

Testimony from Kate Vargas

April 12, 2007

RE: BCP's PUD application

Ladies and Gentlemen of the Commission:

Thank you for listening to my testimony today and for your tireless service to Bridger Canyon and Gallatin County. My name is Kate Vargas, and I serve on the board of the Bridger Canyon Property Owners' Association (BCPOA).

Members of my family have made Bridger Canyon their home since 1946. When I was born, my parents lived in a log house located in the base area. Aunts, uncles, cousins, and grandparents all called Bridger Canyon home at one time or another. After my immediate family moved away because my father had a difficult time making a living as a builder at that time, we maintained a summer residence on Bridger Canyon Road directly across from the Bridger Bowl access road. I spent the happiest summers of my life hiking with my brothers, building tree houses, wandering the streams and meadows with the neighbor kids and catching frogs at the frog ponds near my grandmother's A-frame cabin (a cabin that still stands today across from the Jim Bridger Lodge.)

When my mother's health declined suddenly in 2004, my husband and I decided to return to Bridger Canyon as full-time residents and currently reside at 16002 Bridger Canyon Road. My husband and I have made significant personal sacrifices to live and work here, sacrifices we're happy to make because we love Bridger Canyon and cherish the way of life we enjoy as residents. I believe my feelings about Bridger Canyon are not unique; rather they are shared by everyone who calls the canyon their home. I feel confident in asserting that canyon residents see themselves as stewards of the land, forests, wildlife, waterways, and rural way of life.

Because of my devotion to Bridger Canyon, I have spent some time reviewing the relevant development guides and zoning regulations, and I would like to share with you some of the history of zoning in Bridger Canyon and how that history relates to the evaluative questions before us today. To understand the intent behind our planning guides and regulations, I think it is important to understand how and why these documents, designations, and regulations came about. My presentation to you raises the questions I asked myself when analyzing BCP's PUD application and supplies answers I found while digging through current and past versions of the *Bridger Canyon General Plan and Development Guide*, *Bridger Bowl Base Area Plan*, and *Bridger Canyon Zoning Regulation*.

What was the intention behind creating a zoning district, development guides, and zoning regulations? In order to preserve the "natural, physical character of the canyon, and to ensure orderly growth," the residents of Bridger Canyon petitioned for a development plan that was adopted in 1971. The main reason for this interest in a development plan was a shared concern about the growth of Bridger Bowl and its impact on traffic along Bridger Canyon Road. In that same year, the Bridger Canyon Zoning District was created as Montana's first zoning district and the *Bridger Canyon Zoning Regulation* was approved. Simply put, the residents of Bridger Canyon created a zoning district and the accompanying plans and regulations "*to guide future physical growth within Bridger Canyon and to protect the natural beauty and agricultural open space character of the area*" (p. 2).

How and why was a separate plan for the base area developed? In response to "various development requests" (p. 2) the *Bridger Bowl Base Area Conceptual Plan* was prepared (with input from consultants hired by both the County Commission and Bridger Canyon residents) and adopted by the Planning and

Zoning Commission in 1979. This plan was designed to be an “extension” of the *General Plan* (Base Area Plan p. 6), and “to guide [any] development that *may* take place in the base area” (p. 23). (At that time [as is the case presently] expansion of Bridger Bowl was “not a priority” (p. 20) and the need for development in the base area was unclear.)

In October 1985, the *Bridger Bowl Base Area Plan* was adopted, updating and replacing the *Conceptual Plan*. Specifications for a base area PUD were incorporated into the *Zoning Regulation* at this time.

Why was the base area allotted the high density PUD allocation of one unit per half acre, unprecedented elsewhere in the canyon? The *General Plan* recognized the recreational potential of Bridger Bowl and estimated that it could expand to include 7000-8000 skiers. Planners and residents were very concerned that the existing highway would not be able to handle traffic generated by that many skiers. Constructing a four-lane roadway that could handle such traffic was considered contradictory to the intent of the General Plan. As a means of resolving this expected future traffic problem, the plan allowed for a high density PUD in the base area of one *overnight* unit per half acre (two density units per acre or a total of 800 units) *if* an acceptable PUD application was approved.

This goal of traffic alleviation is reiterated in the 1979 *Bridger Bowl Base Area Conceptual Plan* and the current *Bridger Bowl Base Area Plan*. Both state that “the rationale for creating this high density allocation with overnight qualification (the balance of the Bridger Canyon area has an allowable PUD density of only one unit per 20 acres...) was to allow for the expansion of the Bridger Bowl Ski Area to its ultimate capacity without exceeding the vehicular capacity of the two-lane Bridger Canyon Road” (p. 1 Conceptual Plan; p. 3 Base Area Plan). *The purpose of the high density PUD allowance in the base area, then, was to solve a traffic problem for canyon residents that was anticipated to occur as Bridger Bowl expanded to its full capacity.*

If Bridger Bowl was to provide overnight accommodations, how is it that they’re now allowed to build single-family homes? In 1989 over the objections of property owners in the canyon, the Commission approved an amendment to the *Bridger Canyon Zoning Regulation* allowing 25 percent of all existing overnight density rights to be allocated to single family homes, for a total of 182 homes in the base area around Bridger Bowl. This action was based on the assertion that overnight accommodations for Bridger Bowl would never be built unless a developer could be assured a larger profit margin through sales of single-family homes.

What were the lawsuits of the early and mid 1990’s all about and what were the outcomes? In 1990 and 1991, the Commission approved the annexation of 360 acres (North Slope and Hammersmark properties) into the base area. Shortly thereafter (in 1992), the 360 Ranch Corporation submitted a PUD application for the expanded base area which included a golf course and 151 single family homes. The development was approved in early 1993 over the objections of Bridger Canyon property owners. Shortly thereafter, BCPOA appealed the Commission’s decision.

After being denied in district court in 1994, BCPOA appealed to the Montana Supreme Court. In March of 1995, the Supreme Court ruled in favor of BCPOA and held that “*once a General Plan (master or comprehensive plan)...is adopted, the Commission must substantially comply with that planning document*” (p. 132).

The court’s action invalidated the 1993 approved master PUD. Because the court also concluded that “the planning documents...should be internally consistent as well as consistent with companion planning documents,” in May of 1995, the Commission attempted to remedy the inconsistencies cited by

the Supreme Court by passing a “resolution of intention.” The following month, BCPOA appealed the Commission’s amendments. The suit was settled out of court in November 1996 and was sealed by the presiding judge. In that same year the previously annexed 360 acres (North Slope and Hammersmark) was de-annexed from the base area, thereby reducing the base area to 404 acres. In 1999, the Zoning Regulations were updated to reflect the 1996 settlement agreement, *reducing the maximum number of single-family homes 360 Ranch or its successors could build if they could qualify for a PUD; the numbers were reduced from 151 to 50 and the number of density rights on the North Slope property was limited.*

The lawsuits may also have pointed out an important concept articulated on page 23 of the *Conceptual Plan* that “the Planning and Zoning Commission must be extremely careful to not arbitrarily change basic concepts of the plan without a firm basis and a reasonable approach in doing so.”

Didn’t the lawsuits of the mid-1990’s determine what the developers can and cannot build? The *Conceptual Plan* answers this question clearly on page 21, “in the...base area the basic density allows one unit per 40 acres as a matter of right, but *if an acceptable PUD is presented*, a density of up to two units per acres can be obtained.” The 1996 settlement agreement only set the limit on the maximum number of single-family homes the developer who owned the land in question would be allowed to build if his project was deemed meritorious enough for PUD status. In addition, on page 28 of the Base Area Plan, it states that the density bonus that comes with a PUD designation is granted because the developer has proven that the proposed project will provide the district with significant benefits. Further, to gain PUD status, a project must support the purposes of the district, the goals of the base area, and comply not only with the letter of the Zoning Regulations but the intent of the *General* and *Base Area* plans. The project should be held accountable for addressing the problems that the PUD was designed to solve. The benefits should be “real” and be meaningful to the district in which it’s located. Finally, in order for it to receive the density bonus, it should provide more benefit to the community than a development following the underlying zoning.

What’s happened since the settlement? In 2005 Bridger Canyon Partners purchased 345 acres in the base area. The following year, the Commission approved BCP’s request to re-annex the 113-acre North Slope property into the base area. In December of 2006, BCP filed its PUD application for Bridger Mountain Village.

What guidance does the General Plan give us for evaluating the merit of PUD applications in the base area? In the section considering the base area, the General Plan lists it’s criteria for approving developments: “It is an underlying objective of the canyon residents to support the establishment of recreational uses in harmony with the natural setting, while insisting upon limitation to prevent damaging environmental effects. These limits are designed to prevent any significant change in the environmental character of the canyon. Access control provides the basic limiting element. Any increase in traffic movements, resulting in the need for a four-lane roadway, would be considered a major detriment to the canyon. All proposed development should be reviewed in terms of its...”

- 1) *sensitivity to surrounding uses;*
- 2) *influence on water quality;*
- 3) *access and traffic generation potential;* and
- 4) *overall effects on the environmental quality* (p. 30)

In addition to these principles, the *General Plan* offers specific guidance in various areas throughout the Plan. Pages 25 and 26 speak to building concepts that are “based on the premise of maintaining the

existing canyon character as much as possible.” The Design Concepts section starting on page 37 advises developers on community and environmental design and provides an extensive list of design guidelines.

How about evaluative criteria in the Base Area Plan? On page 6 of the Base Area Plan, it tells us that “this plan attempts to give direction to the expansion of the ski area and accompanying development while preserving the character of Bridger Canyon, and remaining consistent with the basic intent of the *Bridger Canyon General Plan*....The goals and objectives [of the *Plan*] provide a broad and basic framework for determining the merits of development proposals.” The goals of the *Base Area Plan* are to 1) encourage quality year-round recreational activities within the Base Area; 2) Help control traffic with the limits of two-lane Bridger Canyon Road; 3) Conserve the natural resources within the Base Area and Bridger Canyon in general.

What specific direction does the Bridger Canyon Zoning Regulation provide? On page 28, it tells us that in exchange for the density bonus implicit in a PUD, developers must provide “significant community benefits.” As these benefits (to be at all valuable) must be recognized as beneficial to the district. Fortunately the Zoning Regulations list very clearly our values specifying the purposes of the district. Five of those purposes include the following: 1) enhance and preserve open space and unique natural features; 2) preserve to the maximum extent possible the natural characteristics of the land, including topography, vegetation, streams, and tree cover; 3) protect areas of important wildlife habitat; 4) lessen the visual impact of development and preserve the scenic vistas and rural atmosphere; 5) preserve agricultural lands.

So what does all this mean in terms of evaluating the project that is before the Commission today? After carefully analyzing the PUD and CUP applications submitted by Bridger Canyon Partners and studying the design of the overall project and that of their first phase, I am convinced that BCP did not consider the guiding principles or specific recommendations set forth in Bridger Canyon’s three planning and zoning documents. Had they considered the intent of our plans, I doubt they would have chosen to begin their project in an open meadow, close to steams and wetlands in a location entirely visible from Bridger Canyon Road. Even with the modifications they’ve agreed to, against the advice of the *General Plan*, they are still clustering overnight accommodations and single-family homes in sensitive wetland areas, with homes running alongside creeks that serve as tributaries for an already impaired Bridger Creek.

Because they’ve chosen to provide individually owned cabins as overnight accommodations, the footprint they’ll leave on the meadow and surrounding areas is much more impactful than that left by a larger, multi-room facility, such as a lodge (with overnight rooms), small hotel/motel, hostel, or B&B.

Had they considered our planning principles, they wouldn’t have chosen to start in a location distant (in comparison to Phase 2 and 3) from the alpine ski bases. They would have started in the center and worked outward, placing their structures under cover of trees.

Had they understood that the base area was given unprecedented overnight accommodations to solve a future traffic problem for canyon residents, they may have chosen to offer more amenities in Phase 1 or start the entire project with Phase 2. The accommodations are distant from the hill and their lodge will compete (in a limited fashion since they won’t be able to tie their trails into the existing ones at Bohart) with a successful, existing cross-country operation. We don’t need another cross country skiing resort. We need accommodations near the alpine ski facilities as was envisioned by our plans. We need a development that surrounds and supports Bridger Bowl. We don’t need another real estate sales

operation trying to make back its initial capital investment.

That BCP made the design choices before us today, leads me to believe that they did not consider the goals of the *Base Area Plan*, the guiding principles of the *General Plan*, or the purposes of the district from the *Zoning Regulation* when they designed their project. When asked why they chose to start with their Phase 1 site plan, they said that it made good financial sense. It looks to me like the Partners are capitalizing on the beauty of the area's streams and wetlands (with little care for their long-term health and future productivity) so as to more rapidly make a return on their initial investment. Financial considerations are a part of running a business, but when you are applying for a huge density bonus, you also have to be willing to give the community some real, honest-to-goodness benefits as well. I believe that the Partners' have failed to understand the intent of our plans and the values of our district.

Instead, BCP has held onto its own vision trying to force and bully it into working in an environment ill suited for such a project. BCPOA has always supported conscientious development, and I encourage BCP to release their vision of this project and join us in becoming good stewards of the land by reading, understanding, and digesting the intent of our plans and the purposes of our district.

While I appreciate the time I've spent with the Partners and find them to be amiable and enthusiastic, I cannot support their plan. BCP's goals are in direct conflict with those of the district. I encourage you to join the residents of Bridger Canyon in opposing this PUD as it has been submitted and modified. Many people have labored for many years to encourage limited, controlled growth while protecting the natural beauty and agricultural character of the canyon. I can assure you that many people will continue working for as long as it takes to uphold the intent of our zoning regulations.

Thank you for your consideration.

Sincerely,

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