

## STAFF REPORT

### TO: BRIDGER CANYON PLANNING AND ZONING COMMISSION

FROM: ADDI K. JADIN, PLANNER

SUBJECT: LYON REQUEST FOR A MODIFICATION TO THE FLAMING ARROW RANCH PLANNED UNIT DEVELOPMENT CONDITIONAL USE PERMIT (FILE #Z2017-013)

HEARING DATE: OCTOBER 13, 2016

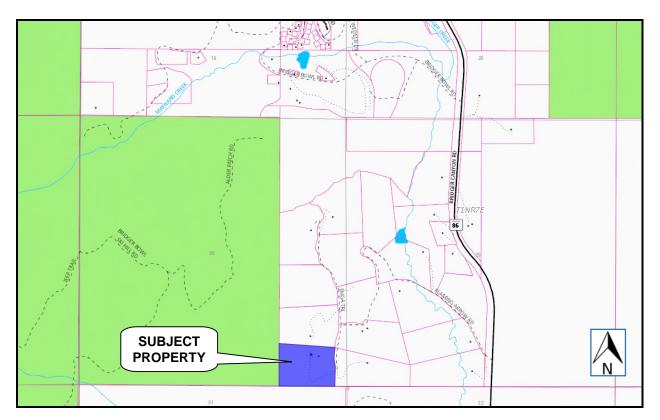
### **CONDITIONAL USE PERMIT REQUEST:**

1. The purpose of the public hearing is to consider a request by Ted and Donna Lyon (Applicants) for a Conditional Use Permit Application (#Z2017-013) to modify the Flaming Arrow Ranch Planned Unit Development (PUD) to allow a modification to the designated building envelope on their property to create an area for an accessory structure on the northwest side of the driveway. The accessory structure includes a garage and second-story Guest House which is the subject of Conditional Use Permit (CUP) Application #Z2017-005. Approval of the accessory structure is contingent upon approval of the modified building envelope.

### **PROPOSED FINDINGS:**

2. <u>Location</u>: The Subject Property is Tract 17 of COS 95B, located in Section 29, Township One North (T01N), Range Seven East (R07E), P.M.M., Gallatin County, Montana. Specifically, the property is addressed as 11094 Taiga Trail, Bozeman, MT, and is located in the Agriculture Exclusive (AE) District of the Bridger Canyon Zoning District (Zoning District).

### VICINITY MAP:



**3.** <u>Background/Flaming Arrow Ranch PUD.</u> In July of 2016, Lance Kresge of Kresge Construction Inc submitted a CUP application for a Guest House on the Subject Property. After reviewing the application, Planning staff determined that the location of the proposed guest house was outside of the building envelope established with the creation of the Flaming Arrow Ranch PUD. Subsequently, a CUP Application was submitted on August 18, 2016 requesting approval to modify the building envelope of Lot 17 of Flaming Arrow Ranch.

The Flaming Arrow Ranch PUD was approved by the Bridger Canyon Planning and Zoning Commission and recorded as COS 95B in March 1980 (Exhibit A). The development consists of eighteen (18) tracts of approximately twenty (20) acres each. Designated building envelopes within the Flaming Arrow Ranch PUD are located in clusters adjacent to interior roads and cul-du-sacs. This design provides for the concentration of building sites and maximum utilization of open space, with the location of building sites off ridgelines and hilltops.

The current configuration of the building envelope for Lot 17 is the result of a modification that was approved in 2003 (Exhibit B) to accommodate a portion of the garage and driveway for the existing residence.

- 4. <u>Adjacent Land Uses/Zoning.</u> The Subject Parcel is adjacent to Forest Service property to the west, other Flaming Arrow Ranch residential properties to the north and east, and a 640-acre undeveloped parcel to the south. With the exception of the Forest Service property, all the lands surrounding the Subject Parcel are similarly zoned AE.
- 5. <u>Access.</u> Access to the applicant's property is provided by private interior subdivision roads.
- 6. <u>Topography/Site Characteristics.</u> The existing residence is in a densely forested area on the property that does not break a ridgeline; as such, the existing residence is well screened from adjacent residences and Bridger Canyon Road. The area proposed for expansion of the building envelope is approximately 75 feet west of the existing residence where the slope of the property continues at an incline after being relatively flat in the area of the existing driveway and the parking pad that would serve the proposed accessory structure. Photos from the staff inspection of the property show the overall vegetation and terrain of the property (Exhibit B).

Upon site inspection, Planning Staff observed an additional accessory structure which appears to be used as a dog kennel. Considering that this structure is located approximately 150 feet from the south property line, it is likely outside of the building envelope which is approximately 200 feet from the property line at its closest point. Staff has suggested as a condition of approval that the structure be removed or moved into the building envelope.

### APPLICABLE REQUIREMENTS OF THE ZONING REGULATION:

**7.** Agricultural Exclusive District (AE). The Flaming Arrow Ranch PUD is within the AE District. The intent of the AE District (Section 6.1) is:

... to preserve agriculture as one of the primary occupational pursuits and an economic endeavor in Bridger Canyon. It is further the intent of this District to protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farm lands from unplanned residential, commercial and industrial development. The purpose of the Agricultural Exclusive District is, when applied to particular land, to encourage the following land use:

- a. the cultivation of ground, including the preparation of soil, planting or seeding and raising and harvesting of crops;
- b. the raising, feeding and managing of livestock, poultry and other animals;
- c. incidental uses which are customarily and necessarily related to and included within an agricultural pursuit; and,

- d. incidental unrelated uses which are necessary to protect and promote the health, safety, welfare and convenience of rural residential citizens.
- **8. Planned Unit Development**. In reviewing the request to relocate the building site, the Planning and Zoning Commission shall review the purposes and applicable standards of a PUD as outlined in Section 13 of the Zoning Regulation. Staff comments are shown as a bulleted list following relevant citations from the Regulation.
  - A. Purpose (Section 13.1). 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. The purposes of this district include the following:
    - a. Enhance and preserve open space and unique natural features.
    - b. Preserve to the maximum extent possible the natural characteristics of the land, including topography, vegetation, streams, and tree cover.
    - c. Protect areas of important wildlife habitat.
    - d. Prevent soil erosion by permitting development according to the nature of the terrain.
    - e. Encourage the development of more attractive site design.
    - f. Reduce the cost and physical impact of public and private services.
    - g. Lessen the visual impact of development and preserve the scenic vistas and rural atmosphere.
    - h. Preserve agricultural lands.
    - i. Provide economies in the provision of public services.

### **B.** Special Definitions (Section 13.2).

- d. Open Space: Land subject to valid restriction against housing development, the maintenance of which in its natural or agricultural state is necessary for the enhancement of living conditions in Planned Unit Developments.
- f. Planned Unit Development: 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 PUD must be contiguous or share a common boundary.
- **C. Standards for Development, General (Section 13.5.a)**. General: In approving an area for a planned unit development, at least one of the following conditions shall exist:

- 1. The parcel is situated such that the planned unit development will allow flexibility of design for the protection of scenic vistas or will lessen the visual impact of the development.
  - The building envelope within Parcel 17 is located on a sloping hillside with mature vegetation. The area proposed for expansion moves the building envelope along the road to an area that would be completely screened from nearby residences.
- 2. The planned unit development will result in the preservation of agricultural land and/or open space.
  - The proposed modification would not result in a change to the total acreage of open space remaining on the lot.
- 3. The parcel contains natural assets which will be preserved through the use of the planned unit development. Such natural assets include vegetation, habitat for wildlife, and streams.
  - Mature vegetation is an asset of the property that likely provides habitat for wildlife. The area proposed for expanding the building envelope is devoid of mature vegetation.
- 4. The parcel contains topography that is suitable for minimizing the visual impact of development. The planned unit development shall prevent erosion and result in the development more suitable to the nature of the terrain.
  - From the area proposed for expansion of the building envelope, staff observed that adjacent residential structures are visible but do not appear to have views onto this area (see photos provided in Exhibit )
- **D.** Specific Standards for Parking and Open Space (Section 13.5.b (2)). ...Open space shall not include areas devoted to public or private streets, parking, or areas covered by buildings. Open space may include natural or agricultural ground, landscaped areas, recreational areas, and water surfaces.
  - Under the proposed configuration of the building envelope, the proposed accessory structure and its parking will be contained.
  - The proposed configuration of the building envelope does not contain the accessory structure used as a dog kennel.

- E. Parking (Section 13.5.f (i)). Occupant and guest car parking should be located so homesites are conveniently served.
  - Under the proposed new configuration of the building envelope, parking spaces for the proposed guest house will be in close proximity.
- **F.** Setbacks (Section 13.5.h). Front, side and rear setback requirements for structures shall be those of the district with which the Planned Unit Development is combined or as established by the approved plan.
  - Structure setbacks within the AE District are 25 feet from any property line, road right-of-way, or road easement; 100 feet from any creek; and, 125 feet from the right-of-way of Bridger Canyon Road. All structures within the PUD must comply with the setback requirements of the AE District.
- **G.** Open Space Areas (Section 13.5.i). Open space areas should be situated in such a manner as to avoid the crowding together of building uses and parking uses or to enhance visual or recreational pursuits of residents.
  - The request to modify the building envelope will not result in the crowding together of building and parking uses that would detract from the visual amenities of the PUD.
- **H. Procedure for Approval (Section 13.8.a).** The method for considering a modification to the Flaming Arrow Planned Unit Development shall be the Conditional Use Permit procedure.
- **9.** Conditional Use Permits (Section 18.3.2). Conditional Use Permits shall be issued only by the Bridger Canyon Planning and Zoning Commission and may be issued for any of the uses as set forth in this Regulation. Such permit 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 health, safety, peace, morals, comfort and general welfare of the Bridger Canyon Zoning District.
  - The Applicant has provided their written response to the above criteria in their narrative accompanying the Application.
  - No written public comment has been received by the Planning Department at the time of publication of this staff report.
  - As shown in Finding 6.B. above, the conditional use permit will allow the property to be used for a purpose that is authorized within the Zoning District.

- A. Permits, Terms of Issuance (Section 18.3.3). A conditional use permit may be issued for a revocable, temporary, permanent or term period. It may contain such conditions as are authorized by State statute and this Regulation, including but not limited to:
  - a. Requiring dedication of rights-of-way.
  - b. Requiring improvements of rights-of-way.
  - c. Requirements for landscaping to protect adjoining property.
  - d. Regulation of placement of uses on the property.
  - e. Regulation of height.
  - f. Regulation of the nature and extent of the use.
  - g. Regulation of the length of time which such use or variance may be permitted.
    - Suggested conditions are identified on page 6 of the Staff Report and are intended to ensure that the structure will meet the requirements of the Bridger Canyon Zoning Regulation.

### B. Notice (Section 18.3.6).

- In accordance with Section 18.3.6, notice of this public hearing was published in the Bozeman Daily Chronicle on September 18 and 25, 2016, and sent to property owners within 300 feet of the subject property via certified mail.
- At the time the staff report was completed, no public comments have been received.

### STAFF SUGGESTED CONDITIONS OF APPROVAL:

If the Planning and Zoning Commission approves the request to modify the CUP for the Flaming Arrow Ranch PUD, staff suggests the following conditions be required:

- 1. The Flaming Arrow Ranch Home Owner's Association shall provide written approval for the relocated building envelope for Tract 17.
- 2. The Applicants shall present to the Planning Department a site plan for Tract 17 which delineates a building envelope in the location as shown in the Lyon CUP Application (#Z2017-013). The site plan shall include a statement restricting the area outside of the building envelope to open space use as defined under Section 13.2.d of the Bridger Canyon Zoning Regulations, shall indicate that the area of the new building envelope is equal to the area of the existing building envelope, and shall be signed by a professional land surveyor. The site plan shall be recorded as Exhibit A of the "Notice of Decision" prepared by the Planning Department (see Condition #4).

- 3. Any structure located outside of the building envelope shall be removed or relocated. Any structure over 100 square feet shall obtain an approved Land Use Permit.
- 4. The Applicant shall record a "Notice of Decision" prepared by the Planning Department with the Gallatin County Clerk and Recorder and provide evidence that it has been recorded to the Planning Department.

### **REQUIRED ACTIONS OF THE PLANNING AND ZONING COMMISSION:**

- 1. <u>Sample Motions.</u> The role of the Planning and Zoning Commission is to make a final decision on the requested Conditional Use Permit. The following sample motions have been provided by Staff for consideration by the Planning and Zoning Commission:
  - <u>Sample Motion for Approval</u>: Having reviewed and considered the application materials, staff report and exhibits, and public comment, in accordance with the requirements of Sections 13 and 18.3 of the Bridger Canyon Zoning Regulation, I move to approve the request from Ted and Donna Lyon to modify the building envelope of Tract 17 of Flaming Arrow Ranch PUD, with approval subject to all applicable laws and regulations, staff findings and staff recommended conditions (or with staff recommended conditions with the following modifications...).
  - <u>Sample Motion for Denial</u>: Having reviewed and considered the application materials, staff report and exhibits, and public comment, in accordance with the requirements of Sections 13 and 18.3. of the Bridger Canyon Zoning Regulations, I move to deny the Lyon Conditional Use Permit request to modify the building envelope of Tract 17 of Flaming Arrow Ranch PUD.
  - <u>Sample Motion for Continuance</u>: Having reviewed and considered the application materials, staff report and exhibits, and public testimony, I move to continue the decision on the Lyon Conditional Use Permit Application for the purpose of (explain reason for continuance, and if applicable, specify any additional information that is being requested) until (state the date when the item will be heard again).
- 2. <u>**Required Findings.**</u> The Planning and Zoning Commission's decision must be supported by findings related to the required determinations.
  - A. That at least one of the four mandatory criteria of Section 13.5(a) have been met (Staff Finding # 8.C. on pages 4 and 5).
  - B. That the relocated building site meets all applicable standards for development of Section 13.5(b) 13.5(i) (Staff Findings #8.D. G. on pages 5 and 6).

# C. That the request meets the criteria for the issuance of a CUP (Staff Finding # 9 on pages 6 and 7).

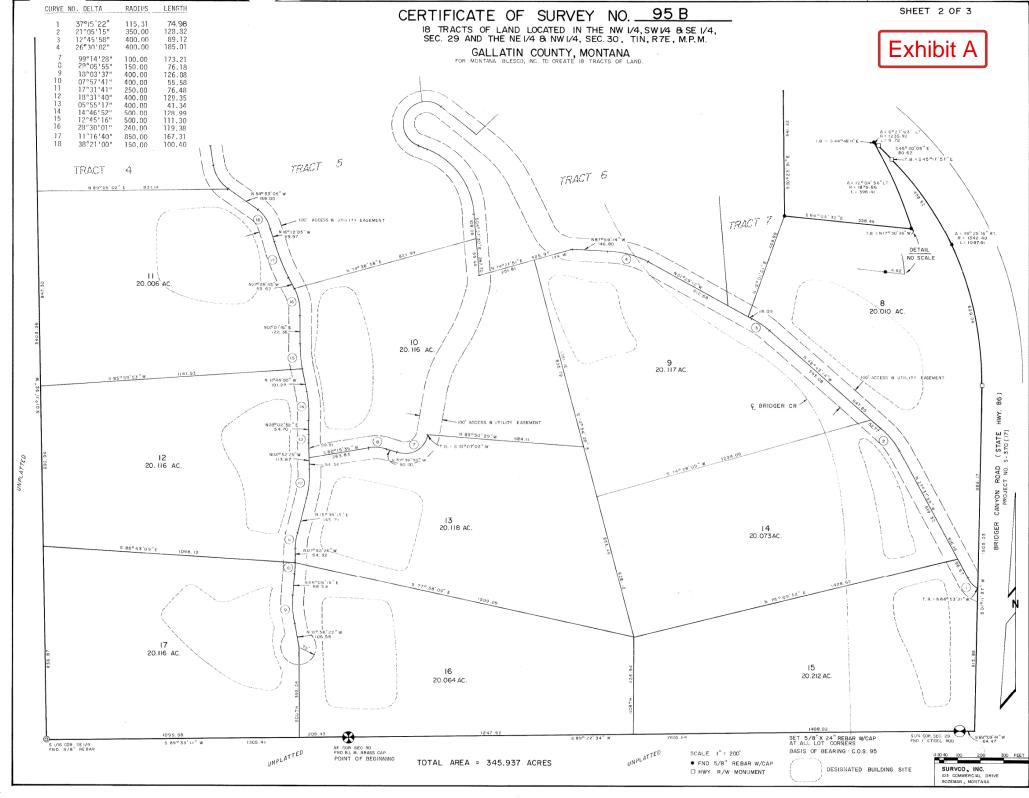
- To provide findings in support of the above determinations, the Planning and Zoning Commission may wish to adopt in whole or in part the proposed findings presented in the staff report (if the Proposed Findings are adopted in part, please specify which findings are omitted.
- The Planning and Zoning Commission also should make original findings based on other relevant information entered into the record during the hearing, including the Applicants' presentation and public comment.
- 3. <u>Motion for Issuance of Findings of Fact, Conclusions of Law, and Order.</u> I move to authorize the Chair of the Planning and Zoning Commission to sign and issue written Findings of Fact, Conclusions of Law and Order that incorporate all of the findings and conclusions entered into the record in this manner.

Attachments:

Exhibit A: COS 95B Exhibit B: Recorded Document #2105417 showing prior modification Lyon CUP Application (#Z2017-013)

Cc:

Ted and Donna Lyon, via email Lance Kresge, Kresge Construction, via email Keith Redfern, Concept 7, via email County Attorney





Shelley Vance-Gallatin Co MT MISC

Exhibit B

### AMENDED BUILDING ENVELOPE SITE PLAN FOR TRACT 17 OF CERTIFICATE OF SURVEY NO. 95B, "FLAMING ARROW RANCH PLANNED UNIT DEVELOPMENT", LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 7 EAST, PRINCIPAL MERIDIAN MONTANA, GALLATIN COUNTY, MONTANA.

On March 28<sup>th</sup> 1980, Certificate of Survey No. 95B was filed for record at the Clerk and Recorders office of Gallatin County, Montana. Certificate of Survey No. 95B created 18 Tracts of land, each having a Designated Building Site.

On March 4, 2003, application was made to the Bridger Canyon Planning and Zoning Commission to amend the Flaming Arrow Ranch Planned Unit Development conditional use permit. The modification would allow the relocation of the Designated Building Site for Tract 17.

On April 10, 2003, The Bridger Canyon Planning and Zoning Commission held a public hearing and determined that the modified building envelope was necessary to accommodate a safe building site, and would not impact the views of surrounding properties. The Commission also found that the property owner's association did not object to the requested modification. In conclusion, the Commission found that the request to modify the building envelope complied with the Planned Unit Development and Conditional Use criteria of the Bridger Canyon Zoning Regulations.

THEREFORE, The Designated Building Envelope Site is hereby being modified as shown on Exhibit "A" hereto and by reference is fully incorporated herein.

I, Gregory L. Finck, a Professional Land Surveyor, hereby state that the amended Designated Building Site shown on Exhibit "A", lies entirely within Tract 17 of Certificate of Survey No. 95B, and the acreage of the Amended Designated Building Site is the same as the acreage of the Building Site shown on Tract 17 of Certificate of Survey No. 95B.

Dated this 23 day of APRIL, 2003

Gregory L. Finck, P.L.S Montana Registration No. 13174LS

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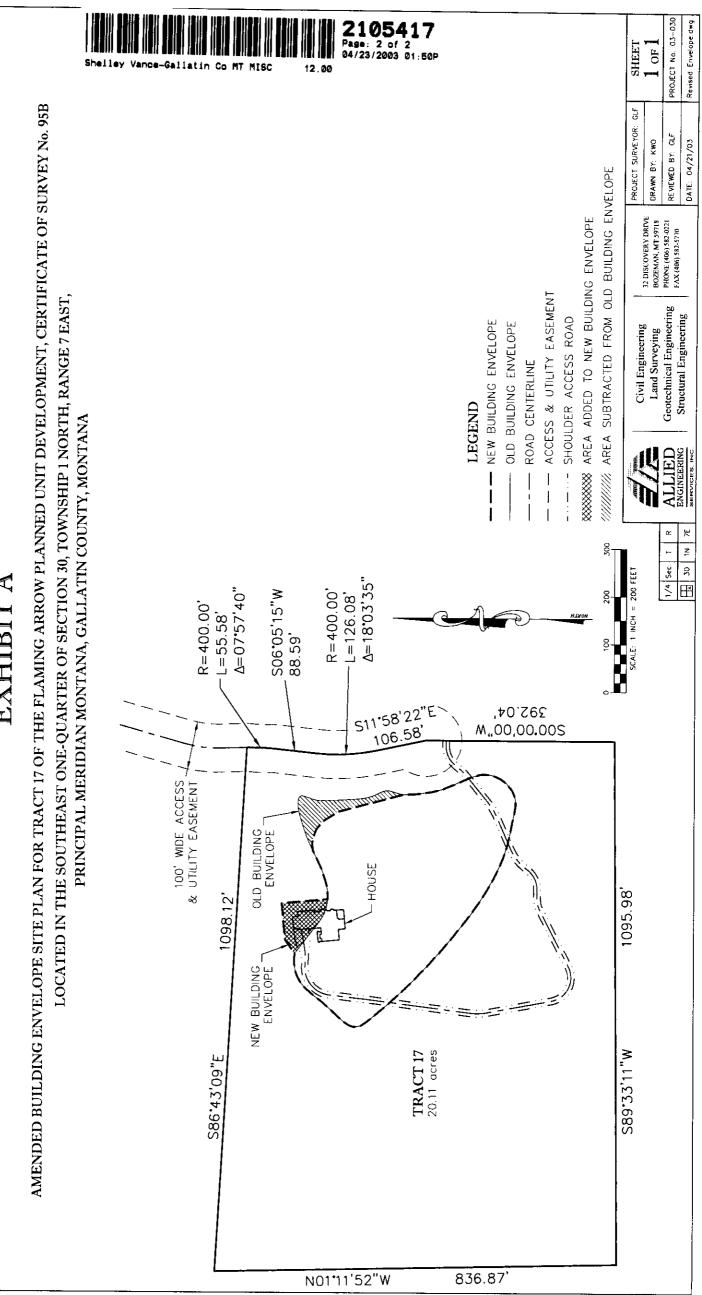
State of Montana )

County of Gallatin)

On this 33 day of <u>April</u>, 2003, before me a Notary Public in and for the State of Montana, personally appeared Gregory L. Finck, known to me to be the person whose name is subscribed to the within instrument and acknowledge to me that they executed the same.

Notary Public for the State o Print Name Pohnie Residing at \_ My Commission Expires:





**EXHIBIT A** 



### **GALLATIN COUNTY**

FILE NO. 2-2017-013

DATE 8/31/16

# **Conditional Use Permit Application Form**

The Undersigned hereby makes application for a **CONDITIONAL USE PERMIT** pursuant to the requirements as outlined in the County Zoning District Regulation.

1.	Name of Applicant: TED & DOWNA LYON
2.	Address of Applicant: 11093 TAZGA TRAIL
	BOZEMAN, MT
3.	Phone Number of Applicant: (214) 802-4798
4.	Email: tolyon c ted lyon, com
5.	Legal Description of Subject Property: C.O.S 95 B Tract 17
6.	DOR#: $06   1013   29   3   02   24   0000   (4)   (2)   (4)   (2)   (4$
7.	General Location: SOUTH OF BREDGER BOWL IN FLAMENC AREON 1093 TABGA TRAIL
8.	Zoning District: BREDGER CANYON Current Zoning: AEPDOO
9.	Conditional Use to consist of the following: BUILDING ENVELOPE
10.	Are any variances being requested? Yes No If Yes, please explain:
11.	Are there any covenants or deed restrictions on the property? Yes Yes
l und the a	erstand that the filing fee accompanying this application is not refundable. I hereby certify that bove-listed information is true and correct.
Appli	cant's Signature Date
Дри	Date Date
Date	FOR OFFICE USE ONLY Filed:
Zonin	g Commission Hearing Date:
Action	n Taken:

Planning Department • 311 West Main, Room 108 • Bozeman, MT 59715 Phone (406) 582-3130 • Fax (406) 582-3135 • Email: planning@gallatin.mt.gov

Proposal

# GALLATIN COUNTY Certification of Property Owners List

ا, <u>٢٤٥ ليوب</u>, applicant for the attached proposal, hereby certify that:

• To the best of my knowledge, the attached list shows all property owners and purchasers under contract for property:

Adjacent to the proposal site (and across watercourses, roads, etc.).

Within \_\_\_\_\_\_ feet of the proposal site.

- The names on the list are from the Gallatin County Clerk and Recorder's most recent records.
- The addresses on the list are from Montana Departments of Revenue's most recent tax records, available on the internet at *http://svc.mt.gov/msl/mtcadastral*.

Planning Department • 311 West Main, Room 108 • Bozeman, MT 59715

• I understand that an inaccurate list may delay review of the project.

Signature

Date

Proposal

**Property Owners** 

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Adjacent to proposal site and across watercourses, roads\*, etc.

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	Legal Description of Property	Property Owner's Name	Mailing Address of Pronerty Owner Ue	
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ы	へ上たいと	United States of America Fasters Schue	PO Box 55287 Houston, TX 77255-5287 United States of America	
9			Forrest Service PO Box 130 Bozeman, MT 59771-0130	
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lf roa	* If road is a state highway, also include Montana Department of Transportation in property owner list.	ansportation in property owner list	Page of	
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Page 4 of 4

CUP\_App0614.docx

Planning Department • 311 West Main, Room 108 • Bozeman, MT 59715 Phone (406) 582-3130 • Fax (406) 582-3135 • Email: planning@gallatin.mt.gov

(If additional pages of this form are needed, download the file entitled "Adjoiner List".)

# Conditional Use Permit 8/23/16 Building Envelope

### 11095 Taiga Trail, Flaming Arrow Subdivision, Gallatin County, Montana

Owners: Ted & Donna Lyon

- The location was carefully chosen: there will be no tree removal, no new road requirements, close proximity to the home, and have very limited or no visibility from any neighbors, or road.
- The objective of this project is to give Ted and Donna Lyon a guest house for their kids, grandkids, and vehicles out of sight thus improving the visual appearance of the property.
- Even though this project is not actually visible from the main road or any neighbor's homes, it will help enhance the natural beauty and desirability of the area by providing an attractive structure to contain the guests and their vehicles.
- The exterior of the project will match & compliment the exterior of the main home.
- This project is in close proximity to the primary residence and will be constructed in an area that is already being used for parking.
- This project will utilize the existing well for water and has an approved septic permit for a secondary septic system.
- The project is nestled so as not be seen from the main road and not interfere with the skyline.
- This project will not change the environmental beauty or agricultural space of the Bridger Canyon District.

### Thank you for consideration of our project.

