

**LAND USE ANALYSIS AND REPORT**  
**Review of Planned Unit Development (“PUD”) Application**  
**and Conditional Use Permit (“CUP”) Application for**  
**Phase I of “Bridger Mountain Village,”**  
**Submitted by Bridger Canyon Partners, LLC**

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This report is prepared for the purpose of submission to the Bridger Canyon Planning and Zoning Commission for its review and consideration of the Planned Unit Development (“PUD”) Application and the Conditional Use Permit (“CUP”) Application for Phase I of “Bridger Mountain Village,” submitted by Bridger Canyon Partners, LLC.

**I. INTRODUCTION AND BACKGROUND**

This report is prepared by Stephanie Gehres Kruer, Attorney and Land Use Consultant, of Kruer Law Firm, P.C., of Sheridan, Montana. Ms. Kruer has 17 years of land use experience and 21 years of experience as a trial attorney. Prior to coming to Montana, she served 10 years as an attorney for the State of Florida, Department of Community Affairs, the state agency responsible for land use planning and growth management, housing and community development, coastal protection programs and emergency management throughout the then-468 counties comprising the state of Florida, including Areas of Critical State Concern in the Florida Keys.

During 1996-1999, Ms. Kruer was the General Counsel for this large state agency which was on the cutting edge of comprehensive planning requirements and growth management techniques. She represented both the Department and the Governor and Cabinet, acting as the Administration Commission, in successful litigation; she also appeared before legislative bodies on behalf of the Department. Ms. Kruer’s areas of expertise include not only land use planning and extensive land use and growth management litigation, local government assistance and interaction, but also private property rights, takings and eminent domain.

Upon relocating to Montana in 1999, Ms. Kruer managed ranch management companies, and gained experience with the unique features and nature of the Treasure State. In 2001, she resumed a law practice with emphasis on land use, real property, local government and litigation. She currently serves as the Town Attorney for the Town of Twin Bridges and has attended numerous land use seminars. She has been a legal consultant to The Sonoran Institute in Bozeman, as well as presenting topics related to land use planning, land development regulations and takings/eminent domain law at in-state seminars.

## II. GENERAL

The focus of this report is a review of the proposed development from a proper land use planning perspective, as well as a review of the CUP Application, the PUD Master Plan, the Bridger Canyon General Plan & Development Guide (“General Plan”), the Bridger Bowl Base Area Plan (“Base Area Plan”), Bridger Canyon Zoning Regulation (“BCZR”), Bridger Canyon Property Association’s Comparative Analysis of the PUD/CUP’s Compliance with the above plans and implementing regulations, the applicable Gallatin County Subdivision Regulations, the Gallatin County Staff Report, and the recently submitted BCP’s proposed modifications of the applications, dated April 6, 2007.

## III. PURPOSE OF PUD

The BCZR defines the purpose of a planned unit development in Section 13.1. It’s essential elements are consistent throughout most jurisdictions where this planning tool is used: emphasis on mixed use and clustered development with exceptional density and intensity of land uses, in areas that are suitable for such development based on natural features and characteristics, need, and reduced costs and impacts. Importantly, PUDs are exceptional developments that are intended to enhance particular characteristics of a community – often resulting in a special development in just the right place that blends suitable land uses with open space to preserve a certain character. In Bridger Canyon in particular, additional and extra emphasis is required by the above-listed Plans and the BCZR to

- ensure significant community benefit
- lessen the visual impact of development
- enhance and preserve open space and unique natural features
- protect areas of important wildlife habitat
- preserve the scenic vistas and rural atmosphere.

The Applications fail to comply with the essential stated purpose of a PUD for Bridger Canyon. “Significant community benefit” is lacking in the Application; rather, the Applications impose burdens on to the community and the natural resources enjoyed by and shared with the community.

The proposed development sets aside open space [*See*: Sections 13.1(a); 13.2(a) and (d); 13.5 (a) (2) and (b) (2); 13.6 (a) (3), BCZR], but it otherwise encroaches on open meadows, wetland areas, valuable wildlife habitat and community view sheds. These are only some of the “unique natural features” of Bridger Canyon that the BCZR is designed to protect.

In addition, the proposed development displaces useful and used wildlife habitat, will empty significant additional humans and their impacts on the natural features of the project area, and will exceed the capacity of Bridger Canyon Road, the 2-lane roadway that will be over – crowded by additional vehicle trips. These impacts will significantly and permanently change the “community character” of Bridger Canyon.

The BCZR, as well as the Bridger Canyon General Plan, requires that the meadows, wetlands and riparian area of Bridger Canyon be protected. The Montana Supreme Court has determined that the BCZR, the General Plan and the Base Area Plan be consistent with each other and consistently applied, in order to protect the Canyons unique assets. The Court held in Bridger Canyon Property Owners' Association v. Bridger Canyon Planning and Zoning Commission (1995), 52 St. Rep. 125, as follows:

We hold that once a General Plan (master or comprehensive plan), which is part of a development pattern, is adopted, the Commission must substantially comply with that planning document. We further conclude that in order to effectively plan for the development of a planning and zoning district, the planning documents which comprise the development pattern must be internally consistent as well as consistent with companion planning documents.

The protections afforded Bridger Canyon by the judicial branch of the Montana state government have been echoed on a statewide basis by the executive branch of Montana state government. Governor Brian Schweitzer recently stated in a letter to the top natural and wildlife resource agencies:

**Development along rivers and streams that destroys protective riparian areas is possibly the single most urgent ecosystem threat facing Montana today.**

*- Governor Brian Schweitzer, Letter to DEQ, DNRS, and DFWP Directors, March 8, 2006.*

Consideration of impacts on streams, riparian areas and setback areas is not the only issue pressing before this Commission; the overall impact on the Bridger Canyon area and the emphasis of the General Plan and the Base Area Plan upon preserving community character, values and natural features – while preserving Bridger Canyon Road as a 2-lane byway – are highly pressing, as well. A review of these critical considerations is set forth below per the contents of BCP's Master Plan itself, preceded by a summary of the standards for design and development required by the BCZR.

#### IV. STANDARDS FOR DESIGN AND DEVELOPMENT

The pertinent standards applicable to a PUD in the Base Area are set forth in the BCZR at Sections 13.5, "Standards for Development," and 13.6, "Procedure." *See also:* Section 17.3 of the BCZR regarding "Conditional Use Permits."

An analysis of the Applications' compliance with the PUD standards and procedures is set forth both in the County's Staff Report and the Bridger Canyon Property Owners Association's Comparative Analysis of the afore-referenced planning and zoning documents applicable to Bridger Canyon and the Base Area.

While the Staff Report identifies information submitted with the Applications that are intended to address, or at least cite to, the specified standards and procedures, the Staff Report does not evaluate, test, or verify the underlying factual bases for the information provided by the Applicant (although technical or agency analyses pertinent to particular standards are attached to the Staff Report, as they may exist).

The Owners Association's comparative analysis document appears to be more reliable. It focuses on the purpose and intent of the General Plan, the Base Area Plan and the implementing BCZR. It not only identifies BCP's every response to the standards and procedures, but also it evaluates the veracity of those responses vis a vis the applicable Plan provisions and factual characteristics of the subject development area. Therefore, the Owners Association's Comparative Analysis is hereby adopted by this report and is incorporated by reference as if fully set forth herein.

The author also strongly notes that it is not whether a statement addressing each criterion is included in the Applications is the pertinent factor for the Commission's consideration at this stage of the review process. Rather, the critical consideration at this point is whether the PUD and the Phase I CUP are consistent with and further the clear purpose, intent and goals of the General Plan and the Base Area Plan that the applicable BCZR is designed to implement. In short, given those critical considerations, is this development suitable for Bridger Canyon?

## V. CRITICAL CONSIDERATIONS FOR THE COMMISSION

All planning documents relevant to the Commission's decision whether to approve, deny, or approve with conditions the subject Applications are very clear on one thing: the proposed PUD must be consistent with and reflect the goals, objectives, policies, purpose and intent of the General Plan and the Base Area Plan, as implemented by the BCZR.

The applicant's Master Plan sets forth the goals, objectives and policies of the Base Area Plan (pp. 6-7); yet it fails to specify how those "GOPs" will be achieved. Specific examples of the key elements of both the Base Area Plan and the General Plan are set forth below, with a brief analysis of whether those exemplified elements – unique to land use planning in Bridger Canyon – are met by the Applicant.

- A. Bridger Canyon General Plan & Development Guide
  - 1. Page 2, "General Plan Objectives"

**This plan recognizes Bridger Canyon as:**

**A desirable place to live and an area with an increasing growth rate.**

**A place of growing recreational use and demand.**

**An area where forest lands will continue to exert influence.**

**A place demanding protection of its environmental beauty and agricultural open space.**

**An area with strong citizen interest favoring conservation of natural resources; preservation of open space and agricultural usage; and limited, controlled growth compatible with the natural environment.** (Emphasis added.)

*The PUD and CUP fail to comply with this stated special recognition of Bridger Canyon, in that its first phase of development is placed in an open meadow historically used for agricultural purposes that is surrounded by streams, riparian areas, and setback areas. This area of intense development is visible from Bridger Canyon Road and proposes to place traffic on that road from 40 cabins, 13 4-plexes, and 25 single family residences in Phase I, alone. Destruction of natural areas and displacement of wildlife caused by the construction of these units is obvious.*

2. Page 17, “Visual Resources”

**The visual qualities must continually be maintained in order to preserve the canyon’s indigenous character and quality of life.**

*The PUD and CUP interfere with and interrupt the visual qualities of the canyon experience, despite efforts by the Applicant to reduce the number of units; they still will be visible from Bridger Canyon Road. Moreover, the “indigenous character and quality of life” will be forever altered by the density and intensity of the development and the number of trips on Bridger Canyon Road.*

3. Page 20, “Land Resources”

**Minimize fencing whenever possible.**

*The Applications allow for fencing at the Declarant’s discretion.*

**Minimize construction around and near streams.**

*While subsequent to the filing of the Applications and County’s and the Association’s initial analysis the Applicant has offered (on April 6, 2007) to reduce the density in the open meadow area and remove the many units proposed in the riparian and/or setback areas, units and the large Cross Cut Lodge are still proposed for development “around and near streams,” including Maynard Creek which holds an “impaired” status.*

4. Page 26, “Residential and Commercial Development”

**[The stated concepts in this section regarding Prime, Secondary and Tertiary Building Sites] are all based on the premise of maintaining the existing canyon character as much as possible.**

*The PUD, including but not limited to Phase I for which BCP seeks conditional use approval, will substantially alter the “existing canyon character” of a rural mountain canyon highlighted by startling vistas, abundant wildlife, cross country skiing, a spectacular ski hill, and numerous hiking and camping opportunities by adding*

*- Alpine ski trails, ski lifts, nordic ski trails, equestrian center, pedestrian trail system and ice skating rink*

*- Overnight accommodations, 452 units in total, consisting of individual cabins, four unit chalets and multiple unit buildings, and a central lodge providing food and beverage service, check-in desk, lobby, game room, swimming pool, and health and fitness facilities*

*- Recreational housing to include 75 detached single-family units*

*- Accessory uses to include bus shelters, fishing/warming hut, detached garages for overnight accommodations, and gazebos*

*- An alpine ski base area consisting of a commercial village which will include retail shops; restaurants and lounges; service establishments; day care facility; amphitheater; skier services; offices; overnight accommodations; central check-inn [sic], and related parking*

*- Total open space of 268 acres or 80% of project area*

*- A central utility and service area which will be the site of a central wastewater treatment facility, fire substation, maintenance shop, property operations center, parking, and future employee housing*

*See: Notice of Public Hearing Before the Bridger Canyon Planning and Zoning Commission Re: Bridger Mountain Village Planned Unit Development and Related Conditional Uses, published in the Bozeman Daily Chronicle on March 25, 2007.*

5. Page 27, “Residential Development Criteria”

**Thus, the agricultural character of the valley will be emphasized and the visual influence of having structures diminished.**

*See: Comments at No. 2, above.*

6. Page 30, “Recreation”

**All proposed development should be reviewed in terms of: its sensitivity to surrounding areas; its influence on water quality; its access and traffic generation potential; and its overall effects on the environmental quality.**

*Sensitivity to surrounding areas and influence on water quality are not promoted or protected by the proposed plan of development in the subject PUD, especially in Phase I where units are placed in the near vicinity of watercourses and roads traverse watercourses, despite the Applicant's efforts to attempt to ameliorate the concomitant impacts by finally offering to adhere to established setbacks and move units up the meadow (see: BCP's April 6, 2007, modification proposal presented less than one week prior to the public hearing). Regarding traffic generation potential, the Traffic Impact Study submitted with the Applications attempts to persuade this Commission that 527 new units that are connected to and will utilize Bridger Canyon Road as the sole method of ingress and egress to the Base Area will not adversely impact the traffic volumes on Bridger Canyon Road. The study claims that since the rate of one vehicle trip per skier will not change, the addition of approximately 1,976 additional residents/guests/anticipated skiers (452 overnight accommodation units x 3.75 persons per unit + 75 residential units x 3.75 persons per unit = 1,976.25 persons, per the Staff Report at pages 32-33) will not impact the volume of traffic on the road.*

*Note, however, that the PUD Master Plan's analysis of the number of additional cars on the road states that "the traffic volumes along Bridger Canyon Road will be related to the total skier visits at the mountain." It also relies on the build out potential of the Base Area Plan at 4500 day visitors and 3,000 overnight visitors. See: Master Plan, page 21.*

*The notion that such an increase in cars on the road will not negatively impact the use, capacity and enjoyment of Bridger Canyon Road defies logic and the current status and experience of driving that road. In addition, the Applicant's Traffic Study alleges that even though the subject roadway is operating under-capacity, and no indication is made as to when capacity will be reached and the suggested turn lane improvements will actually be needed, they are opined to be needed someday and since the PUD will step-up the need for such improvements, the PUD not only will not affect traffic rates and volume, but also it will result in "better operations than without the development." Id.*

*Again, the overall effects of not only quality of life, but environmental quality, become obvious. See also: Appendix G to the General Plan, regarding "Water Management Practices."*

**B. Bridger Bowl Base Area Plan**

**1. Page 3, "Background"**

**The rationale for this high density allocation with overnight qualification ... 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.**

*See: Bridger Canyon Road capacity analysis, above. Also, the intended overnight accommodations were suggested in the form of hotel or motel developments near the Ski Area, so that skiers would come to the Ski Area to stay, as opposed to houses or condominium-type units*

with full kitchens requiring skiers to drive up and down Bridger Canyon Road to get food and supplies in Bozeman.

See also: page 24 - 25, “Commercial/Overnight Accommodations”

**The importance of overnight accommodations at the Base Area has long been recognized. In the Bridger Canyon General Plan, adopted in 1971, it is stressed that overnight accommodations are needed to help control traffic on the two-lane Bridger Canyon Road.**

\* \* \*

**A density bonus of up to fifty percent for hotels and motels has been a part of the Bridger Canyon Zoning Regulation since it was originally adopted in 1971. The bonus is intended to encourage the development of hotels and motels in the Base Area.**

\* \* \*

**It is the intent of this Plan to allow for a variety of overnight accommodations and recreational housing in the Base Area, and to encourage the most dense development near the Ski Base facilities.**

See also: page 35, Bridger Canyon Zoning Regulation

**It is the intent of the Base Area Planned Unit Development to allow for a variety of overnight accommodations and recreational housing in the Base Area, and to require the most dense development near the Ski Base facilities.**

2. Page 5, “Bridger Canyon General Plan”

**The emphasis of the Bridger Canyon General Plan is to favor “the conservation of natural resources, the preservation of open space and agricultural usages, and limited controlled growth.”**

*This citation reflects the consistency required by the Montana Supreme Court for these two plans. See: General Plan, p. 1. Limited and controlled growth is a stated goal of the PUD Application, but the contents and ultimate result of the PUD defy this concept. Development pursuant to the PUD may be controlled to a certain extent by the phasing process, but to add 527 units and the associated cars on the roadways, with immediate emphasis on the 40 cabins, 13 4-plexes, and 25 single family residences in Phase I, alone, can barely be categorized as limited given the current rural nature and sparsely developed status of Bridger Canyon.*



3. Page 7, “Goals and Objectives for Bridger Bowl Base Area”

**1. Encourage quality year-round recreational activities within the Base Area.**

*The PUD emphasizes ski hill-related activities, facilities and services.*

**2. Help control traffic within the limits of two lane Bridger Canyon Road.**

*Discussed above.*

**3. Conserve the natural resources within the Base Area and the Bridger Canyon in general.**

*Discussed above; the Plan de-emphasizes financial gain or expediency.*

4. Page 20, “Buildable Areas Map”

**Copy attached hereto as “Exhibit A.”**

*This map in the Base Area Plan establishes “Least Desirable, Moderately Desirable, Most Desirable and Requires Further Study” districts in the Base Area. Notably, the Crosscut Area, slated for intensive development of 5 4-plexes and 11 cabins, with adjacent future parking areas, 9 additional cabins and the multi-faceted Phase I Cross Cut Lodge, is denoted as a “Least Desirable” buildable area.*

5. Page 28, “Roads”

**The basic road design as proposed in this plan will consist mainly of collector roads off the main ski area access which will loop whenever possible to eliminate long cul-de-sacs which are very undesirable.** (Emphasis added.)

*The Phase I Site Plan currently includes 6 cul-de-sacs for the subject development.*

C. Bridger Canyon Zoning Regulation

These regulations applicable to PUDs are addressed in detail in the Association’s Comparative Analysis, adopted herein. That analysis will not be repeated here. Rather, this report will focus on one component of the BCZR at page 28:

**The planned unit development designation is intended to provide for alternative forms of development which may**

**include a density bonus in exchange for development quality that is of significant community benefit.** (Emphasis added.)

*An examination of the “Community Services” set forth on pages 25-28 of the proposed Master Plan demonstrates that the “benefit” of the proposed PUD is primarily to the developer, not to the community. For example:*

*- a fire substation and fire truck is promised in BCP’s recent modification letter; this need is necessitated by the PUD, not the existing community at large.*

*- the project “will result in significant revenue sources for the school districts upon build-out.” But since the bulk of the development -- overnight accommodations -- will not be used by full time residents, there won’t be school aged children in the units fulltime.*

*- Bridger Bowl will benefit from the new wastewater treatment system, but it has no immediate plans to connect to the system.*

*- Bridger Bowl “sees no immediate benefit to the local skiers and Association members” from adding a chair lift in the PUD’s North Base Area.*

*- The PUD promises to connect with Bohart Ranch to provide a vast and comprehensive nordic trail system, but acknowledges that no agreement with Bohart Ranch has been reached.*

*- Several Aspen tree groves “have been identified and will be protected;” yet at least one such “outstanding” grove will be eliminated in the Cross Cut area and be replaced by structures..*

*- No soil erosion plan or weed control plan has been provided, but one has been recently promised; meanwhile, the County can spray for weeds and lien the PUD property.*

*- Influence on wildlife by “additional human activity” necessitated by the PUD is acknowledged.*

## VI. DOES THE PUD FIT IN BRIDGER CANYON

Suitability of a PUD is expressed in BCZR’s standards for PUD development in terms of adequate topography, minimizing the visual impacts of development, erosion control, matching the development to the terrain, complimenting the natural beauty and pleasant environment of the site, setback of structures, and open space to enhance visual or recreational pursuits. [Section 13.5(a) and (b).] Suitability of a proposed PUD to its natural setting is critical. While the current Applications employ a style of structures (e.g., trapper style cabins) that is not historically inappropriate for the area, the location and amount of those structures, coupled with the impact of the natural area and resources they will invade and supplant, are not suitable.

Certainly, a key component of any PUD is the concept of clustering – disturbing less ground, consolidating the impacts of development, and streamlining facilities and services. Keeping that clustered development in vegetated or tree cover area also contributes to the aesthetics of the PUD and helps the development to better “blend” with its natural surroundings. In rural urban areas, this may translate into tree – lined sidewalls or landscaped roadway medians. In a rural and largely (and intentionally) underdeveloped area such as Bridger Canyon, this translates into maintaining large stands of aspens and cottonwoods, open meadows and meandering creeks. Clustering only works in these areas -- i.e., meets the purpose and intent of a PUD -- if the density and intensity matches the conditions of the area.

Simply stated, the density and intensity of the proposed PUD and CUP in this area is not suitable for, and does not match, the rural community character of Bridger Canyon. The 46 structures in Phase I alone will be visible from Bridger Canyon Road, will require sacrifice of vegetative cover and will compete with, rather than compliment, the topography, terrain and environmental quality. The PUD, as proposed, defies the “canyon character” presented by the Bridger Canyon General Plan.

It just does not fit this place at this time.

The developer has made a last ditch effort to try to make it fit, with its April 6, 2007, modification proposal. The proposal makes considerable changes and commitments that alter the PUD and the CUP Site Plan for Phase I. Structures are proposed to be moved out of setbacks and other structures will be removed entirely. Roads will be eliminated. The size of open meadows will change. Fire stations will be constructed and equestrian centers will be eliminated. Erosion control plans and weed control plans are promised. Dewatered dry solid waste will be taken to landfills that historically have not accepted such waste. Roads that are depicted on the Site Plan as crossing watercourses now will be set back from designated water channels.

These modifications are on too grand of a scale to postpone consideration of their impacts to subdivision review. In its Phase I Conditional Use Permit Application, BCP offers a “Final Site Plan Submittal.” The Application states at page 29:

If deemed necessary by the Zoning Commission, a final site plan shall be submitted for review and approval by the Gallatin County Planning Office. The intent of this suggested condition is to allow for an additional review step in the process to assure that both the regulatory body and the applicant have a clear understanding of conditions placed on the application. This is a standard procedural mechanism in most zoning districts.

Notably, the public and the Bridger Canyon residents would benefit from this “clear understanding,” as well, at what appears to be no burden to the Applicants.

## VII. RECOMMENDATION

This report recommends that the PUD and CUP Applications as submitted be denied by the Commission as inconsistent with and not supported by the critical and well-founded purpose, intent, provisions and requirements of the Bridger Canyon General Plan & Development Guide, the Bridger Bowl Base Area Plan and the Bridger Canyon Zoning Regulation. In the event that the Commission is considering a conditional approval of the Applications given the Applicant's recent April 6, 2007, letter modifications, then the Commission should require that any such approval be tabled and reconsidered upon the Applicant's submission of a revised and final site plan for Phase I and an updated Application.