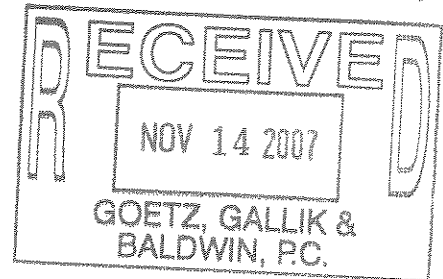


BKG ☒JDG ☐

SABOL LAW OFFICE
ATTORNEYS & COUNSELORS AT LAW

November 13, 2007

Client *Kate Vargas*
enclosures
via email

Brian Gallik
Goetz, Gallik & Baldwin P.C.
35 North Grand
Bozeman, MT 59715

RE: Bridger Mountain Village PUD

Dear Brian:

Thank you for your continued involvement with our PUD application and dialog with Jimmy Pepper and the canyon association. At our October 13, 2007 meeting with the Bridger Canyon Property Owners Association, a list of legal concerns was generated. As these issues have been discussed for many months limited resolve, Bridger Canyon Partners desires to make their position clear on each of these matters.

1. BCP will pursue a continuance of our existing, pending application with proposed conditions for the Commission's consideration as discussed in our meetings. A continuance with proposed or suggested conditions is standard and typical of the PUD process and given the length of time we have taken to discuss these changes, BCP does not want to commit additional time pursuing an amendment. BCP has understood that it is not the desire of BCPOA to cause additional delays provided the changes are agreeable and adequately documented. BCP will prepare the proposed and suggested conditions in advance so BCPOA can be assured that the changes as discussed will be presented to the planning commission and implemented. Naturally, BCP has asked for BCPOA's endorsement of these changes.
2. At the May 15, 2007 hearing, the county was clear on the interpretation of the PUD for the General Plan (13.1 BCZR) vs. the PUD for the Base Area Plan (13.10 BCZR) as noted below. When the base area plan was drafted it did take into consideration the General Plan. It has been BCP's desire in meeting with Jimmy Pepper and BCPOA to bridge the gap between the General Plan and Base Area Plan promoted by the BCPOA. It is BCP's understanding that we are very close on a plan that addresses BCPOA's concerns.

In terms of proceeding with a Base Area Plan PUD without a CUP, this condition only applies to the base area and not the balance of the Canyon.

JOSEPH W. SABOL II**HOLLY N. MARCH**

225 EAST MENDENHALL BOZEMAN, MONTANA 59715
PHONE 406.587.9338 FACSIMILE 406.587.9752
EMAIL: SABOLLA@MONTANA.NET

Sullivan: '...if you look at your staff suggested findings, number 8 is the finding that you need to make based on case law in Montana, whether the PUD substantially complies w/ the base area plan. As a matter of law, if you find that the PUD complies with the base area plan than you are finding that it complies with the general plan, the base area plan has been adopted to implement as a component of the general plan. They are internally consistent, you've heard testimony from attorneys during public comment period that that's the case, you just need to focus on the base area plan. The statement in 13.1 that refers to community benefit, you can include that in your analysis, in your findings under #8.

Trygstad: 'In the base area plan, it does state that any PUD must be in compliance w the general plan and zoning reg.'

Sullivan: 'Your looking at a base area PUD, you need to test that against the base area plan.'

Trygstad: 'In the base area plan, we are also to consider the other two documents?'

Sullivan: 'Without getting into too much detail right now, before you begin your discussion, you can look at the general plan, but you need to assume that the base area plan has been drafted and it implements the general plan, it is consistent with that plan and the zoning ordinance, they are all internally consistent.....

3. The 113 acres known as Bridger Park II includes 12 recreational density rights. This property was annexed into the base area on June 20, 2006. See attached resolution. As part of a PUD in the base area the density rights on this parcel can be increased or decreased. There is nothing in the 1996 Stipulation and Settlement Agreement or anywhere else that limits the density in this parcel to 12 through a PUD in the base area.

The 12 density rights for this parcel were established as follows:

- 5 (underlying zoning - 1 unit per 20)
- 3 (traded from Bridger Bowl track 80 acre Track A, 4 possible with 3 used)
- 4 (section 13 in Bridger Canyon, transferred by 360 Ranch)

4. Per the 1996 Stipulation and Settlement Agreement the 75 recreational density rights are as follows.

Bridger Bowl	9 (traded from track AA in base area- pg. 3)
Bridger Bowl	4 (traded from Parcel B USFS- pg. 3, paragraph 3)
360 Ranch (BCP)	50 (pg. 3)
Bridger Park II	<u>12</u> (pg. 4, paragraph 4)
	75

BCP's position on each of these issues are consistent with the settlement agreement and the county's findings and are ultimately up to the county to defend.

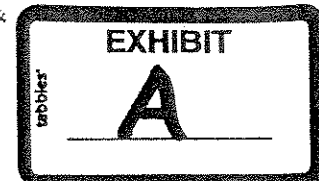
BCP is pleased with the progress we have made and appreciate the time and effort everyone has put into this process. We look forward to completing the additional work on the planning efforts.

Sincerely,

Joseph W. Sabol II
by pcj

JOSEPH W. SABOL II

JWS:pcj



STIPULATION

AND

SETTLEMENT AGREEMENT

THIS STIPULATION AND SETTLEMENT AGREEMENT made and entered into this 12th day of November, 1996, by and between **BRIDGER CANYON PROPERTY OWNERS' ASSOCIATION, INC.** ("Association"), a Montana nonprofit corporation, **360 RANCH CORPORATION** ("360"), a Nevada corporation, **BASE AREA ASSOCIATES** ("Associates") an informal partnership, and **BRIDGER BOWL INCORPORATED** ("Bridger Bowl"), a Montana nonprofit corporation, is as follows:

WITNESSETH:

WHEREAS, 360 is the owner of record of certain real property located in the Bridger Bowl Base Area ("Base Area") within the Bridger Canyon Planning and Zoning District ("District") and has heretofore in conjunction with the Associates applied and received certain approvals from the Bridger Canyon Planning and Zoning Commission ("Commission") and the Board of County Commissioners of Gallatin County ("Board") for the development of its real property and is desirous of seeking further and other approvals from the Commission/Board for the development of its real property, and

WHEREAS, under the presently existing zoning in the Base Area of the District, 360 is entitled to 151 single-family density units and Bridger Bowl is entitled to 16 single-family density units, and

WHEREAS, the Association has heretofore instituted litigation in the District Court of and for the Eighteenth Judicial District, Gallatin County, Montana, specifically Cause No. DV-95-159 ("the litigation"), and

WHEREAS, certain of the parties to the litigation, namely, the Association, 360, and Bridger Bowl, have negotiated, each with the other, and have reached an agreement to resolve and settle the disputes and differences that exist relative to the number of single-family density units allowable within the Base Area, which agreement is hereinafter more particularly set forth and constitutes an accord and satisfaction between the Association, 360 and Bridger Bowl, and

WHEREAS, notwithstanding the fact that the Associates were not parties to the litigation, the Associates nevertheless agree to be bound by this Stipulation and Settlement Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, conditions, representations and warranties hereinafter set forth, reserved and contained on the part of the parties hereto to be kept and performed, the parties hereto covenant, warrant and agree, each with the other, as follows:

1.

That the Association, 360, the Associates and Bridger Bowl agree, each with the other, that the allocation of the single-family density units (recreational housing units) within the Base Area of the District shall be as follows:

Base Area Owners	Existing Rec Housing Units	Reduction To:	Total Redu
Bridger Bowl	16	9	7
360 Ranch	151	50	101
Lachenmaier	13	13	0
Hepburn	<u>2</u>	<u>2</u>	<u>0</u>
	182	74	108

2.

That in an effort to ensure a sense of finality relative to the allocation of single-family density units in the Base Area of the District, Bridger Bowl and 360 covenant, warrant and agree, each with the other, and with the Association, and acknowledge to the Commission and the Board that upon the rezoning of the Base Area in conformance with the agreed upon allocation of single-family density units as hereinabove set forth, and subject to the right pursuant to the Zoning Ordinance of all property owners within the Base Area to transfer their single-family density rights to other property located within the 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 - 50, which deed restrictions are intended to be and shall be a restriction in perpetuity.

3.

That in the event that certain parcel of real property containing forty (40) acres, more or less, lying within the boundaries of the Base Area of the District and presently owned by the State of Montana, Department of Fish, Wildlife & Parks, should be

conveyed from public to private ownership, said parcel shall be entitled to receive and shall receive four (4) single-family density units, which four (4) single-family density units shall be in addition to the seventy-four (74) single-family density units apportioned to the privately owned real property within the Base Area of the District.

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.

5.

That this Stipulation and Settlement Agreement and the deed restriction covenant contained in Paragraph 2 above are not intended to, nor do they, restrict the transfer of single-family density units within the Base Area of the District between the owners thereof, each with the other, notwithstanding the fact, however, that the total number of single-family density units within the Base Area of the District shall hereafter remain consistent and in conformance with the terms and provisions of this Stipulation and Settlement Agreement.

6.

That upon execution of this Agreement, the parties hereto shall provide a copy of the Agreement to the Gallatin County Attorney with a request that the Gallatin County Attorney request the initiation of amendments to the Bridger Canyon General Plan and

Development Guide, Bridger Canyon Zoning Ordinance, and Bridger Bowl Base Area Plan, in conformance with the allocation of single-family density units set forth in paragraphs 1 and 3 above. That upon approval of said amendments by the Planning and Zoning Commission for the Bridger Canyon Zoning District, upon adoption of said amendments by the Board of County Commissioners of Gallatin County, and upon expiration of the deadline for the appeal of said amendments, the Association shall dismiss the litigation in accordance with Mont. R. Civ. P. 41(a)(2).

7.

That the Commission/Board have not been party to any negotiations with or between any of the other parties to this Stipulation and Settlement Agreement and have made no representations, expressly or by implication, that the Commission/Board would do and perform any act or withhold the performance of any act in consideration of the execution of this Stipulation and Settlement Agreement by the parties hereto.

8.

That this Stipulation and Settlement Agreement was entered into and executed by the parties hereto in good faith and is intended to, and does, contain a covenant of good faith and fair dealing running from each of the parties hereto to the others.

9.

That this Stipulation and Settlement Agreement is intended to be, and is, a full and complete settlement agreement of the lawsuits filed by the Association on March 12, 1993, June 9, 1995, and October 6, 1995 relating to the planning and zoning amendments adopted by the Planning and Zoning Commission and the Board of County Commissioners in August 1989 and May 1995, and those certain disputes and differences

existing between the Association and the Board/Commission as a result of those planning and zoning amendments and is intended to be irrevocable and unconditional, without reservation or exception of any type or nature, subject to the rezoning of the Base Area by the Board insofar as the allocation of single-family density units as hereinabove set forth.

10.

That each of the parties hereto covenant, warrant, and acknowledge to the other that they will not jointly, individually, or otherwise, hereinafter institute or prosecute, or suffer to be instituted or prosecuted, any suit or action to recover of or from any other party, its officers, directors, or individual members, damages or compensation of any kind, character, or description for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the lawsuits filed by the Association on March 12, 1993, June 9, 1995, and October 6, 1995, or any statements made by any of the parties hereto, their officers, directors, members, agents, or attorneys, during the course of the litigation.

11.

That each of the parties hereto covenant, warrant and acknowledge to the other that the signatories to this Agreement are fully authorized to sign this Agreement and bind the entities, directors and officers for which the signatories are signing.

12.

That this Stipulation and Settlement Agreement, once executed by the parties hereto, and acted upon affirmatively by the Board after hearing held, may be plead as an

affirmative defense in any litigation instituted by any of the parties hereto against the other relative to the subject matter of this Stipulation and Settlement Agreement.

13.

That in the event and for whatever reason the Board fails, refuses or neglects to rezone the Base Area of the District in conformance to the allocation of the single-family density units as hereinabove set forth, this Stipulation and Settlement Agreement shall terminate, be at an end and of no further force and effect and the District Judge Presiding shall thereafter rule on the merits of the litigation.

14.

That it is agreed and understood by and between the parties hereto that all of the terms, covenants, and conditions herein set forth, reserved, and contained on the part of the parties to be kept and performed shall be binding upon and inure to the benefit of, and be enforceable by, the assigns and successors-in-interest of the parties hereto.

15.

That this Stipulation and Settlement Agreement is subject to the approval of the Honorable Larry W. Moran, District Judge Presiding.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the day and year first above written:

**BRIDGEER CANYON PROPERTY
OWNERS' ASSOCIATION, INC.**
a Nonprofit Corporation,

By: *H. M. L.*
Secretary

By: *Michael C. Cichon*
President-
Chairman

360 RANCH CORPORATION
A Nevada corporation,

By: Allison M. Takahashi
Secretary

By: [Signature]
President

BASE AREA ASSOCIATES
An informal partnership,

By: [Signature]
MICHAEL E. POTTER

By: [Signature]
RICHARD PRUGH

BRIDGER BOWL INCORPORATED
A Nonprofit Corporation

By: [Signature]
Secretary

By: [Signature]
MAX SIMMONS
President

APPROVAL

The Court, having heretofore recommended to the parties involved in the above-entitled litigation that they enter into and attempt to effectuate good faith negotiations, each with the other, relative to the settlement of the litigation, and the Court having been involved in and been made aware of the status of the negotiations;

The Court finds and determines that this Stipulation and Settlement Agreement is fair, equitable and just, in the best interests of the parties to the litigation, the residents of the District and the public at large; and

Therefore, the Court approves this Stipulation and Settlement Agreement in conformance with the provisions herein contained.

DATED this _____ day of _____, 1996.

LARRY W. MORAN
District Judge Presiding

RESOLUTION NO. 2006 - 063

A RESOLUTION
OF THE
GALLATIN COUNTY COMMISSION
AMENDING THE BRIDGER BOWL BASE AREA PLAN BOUNDARY
AND THE
OFFICIAL ZONING MAP
FOR THE
BRIDGER CANYON ZONING DISTRICT

This resolution was introduced by the Gallatin County Planning Department. Moved by Commissioner Murdock, and seconded by Commissioner Skinner.
The resolution was adopted 2:1. Chairman Vincent abstained.

WHEREAS, in April of 1971, the Gallatin County Commission adopted the Bridger Canyon General Plan and Development Guide, and in October of 1971, the Gallatin County Commission adopted the Bridger Canyon Zoning Regulations and Official Zoning Map, and in May of 1979, the Gallatin County Commission adopted the Bridger Bowl Base Area Plan; and

WHEREAS, Bridger Canyon Partners LLC, made application to amend the boundaries of the Bridger Bowl Base Area Plan, as designated on the Official Bridger Canyon Zoning Map. Specifically, the requested Zone Map Amendment (ZMA) would add a 113.16 acre parcel to the Bridger Bowl Base Area zoning district, and change the zoning designation of said parcel from Recreation and Forestry (R-F) to Base Area Recreation & Forestry (B-4); and

WHEREAS, the applicant's property is described as Tract 1 of Certificate of Survey No. 1822A, being a portion of Tracts B, C, D and E of Certificate of Survey No. 1822, located in Section 19 and the West ½ of Section 20, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana. In general, the property is situated between the north boundary of the Bridger Bowl Base Area zoning district and the Bohart Ranch Nordic Ski Center; and

WHEREAS, notice of a joint public hearing before the Bridger Canyon Planning and Zoning Commission and Gallatin County Commission for consideration of the Plan and Zone Map Amendment was published in the Bozeman Daily Chronicle on May 14 and 21, 2006, mailed to adjoining property owners by certified mail, return receipt requested, and posted within three locations of the subject property on May 23, 2006; and

WHEREAS, on June 8, 2006, the Bridger Canyon Planning and Zoning Commission and County Commission held a joint public hearing to consider the Plan and Zone Map Amendment application, presentation of staff report, applicant presentation, and public testimony; and

WHEREAS, after considering the Plan and Zone Map Amendment request, the Bridger Canyon Planning and Zoning Commission recommended the Gallatin County Commission approve the Plan and Zone Map Amendment request as submitted by Bridger Canyon Partners LLC; and

WHEREAS, after consideration of the recommendation of the Bridger Canyon Planning and Zoning Commission, the Gallatin County Commission found as follows: the inclusion of the 113 acre parcel into the Bridger Bowl Base Area would allow for a more cohesive development of the base area, and improve recreational opportunities; development within the 113 acre parcel would connect to the base area central water and sewer system; there would be no net increase in density with the inclusion of the 113 acre parcel into the Bridger Bowl Base Area; the request was compatible with the Bridger Canyon General Plan and Development Guide and the Bridger Bowl Base Area Plan; was consistent with the intent and purpose of the Bridger Canyon Zoning Regulations; was compatible with adjacent uses and zoning designations; and, would benefit the Bridger Bowl Base Area and the community.

NOW, THEREFORE, BE IT RESOLVED:

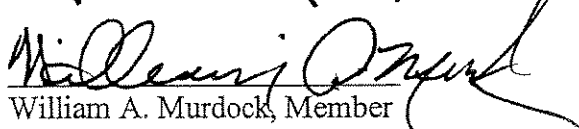
The Gallatin County Commission approves the attached Bridger Bowl Base Area boundary and Zone Map Amendment as submitted by Bridger Canyon Partners, L.L.C.

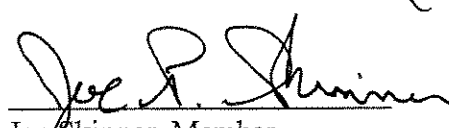
Dated this 20th day of June, 2006.

GALLATIN COUNTY COMMISSION


John Vincent, Chairman

abstained on vote


William A. Murdock, Member


Joe Skinner, Member

ATTEST:


Shelley Vance
Clerk & Recorder

f:\plnr\randy\zoning\bcp-zma-cc.res

BEFORE THE
BRIDGER CANYON PLANNING & ZONING COMMISSION
GALLATIN COUNTY MONTANA

IN THE MATTER OF THE APPLICATION
OF BRIDGER CANYON PARTNERS, LLC
FOR AN AMENDMENT TO THE BRIDGER
BOWL BASE AREA PLAN BOUNDARY AND
REZONING

FINDINGS OF FACT
AND
RECOMMENDATION

PURSUANT to the Bridger Canyon Zoning Regulations (“Zoning Regulation”) having been adopted and amended thereafter, after notice given, a joint public hearing was held at the Community Room of the Gallatin County Courthouse, Bozeman, Montana, on June 8, 2006. The purpose of the hearing was to: review required plans, information, exhibits; determine if the information contained in the application met the requirements of the Zoning Regulation; and, to listen to public testimony concerning the application, and to consider written comments.

THEREFORE, with completion of the review and the receipt of all public input, the Bridger Canyon Planning and Zoning Commission (Planning & Zoning Commission) being fully advised of all matters presented to it regarding this application, the Planning and Zoning Commission makes the following Findings of Fact:

FINDINGS OF FACT

I.

The application to amend the boundaries of the Bridger Bowl Base Area Plan and request for rezoning was made on April 10, 2006. A joint public hearing before the Bridger Canyon Planning and Zoning Commission and the County Commission was scheduled for June 9, 2006. Notice of the joint public hearing was given in the Bozeman Daily Chronicle

on May 14 and 21, 2006. Adjoining property owners were notified by Certified Mail, return receipt requested. Notice was posted within three locations of the subject property on May 23, 2006. A joint public hearing was held on June 9, 2006.

II.

Bridger Canyon Partners LLC, has made application to amend the boundaries of the Bridger Bowl Base Area Plan, as designated on the Official Bridger Canyon Zoning Map. Specifically, the requested Zone Map Amendment (ZMA) would add a 113.16 acre parcel to the Bridger Bowl Base Area zoning district, and change the zoning designation of said parcel from Recreation and Forestry (R-F) to Base Area Recreation & Forestry (B-4).

III.

The property is described as Tract 1 of Certificate of Survey No. 1822A, being a portion of Tracts B, C, D and E of Certificate of Survey No. 1822, located in Section 19 and the West ½ of Section 20, Township 1 North, Range 7 East, P.M.M., Gallatin County, Montana. In general, the property is situated between the north boundary of the Bridger Bowl Base Area zoning district and the Bohart Ranch Nordic Ski Center.

IV.

The area requested for amendment to the Base Area is located adjacent to the northern boundary of the Base Area, and consists of 113.16 acres. The amendment would increase the size of the Base Area to approximately 513 acres.

According to a 1996 Stipulation and Settlement Agreement between the Bridger Canyon Property Owners' Association and 360 Ranch Corporation (prior owner), density units within the 113 acre parcel are restricted to a maximum of 12 single-family density units under an approved planned unit development. The Planning and Zoning Commission

found that the amendment would increase the number of potential recreational housing rights within the Base Area to 86 units, and at the same time would reduce potential single-family developments within Bridger Canyon by 12 units. No additional overnight accommodation density units were requested with the amendment application.

Current zoning on the 113 acre parcel is Recreation and Forestry (R-F). As part of the Base Area boundary amendment, the applicant requested a new zoning designation of Base Area Recreation & Forestry (B-4).

V.

In reviewing the boundary and zone map amendment request, the Planning and Zoning Commission considered the following:

- Relationship/compliance with the Bridger Canyon General Plan and Development Guide and the Bridger Bowl Base Area Plan.
- Consistency with the intent/purpose of the Bridger Canyon Zoning Regulations.
- Relationship with prevailing uses and zoning in the area.
- Whether or not the requested zone map amendment benefits a small area and only one or a few landowners.

VI.

Changes to the Official Zoning Map must be made in accordance to Section 17.5 of the Bridger Canyon Zoning Regulations. Section 17.5 provides that the Regulation may be amended whenever the public necessity and convenience and general welfare require such amendment and according to the procedure prescribed by law, and the Regulation.

VII.

Written and public testimony was presented to the Planning and Zoning Commission during the hearing. Testimony in support of the request provided that the annexed property would be required to be serviced by the Base Area central sewer and

water system; would facilitate a more orderly and cohesive development of the ski base; and, would improve trail connections and recreational opportunities within the ski base area. Testimony in opposition to the request stated that any future development of the ski base area would result in increased traffic congestion on Bridger Canyon Road.

VIII.

In Board discussion, the Planning and Zoning Commission evaluated all submitted information, applicant's testimony, public testimony, and the requirements of the Bridger Canyon Zoning Regulation, Bridger Canyon General Plan and Development Guide and the Bridger Bowl Base Area Plan. The Zoning Commission found that inclusion of the 113 acre parcel into the Bridger Bowl Base Area would allow for a more cohesive development of the base area, and improve recreational opportunities. Additionally development within the 113 acre parcel would connect to the base area central water and sewer system. The Planning and Zoning Commission also found that there would be no net increase in density with the inclusion of the 113 acre parcel into the Bridger Bowl Base Area. A motion to approve the Bridger Bowl Base Area boundary amendment and the rezoning of the 113 acre parcel to B-4 was made, finding that: the request was compatible with the Bridger Canyon General Plan and Development Guide and the Bridger Bowl Base Area Plan; was consistent with the intent and purpose of the Bridger Canyon Zoning Regulations; was compatible with adjacent uses and zoning designations; and, would benefit the Bridger Bowl Base Area and the community. The motion was approved unanimously by the Planning and Zoning Commission.


RECOMMENDATION

IT IS HEREBY RECOMMENDED that the request by Bridger Canyon Partners LLC for an amendment to the boundaries of the Bridger Bowl Base Area Plan, and the rezoning of the 113 acre parcel from Recreational and Forestry (R-F) to Base Area Recreation and Forestry (B-4) be approved by the Gallatin County Commission with the following conditions:

1. A legal description and map of the property and zone boundaries shall be completed and submitted to the Gallatin County Planning Department to be recorded on the Official Zoning Map.
2. The Bridger Canyon General Plan and Development Guide, Bridger Bowl Base Area Plan, and the Bridger Canyon Zoning Regulation shall be updated to reflect the amended Bridger Bowl Base Area Plan boundaries, adjusted acreages, and new zoning classifications.

DATED THIS 8th DAY OF JUNE, 2006.

BRIDGER CANYON PLANNING AND ZONING COMMISSION

 6/9/06
Joe Skinner, Chairman

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