

To: Bridger Canyon Planning and Zoning Commission
From: Alex Eby, BCPOA, Chairman, Board of Directors
Date: April 17, 2007
Re: Testimony on BCP PUD Application

Good afternoon. My name is Alex Eby. I live at 2025 Stone Creek Road in Bridger Canyon. I serve as Chairman of the Board for the Bridger Canyon Property Owners' Association. First I would like to thank members of the Commission for their consideration of the needs of the public in allowing time for everyone to speak and be heard and for scheduling this hearing to meet the needs of the concerned citizens present today.

In my presentation, I'll be addressing the Staff Report presented by Randy Johnson. First, I'd like to point out a critical error in the report, which was repeated by Randy Johnson in his staff presentation last Thursday. Section 17.3.2 of the *Bridger Canyon Zoning Regulation* sets forth guidelines for issuing a conditional use permit. It states, "Such permits may be granted only if it is found that the establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the *Bridger Canyon Zoning District*." The staff report substitutes the word "County" for "Bridger Canyon Zoning District," and Randy repeated this error in his presentation. The implications of this mistake are profound since they occur in the section of the Staff Report the commission will rely on while making their findings. I must insist that the Staff Report be corrected to reflect the actual language in our zoning regulation and would like Randy Johnson to correct his statement to the commission. It is imperative that the commission understands their decision must relate to the residents of *our* zoning district and not the County in general.

Along these same lines, I would like to reiterate our unwavering belief that any benefits provided by this PUD must relate to Bridger Canyon Zoning District. This is entirely consistent with the CUP approval language I just mentioned and meets any legal test based on common sense. It would make absolutely no sense for our district to create an exemption to our zoning regulation that includes an increase in density, in this case the PUD, which required off-setting benefits for the entire County instead of for the residents of our district. The impacts will directly affect our residents, and *they* require benefits to offset those impacts. Furthermore, Section 1 TITLE, CREATION AND ADOPTION of the Bridger Canyon Zoning Regulation states: "This Regulation shall be known as the "Bridger Canyon Zoning Regulation" and is adopted for the Bridger Canyon Zoning District." This is *our* zoning

regulation and everything in it pertains to Bridger Canyon Zoning District. Except in the erroneous Staff Report, the County is never even mentioned. Even more telling, our PUD regulation does not apply to Big Sky Zoning District, or Hebgen Lake Zoning District, or the city of Bozeman and cannot be used in those districts. Why then would the benefits relate to them? There is no reason, whatsoever, to believe that the requirement for significant community benefit in our PUD regulation applies to anyone but us. For the County or a developer to argue otherwise is self-serving at best, and in my humble opinion, an outrageous taking of our rights.

The second point I'd like to make questions the validity of Bridger Canyon Partners' PUD application. The Staff Report makes no mention of the problem of Bridger Mountain Village's lack of contiguous borders. According to page 30 of the *Bridger Canyon Zoning Regulation*, a planned unit development is defined as

An area of land, controlled by a landowner to be developed as a single entity for a number of dwelling units, the Plan for which may not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in the underlying zone. *Multiple parcels within a Planned Unit Development must be contiguous or share a common boundary.*

As you can see from the any of the master plan maps, Phase 3B is separated from the earlier phases by property owned by Bridger Bowl and the Lachenmeiers. The overall project is not contiguous and does not share a common boundary. In a conversation with Mr. Johnson, he mentioned that the issue of *contiguous boundaries* applies only to parcels outside of the base area. He confirms this believe on page 25 of the Staff Report (item 3) stating that the "standard applies to planned unit developments outside of the Bridger Bowl Base Area." My reading of the Continuous Boundaries for Multiple Parcels section (page 31 Zoning Regulation) is that parcels must not only be contiguous, but also the minimum length of the contiguous boundary must be at least 660 feet. In my extensive research of the zoning regulations, I have not found anything that corroborates Mr. Johnson's contention exempting the base area from this requirement.

Third, Section 13.8 titled "Procedure for Approval," located on page 34 of the *Bridger Canyon Zoning Regulation*, states,

The method for considering a Planned Unit Development [PUD] shall be the Conditional Use Permit [CUP] procedure.

I'm not clear as to why Bridger Canyon Partners has been allowed to submit a master PUD without also applying for a CUP for the entire project. Nowhere in the regulations do I find language supporting a procedure allowing for conditional use permits to be granted on a phase-by-phase basis. Part of the problem with evaluating Bridger Canyon Partners' application has been that we do not have sufficient information on the overall PUD to adequately determine the potential impacts and trade-offs associated with the whole project. Without requiring the developer to follow the letter of the regulation and go through the CUP process as part of the overall PUD application, property owners in Bridger Canyon are left with the unfortunate prospect of piece-meal development.

I foresee three additional problems with allowing developers to submit CUP applications on a phase-by-phase basis:

(1) According to Allied Engineering's report, absent a Conditional Use Permit (supplying complete project details), the Montana Department of Environmental Quality would not have sufficient information on which to evaluate water and sewage requirements for a master PUD. It's important to remember that the MDEQ considers **only** the development (regardless of whether it's the overall project or just a phase) presented during the subdivision review process. If a CUP is approved for Phase 1, then MDEQ considers only Phase 1's water and sewage application. MDEQ cannot issue approval for all phases concurrently unless it reviews a CUP for the entire project. Consequently phase-by-phase approval will not assure water and sewage capacity for a master PUD.

(2) If after receiving MDEQ approval, Phase 1 is built, but water and sewage capacity proves insufficient to warrant further development, then phases 2 and 3 would be unable to obtain the necessary MDEQ permits and would have to be abandoned. Without subsequent stages, would Phase 1 stand on its own? Unfortunately not. Because Phase 1 lacks sufficient commercial amenities to keep guests on the hill (and off the road) and is located at a distance relatively far from the alpine ski facilities, it fails to meet the goals of the *Base Area Plan* and the intent of the *General Plan*.

(3) BCP's allocation of "reserve" overnight unit presents another problem. To use the reserve development rights, developers must meet certain standards (adequate water and sewage capacity, slope and soil capability, adequate use

information, and an analysis of recreational home use development rights).

In BCP's phased approval plan, the distribution of development rights for reserve overnight accommodations appears extremely lop sided with the first phase having no reserve overnight accommodations and the final stage all reserve. If Bridger Mountain Village is allowed to proceed with phased approval, and water or sewage capacity prove insufficient to build the reserve units, then the base area would be left with roughly half of the overnight units in Phase 1, half in Phase 2, and none in Phase 3. The result would be no overnight accommodations located near the existing base area (which according to the Zoning Regulation should have the highest concentration of overnight density).

Phase	# of overnight units	% of overnight units with full dev rights	# of reserve overnight units	% of overnight units with reserve dev rights
1	92	100%	0	0
2	119	49%	124	51%
3	0	0%	117	100%

Only by evaluating a master PUD through the CUP approval process can the above problems be resolved. It is simply not possible to weigh the impacts of a project without a detailed picture of the whole thing. Although building in phases may make sense, approving a project on a phase-by-phase basis guarantees piece-meal development and opens the door for serious, long-term, negative impacts.

On page 2 of the Staff Report, Randy Johnson states, "While it is possible to accomplish some development in the base area with a standard approach on individual properties, only through the use of the PUD process can the development densities and the land use relationships encouraged by the plan and regulation be achieved. The PUD process allows for the blending of densities and land uses that are not possible if development were to proceed within separate parcels." Unfortunately, the phase-by-phase approval process evidenced in BCP's PUD evaluation is roughly equivalent to development of separate parcels and defeats the purpose Mr. Johnson hopes to achieve.

Fourth, the Staff Report's Accessory Uses section (page 36), lists garages, single level, not to exceed 500 square feet per unit for the overnight

accommodations (the CUP's eight parking exhibits specify parking spaces only); bus shelters, not to exceed 150 square feet; two gazebo structures, not to exceed 400 square feet; and a fishing/warming hut, not to exceed 800 square feet, located near the pond for ice-skating and summer use. In the accessory uses listed under the Conditional Uses section of BCP's CUP application (page 24), however, none of the above-listed uses are included. These changes to the developer's CUP application appear to be relevant and substantial. After a conversation with Mr. Johnson, I'm not clear as to whether significant changes to the application after submission warrant additional review time or summary dismissal of the application.

In a public meeting, John Barkow of BCP agreed to provide BCPOA with supplemental information provided to the planning office. Later, we were informed that he had supplied the information in telephone conversations with Randy Johnson. It's my understanding that the PUD/CUP approval process is public and that information is to be made available to all interested parties. In what form was this information made public prior to the April 12th hearing?

Fifth, I'm concerned by the lack of detailed information provided by the applicant about various items considered conditional uses: building envelopes for both overnight accommodations and the recreational home sites; the proposed swimming pool (How big will it be? Where will it be located? What provisions have been made for discharging the chlorinated water?); the summer pond—winter ice skating rink (Where will it be? How big? What will it displace?); the dimensions and location of the sauna and steam room facilities.

Sixth, the modifications presented by Bridger Canyon Partners appear to represent significant changes with the elimination of one road (Coombs Cutoff) and the relocation of another (Forsythe road moving west some distance). Will the application be dismissed because of the last minute modifications, some of which are substantial and relevant?

Seventh, BCPOA is especially concerned with BCP's fifth modification topic: beginning construction without receiving all necessary permits. According to Gallatin County's Subdivision Regulations, "no installation of infrastructure improvements (i.e. roads, water and sewer facilities, utilities) shall take place within the site until all applicable permits...have been issued..." (page 17). Upon approval of their PUD, however, BCP proposes to begin "limited" construction in 2007 prior to obtaining all required permits (such as those [1] verifying the physical availability of a sufficient water supply, [2] ensuring the legally authorized use of water, [3] guaranteeing adequate protection for streams, wetlands, and water quality, to name a few).

Specifically, BCP wishes to build a road and 12 overnight accommodations in the middle meadow area. (This interim phase represents four times the underlying density and would require a PUD on its own.) They also propose getting started on the lodge, setting up an interim wastewater collection system and two small water systems, and extending the existing Bridger Base Water System to provide fire protection to the initial development area.

We are particularly concerned with the permitting process because of a problem that has come to our attention recently regarding the Ross Peak subdivision (formerly Bridger Park I). Last year, BCPOA discovered that as of December 2006, Ross Peak's community water organization had not received approval from the MDEQ even though the subdivision was approved nearly ten years ago. In addition, the subdivision had also not acquired a Beneficial Use Permit from the DNRC. According to Morrison and Maierle's representative, the Beneficial Use Permit has still not been submitted.

BCPOA wants an unqualified commitment from BCP that it will not begin any construction of any kind prior to receiving all permits—federal, state, and county—for the entire project. BCPOA fully supports upholding Gallatin County's Subdivision Regulations in disallowing any construction until all necessary permits have been obtained for the entire project. BCPOA strongly opposes the interim phasing suggested by BCP in its CUP application for Bridger Mountain Village.

Eighth, during our research, we found density transfer rights that were recorded prior to any PUD approval and/or difficult to understand. Consequently, we request that all density transfers associated with the base area and BCP be reviewed to ensure accuracy and compliance with the procedures set forth in the *Bridger Canyon Zoning Regulation*.

Ninth, according to the Stipulation and Settlement Agreement of November 1996, Bridger Bowl and 360 were to prepare deed restrictions limiting the number of single-family homes in conformance with the agreement, such restrictions being made in perpetuity (see page three). BCPOA would like to ensure that such deed restriction have been executed and approved prior to proceeding further in the PUD approval process. The Association is particularly concerned with the deed restrictions required in the agreement for the North Slope property that was recently annexed into the base area (page 4).

Tenth, the Stipulation and Settlement Agreement was sealed by District Court Judge Larry Moran in November 1996. A sealed copy remains in the planning office to this day. Given its status, how is it that the part of the

sealed settlement applying to BCPOA appears in the Staff Report, which is a public document?

Eleventh, according to the Record of Decision, Bridger Bowl Master Development Plan Approval and Special Use Permit Authorization, Gallatin National Forest, Bozeman Ranger District, January 2005, the Forest Service limited “the overall resort [capacity] of Bridger Bowl to 6,100 patrons” daily. In the Staff Report on pages 11 and 21, Randy Johnson quotes the *Base Area* and *General* plans as stating that at its full potential, Bridger Bowl could host as many as 8,000 skiers per day. The figure used to calculate the number of parking spaces and residential accommodations (both overnight and recreational homes) is 7,500 (page 21). The *General Plan* states, “an additional 3,000 persons will need to be provided for in base operations and overnight facilities.” According to the updated information provided in the Bridger Bowl Special Use Permit, however, Bridger Bowl will need to provide accommodations for 47% percent (1400) fewer people. What implications does this have for the base area and the *Base Area Plan*? In considering new information deemed important, relevant, and compelling, how would Commissioners factor it into their deliberations?

Twelfth, although during the first day of the hearing, BCP stated that their cabins were 1200 and 1800 square feet, according to the Staff Report, they actually are 1300 and 1890 square feet. When examining BCP architectural exhibits, I noted that the actual foot print of Trapper One Cabin is 1620 square feet and Trapper Two Cabin 2124. I am wondering how BCP calculated their open space. Was it based on the square footage of the structure or the size of the footprint? Also, has BCP readjusted their figures based on their request for garages for the overnight accommodations, the swimming pool (a paved surface), two gazebos, the fishing hut, and the bus shelters added after the PUD had been initially submitted?

Thirteenth, on page 10 of the Staff Report, it states “In cooperation with the Bohart Ranch, the Bridger Mountain PUD will incorporate an expanded Nordic trail system. Trails within the PUD will connect at several locations to the adjacent Bohart Ranch.” On the contrary, Bohart Ranch has no such agreement with Bridger Canyon Partners and will not be working in conjunction with them in any way. The trail systems will not connect at all.

Fourteenth, on page 3, section 3, paragraph 3, it states, “in 1989, the Base Area Plan and the Bridger Canyon Zoning Regulation were amended to allow for both recreational housing and overnight accommodations in the Bridger Bowl Base Area. Generally, twenty-five percent (25%), or 200 of the dwelling units were allocated to recreational housing, and seventy-five

percent (75%), or 600 dwelling units were allocated to overnight accommodations." These figures are also quoted on pages 9 and 23.

The report fails to mention that as a result of the November 1996 Stipulation and Settlement Agreement (changes that were incorporated into the 1999 Zoning Regulations), the total number of recreational housing allowed through a PUD fell to 78 (originally 74, but Bridger Bowl purchased a piece of state land with 4 recreational home rights that were incorporated into the base area per the 1999 revisions) and the total number of overnight accommodations remained the same at 542 (289 of which are designated reserve overnights). The resulting percentages reflect the 1999 reductions in the total number of recreational homes in the Base Area to 13% of the total allocated density rights with 87% of the total density rights designated for overnight accommodations for a total of 620 units.

Fifteenth, on page 38 of the *Zoning Regulation* (and 26 of the *Base Area Plan*), recreational housing development rights for Bridger Bowl are listed as 16. That number, however, does not correspond to the agreed number set forth in the November 12, 1996, 'Stipulation and Settlement Agreement.'" In the chart at the top of page 3 of the Stipulation Agreement, it shows that Bridger Bowl's development rights were reduced from 16 to 9. This change was not reflected in either the *Zoning Regulation* or the *Base Area Plan*.

Also at the bottom of page 3 of the Settlement Agreement, it notes that if a certain parcel of State land is sold into private ownership, then with it will transfer four (4) single-family density units. This piece of land was purchased by Bridger Bowl bringing their number of recreational house density units up to 13 ($9 + 4 = 13$), yet this is not reflect in either of the above-mentioned charts.

In this review of the Staff Report prepared to evaluate the PUD application before us today, I hope I have raised enough questions for you to become as concerned as I am...as the entire Board of the Bridger Canyon Property Owners' Association is...as all the concerned citizens who have left their work and families to attend two days of testimony before this Commission. We who oppose this development are not a "radical fringe group"; rather, we are a community friends and neighbors who have spent thousands of hours meeting, talking, reading, investigating, reviewing, writing, testifying, and organizing because we have determined that this project is wrong for the Bridger Bowl Base Area and wrong for Bridger Canyon. The district deserves more than polished briefings or reassuring clichés. We need a development that through its design demonstrates an awareness of our values and priorities...a development that provides meaningful benefits and minimizes negative impacts. Our district...our community stands together in opposing

this development. We ask you to join us and deny this PUD application swiftly and completely.

Thank you for your consideration.

Sincerely,

Alex Eby

Encl.