

An Analysis of Base Area Development Transfers

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BCPOA asserted in public testimony that there were a variety of problems with the development unit transfers claimed to support the recreational home density sought in the Bridger Mountain Village PUD application. Since that time we have further researched the development transfers associated with the base area, and determined that at least 10 units are questionable, reducing the total recreational home density available in Bridger Mountain Village from 75 to 65. We also note several problems with the density transfers to Ross Peak Ranch (Bridger Park PUD). Our findings include the following:

1. The North Slope property, annexed into the Base Area in 2006, is considered to contribute 12 development units to the project. In fact it has 5 possible under a PUD that originate with the property; other density units related to the property originate outside the Base Area and cannot be transferred in (zoning regulation 13.9.d and Base Area Plan), though BCP may still retain title to them for use elsewhere. The annexation resolution, 2006-63, does not automatically include the transferred density units, nor does it mention them. Development transfers are not consummated until a PUD is approved (13.9.e), which cannot occur now that the North Slope is in the Base Area. In any case, we can only establish the transfer of 6, not 7, units available to the North Slope.
 - a. The 5 units were established by the 1996 Settlement Agreement, as follows:

4.

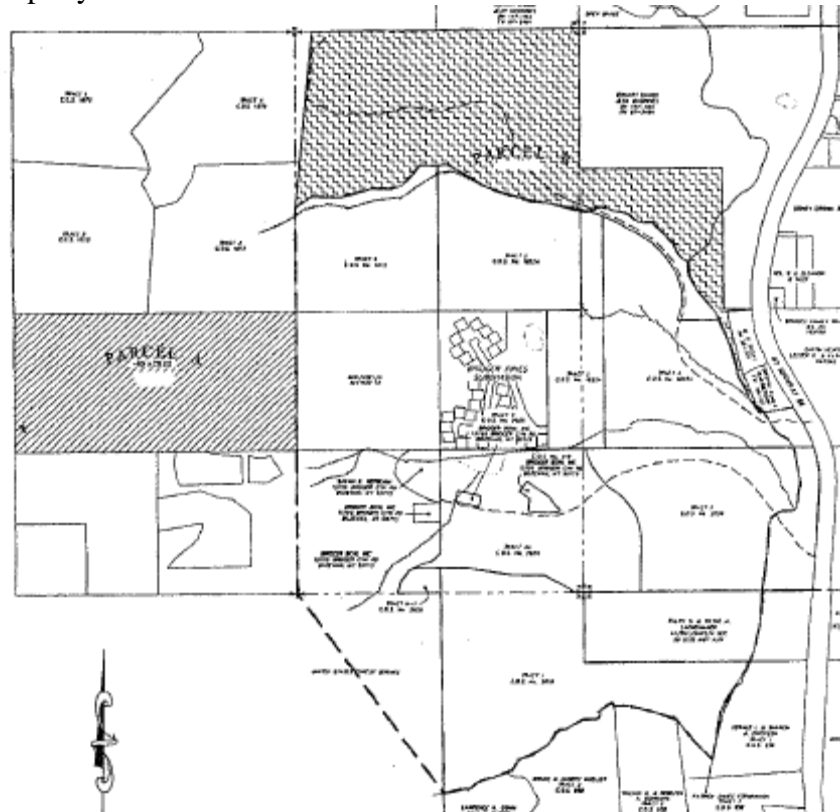
That, in addition to the above and foregoing, 360 and the Associates agree to limit the number of single-family density units that can be transferred in accordance with the Zoning Ordinance on to that certain 100 acres of real property owned by 360 adjacent and contiguous to the Base Area, but lying outside thereof, to 7 single-family density units, such that the maximum total number of single-family density units on such property under an approved PUD shall be 12.

- b. On December 5th 2005, development units were recorded for transfer onto the North Slope from the Doren properties outside the base area in T1SR6ES13 believed to be known as Beasley Creek. The agreement is vague as to the actual number of units transferred, but as the area comprises roughly 320 acres and four units are reserved to Doren, one could presume that the quantity transferred is $320/40 - 4 = 4$ units.

WHEREAS, Doren and HMR both understood there were eight (8) development rights (the "Development Rights") that were appurtenant or related to the Property;

WHEREAS, Under the Agreement, to the extent the development rights appurtenant or related to the Property are transferable, Doren agreed to transfer to HMR all but four (4) of the Development Rights to HMR upon its request (such Development Rights in excess of the four, the "Transferable Development Rights");

- c. On June 8, 2006 and corrected on December 30th, 2006, 2 development units were recorded for transfer onto the North Slope from Bridger Bowl property outside of the Base Area.¹



2. The North Slope is subject to a permanent upper limit of 12 recreational homes, as stipulated in the settlement cited above and recognized in the findings of fact and recommendations accompanying the annexation resolution, 2006-063. Currently the PUD application designates 37 homes for development in that area. The settlement restriction on North Slope development was designed to protect old growth forest, key habitat, and highly-visible elevated areas. The settlement is not subject to alteration by annexation or the PUD process.

¹ Per letter from Joby Sabol, 11/13/2007, BCP argues that 3 of four rights available on the 80-acre parcel were transferred, counting rights at 1-in-20 PUD density. We argue in #8 below that there is no basis for doubling the density of rights originating on a property outside of a PUD; they must be counted at the underlying permitted density of 1-in-40. In this case it is particularly obvious that this must be so, because no PUD was approved or applied for at the time of transfer, nor could one use these rights now, as they originate outside the Base Area. Moreover, the Dec. 30, 2006 transfer agreement records only two transfers:

WHEREAS, the transferor certifies that it is the owner of the following described two parcels of real property which contains two (2) development rights to be transferred herein pursuant to the Bridger Canyon Zoning Ordinance and Amendments thereto. Therefore we stand by our conclusion.

3. A March 13, 1991 agreement with Delaney & Co. makes development of the North Slope contingent on development of the Second Base Area (this is not inconsistent with current proposals, but we note it because it should be imposed as a condition on the PUD).

ARTICLE I

Second Ski Base Restriction

Any development proposal for the real property described on Exhibit "A" attached hereto shall include, as part of any such development proposal, provision for a second ski base at the Bridger Bowl Ski Area.

4. As far as we can determine, 360 Ranch failed to record other deed restrictions required in the 1996 settlement (Exhibit A in the April 12 Staff Report).
Base Area, Bridger Bowl and 360 will prepare, execute and file in the office of the Clerk and Recorder of Gallatin County, Montana, a legally sufficient deed restriction restricting the number of single-family density units to be developed on their respective parcels of real property in conformance with the numbers hereinabove set forth, that is to say
Bridger Bowl - 9 and 360 - 10.
5. Ross Peak Ranch acquired one development unit from an "out parcel" owned by Bridger Bowl. However, the "out parcel" concerned does not in fact exist. It may have been imagined to exist because GIS maps of the Base Area zone boundaries and property lines are not well aligned, or because there is a creek adjacent to the boundary. As a result, it appears on digital maps that there is a small area between the boundary of the Base Area, roughly coincident with Bridger Creek, and the boundary of Bridger Bowl's property, a little to the north. However, this is an artifact. It is clear from the Base Area Plan, Map 1 that the zone boundary is coincident with the property boundary, with the creek lying inside the Base Area. More importantly, Resolution 1996-4 which de-annexed the North Slope from the Base Area specifically references the North Base Area property, not any other geographic entity. Thus to imagine that a strip of the Bridger Bowl property adjacent to the North Slope now lies outside the Base Area is equivalent to imagining that such a strip has always lain outside the base, even when the base included the surrounding North Slope, which is clearly contradictory to common sense and all Base Area maps. Even if the "out parcel" concerned were to exist, there is no logic in the Bridger Canyon zoning regulations that would make it an additional developable unit. Therefore Bridger Bowl's 13 development units must be debited by 1.

6. We note in passing that a further portion of Bridger Bowl's development units transferred lie on the parcel on which the Deer Creek Lodge was developed. It stands to reason that commercial development of a property ought to extinguish residential development units.²
7. Ross Peak Ranch also acquired two development units from "out parcels" now owned by BCP, from the portions of the former Simkins & Haggerty and Crosscut parcels that appear to lie outside the Base Area adjacent to the highway. The portions of these properties concerned are comprised entirely of rights-of-way, steep slopes, and wetlands, and thus are undevelopable. Further, they are not in fact parcels at all, as they have never been subdivided from the remaining land in the Base Area, nor could they be as they are too small (they would not qualify for an additional density allocation either). Given that the zoning regulations do not enable such calculations, the 2 units transferred to Ross Peak Ranch should be debited from the 50 units held by the BCP properties within the base. Otherwise the transfers create additional density within the district.
8. We also note that Ross Peak Ranch double-counted development units based on transfers from other properties at 1-in-20, with the rationale that they were involved in a PUD. We believe that this is incorrect. 1-in-40 rights on Property A do not magically become 1-in-20 units in a PUD on Property B, particularly when there is no common ownership and B is not contiguous with A as the zoning regulations require for a PUD. We believe that density should transfer at permitted density (1-in-40), unless a PUD on the originating property establishes otherwise. Section 13.9 of the zoning regulation provides for "transfer of permitted dwelling units" and not of conditional density available under a PUD. In no case should transfer of development units enable density greater than the 1-in-20 available under a PUD, though in fact that appears to have occurred at Ross Peak Ranch (30 units on 520 PUD acres).
9. Section 14.2 of the zoning regulation provides that, "If two (2) or more lots and portion of lots with continuous frontage in single ownership are of record at the time of adoption or amendment of this Regulation, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Regulation." Four of the density units transferred to Ross Peak Ranch originate on a group of contiguous Bridger Bowl parcels totaling less than 80 acres. Assuming those parcels were also in common ownership at the time of adoption or amendment of the regulation, they should share fewer than 4 density units.

² Upon further research, it turns out that this transfer was withdrawn in a separate memo. However, it remains a problem that commercial development of a property does not extinguish residential density units. It also appears that rights were transferred to Ross Peak Ranch from another Bridger Bowl tract that contains rental cabins.

To summarize, we have compiled the following table of density units allocated in the Bridger Mountain Village PUD, as applied for, and as we believe them to exist:

Property	Claimed Recreational Home Development Units	Adjustment	Actual Recreational Home Development Units
BCP Base Area Properties	50	-2 for non-existing “out parcel” transfer to Ross Peak Ranch (#7 above)	48
Transfer from Bridger Bowl properties	13	-1 for non-existing “out parcel” transfer to Ross Peak Ranch (#5 above)	12
North Slope	12	-1 for non-existent transfer -6 for inadmissible transfers from properties outside the Base Area (#1 above)	5
Total	75		65

Note that we have referred to “density units” rather than “density rights” throughout this document, as the court did in the 1996 Stipulation & Settlement Agreement. That is because we believe that the settlement established upper limits to recreational home density, subject to the provision of significant community benefits, as required for density exceeding the underlying density in the Base Area or any other property in the district for which a PUD designation is available. These density units are not the same as unencumbered 1-in-40 development rights permitted by the underlying zoning.

In consideration of all the above, BCP has a maximum of 65 allowable recreational home development units, dependent on the amount of significant community benefit achieved, of which a maximum of 12 may be located on the North Slope.

We have scrupulously documented our conclusions above and would be happy to provide copies of the transfer agreements and other supporting documents. If further documents pertaining to Base Area transfers are available we would be glad to receive copies and adjust our conclusion as appropriate.