and,

WHEREAS, The Subject Property is subject to a request for annexation and initial zoning; and,

WHEREAS, DNRC is desirous of applying a Planned Unit Development (PUD) overlay to city zoning classifications; and,

WHEREAS, In order to allow the PUD, assure the installation of Infrastructure within the "Subject Property", permit connections to the CITY utility systems, and prescribe the permitted uses within the requested zoning areas, the parties hereto determine it is to be in their best interests to enter into this Planned Unit Development Agreement; and,

WHEREAS, (i) Use and development of the property is subject to the provisions of the Section 36 Neighborhood Plan, jointly adopted by the City of Kalispell and Board of County Commissioners in 1999; (ii) the adopted plan is further subject to an environmental impact statement performed under the Montana Environmental Policy Act; (iii) and further subject to the Record Of Decision (ROD) which establishes additional parameters to development and (iv) a Memorandum Of Understanding (MOU) establishes policy for taxation, local review of projects, and other development considerations; and,

WHEREAS, DNRC is requesting annexation of the property into the City of Kalispell with City of Kalispell Zoning classifications of B-5 to be applied to the Mixed Commercial POD, R-5 to the Mixed Professional POD, and R-4 to the Mixed Residential POD; and,

WHEREAS, It is desirous by DNRC to further restrict the allowances of these City of Kalispell Zoning classifications to the property and to provide additional standards for development consistent with the Plan by applying a PUD overlay to the underlying zoning classifications.

I. DEFINITIONS

1.01 Agreement shall mean this Planned Unit Development Agreement between DNRC, and CITY.

1.02 Building Department shall mean the Building Department of the City of Kalispell.

1.03 CITY shall mean the City of Kalispell, Montana.

1.04 City Council shall mean the City Council of the City of Kalispell, Montana.

1.05 Developer shall mean DNRC, its agents, designees and assigns.

1.06 Director of Public Works shall mean the Director of Public Works of the City of Kalispell, Montana.

1.07 Easement(s) means the Easement(s) described in §3.04 of this Agreement.

1.08 Section 36 Plan means the Neighborhood plan approved by the City of Kalispell and Board of Flathead County Commissioners and as amended by the Record of Decision issued by DNRC on August 11 , 2001, all pertaining to the School Trust Lands located in Section 36, T29N-R22W, Flathead County Montana.

1.09 Mixed Commercial means that portion of the Subject Property generally lying in the NE¼ of Section 36 and as more particularly described in Exhibit B.

1.10 Mixed Professional means that portion of the Subject Property lying generally in the NW ¼ of Section 36 and as more particularly described in Exhibit C.

1.11 Mixed Residential means that portion of the Subject Property lying generally in the SW¼ of Section 36 and as more particularly described in Exhibit D.

1.12 Sports Fields means that portion of the property generally located in the SE ¼ of Section 36 and already zoned P-I and previously annexed into the City of Kalispell.

1.13 Subject Property or Subject Area means the real property described in Exhibit A.

1.14 Memorandum of Understanding means a 3-party agreement entered into by DNRC, City of Kalispell, and Board of Flathead County Commissioners dated April 19, 2001.

1.15 Final Environmental Impact Statement means a document released as a Final Environmental Impact Statement (FEIS) by DNRC on July 26, 2001 relative to proposed actions associated with school trust lands located in Section 36, Township 29 N, Range 22 W, P.M.M., Flathead County Montana.

1.16 Record of Decision means a decision document issued by DNRC on August 11, 2001, that identifies selective alternatives related to a land use plan for Section 36 and a proposal to lease land in section 36 to construct a business and technology park.

1.17 Substantial Completion shall mean that substantially all of the work to be performed in the development shall have been performed and the Infrastructure constructed in each Phase are usable for their intended purposes, as certified by the Director of Public Works and the Building Department, which certification shall not be unreasonably withheld or delayed.

1.18 Infrastructure means all water, sewer and storm drainage systems that will be dedicated to the public and have been installed in accordance with the Montana Public Works Standard Specifications and the City of Kalispell Standards for Design and Construction. In addition, *Infrastructure shall include roads that are designed and constructed in accordance with the Montana Public Works Standards for Design and Construction.* Said Infrastructure shall consist of various public utilities and dedicated streets. The Infrastructure required to serve developed facilities and to provide connection to future phases of development will be identified concurrent with subdivision review. Notwithstanding any of the foregoing, excluded from these terms are: building construction; parking lot paving; final landscaping in and around the buildings and parking lot(s); lighting; signage; and the service lines to each building.

1.19 Section 36 means land owned by the State of Montana as School Trust Lands (Section 36, T 29 N, R 22 W, P.M.M., Flathead County Montana) and administered by the DNRC and as more precisely described by Exhibit A.

1.20 School Trust Lands mean lands granted to the state of Montana by the Enabling Act of February 22, 1889 (and subsequent acts) for support of the common schools.

1.21 DNRC means State of Montana/Department of Natural Resources and Conservation.

1.22 Applicant shall mean any party assigned by the DNRC that has been provided development rights by DNRC for any portion of the Subject Property. Applicants shall be granted all appropriate and necessary rights to allow Applicant to obtain approvals for and construction of such property designated by DNRC.

II. GENERAL DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 Development Overview

(A) Subject to the other provisions of this Agreement, any use/development of the Subject Property occurring after the effective date of this Agreement shall substantially conform to and comply with the provisions of the PUD Kalispell Zoning of Section 36 and this Agreement with the documents and drawings annexed hereto.

(B) It is agreed between the parties, that the development of the Subject Property will include the following:

- (1) A land use map, which identifies three land use pods and a proposed alignment of internal collector roads to be built in phases as development occurs (Exhibit E);
- (2) A list of permitted uses associated with each land use pod;
- (3) A phasing schedule of development;
- (4) Description of Infrastructure as described in the FEIS for use in planning and bonding purposes;
- (5) Annexation of the Subject property into the city limits of Kalispell;
- (6) Extension of city water and sewer services by DNRC or its assigns to serve the developed facilities of the Subject Property;
- (7) Adherence to the Memorandum of Understanding jointly approved by the City of Kalispell, Flathead County, and DNRC; and
- (8) Compliance with the PUD zoning regulations and City of Kalispell Subdivision regulations.

(C) Development themes for each Land Use POD being annexed into the City of Kalispell are as follows:

- (1) Mixed Commercial: a district providing a variety of commercial industries are appropriate and where community design to minimize the appearance of strip commercial development is desirable, including restriction of allowable uses as might otherwise be permitted or conditionally permitted in the B-5 City of Kalispell zoning classification. Strip-type uses characterized by substantial outdoor storage and display of products, such as car lots and equipment and trailer sales are specifically excluded. Also specifically excluded as permitted uses are gaming/gambling establishments of any kind, including casinos. The range of permitted uses is intended to permit a variety of uses associated with the retail, professional services, or technology industries but does not necessarily limit or restrict opportunities for continued agricultural

operations or practices. However, technology uses are given priority consideration.

- (2) Mixed Professional: a district providing opportunities for development of offices, office parks, and compatible uses in a fashion that promotes clustering of uses and architectural control, including but not limited to all uses set forth in Kalispell Zoning Ordinance Classification R-5 and as otherwise modified by this Agreement. The phasing limitations anticipated by the Section 36 Neighborhood Plan would be modified to encourage development of schools and a resource agency office park in this POD.
- (3) Mixed Residential: a district providing opportunities for development of residential uses, offices, and other compatible uses in a fashion that promotes clustering of uses and architectural control, including but not limited to all uses set forth in Kalispell Zoning Ordinance Classification R-4 and as otherwise modified by this Agreement. A land exchange process will be encouraged to facilitate opportunities for private ownership and development of this POD. The phasing limitations anticipated by the Section 36 Neighborhood Plan would be modified to encourage development of schools in this POD.

(D) The creation of individual lots (or lease lots) will be subject to subdivision review concurrent with specific project proposals. Subdivision approval will verify compliance with the provisions of the PUD Agreement and covenants and identify requirements for extension of utility services. Bonding requirements to guarantee completion of the required infrastructure (roads, water, sewer, etc) will be accomplished via the subdivision approval process. The Infrastructure requirements as described in the FEIS may be referenced by the City in fixing any conditions for subdivision approval. Infrastructure improvements shall accommodate the needs of future development within each POD, such as planning for road, water, and sewer extensions beyond the immediate project area.

(E) General performance standards applicable to the Subject Property are as follows:

(1) Transportation and Parking

a General access to the commercial district beginning at West Reserve Drive and ending ½ mile south along U.S. Highway 93 shall be limited to no more than 3 approaches. Additional approaches south of the aforementioned area shall also be allowed as approved by the access-permitting agency. New approaches onto Reserve Drive, Stillwater Road, and Four Mile Drive shall generally be limited to a minimum spacing distance of 1,300 feet or as otherwise authorized by the access-permitting agency;

b. All uses shall have direct access from the internal road system. No direct access to a particular use shall be permitted from the Highway or the other perimeter public roads as listed in Ia, above;

c. The collector road system shall be as generally shown by Exhibit E and as more precisely aligned by subsequent engineering analysis, use patterns, and subdivision review;

d. All roadway improvements shall be built in accordance with city of Kalispell road design standards;

e. Roadway design shall include provisions for landscape boulevards and sidewalks. A bike and pedestrian path system shall generally follow the internal collector road system with outlet connections to path systems external to the property, including connection to the proposed Meridian/ Four Mile Drive bike path;

f. Lighting shall be shielded and directed downward; and,

g. Parking space requirements and general parking lot design shall be guided by the parking and loading provisions of the City of Kalispell Zoning Regulations, except as noted herein. Parking lots in the Mixed Commercial and Mixed Professional PODS may extend to within 5 feet of any lease lot boundary, provided a 5 foot wide exterior landscape buffer adjoins the extended parking lot. In locations where the parking lot adjoins a landscaped common area, no setback from the lot/lease boundary is required.

(2) Landscaping

a. Landscaping, to include lawn, shrubs, trees, and/or rock gardens, shall comprise all open spaces within the boundaries of the parent lease lot. Parking lots may extend to within 5 feet of any lot/lease lot boundary.

b. Buildings in the Mixed Commercial and Mixed Professional PODS shall be set back a minimum of 20 feet from the side, front, side corner, and rear of the parent (not sublots) lot/lease lines.

c. Parking lots serving multiple businesses where the area for parking spaces exceeds a lineal length or width of 270 feet shall include internal landscape islands having minimum dimensions of 9

feet by 18 providing one island for every 15 contiguous parking spaces when such space are located internal to the parking lot (not abutting the perimeter boundary to the parking lot or store front). The number of contiguous cars per island may increase up to a limit of 20 provided that the associated landscape island proportionally increases in width (i.e. a row of 20 cars is a 33% increase over the maximum 15 space standard, therefore the island width would increase 33%).

d. A landscape boulevard having a minimum width of 4 feet shall parallel both sides of the collector roads shown on the neighborhood plan map. Street trees acceptable to the City of Kalispell shall be planted at 40 to 50 foot intervals as appropriate.

e. Sidewalks or pathways shall connect developed properties from roadside sidewalks (see 1e, above) to building entrances in a continuous manner.

f. All landscaped areas shall be irrigated and routinely maintained by Developer or its assigns; and

g. An irrigated landscape corridor of at least 20 feet in width shall parallel the right of way of U.S. Highway 93 adjacent to the commercial POD. The corridor should include undulating topography and have a mix of tree plantings with a ground cover of predominately lawn. A similar landscape common corridor, 10 feet in width shall parallel West Reserve Drive and be completed in phases to correspond with development activity.

h. Landscaped beds and parking lot landscaping islands shall be mulched with either naturally decomposing material (bark) or small gravel mulch (1"-3" rounded river rock mulch is strongly discouraged). In high traffic areas, an urban design approach to islands (concrete with trees in grates or patterned/ colored concrete type designs) is encouraged but not required.

3. Building and [lease] Lot Parameters

a. Buildings should not exceed 35 feet above the final grade in the Mixed Residential POD, 40 feet in the Mixed Professional POD and 45 feet in the Mixed Commercial POD. Such height limitation may be exceeded in the mixed commercial POD by issuance of a conditional use permit.

b. Applied finishes of buildings shall be predominately earth tone;

c. Buildings may have an orientation towards the internal road system however, if the building "fronts" in another direction, four sided architecture shall prevail and the side facing the internal street shall contain front architecture features and treatment .

d. Ground and wall signs as limited below may be used to identify a single use lease lot or multiple uses within common lot/lease area. Ground signs shall have natural earth tones and not be fabricated primarily of exterior plastic, Plexiglas or similar materials. The ground sign may have internal lighting or sign mounted external lighting. Shielded lighting may be provided from ground-mounted fixtures directed towards the sign face. Ground signs may have a concrete or similar mounting base but in no situation shall the total height of the sign exceed the size and height standards for freestanding signs as specified in Table 1 of Section 27.24.080 (1d) of the Kalispell Zoning ordinance. In addition, freestanding signs shall be capped at 24 feet in total height and 120 square feet in total surface area. There shall be no more than a total of 3 free standing ground signs, one for phase one, one for phase 2 and one for phase 3. The freestanding signs shall be constructed as presented in exhibit 1A and shall only advertise the name of the primary tenant of the phase and the name of the development. Wall signs may have internal lighting and shall not exceed a sign face area as provided in the City of Kalispell Zoning Ordinance.

e. *In situations involving a commercial or office town home, condominium or subplot design, only the parent lot is eligible for a common ground sign. Individual uses are eligible for a wall sign if the use has outside frontage. A common wall sign may be appropriate to identify a building having multiple tenants. A common signage plan that involves other types of building signage, such as canopy signage, may be permitted subject to the review and approval of the City of Kalispell Site Development Review Committee. Residential uses shall be permitted signage as otherwise permitted by the City of Kalispell zoning regulations. All other provisions of the Kalispell sign regulations shall apply subject to the restrictions set forth herein;*

f. The exterior appearance of commercial buildings with "backs" facing, adjacent, and visible from Highway 93 shall contain architectural elements found on the "front" portions of the buildings. Walls and surface planes should be broken up in such a manner as to

create a visual interest, avoiding monotony. Notwithstanding anything contained herein to the contrary, facades that do not have frontage exposure to US Highway 93 should have appropriate elements that create visual interest;

g. Lease lots with single or multiple buildings shall have sufficient area to accommodate the size of the proposed building(s) and required on-site parking plus sufficient area for landscaping exterior to the building and parking lot (see 2a & 2b, above);

h. A single lease lot may contain buildings with multiple tenants and/or uses or be comprised of multiple attached or detached buildings. In such situations, landscaping, parking, and internal access shall be common to all buildings within the lease lot; and

i. Commercial buildings or combination of buildings on a single lease lot exceeding 60,000 sq. ft. total gross floor area (where no sub-lots have been established) shall be set back a minimum distance from U.S. Highway 93 as follows: Phase 1 – 300 feet, Phase 2 – 225 feet and Phase 3 – 150 feet.

4. Extension of Services

a. All required services shall be underground; and

b. Annexation and provision of city services shall be subject to the approval of the City of Kalispell.

5. Growth Management

a. Development of property shall conform to the general provisions of the neighborhood plan consistent with Section 27.22.120, KZO.

b. Phase I (Exhibit B) is the Mixed Commercial Pod.

i. Clustering of uses is preferred to encourage sharing of roads, parking, utilities, and common design. However, separation of uses, such as “large” from “small” or “commercial” from “industrial” may be appropriate within the Commercial POD.

ii. Development design is intended to avoid a "strip" commercial appearance with specific exclusion of certain uses.

iii. The area of the Mixed Commercial POD will be extended to include the entire NE ¼ of Section 36 and the extended area will be held as a reserve area for expansion of technology uses beyond the original POD area as described by Exhibit B-1.

iv. That portion of the Mixed Commercial POD lying southerly of the by-pass alignment will offer leases primarily to business (offices) and technology uses and compatible commercial uses, such as small retail convenience uses (delis, restaurants, copy shop, "wired" motel, etc). Retail stores exceeding 10,000 square feet per store front will not be permitted. No retail will be permitted until at least 20,000 square feet of non-retail space is leased and operating within the POD.

v. Expansion of business and technology uses into the expansion area will not be permitted until at least 60% of the originally-sized Mixed Commercial POD is leased for development.

vi. If business and technology uses fail to achieve a 40,000 square foot floor area leasing threshold within 5 years following execution of this agreement, or if the proposed business and technology park as proposed by Hampstead Partners fails to proceed within 2 years following the execution of this agreement, then the original Mixed Commercial and Mixed Professional boundaries (Exhibit B) shall be restored and the retail restrictions removed to permit all the uses listed in Section 2.02 of this Agreement. The City agrees that if the proposed business and technology park, as proposed by Hampstead Partners fails to proceed within 1 year following the execution of this agreement, it shall provide marketing assistance to the Developer to achieve the goals set forth above.

vii. If business and technology uses fail to achieve a 120,000 square feet floor area threshold within 10 years following the execution of this agreement, then the boundaries of the original Mixed Commercial POD (Exhibit B) shall be restored and the retail restrictions removed to permit all the uses listed in Section 2.02 of this Agreement.

c. Phase II (Exhibit C) is the Mixed Professional POD.

i. Clustering of uses is preferred to encourage sharing of roads, parking, utilities, common design, and to prevent a scattered development pattern within the POD.

ii. Infill of developed uses, with some exceptions, such as schools, agricultural facilities, and equestrian facilities, shall be from east to west. The "Section 36 Neighborhood Plan Map" also designates an area along Stillwater Road that is excluded from nonagricultural development until the year 2010. Schools and a natural resource agency campus may build at any time within the Mixed Professional POD, including the deferred development area.

iii. Development of non-agricultural uses shall be restricted to no more than 20% of this POD until at least 50% of the Mixed Commercial POD (Exhibit B) is leased for development. School, agency campus, and equestrian facilities may be permitted at any time and are not subject to the 20% calculation.

iv. That portion of the NE 1/4 of Section 36 lying within the Mixed Professional POD may be added to the area of the Mixed Commercial POD as described in (b) above. The amended legal description of the Mixed Commercial POD is described in Exhibit C-1. The infill pattern of the Mixed Professional POD would need to reflect this reserve area for the future expansion of the Mixed Commercial POD.

d. Phase III is the Mixed Residential POD.

i. Clustering of uses is preferred to encourage sharing of roads, parking, utilities, common design, and to prevent a scattered development pattern within the POD.

ii. Infill of developed uses, with some exceptions, such as schools, agricultural facilities, and equestrian facilities, shall be from south to north or from east to west. The "Section 36 Neighborhood Plan Map" also designates an area along Stillwater Road that is excluded from non-agricultural development until the year 2010. Schools may build at any time within the Mixed Residential POD, including the deferred development area.

iii. Development of non-residential and non-agricultural uses shall be restricted to no more than 20% of this POD until at least 50% of the Mixed Professional POD is leased for development or 50% of this POD is occupied by residential uses, whichever comes first. This limitation does not apply to public facilities.

6. Supplementary Regulations

a. Accessory uses shall be permitted as appropriate to a particular use and as generally set forth in Section 27.22.020 et seq, KZO. Subsections 2a and 2b of that section of the KZO shall generally apply to residential uses within any portion of Section 36. Subsections 2d and 2e, KZO, would apply as appropriate to non-residential uses in any portion of Section 36.

b. The greenbelt provisions of Section 27.22.050 shall be interpreted and applied concurrent with subdivision review.

c. If a single lot/lease lot contains buildings with multiple tenants and/or uses or is comprised of multiple attached or detached buildings, landscaping, parking, and internal access shall be common to all buildings within the lot. This provision shall not apply to lots approved for single family dwellings.

d. The creation of sublots (including for purposes of leasing) may be appropriate in situations involving residential, commercial, office, and industrial uses.

e. All other provisions of the Chapter 27.22 of the City of Kalispell Zoning Regulations shall apply.

(F) Covenants: Draft covenants are attached as Exhibit F. Prior to construction of any building improvements or concurrent with subdivision review, final covenants shall be completed and recorded. The City shall review the covenants for consistency with this PUD Agreement and shall revise the covenants as necessary to comply with the conditions of approval of the PUD. Notwithstanding the foregoing, the applicant may prepare their own separate Easements, Covenants, Conditions and Restrictions, (ECC&R's) between the DNRC and the Applicant.

2.02 Uses

(A) The uses allowed in the PUD shall be those uses generally allowed under the following zoning classifications and as otherwise limited herein:

- 1) Mixed Commercial POD — Zoning Classification B-5
- 2) Mixed Professional POD — Zoning Classification R-5
- 3) Mixed Residential POD — Zoning Classification R-4

(B) The Mixed Commercial POD is limited to the following permitted uses.

- 1) Agriculture (farming, livestock, riding academies, stables, horticulture, nursery, etc)
- 2) Automobile service (fuel, wash, mechanical repair, tires, etc)
- 3) Barber & beauty services, massage parlor, etc
- 4) Cultural facilities (museums, theaters, libraries, etc)
- 5) Educational facilities (private and public schools, colleges, universities, trade schools, music, dance, theater lessons, educational research or incubator facilities, etc)
- 6) Financial services and institutions (banks, credit unions, mortgage companies, savings & loans, etc)
- 7) Healthcare (medical offices/clinics, dental/orthodontic, in-patient/outpatient facilities, pharmacies, diagnostic services and treatment, etc)
- 8) Office, professional/governmental
- 9) Park, private or public (may include open space, trails, passive or developed facilities, etc)
- 10) Public assembly buildings (assembly halls, coliseums, stadiums, convention center, etc)
- 11) Public or quasi public buildings/structures (fire/law enforcement stations, community /homeowner facilities, water tower, electrical distribution/stations lines, telephone relay equipment, etc)

- 12) Radio/television broadcast stations, internet companies, etc
- 13) Recreational facilities, outdoor/indoor, private/public or quasi-public, commercial/non-commercial (tennis courts, bowling alley, golf course, ice skating arenas, ball fields, swimming pool, zoo, amusement park, community center gym, health/fitness club, driving range, etc)
- 14) Research, technical, or business parks (may include indoor assembly of parts, limited outdoor storage, product distribution)
- 15) Restaurant (deli, bakery, fast food, sit-down, beverage shop, drive through, etc) and incidental casino use. Incidental casino use. Incidental casino use is limited to 5% of the gross floor space of a fully bonifide, freestanding restaurant facility (as opposed to a gas station-restaurant-casino arrangement for example). The casino floor plan must be visually separate from the primary use of the building as a restaurant. There can be no outside indication of a casino or gaming activity including signage in a window, on the building or the premise and no excessive lighting or attraction to indicate such a use. This includes but not limited to reference to words or symbols associated with the gaming industry such as gambling, gaming, poker, chance, casino, live betting, daily take or pot, card game, dice, \$, etc.
- 16) Retail facilities/enterprises (clothing, convenience, food, sporting, book, office products, drug, computer, phone, hardware, tire, plumbing, electrical, furniture, art, household, gifts, mall, warehouse discount, etc)
- 17) Tourist accommodations (motels, hotels, bed & breakfast, campground, recreational vehicle park, etc)
- 18) Veterinary services and facilities
- 19) Worship buildings (churches, synagogues, etc)

(C) The Mixed Professional POD is limited to the following permitted uses.

- 1) Agriculture (farming, livestock, riding academies, stables, horticulture, nursery, etc)
- 2) Automobile convenience (fuel, wash, & convenience retail, only, i.e. no mechanical service)
- 3) Barber & beauty services, massage parlor, etc
- 4) Cultural facilities (museums, theaters, libraries, etc)
- 5) Educational facilities (private and public schools, colleges, universities, trade schools, music, dance, theater lessons, educational research or incubator facilities, etc)
- 6) Financial services and institutions (banks, credit unions, mortgage companies, savings & loans, etc)
- 7) Food/grocery store
- 8) Healthcare (medical offices/clinics, dental/orthodontic, in-patient/outpatient facilities, pharmacies, diagnostic services and treatment, etc)
- 9) Office, professional/governmental
- 10) Park, private or public (may include open space, trails, passive or developed facilities, etc)
- 11) Public or quasi public buildings/structures (fire/law enforcement stations, community /homeowner facilities, water tower, electrical distribution/stations lines, telephone relay equipment, etc)
- 12) Radio/television broadcast stations, internet companies, etc
- 13) Recreational facilities, outdoor/indoor, private/public or quasi-public, commercial/non-commercial (tennis courts, bowling alley, golf course, ice skating arenas, ball fields, swimming pool, zoo, amusement park, community center gym, health/fitness club, driving range, etc)
- 14) Restaurant (excludes food drive-up service but permits drive-up beverage service and take and bake establishments and sit-down facilities)
- 15) Retail enterprises less than 3000 square feet in gross floor area (excludes tavern, gaming, or casino facilities/operations)
- 16) Veterinary services and facilities
- 17) Worship buildings (churches, synagogues, etc)

All other uses otherwise listed as permitted or conditionally permitted in the R-5 zoning classification may be considered only as conditionally permitted uses in the Mixed Professional POD.

(D) The Mixed Residential POD is limited to the following permitted uses.

- 1) Agriculture (farming, livestock, riding academies, stables, horticulture, nursery, etc)
- 2) Educational facilities (services/facilities for pre -K or K-12 only)
- 3) Office, professional/governmental
- 4) Park, private or public (may include open space, trails, passive or developed facilities, etc)
- 5) Public or quasi public buildings/structures (fire/law enforcement stations, community /homeowner facilities, water tower, electrical distribution/stations lines, telephone relay equipment, etc)
- 6) Recreational facilities (limited to non-commercial facilities)
- 7) Residential (day care or day care centers; dormitories or fraternities (college); dwellings: single family; duplex; or multi-family; manufactured home park (class "A" only); Nursing homes and elder care; retirement home, etc)
- 8) Worship buildings (churches, synagogues, etc)

All other uses otherwise listed as permitted or conditionally permitted in the R-4 zoning classification may be considered as conditionally permitted uses in the Mixed Residential POD.

(E) Property development standards for the Mixed Commercial POD relative to (1) minimum lot area, (2) minimum lot width, (3) minimum yards, (4) maximum building height, (5) permitted lot coverage, (6) off-street parking, and (7) maximum fence height shall be consistent with Section 27.17.040, City of Kalispell Zoning Ordinance (KZO) unless otherwise specified herein by the listed performance standards or by language within the adopted neighborhood plan (see Section 27.22.120, KZO).

(F) Property development standards for the Mixed Professional POD relative to (1) minimum lot area, (2) minimum lot width, (3) minimum yards, (4) maximum building height, (5) permitted lot coverage, (6) off-street parking, and (7) maximum fence height shall be consistent with Section 27.08.040, City of Kalispell Zoning Ordinance (KZO) unless otherwise specified herein by the listed performance standards or by language within the adopted neighborhood plan (see Section 27.22.120, KZO).

(G) Property development standards for the Mixed Residential POD relative to (1) minimum lot area, (2) minimum lot width, (3) minimum yards, (4) maximum building height, (5) permitted lot coverage, (6) off-street parking, and (7) maximum fence height shall be consistent with Section 27.07.040, City of Kalispell Zoning Ordinance (KZO) unless otherwise specified herein by the listed performance standards or by language within the adopted neighborhood plan (see Section 27.22.120, KZO).

(H) DNRC or Applicant shall require all proposed uses developments and buildings to be subject to architectural review in accordance with a separate Agreement between the DNRC and the Applicant. A staff representative from the City of Kalispell shall serve on the committee in an advisory capacity at its discretion. All structures shall conform to the relevant city of Kalispell Building Department regulations. Architectural consistency between building types with each POD is desired. (Since development of this property is likely to expand over several decades and styles change, some flexibility in design is desirable and expected.) The covenants establish architectural review authority for all proposed uses.

- 1) Landscape features are an important component of the developed properties. Landscaping is intended to complement the travel ways, parking lots, buildings, lots, and common areas (see 2.01E (1), (2), and (3) of this Agreement).
- 2) Landscape materials shall be comprised of ornamental and native plant species common to the general community. Boulevard trees shall be consistent with the approved species list of the City of Kalispell.
- 3) Exterior lighting along travel ways and parking lots should be directed downward. Ornamental lighting along pathways and parking lots is encouraged. Low intensity lighting (exterior) may be appropriate to add architectural interest to certain features of a building face or building signage. Lighting directed upward to illuminate tree canopies or building overhangs may provide attractive accents.
- 4) Signage on buildings is intended to be complimentary to the building design and add architectural interest to the structure. Common signage, including entrance signage, is intended to be low profile and comprised of materials complimentary to the building structures (see Section 2.01 E (3) of this Agreement).
- 5) Building design is an important consideration in helping to define the quality of the built environment. Each land use POD allows a mix of different land use types. Landscaping and other common features will provide one form of community linkage and identity. The other linkage will be building architecture. In general terms, all commercial buildings should seek to have architecturally enhanced facades and broken roof and wall lines to minimize monotony of design. Expectations of building design common to all land use types will include the following components.

a. Exterior wall colors should harmonize with the site and surrounding buildings. The pre-dominant tone on building faces should tend toward warm earthy hues, whether

in the natural patina or weathered color of the wall surface itself or the color of the paint stain or other coating. The color of concrete products on building faces should be not be achieved from painting the surface. The use of materials such as wood, brick or stone for trim material is encouraged.

b. Large, rectangular masses should be avoided by incorporating offsets in the wall and roof. A change in the plane of the walls, changing the direction or providing some variety in the roof form gives diversity and visual interest. Facades greater than 120 feet in length shall have variation and interest in the wall. Among other things, major landscaping, significant tree planting, use of color or building materials or architectural treatments would be in order.

c. Commercial buildings (non-residential) should place an emphasis on entry. Entries should be a prominent component of the building face by providing an architectural covered or recessed entry with modified roof accent and increased usage of windows and trim.

d. All residential roofs must be pitched. Commercial roofs may be pitched or flat. Brightly colored roof material is prohibited as are reflective metals. All roof mechanical systems shall be shielded from view from 5'-0" above ground plane of US Highway 93 as seen at a 90 degree angle or incorporated into architectural features. Roof design shall incorporate architectural relief if building foot print size is greater than 20,000 square feet.

e. Extensive use of windows is encouraged to break up building planes or add architectural interest to building facades or other walls facing public view.

f. Franchise architecture is may be subject to modification to achieve the sign, color, and building style objectives set forth by this agreement. Colors and materials of franchise architecture shall be similar to or compatible with the materials and colors of Spring Prairie Center as identified in a separate Agreement between the DNRC and the Applicant.

g. Architectural elements of the front of the building shall be incorporated into the back of buildings when the back of the building is visually accessible from U.S. Highway 93.

2.03 Ownership

The State of Montana may retain ownership of the Subject Property or leased parcels for the development and use by third parties. This Agreement is binding on the owners, successors and assigns inclusive of lessees of the property described in Exhibit A attached hereto.

2.04 Relationship to Zoning Ordinance

Except as specifically modified or superseded by this Agreement and attached drawings or the PUD Application of DNRC, the laws, rules, and regulations of the City of Kalispell governing the use and development of land and buildings, including the Kalispell Zoning Ordinance as it now exists or as amended, shall apply to the Subject Property.

2.05 Effectiveness

The provisions of this Agreement shall become effective simultaneously with approval of the PUD Ordinance.

III. SITE CONDITIONS

3.01 Development

The Subject Property shall be developed in substantial compliance with the Section 36 Plan and as further described by the Record of Decision issued by DNRC on August 10, 2001 and as set forth in this Agreement.

3.02 Access

(A) Primary access to the Subject Property shall be as shown on the land use map (Exhibit E) of the Plan.

(B) DNRC has completed a comprehensive traffic impact study, which identifies all expected traffic impacts and proposals for mitigation.

(C) DNRC or its assigns or Applicant will obtain all required access permits from the Montana Department of Transportation and/or Flathead County Road Department and CITY prior to development of any uses that require access to a particular public road.

(D) DNRC agrees to be responsible for all required traffic turn lanes, traffic signals, and other regulatory signs and signals directly pertaining to ingress and egress to and from U.S. Highway #93, West Reserve Drive, Stillwater Road and Four Mile Drive indicated by the traffic study.

(E) All primary and secondary entrances shall be completed to CITY standards prior to occupancy permits being issued for any site utilizing said entrances for access.

(F) Emergency fire, ambulance, police and public vehicle access shall be at all times available through said primary and secondary access without impediment.

3.03 Internal Roadways and Sidewalks

(A) DNRC acknowledges that the development of the Subject Property includes development, at DNRC's expense, of internal roadways providing access to the lots within the PUD.

(B) DNRC agrees that the interior roadways within the PUD shall be constructed to CITY standards with Curb, gutter, and sidewalks, in accordance with the proposed Site drawings and applicable City Standards for Design and Construction for local and collector streets. A paved pedestrian/bike path will generally follow the collector roads.

(C) DNRC agrees that they will dedicate all internal streets and sidewalks to the City of Kalispell upon completion.

3.04 Sewer and Water

(A) Sanitary sewer service to the Subject Area shall be accomplished by an extension of the existing Municipal sewer system.

(B) Water service to the Subject Property shall be accomplished by extension of the existing Municipal water system.

(C) If a well is used on the premises, it shall not in any way be connected to the CITY water supply system without prior consent and approval by the City of Kalispell.

(D) All sanitary sewer and water mains shall be designed and installed in accordance with the City of Kalispell's Standards for Design and Construction.

(E) All utility Infrastructure located within the subject Property shall be dedicated to the public upon completion.

(F) DNRC agrees to obtain all necessary easements for the extension of water and sewer to the Subject Property. In addition, DNRC will grant to CITY any and all easements necessary for CITY to perform maintenance of water and sewer lines installed pursuant to the Agreement.

(G) In the event that CITY requires installation of water and/or sewer lines larger than those required to service the needs of DNRC as set forth in its total Infrastructure requirements delineated at the reference 2.01(B)(4), then CITY shall pay only those costs associated with the increased utility main sizing or extension.

(H) In no event shall this Agreement be construed as to require CITY to complete installation of Infrastructure and other improvements on the Subject Property, or on any portion thereof, during any phase of development of the Subject Property.

(I) Following completion of installation of the sewer and water lines on the Subject Property by DNRC, it is agreed that the said utility lines shall be maintained by CITY in accordance with CITY maintenance policy and standards. However, service lines to individual buildings on site shall remain under private ownership and shall be privately maintained.

3.05 Storm Water

(A) Storm Water retention, drainage, and disposal shall be designed in accordance with regulations of the CITY and the Montana Department of Environmental Quality, and such other City, State and Federal "storm water requirements" as are in existence and made applicable to the property at the time of the construction of any improvement.

(B) Storm Water will not be retained, treated or discharged off-site.

3.06 Site Grading

(A) Prior to commencement of site grading, DNRC agrees to obtain an Air Quality Construction and Demolition Permit from the Director of Public works, and to comply with the terms and conditions of said Permit during construction including hauling of material to and from the site.

3.07 Fire Suppression

(A) Prior to the Building Department issuing any permit for any foundation or building within the PUD, the Fire Chief for CITY must certify that DNRC has supplied a fire site access plan for the Subject Property and an engineered internal

fire suppression system for the buildings to be constructed on the Subject Property, which will be in accordance with the Uniform Fire Code and will be acceptable to the Fire Chief.

(B) DNRC agrees to install hydrants, water mains, supply and storage units in accordance with City of Kalispell Standards and to obtain approval thereof prior to construction from the City of Kalispell Fire Chief.

3.08 Landscaping

(A) In addition to the performance standards related to landscaping, subdivision review will consider the landscaping and common area features of all proposed development.

(B) Street trees will be placed at 40-foot intervals along both sides of the internal roadways except where they immediately abut a parking lot island or planter or abut building fronts. Street trees are to be a minimum of 2 -1/4 inch caliper at planting.

(C) Landscaping along Highway 93 and West Reserve Drive will include street trees placed at 50-foot intervals, which are a minimum of 2-1/4 inch caliper at planting.

(D) The overall landscape plan shall be coordinated with the Kalispell Parks and Recreation Director as to the exact size and location of the plantings and the species lists. This plan shall be attached hereto as an addendum.

(E) All refuse areas shall be screened from public view.

IV. CITY SEWER/WATER CONNECTION FEES

4.01 Connection Fee Schedule

(A) Connection fees for connection to the CITY Water and Sewer utility will be determined in accordance with City Standards and fee schedules for connection fees, in effect at the time of the application for a building permit.

(B) DNRC, or its successors and assigns which own the property at the time of applying for a Building Permit, shall pay the connection fees associated with the utility connections at the time of obtaining the Building Permit for each structure. This provision is to assure that the fees are paid at the time of applying for a Building Permit and is not to be construed as to prohibit DNRC from requiring reimbursement or advance payment of the cost from any potential tenant or purchaser.

(C) DNRC may be entitled to reimbursement of a portion of the costs of installation and extension of water and sewer utilities from future users who connect to extended

water and sewer facilities. If DNRC anticipates the need for reimbursement of cost, DNRC's engineer shall prepare a preliminary design and report that details the proposed facilities and the estimated proposed reimbursable costs and will submit said design and report to the CITY for review and concurrence in advance of construction. Costs shall be recovered through a developer's extension agreement and will be subject to the following conditions.

1) No reimbursement will be allowed for any costs associated with meeting the utility requirements for development of the Subject Property. These costs shall be determined by DNRC's engineer and shall be submitted for review and concurrence by the Director of Public Works. Said costs shall be the actual costs of construction, inclusive of engineering and inspection costs, and shall be submitted as specified within thirty (30) days of substantial completion of the work.

2) No reimbursement will be allowed for any costs of extension of water and sewer facilities, or increases in size thereof, for which the CITY has agreed to provide reimbursement as described elsewhere in this agreement.

3) Costs associated with extensions of water and sewer facilities to future users shall be determined by DNRC's engineer and shall be provided to the Director of Public Works for review and concurrence that said costs are appropriate for reimbursement. Said costs shall be the actual costs of construction, inclusive of engineering and inspection costs, and shall be submitted as specified within thirty (30) days of substantial completion of the work.

4) A developer's extension agreement shall be prepared by DNRC's engineer and submitted to the Director of Public Works for review and concurrence. The agreement shall identify the costs to be reimbursed, the properties benefitted by the extended utilities, and the proportionate cost to be reimbursed by each benefitted property upon connection to the extended utilities. The agreement shall identify the recommended method for apportioning reimbursable costs between the benefitted properties. Said method shall be the same for all properties. The term of this agreement shall not exceed a period of seven (7) years.

5) Upon concurrence, the Director of Public Works shall submit the proposed developer's extension agreement to the Kalispell City Council for approval.

6) Future extensions by the CITY of utility facilities covered by this PUD agreement shall not be subject to the cost reimbursement outlined in this section.

V. AMENDMENT OR MODIFICATIONS OF AGREEMENT

5.01 Amendment or Modification Procedures

This Development Agreement may be amended or modified only by application of DNRC, in accordance with the procedures set forth herein. Applications for amendment or modification may be made to the City of Kalispell Site Review Committee.

(A) Modifications of this agreement and the attachments hereto which are deemed by said Site Review Committee to be minor modifications shall require only the consent of the Site Review Committee and shall not require the consent of the City Council or any other public agency.

(B) All amendments and modifications of this Agreement, other than minor modifications, shall require the approval of the City Council.

(C) All applications for modifications or amendments of the Agreement shall be filed with the Site Review Committee and the Site Review Committee shall promptly, within 10 days, determine whether the modifications are major or minor.

(D) The Site Review Committee shall make its determinations with respect to any application for minor modifications subject to this Section within 15 days after it determines the application to be subject to said minor modification.

(E) If the amendment or modification requested is of such a nature as to require approval of the City Council, the Site Review Committee shall refer the matter to the City Council within fifteen (15) days after it determines the matter to require Council review.

(F) DNRC may appeal the decision of the Site Review Committee to the City Council, who may affirm, reverse or modify the site Review Committee decision.

VI. MISCELLANEOUS

6.01 Severability

In the event that any provisions of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Agreement shall continue to be of full force and effect.

6.02 Recordation

This Agreement shall be recorded in the Office of the Flathead County Clerk and Recorder.

6.03 Entire Agreement Primacy

This Agreement and the attachments, exhibits, plans, and reports referenced herein constitute the entire Agreement between the parties and may only be amended as set forth herein. In the event during the term of this Agreement, there is a variance between the provisions of this Agreement and any drawing or document submitted prior to execution of this Agreement, this Agreement shall take precedence.

6.04 Integration

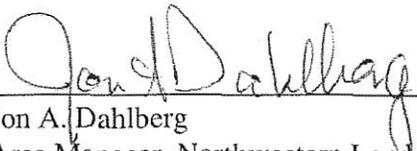
This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, integrates all negotiations and previous agreements between the parties and supercedes any other written or oral agreements or representations between the parties. This Agreement can be modified only in writing, signed by all parties hereto.

6.05 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the respective parties, heirs, successors and assigns.

Dated this 2nd day of February, 2004.

DEPARTMENT OF NATURAL RESOURCES

By: 
Jon A. Dahlberg
Area Manager, Northwestern Land Office

RESOLUTION NO. 4480

A RESOLUTION ADOPTING A RECOMMENDED NEIGHBORHOOD PLAN AMENDMENT TO THE KALISPELL CITY-COUNTY MASTER PLAN.

WHEREAS, on April 7th, 1986, the City Council adopted the Kalispell City-County Master Plan by Resolution No. 3641, and

WHEREAS, the Montana Department of Natural Resources, in 1997, made an application to amend said Master Plan by changing the designation of approximately 600 acres of state school trust land located in Section 36, Township 29N, Range 22W, P.M.M., Flathead County, Montana, and

WHEREAS, on March 9, 1999, the Kalispell City-County Planning Board held a public hearing, after due and proper notice, received public comment upon, and received FRDO report #KNP-99-1 which evaluated the proposal based upon the goals and objectives of the Master Plan, the purpose of zoning and current circumstances in the planning jurisdiction, and

WHEREAS, at the conclusion of said public hearing and after consideration of the proposed amendment, the Kalispell City-County Planning Board adopted report #KNP-99-1, as the findings of fact and recommended that the Kalispell City-County Master Plan be amended through the adoption of a Neighborhood Plan to serve as basis for future development of the property encompassing said School Trust Land, and

WHEREAS, the City Council of the City of Kalispell considered it advisable that they consider the proposed Neighborhood Plan amendment and the recommendations of the Kalispell City-County Planning Board, and adopted a Resolution of Intention to Adopt, Revise or Reject a Recommended Neighborhood Plan Amendment to the Kalispell City-County Master Plan (Resolution No. 4471), and

WHEREAS, on June 7th, 1999, the City Council met, held a public hearing and considered Resolution No. 4480, and

WHEREAS, based upon the report (#KNP 99-1), the Minutes and recommendations of the Kalispell City-County Planning Board and the input received at the hearing of March 9, 1999, the Council may, under § 76-1-604, MCA, adopt a resolution either adopting, revising or rejecting the requested amendment to the Kalispell City-County Master Plan.

WHEREAS, the City Council hereby adopts as the findings of fact #KNP 99-1, as adopted by the Kalispell City-County Planning Board.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, AS FOLLOWS:

SECTION I. That pursuant to Section 76-1-604, MCA, the City Council of the City of Kalispell hereby adopts #KNP 99-1 as the findings of fact contained herein and adopts the requested amendment to the Kalispell City-County Master Plan to change the land use designation of the property described as Section 36, Township 29 North, Range 22 West, P.M.M. Flathead County, Montana, as set forth in the DNRC Neighborhood Plan for said land.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF KALISPELL, THIS 7th DAY OF JUNE, 1999.

Wm. E. Boharski
Wm. E. Boharski
Mayor

Attest:

Theresa White
Theresa White
City Clerk

**DNRC NEIGHBORHOOD PLAN
SECTION 36
KALISPELL, MONTANA**

**A proposed amendment to the:
Kalispell City-County Master Plan**

Prepared by:

**Montana Planning Consultants
P.O. Box 7607
Kalispell, Montana 59904**

February 8, 1999

INTRODUCTION

This document is a land use plan to guide the future use and development of School Trust Land generally described as being located within Section 36, Township 29N, Range 22W, P.M.M. The Montana Department of Natural Resources and Conservation (DNRC) is a state agency responsible, in part, for the management of School Trust Lands. Section 36 is located adjacent to the northerly city limits of Kalispell. The DNRC has prepared this plan in consideration of 2 primary objectives: (1) to achieve a public mandate to generate revenue for the state school system and (2) consider issues of neighborhood compatibility and relationships to local land use plans and regulations.

It is the intent of this planning process to integrate with the Kalispell City County Master Plan. This will be accomplished by incorporating the plan for Section 36 into the Kalispell Master Plan via the master planning process identified under Section 76-1-601 et seq, MCA. This will involve public hearings and approval by the Flathead Board of County Commissioners and the City Council of Kalispell. A "state" planning process involving school trust lands that seeks to integrate into the local planning process is a new concept. Under Montana statutes, the DNRC is mandated to "seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefitting therefrom, and that in so doing the economy of the local community as well as the state is benefitted as a result of the impact of such development." Section 77-1-601, MCA. Other Montana codes essentially exempt state properties from being subject to most zoning (76-2-402, MCA) and subdivision (Section 76-3-205, MCA) provisions. Despite the apparent advantage that some of these exemptions may offer, this Plan is proposing that all development proposals in Section 36 adhere to local planning and zoning regulations. By following this plan, the long term objectives to generate revenue for the school trust fund and promotion of neighborhood compatibility can be achieved.

A "state" neighborhood plan also differs in other respects from other neighborhood plans. Not only does the plan involve lands in state ownership but the plan also anticipates a long term development scenario. Based on a number of considerations and circumstances, this plan is likely to have application over a period of decades as opposed to a traditional time period of less than 10 years. Integral components of the plan include identification of land use pods, phasing of development, and performance standards for development.

Plan Development Process

Justification

Section 36 is located on the north side of Kalispell. The SE1/4 of the Section is within the city limits of Kalispell. All but approximately 20 acres of Section 36 is state-owned and managed as school trust land. The property is within the northerly growth pattern of the City. Consideration of this property for future development and expansion of the city limits is essential for a variety of reasons, among which is to minimize leap frog development beyond this property to less desirable locations.

The DNRC has long recognized the need for a land use plan for the property. The north side of Kalispell is experiencing rapid change and development pressures. In the absence of a comprehensive land use plan for the property, decisions on use proposals can be made without understanding the cumulative affects of incremental decision-making relative to such fundamental considerations as transportation, extension of services, and compatibility of uses. Had a plan been in place several years ago, more informed decisions may have been possible concerning such proposals as the city sports complex and routing of the west side bypass, which now greatly influence how the remaining property can be effectively utilized.

In an effort to wisely plan for future growth in Section 36, the DNRC decided to undertake a neighborhood planning process. Although this process was not formerly underway until the spring of 1998, an initial proposal to "master plan" the property was made by the DNRC in 1991 and a formal request for funding was made in 1997 when the West Valley Neighborhood planning process was underway.

As suggested in the "Introduction" section of this Plan, the development of a neighborhood plan on state-owned lands is unique. Why subject state property to specific land use goals and policies when it is exempt from most planning regulations? Section 36 is somewhat unique among state-owned lands. Factors favoring the development of a plan for this particular section include the following:

- ▶ Portion of the property (25%) is already inside the city limits;
- ▶ One mile of frontage (east side) along U.S. Highway 93;
- ▶ Bisection of the property by the proposed West Side Bypass;
- ▶ One mile of frontage (north side) along West Reserve Drive, a minor arterial;
- ▶ One mile of frontage (south side) along Four Mile Drive;
- ▶ One mile of frontage (west side) along Stillwater Road;
- ▶ Industrial and neighborhood commercial uses on the east side of U.S. Highway 93;
- ▶ Moderate to dense residential development to the north of property;
- ▶ Urban scale development to the south of property;
- ▶ Community college on the east side of U.S. Highway 93; and
- ▶ City utility services available for extension to property.

Based upon these and other characteristics, the property can no longer be labeled as "fringe" lands.

The property is best described as "urban-interface" and should be planned accordingly. The difficulty with this label is public perception. State-owned lands are perceived by many as being held in perpetuity as forest or agricultural lands, when in fact, school trust lands, such as Section 36, were granted by the federal government to Montana for the sole purpose of generating revenue for the Montana school system. Section 36 retains an agricultural "appearance" but revenue from the lease of land for agricultural purposes is modest compared to other revenue options so the transition to non-ag uses can and should be expected in the near future. How that transition occurs will be guided by this plan.

Process

The Kalispell DNRC Office hired a consultant in May 1998 to initiate a planning process for Section 36. The role of the consultant also included representing the interests of the DNRC in the ongoing process by the Kalispell City County Planning Board to update the Kalispell City-County Master Plan.

A Neighborhood Planning process was selected as the preferred strategy for preparing a land use plan for Section 36. This process encourages an active participation by the public, especially those owning property in the immediate vicinity. The planning effort was not constrained or otherwise affected by any preconceived or preferred outcome by DNRC nor was the planning effort spearheaded by any pending actions or proposals on the land. An overall guiding premise was to seek neighborhood compatibility of uses within the constraints of the DNRC's role as a land manager responsible for generating the largest legitimate return of revenue from the leasing of school trust lands. Other underlying premises of the planning effort were that (1) no lands would be sold or conveyed as separate lots, and (2) the DNRC would not directly participate in the development of the land. In other words, all proposed uses would be developed on leased lots and the DNRC would not participate in the development of any structures, roads, infrastructure, or any other improvements.

Public Involvement

Public involvement was encouraged via several avenues. Initially, a list of potentially interested parties was prepared by the consultant and DNRC personnel, including names of adjoining landowners and/or homeowner associations and public officials. This initial list was used to announce the first in a series of 4 general public meetings. The mailing list was expanded to include all meeting attendees and others showing an interest in the process. Another effort to gain public exposure and input into the process was to attend various homeowner association meetings, meet individually with interested parties, and speak at various club meetings. All public meetings held by the DNRC concerning the planning process were held at the Summit in Kalispell. The scope of each public meeting is briefly outlined below.

Meeting 1. This meeting was held on August 19, 1998. The purpose of this initial meeting was to introduce the planning concept to the public and seek public involvement in the process. A base map

of the property and surrounding area was presented.

Meeting 2. This meeting was held on September 30, 1998. The purpose of this meeting was to present a draft land use map that depicted 4 land use pods. A list of land uses associated with each POD was handed out to the audience and discussed. Attendees were asked to send any comments or suggestions to the consultant. The participants discouraged such uses as the fairgrounds, strip commercial, and casinos.

Meeting 3. This meeting was held on November 17, 1998. The purpose of this meeting was to present the goals and policies of the plan and the draft transportation plan. Overheads were used to discuss the goals and policies. All attendees received copies of the land use map, transportation map, and goals and policies.

Meeting 4. This meeting was held on December 14, 1998. The purpose of this meeting was to address all the issues raised by the public since the start of the process. This was facilitated by handing out an issue/response form. The format of the meeting was question/response. A time schedule for adoption of the plan was also presented.

As noted previously, various agency officials were also invited to participate in the process. Among those was the chair of the Kalispell City-County Planning Board, City Manager and Mayor of Kalispell, and Flathead County Board of Commissioners. In an effort to more adequately inform these governing bodies of the process and progress, work sessions were held with the Commissioners and with the Planning Board in January 1999.

**State School Section 36
Kalispell, Montana**

PLANNING STATEMENT: *It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefitting therefrom, and that in so doing the economy of the local community as well as the state is benefitted as a result of the impact of such development (77-1-601, M.C.A.).*

- NEIGHBORHOOD GOALS:**
- ① To establish a framework for the review of land use options and proposals

 - ② To provide for a systematic and logical development pattern by considering phasing and priority of development between land use pods and within land use pods

 - ③ To recognize the preference of the State of Montana to "lease" rather than to "sell" land

④ To maintain a pleasing highway corridor entrance to the city of Kalispell

⑤ To consider issues related to the proposed west side bypass alignment and power line corridor that bisect the property

⑥ To seek a compatible mix of land uses within the property and with that of the surrounding area

⑦ To identify an integrated internal transportation system that serves to link land use pods and minimize approaches onto public roads

⑧ To seek a "level of services" consistent with the rate, amount, type, and location of development

⑨ To identify acceptable criteria for development

The land use plan for Section 36 is guided by these general Neighborhood goals and by the goals and policies of four (4) distinct land use PODS. The land use pods were identified based on a variety of parameters including scale, type, and density of nearby land uses; associated transportation network; compatibility of uses; and other considerations, such as public comment. For example, the mixed residential pod is located away from the highway, abuts other residential areas, and is more

"remote" in terms of access. The mixed professional pod is bounded by the alternate route for U.S. Highway 93 (bypass) on the south and by West Reserve Drive on the north, a minor arterial. Most types of retail commercial uses in this area were contrary to neighborhood opinion. The proposed uses in the professional pod provide an excellent transition of uses between the proposed highway uses and the "suburban" area located on the north side of West Reserve Drive. The identification of the mixed commercial pod adjacent to the highway is appropriate given the highway and bypass influences. Phasing policies of this plan establish additional safeguards to the logical development pattern of the property. Refer to the Land Use Map (MAP Exhibit A) for the locations of the PODS. Uses appropriate to each POD are listed in Text Exhibit A.

MIXED COMMERCIAL

The Mixed Commercial POD is located on the west side of U.S. Highway 93. The development strategy for this POD is to provide a suitable location for commercial uses at an urban scale density without creating a strip commercial appearance. Certain commercial uses are restricted and highway adjacent landscaping is required. This area is expected to be annexed and provided with a full range of city services. Development of this POD has priority over the development of the other land use PODS.

- GOALS:
- ① To identify the appropriate location for commercial uses
 - ② To minimize the appearance of highway strip development
 - ③ To identify appropriate commercial uses
 - ④ To identify appropriate development standards

Policies:

1. Retail commercial development should have convenient access onto U.S. Highway 93 via no more than 2 controlled access intersections;
2. Individual commercial uses should not have direct access onto the highway but should be served by a secondary internal road system;
3. Uses should not have a highway orientation and lease lot boundaries should

- be setback from the highway right-of-way to provide for a continuous and commonly held highway landscape corridor;
4. Use allowances should allow for a mix of commercial and professional office opportunities but "strip-type" uses characterized by substantial outdoor storage and display of products, such as car lots and trailer sales should be avoided;
 5. Taverns and gaming/gambling uses are inappropriate;
 6. A village or cluster concept of development is encouraged versus a linear orientation of uses;
 7. A common landscape philosophy should include street trees and plantings associated with parking lots and buildings;
 8. Exterior lighting should be low profile and direct light inward and downward;
 9. Signage should be low profile by permitting only ground and wall signs. Freestanding (pole) signs should not be permitted;
 10. Exterior appearance of walls and/or roofs of commercial buildings visible from the Highway should contain architectural elements found on the "front" portions of the buildings. Walls and surface planes should be broken up in such a manner as to create a visual interest, avoiding monotony. Applied finishes of buildings should be predominantly earth tones.
 11. Buildings having a footprint size greater than 60,000 sq ft shall be located a minimum of 300 feet from the highway right of way; and
 12. All portions of the lot area lying outside the building footprints and parking lot(s) shall be landscaped and irrigated.

MIXED PROFESSIONAL

The Mixed Professional POD is generally located between the alternate route for U.S. Highway 93 (bypass) and West Reserve Drive. The land use theme is more "office" rather than retail commercial. Development priority and intensity of use is from east to west to provide a gradual transition into the more rural landscape to the west. Development is expected to be at a "suburban" density. The need for city services and annexation will be evaluated as development interests become more apparent. This POD is identified for Phase II development priority.

GOALS:

① To identify an area suitable for transitional commercial uses, such as offices and other similar and compatible uses

② To establish use priorities and phasing of development

③ To seek neighborhood compatibility via establishment of performance criteria for all new development

Policies:

1. Offices are preferred uses. Retail commercial uses should be discouraged except for small convenience retail as normally permitted in a neighborhood business zoning classification;
2. Restrict development of non-agricultural uses to less than 20% of the pod until

at least 50% of the Mixed Commercial pod is leased for development. This 20% allowance shall not permit freestanding retail or convenience commercial uses. This limitation would not apply to school or equestrian facilities.

3. Promote a generous green space requirement around all structures, including the provision of common pedestrian trails;
4. Open space and a low density pattern of development can be promoted, if appropriate and desirable, by providing on-site treatment of sewage;
5. Structures should not exceed 35 feet in height and should have natural earth tones as the primary exterior color;
6. Uses should have an inward orientation with no direct frontage onto any public road;
7. Agricultural uses and activities are acceptable;
8. Exterior lighting should be low profile and direct light inward and downward;
9. Signage should be low profile by specifically excluding freestanding signs other than ground signs; and
10. Landscaping adjacent to roadways and parking lots will be encouraged. All portions of lots lying outside the building footprints or paved surfaces shall be landscaped and irrigated.

MIXED RESIDENTIAL

The Mixed Residential POD is generally described as being located in the SW1/4 of Section 36. The transportation plan suggests a realignment of Four Mile Drive to improve traffic circulation in the area. The primary land use theme is "residential" but other compatible uses are also permitted. This POD is identified as Phase III in terms of development priority. As with the Mixed Professional POD, development priority and intensity is from east to west, such that the lowest density of development would occur near Stillwater road. The need for city services will depend on the type and intensity of uses that develop within the POD. Apartments, dormitories, or a large office complex are examples of uses that would benefit from city services.

GOALS:

- ① To identify an area for transitional residential uses that may include a mix of residential, quasi-residential, and office uses

- ② To recognize roadway access limitations from Four Mile Drive

- ③ To seek neighborhood compatibility through establishment of performance criteria, development priorities, and phasing

Policies:

1. Restrict development of non-residential and non-agricultural uses to less than

- 20% of the pod until at least 50% of the Mixed professional pod is leased for development or 50% of this pod is occupied by residential uses, whichever comes first. This limitation would not apply to public facilities.
2. Promote a generous green space requirement around all structures, including the provision of common pedestrian trails;
 3. Open space and a low density pattern of development can be promoted by providing on-site treatment of sewage, whenever appropriate, desirable, and feasible;
 4. Structures should not exceed 35 feet in height and should have natural earth tones as the primary exterior color;
 5. Uses should have an inward orientation with no direct frontage onto any public road;
 6. Agricultural uses are acceptable;
 7. Exterior lighting should be low profile and direct light inward and downward;
 8. Signage should be low profile by specifically excluding freestanding signs other than ground signs; and
 9. Landscaping adjacent to roadways and parking lots will be encouraged. All portions of lots lying outside the building footprints or paved surfaces shall be landscaped and irrigated.

SPORT FIELDS

The City of Kalispell has entered into a 40 year lease with the DNRC for most of the SE1/4 of Section 36. The property is being developed as a sport field complex. This plan recognizes this existing lease and does not intend to modify any provisions of that existing lease. Any change to the lease agreement that would anticipate alternative land uses or mode of operation would be subject to an amendment to the Kalispell City County Master Plan.

GOALS:

- ① To recognize an existing lease arrangement with the City of Kalispell for a sports field complex
- ② To provide linkages to the sports fields from other land use pods
- ③ To consider appropriate land uses adjacent to the sport fields

Policies:

1. Consider opportunities to provide pedestrian pathway and roadway connections between the sports fields and other land use pods;
2. Provide a land use transition buffer, if appropriate, between the sports complex and other land use pods; and
3. Encourage the development of support services for tourists and visitors to the sports fields, primarily in the adjoining Mixed Commercial pod.

TRANSPORTATION

The State school trust section is approximately 1 mile square. The property is bordered on the east by U.S. Highway 93, on the north by West Reserve Drive, on the west by Stillwater Road, and on the south by Four Mile Drive. The proposed alternate route (bypass) of U.S. Highway 93 bisects much of the property. It is the intent of this plan to minimize the number of new approaches onto these existing transportation corridors. Map Exhibit A identifies a primary internal transportation system for the property. The map is meant to depict the general locations of these collector roads. The exact locations and alignments will be determined upon further review by regulatory agencies, engineering evaluations, and land development considerations. Not shown are the secondary roads that would provide more immediate access to individual developed lease sites.

GOALS:

- ① To minimize the number of approaches onto the existing public transportation system
- ② To identify the general alignment of the internal collector roads
- ③ To recognize the proposed alignment of the alternate U.S. Highway 93 (bypass) through the property

Policies:

1. Attempt to limit the number of approaches onto the county roads as shown on

- the Land Use Map or to a spacing of no less than 1,300 feet;
2. Prohibit direct access of any individual use onto any of the perimeter public roads;
 3. Attempt to coordinate approach alignments, whenever possible, with those on opposite sides of the highway/county roads;
 4. Consider the realignment [and related abandonment] of Four Mile Drive as shown on the Land Use Map;
 5. Provide for an internal connection between land use pods including a crossing of the highway bypass near the center of the Section and as shown on the Land Use Map;
 6. Coordinate the development of the road system with phasing of development;
 7. Attempt to identify opportunities for a coordinated system of pedestrian trails in conjunction with development proposals;
 8. Provide landscaping adjacent to all developed roads;
 9. Clearly define lessee responsibility for roadway improvements and proportionate share of maintenance; and
 10. Minimize the intrusion of structural facilities within the proposed highway bypass alignment.

IMPLEMENTATION

The DNRC agrees to voluntarily adhere to the provisions of this plan and to any zoning regulations adopted pursuant to this plan. As such, the DNRC and lease proposals will be subject to the same level of plan and zoning review as any other non-government entity. Amendments to this Plan and subsequent zoning requests will follow the procedures set forth by state statutes as applicable to the private sector. The purpose of this self regulation is to enhance public confidence in this plan and to promote a well planned community entrance to Kalispell.

GOALS:

① To use this plan by the DNRC and land use regulatory agencies as a "blueprint" for the wise use and development of the State School Trust land

② To seek adoption of this Plan as an official amendment to the Kalispell City-County Master Plan

③ To identify responsibilities for development of common elements by individual lease holders

④ To adhere to local zoning regulations adopted pursuant to the provisions of this plan

Policies:

1. Individual lease holders shall be responsible for the development of all the

infrastructure, including roads, water supply, sewage treatment, electricity, telephone, and landscaping necessary to serve the use;

2. All utility extensions shall be underground;
3. Encourage orderly development by promoting an east to west infill pattern in the Mixed Professional and Mixed Residential land use pods. The Land Use Map indicates a "Green" buffer on the west side of the Section that is not intended to be developed for any non agricultural use until at least the year 2010;
4. Common or shared service and landscape elements will be subject to special assessments for the care and maintenance of those elements;
5. Lease agreements with individual lease holders should include reference to the adopted plan and identify individual responsibilities of development, including consideration of architecture, open space, landscaping, travel ways, and extension of services;
6. The proposed west side highway bypass alignment may be considered for non-structural uses pending actual securement of the right-of-way by the appropriate federal/state authorities;
7. The DNRC should adhere to the provisions of this plan when particular uses or activities are proposed for the property;
8. A Montana Environmental Policy Act (MEPA) review and analysis will be prepared for each proposed lease consistent with state law;
9. Seek a cooperative process between the DNRC and the Flathead Regional Development Office (FRDO) to check compliance with the goals and policies of this plan whenever a particular use is proposed; and
10. Attempt to adopt zoning regulations as a mechanism to assist in the

implementation of this plan, especially relative to such aspects as the type and location of uses. A Memorandum of Agreement shall be sought with the affected governing bodies to ensure state compliance with the adopted zoning regulations.

TEXT EXHIBIT A

MIXED COMMERCIAL

Assembly halls, coliseums, stadiums
Beverage shops, coffee or wine
Car wash
Churches
Community meeting halls
Convenience stores
Convention center
Cultural facilities (museums, theaters, libraries, etc)
Day care homes or centers
Delicatessens
Educational facilities (private and public schools , colleges, and universities; trade schools, music, dance, theater lessons)
Equestrian facilities
Farming of crops
Financial services and institutions
Food stores
Gardens and horticultural facilities including nurseries
Gas stations
Health clubs
Light Industrial (No outside storage or outside assembly, no stack emissions)
Medical and dental facilities
Motels
Offices, private or public
Parks, private or public
Personal care facilities (massage, barber/beauty, tanning)
Public or quasi public buildings (fire stations, chamber of commerce facilities, etc)
Radio or television broadcast stations
Recreational facilities, outdoor or indoor (tennis courts, bowling alley, golf course, ice skating arenas, swimming pool, etc)
Recreational theme parks (zoos, aquariums)
Recreational vehicle parks
Retail facilities (e.g., baked goods, clothing, gifts, drug, pharmacies, furniture, hobby, flowers, art, music, shoes, antiques, candy, sporting goods)
Restaurants (no liquor sales – beer and wine only)
Travel agencies

Veterinary services and facilities

Warehouse retail

MIXED PROFESSIONAL

Beverage shops, coffee or wine

Car wash

Churches

Community meeting halls

Convenience stores

Cultural facilities (museums, theaters, libraries, etc)

Day care homes or centers

Delicatessens

Educational facilities (private and public schools , colleges, and universities; trade schools, music, dance, theater lessons)

Equestrian facilities

Farming of crops

Financial services and institutions

Gardens and horticultural facilities including nurseries

Health clubs

Medical (including nursing homes and elder care) and dental facilities

Offices, private or public

Parks, private or public

Personal care facilities (massage, barber/beauty, tanning)

Public or quasi public buildings (fire stations, chamber of commerce facilities, etc)

Recreational facilities, outdoor or indoor (tennis courts, bowling alley, golf course, ice skating arenas, swimming pool, etc)

Recreational theme parks (zoos, aquariums)

Residential care facilities (nursing, assisted living, retirement)

Travel agencies

Veterinary services and facilities

MIXED RESIDENTIAL

Churches

Community meeting halls

Day care homes or centers
Dormitories (college)
Dwellings, single or multifamily
Educational facilities (private and public schools , colleges, and universities; trade schools, music, dance, theater lessons)
Equestrian facilities
Farming of crops
Gardens and horticultural facilities including nurseries
Manufactured home park (class "A" only)
Nursing homes and elder care
Offices, professional
Parks, private or public
Public or quasi public buildings (fire stations, chamber of commerce facilities, etc)
Recreational facilities, outdoor or indoor (tennis courts, golf course, ice skating arenas, swimming pool, etc)
Residential care facilities (nursing, assisted care, independent, retirement)

SPORTS FIELDS

Ball fields (e.g. soccer, football, baseball, softball, tennis, volleyball)
Skating rink (public only)
Concession stands (accessory only)

Map Exhibit A
State Lands Neighborhood Plan
 Land Use Map

