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*SENT VIA EMAIL ONLY*

Bridger Canyon Planning & Zoning Commission  
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**RE: Bridger Canyon Property Rights Coalition (Dickson) Zone Text Amendment (Z2024-069)**

Honorable Planning & Zoning Commission members,

We write this letter on behalf of our client Bridger Canyon Property Owners Association, Inc. (“BCPOA”) regarding the zone text amendment (“ZTA”) application submitted by the Bridger Canyon Property Rights Coalition for the Bridger Canyon Zoning Regulation (“Zoning Regulation”).

We have concerns regarding the ZTA and what we believe is the potential inability of staff and landowners to implement and enforce the proposed regulations due to ambiguous and conflicting language. We also are concerned the ZTA is inconsistent with the *General Plan and Development Guide* (“General Plan”) and the *Bridger Bowl Base Area Plan* (“Base Area Plan”). Both Plans specifically contemplate that Recreational Housing and Overnight Accommodations be located only within the Bridger Canyon Base Area (“Base Area”).

Because the issues with the proposed amendment are pervasive, we do not believe it is practical to continue the hearing for revisions. We ask the Planning & Zoning Commission to deny the ZTA. The ZTA is not required by public necessity, convenience, or the general welfare; authorizes commercial Uses significantly different from prevailing residential Uses in the Zoning District; benefits a small portion of landowners; and conflicts with the General Plan and Base Area Plan.

We appreciate the opportunity to provide these comments and will be available at your upcoming hearing to answer any questions.

## **Standard of Review**

The ZTA review criteria are established at Section 14.3 of the “Part 1” Zoning Administrative Regulation (“Administrative Regulation”). Section 14.3.a states:

*To approve an amendment to the District Regulation or official map, it shall be found that all of the following criteria are satisfied:*

- i. The public necessity, convenience, and general welfare require such amendment;*
- ii. The proposed amendment does not authorize potential Uses that are significantly different from prevailing Uses in the Sub-district or vicinity in which the subject property is located;*
- iii. The proposed amendment will benefit the surrounding neighborhood, community, and the general public and not just benefit a small area and only one or few landowners;*
- iv. The proposed amendment is consistent with the District Regulation and applicable growth policy or neighborhood plan and is not special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public; and*
- v. The procedural requirements of §76-2-101 et seq., MCA have been followed.*

We believe the ZTA fails to satisfy these criteria due to the following issues analyzed in this letter:

- Unnecessary description of Short Term Rental as a residential use may have problematic County-wide implications.
- Asymmetries in the treatment of Short Term and Long Term Rentals may have unintended consequences.
- The new definitions for Short Term Rental and Long Term Rental conflict with the existing definitions of Overnight Accommodations and Recreational Housing.
- The proposed standards include ambiguous terms and indirect language that will make administration and enforcement of the Zoning Regulation difficult.
- There are no clear grounds or administrative procedures for revocation of a Short Term Rental approval.

- Unrestricted Accessory Dwelling use conflicts with the General Plan’s allocation of density.
- Short Term Rentals outside the Base Area conflicts with the General Plan and Base Area Plan.

The amendments will not promote the “public necessity, convenience, or general welfare.” but will negate the residents’ general welfare by allowing for inconsistent uses lacking enforceable standards and conflicting with the Regulation’s foundational plans. The proposed Short and Long Term Rentals are significantly different from prevailing Permitted Uses and, consequently, will not benefit the surrounding neighborhood and community. The ZTA also is inconsistent with the density and the development pattern intended by the General and Base Area Plans.

### **Ambiguities and Conflicts with Current Regulation**

We believe the following portions of the ZTA will create confusion, be difficult for staff to enforce and landowners to comprehend, and may have unintended consequences. We ask the Planning & Zoning Commission to deny the ZTA.

#### **1. Inadvertent Unlimited Commercial Long-term Rentals**

As a preliminary matter, we believe it is important to consider the impacts of the ZTA not only concerning “Short Term Rentals,” but also the proposed “Long Term Rentals.” The proposed definition of Long Term Rental is problematic. Long Term Rentals do not solely encompass the standard long-term renter treating the premises as their permanent residence. Long Term Rental is defined to include any rental over 31 days. For example, premises rented like an extended stay hotel will be considered a Permitted Use and not subject to the proposed restrictions for Short Term Rentals.

The Staff Report, p. 6, states: “[T]he rental of dwelling units for a month or more at a time has not been regulated by Gallatin County, thus the addition of long-term rental to the list of permitted uses is not a significant change and is not analyzed in any detail in this staff report.” We respectfully disagree with this statement.

As defined, Long Term Rentals will inadvertently allow for unlimited extended-stay rentals of 31 days or more. This is a commercial use in the AE (Agriculture Exclusive District) and RF (Recreational and Forestry) Sub-districts, both of which are intended for residential uses.

The BCPOA does not oppose appropriately defined long-term rentals as a Permitted Use to allow for the rental of a Principle Single Family Dwelling as a permanent residence. However, this is not the definition proposed by the ZTA. A definition is not strictly necessary, as a residential long term

rental is a use that is not distinct from owner occupancy, except in form of ownership or tenancy. No one contests the legitimacy of long term rentals as permanent residences.

## 2. Description of “Long Term Rentals” and “Short Term Rentals” as Residential Uses

The ZTA is based on the premise that Short Term and Long Term Rentals are residential uses. The application stresses it is only expanding the “conditions of habitation for already permitted dwellings,” because the Zoning Regulation already allows for principal dwellings and accessory dwelling units.”<sup>1</sup> The ZTA therefore defines both “Short Term Rental” and “Long Term Rental” as residential uses.

This treatment is inconsistent with the Zoning Regulation’s existing definitions for Recreational Housing and Overnight Accommodations. These definitions are inclusive of both Short Term Rentals and Long Term Rentals and describe the uses as commercial.

Further, describing Short Term Rentals and Long Term Rentals as “residential uses” may have unintended impacts on the interpretation of short-term rentals in the County’s other zoning districts.

The ZTA proposes the following definitions, with emphasis added:

3.xx *Long Term Rental: Rental of a Dwelling Unit or portion thereof **for residential use** for a period of more than 30 consecutive nights to one and the same Family for the entire rental period.*

3.xx *Short Term Rental: Rental of a Dwelling Unit or portion thereof **for residential use** for a period of 30 or fewer consecutive nights, to one and the same Family for the entire rental period.*

There is no definitive guidance in state law as to whether short-term rentals use is residential or commercial in nature. The determination depends on the specific covenant or regulation at issue and the surrounding facts and circumstances.

In *Craig Tracts Homeowners’ Association v. Brown Drake, LLC*, the Montana Supreme Court narrowly concluded that private covenants allowing “residential purposes only” were ambiguous and determined the covenants permitted short-term rentals as a residential use based on the specific facts and circumstances at issue.<sup>2</sup> In contrast, in January 2024, a district court judge in Flathead

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<sup>1</sup> Cover Letter Supporting Application, 3 (Apr. 29, 2024).

<sup>2</sup> 2020 MT 305, ¶¶ 4, 16-19, 402 Mont. 223, 477 P.3d 283.

County determined that private covenants prohibiting commercial uses and allowing “single family residential purposes” prohibited short-term rentals as a commercial use.<sup>3</sup>

The circumstances in Bridger Canyon are closer to the Flathead County case. Unlike *Craig Tracts Homeowners’ Association*, there is no ambiguity existing in the Zoning Regulation and Administrative Regulation that short-term rentals are prohibited. The Administrative Regulation very clearly provides at Section 3.2 (discussed further below) that only those Uses listed as Permitted or Conditional Uses are allowed in each Sub-District. Furthermore, the Zoning Regulation treats Short Term and Long Term Rentals as commercial uses. While the terms are not explicitly defined in the Regulation, both uses are encompassed within the existing definitions for Overnight Accommodations and Recreational Housing.

Section 3.5.2 defines an “Overnight Accommodation,” with emphasis added, as:

*Permanent, separately rentable accommodations that are **not available for residential use**, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.*

Under the ZTA, a Long Term Rental would constitute an Overnight Accommodation if the dwelling is rented to the general public at least 48 weeks of the year. The Zoning Regulation considers this a commercial use. However, under the ZTA, this is simultaneously a residential use.

Long Term Rentals lasting less than 48 weeks and the proposed Short Term Rentals would fall within the existing definition for Recreational Housing. While the definition for Recreational Housing does not expressly state whether the use is residential or commercial, the implication is commercial. Section 3.62 defines Recreational Housing, with emphasis added, as:

***Recreational Housing:** Housing located in the Base Area that does not have restriction on length of stay and includes attached and detached Single-Family Dwelling Units. Rental of a Dwelling Unit for lodging purposes only. **Rental may be a vacation home, tourist home as defined in MCA 50-51-102, which is rented by or on behalf of the owner to the general public for compensation for transient***

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<sup>3</sup> *Morrison, et al. v. Beveridge*, DV-15-2022-674C, pp. 4, 12-14 (Mont. 11<sup>th</sup> Jud. Dist. Jan. 25, 2024), attached as Exhibit A.

***occupancy for any period of time deemed appropriate by the owner. Lodging shall be limited to inside the Dwelling Unit. Rental shall be subject to all applicable licenses. This is distinguished from other Dwelling Units by the special requirements.***

- a. *Recreational Housing, Attached: Single-Family Dwelling Units located in the Base Area that have at least one other Single-Family Dwelling Unit within the same Building structure. Includes Hotels, townhouses, duplexes, and condominiums.*
- b. *Recreational Housing, Detached: Single-Family Dwelling Units (i) on individual lots or in a Planned Unit Development and (ii) located in the Base Area.*

Construing Recreational Housing as a commercial use makes sense, given the Use is only allowed in the Base Area. The use is not allowed in either the AE or RF Sub-district. This is because those subdistricts encourage “[r]esidential uses that do not impair the rural character of Bridger Canyon.”<sup>4</sup> Thus, Bed and Breakfast Inns and Guest Ranches, both Conditional Uses in the AE and RF Sub-districts, are treated as commercial uses.<sup>5</sup>

The ZTA would amend both the AE and RF Sub-districts to allow Short and Long Term Rentals as residential uses, contrary to the definitions and existing allowances for Overnight Accommodations and Recreational Housing only in the Base Area.

We also anticipate that defining short-term rentals as a residential use in the Zoning Regulation will unintentionally spill over into the County’s interpretation of other district regulations. Landowners may argue the County’s treatment of short-term rentals in the Bridger Canyon Zoning District as a “residential use” necessitates that such rentals are permitted residential uses in other districts.

For example, the Springhill Zoning Regulation generally permits one single-family dwelling per parcel. The Regulation does not reference short-term rentals. Adopting the ZTA’s reasoning, that short-term rentals are residential in nature, could detrimentally allow a landowner to argue that short-term rentals are permitted as part of the single-family dwelling.

As defined in the ZTA, Short Term Rental and Long Term Rental are problematic and inconsistent with the Zoning Regulation.

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<sup>4</sup> Sections 4.1.a and 5.1.a, Zoning Regulation.

<sup>5</sup> Staff Report, p. 8.

### **3. Conflicting and Duplicative Definitions for Short Term Rentals, Long Term Rentals, Recreational Housing, and Overnight Accommodations**

The proposed definitions are unnecessarily duplicative and conflicting. The new definition for “Short Term Rental” is duplicative of the existing definition for “Recreational Housing.” The new definition for “Long Term Rental” conflicts with the definition for “Overnight Accommodation.” These definitions are not only at odds but will create contradictory results and standards for staff and property owners to administer.

The Zoning Regulation is predicated on the General Plan and the Base Area Plan. As explained below, both Plans intend that only the Base Area allows for short-term rentals.

Overnight Accommodations and attached Recreational Housing are allowed in the B-2 (Base Area Business) and B-3 (Recreational Business) Sub-districts as Conditional Uses.<sup>6</sup> In the B-4 (Base Area Recreation and Forestry) Subdistrict, Overnight Accommodations and Recreational Housing are Permitted Uses within existing Principal Single-Family Dwelling Units.<sup>7</sup> Within a Planned Unit Development (“PUD”) in any of these sub-districts, only a prescribed number of Overnight Accommodations and Recreational Housing are allowed per existing development rights.<sup>8</sup>

The ZTA leaves the B-2, B-3, and B-4 sub-districts untouched. It only amends the AE and RF Subdistricts to identify Short Term Rentals and Long Term Rentals as Permitted Uses. While the applicant likely intended to simplify this ZTA by only amending the AE and RF Sub-districts, the ZTA creates conflicting standards for rentals among the various sub-districts. The result is a hodge-podge application of rentals that are inconsistent with the spirit and intent of the Zoning Regulation and the plain language of the General Plan and Base Area Plan. It will be challenging for staff and landowners to reconcile these conflicts.

Under the ZTA, Short Term Rentals (30 days or less) and Long Term Rentals (31 plus days) are Permitted Uses in the AE and RF Sub-districts and allowed in detached Accessory Dwelling Units. However, Recreational Housing (any duration) is still prohibited per Section 3.2 of the Administrative Regulation. That section states:

*No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of*

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<sup>6</sup> Sections 7.3.g and 8.3.a, Zoning Regulation.

<sup>7</sup> Per Sections 9.2.n and 9.2.o, Zoning Regulation.

<sup>8</sup> Section 11.10.4, Zoning Regulation.

*Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.*

In the existing B-2 and B-3 Subdistricts, Recreational Housing (any duration) and Overnight Accommodations (rented for at least 48 weeks of the year) are only Conditional Uses and are not allowed in detached Dwelling Units. At the same time, Short Term Rentals (30 days or less) and Long Term Rentals (31 plus days) are prohibited per Section 3.2, above.

Similarly, in the B-4 Subdistrict, Recreational Housing and Overnight Accommodations are Permitted uses. However, Short Term Rentals and Long Term Rentals are still prohibited per Section 3.2. In the Base Area PUDs, only a prescribed number of Recreational Housing or Overnight Accommodations are allowed, whether as a Permitted or Conditional Use. Per Section 3.2, Short Term Rentals and Long Term Rentals would still be prohibited.

These duplicative and conflicting Uses only serve to create confusion for staff and property owners regarding what rental uses are allowed within the Zoning District. The ZTA must account for the already existing Recreational Housing and Overnight Accommodation uses allowed in the B-2, B-3, and B-4 Subdistricts and Section 3.2 of the Administrative Regulation.

#### **4. Short-Term Rental Requirements & Standards**

Next, the ZTA proposes new requirements and standards for Short Term Rentals. These provisions contain ambiguous and vague language that will be difficult to enforce. In addition, we are concerned that Long Term Rentals are not required to comply with these same standards. There is no legitimate reason for limiting the potential impacts created by a 30-day rental, but ignoring the same impacts created by a 31-day rental.

##### **a. “Planning to Offer”**

New Section 12.14 states, with emphasis added: “Any property owner **planning to offer** a Short Term Rental shall acknowledge by signature that they understand and will adhere to the following requirements and conditions: . . . .” The phrase “planning to offer” is far too subjective to enforce.

It is unclear at what point someone is “planning to offer” a Short Term Rental. Is this when the person first decides they are going to rent their dwelling? Is it when they post the advertisement on a rental platform? It is unavoidable that staff and property owners will disagree as to when the triggering event occurs.

Furthermore, the provision provides no specificity as to where or to whom the property owner is required to acknowledge they will adhere to the requirements. We assume staff will develop a form



that the property owner must sign and submit in advance. However, the proposed language lacks the specificity and detail necessary for staff to ensure this foundational requirement is satisfied.

b. Revocation Process

Proposed Section 12.14.b provides that “[a]pproval may be revoked upon violation of the Short Term Rental standards as set forth in this Section 12.14.” This section is similarly vague. The process for revoking the approval is completely absent. This creates serious concerns that any revocation will be subject to challenge and not defensible. It is unclear from the language who performs the revocation and what process is required for doing so.

Based on the references to the Planning Department in the proposed subsections preceding and following the revocation provision, we assume the implication is that the Planning Department can revoke the approved Short Term Rental if the property owner violates Section 12.14.

The revocation process should require a decision by the Planning & Zoning Commission, after an opportunity for notice and hearing by the property owner. If Planning staff unilaterally revoke the approval, we anticipate that property owners will challenge the revocation as an unlawful denial of due process<sup>9</sup> and potentially a taking of property without just compensation.<sup>10</sup>

It may be debatable whether the “approval” of a Short-Term Rental amounts to a constitutionally protected property interest. However, to protect the County from unnecessary exposure and increase the defensibility of any revocation, the revocation should occur only upon a noticed hearing of the Planning & Zoning Commission. This process would be similar to the process for revoking a Conditional Use Permit. *See* Section 10.12 of the Administrative Regulation.

c. Unclear Documentation Required

The standards for Short Term Rentals are located at proposed Section 12.14.d. These standards contain vague language that will be challenging for staff to enforce. It also will be difficult for

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<sup>9</sup> “Procedural Due Process requires that some form of hearing be available that provides a meaningful and timely opportunity to be heard before property is taken.” *Mont. Media, Inc. v. Flathead Co.*, 2003 MT 23, ¶ 66, 314 Mont. 121, 63 P.3d 1129 (citing *Logan v. Zimmerman*, 455 U.S. 422, 434, 102 S.Ct. 1148, 1156-1157 (1982) and *Matter of Connell v. State*, 280 Mont. 491, 496, 930 P.2d 88, 91 (1997)). The notice “must be reasonably calculated, under all circumstances, to inform parties of proceedings which may directly affect their legally protected property interests.” *Pickens v. Shelton-Thompson*, 2000 MT 131, ¶ 15, 300 Mont. 16, 3 P.3d 603) (citation omitted).

<sup>10</sup> Both the Fifth Amendment to the United States Constitution and Article II, § 29 of the Montana Constitution prohibit the taking of private property without just compensation. The rights under the Fifth Amendment and Article II, Section 29 are coextensive. *Buhmann v. State*, 2008 MT 465, ¶ 64, 348 Mont. 205, 201 P.3d 70 (citing *Kafka v. Mont. Dept. Fish, Wildlife and Parks*, 2008 MT 460, ¶¶ 30-31, 348 Mont. 80, 201 P.3d 8). A taking occurs not only when there is an interference with the actual use of the property, but also when there is an interference with the right to use the property. *Howard v. State*, 198 Mont. 470, 647 P.2d 828 (1982).

property owners to understand if they are adhering to the standards.

First, proposed Section 12.14.d(1) requires the Planning department to approve a Short Term Rental Use if it complies with various standards, including providing documentation “that all required state and local permits and licenses for the Short Term Rental Use, including, if applicable, pursuant to § 50-51-201, MCA; Title 70, chapters 24, 25, and 33, or otherwise, have been obtained.” This provision places the burden on Planning staff to make a legal determination as to what other permits and licenses are required for the Short Term Rental by other governmental entities.

The requirement is even more confusing in referencing laws that are inapplicable to Short Term Rentals. The statutes within Title 70, Chapters 24, 25, and 33, MCA, do not apply to short-term rentals. These statutes implement the Residential Landlord and Tenant Act<sup>11</sup>, the Residential Mobile Home Lot Rental Act<sup>12</sup>, and residential tenants’ security deposits governed by either Act.

The proposed ZTA creates an unnecessary obligation on staff to broadly confirm that permitting and licensing is received from unidentified governmental entities and under statutes inapplicable to Short Term Rentals.

Second, the “applicant” for the short-term rental must “agree in writing” to the six requirements listed in subsections (A) through (F). It is unclear if the “applicant” can be someone other than the property owner, like a property manager, or if the change in terminology is unintentional. It also is unclear, similar to the required acknowledgment discussed above, by what writing the applicant is supposed to agree to comply with subsections (A)-(F).

Rather than vaguely requiring the “applicant” to agree in writing to take certain actions, the ZTA should affirmatively and directly require the property owner to abide by subsections (A)-(F). This more direct language will provide staff a clearer basis from which to enforce the Zoning Regulation.

Third, subsections (A)-(F) contain additional ambiguities. For example, under subsection (A), the applicant must “keep taxes, permits, and licenses up-to-date.” It is unclear what permits and licenses this subsection is referring to or what “up-to-date” means. While we assume this

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<sup>11</sup> The Residential Landlord and Tenant Act excludes “hotels” from its application, which include Short Term Rentals. *See* § 70-24-104, MCA (excluding “transient occupancy in a hotel or motel”) and § 50-51-102(6), MCA (defining “hotel” or “motel” to include “a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.”)

<sup>12</sup> The Residential Mobile Home Lot Rental Act applies to the rental of land on which the tenant’s mobile home is placed. *See* § 70-33-104(1), MCA (“This chapter applies to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home.”)

subsection refers to the required public accommodation license and septic permit, the Regulation should simply state as much to avoid unnecessary disputes.

Similarly, subsection (D) requires the applicant to “maintain documentation on the premises that informs occupants of rules and regulations that affect the property, such as information about property lines, trespassing laws, speed limits, proper garbage disposal, wildlife etiquette, bans on burning, smoking restrictions, quiet hours, parking, dark sky lighting, and neighbor requests.” This standard will require staff to subjectively decide whether the “documentation” is properly “maintained” and sufficiently informs occupants of the amorphous “rules and regulations that affect the property.” Staff must also make legal and technical conclusions as to whether this information appropriately informs occupants about property lines and “trespassing laws” in addition to the vague reference to “neighbor requests.”

It is significant to note that the mere requirement on the applicant to “maintain documentation” regarding applicable rules and regulations does not actually obligate the applicant or their renters to comply with the rules and regulations. There is no accountability on the property owner. For example, if the tenants repeatedly cross neighbors’ property lines, harass wildlife, are unreasonably loud, ignore neighbor requests, etc., there is no recourse for the neighbors or the County within the Zoning Regulation, as long as the applicant “maintain[s] documentation” noting the applicable rules and regulations.

As the Planning & Zoning Commission knows, there is a long history of property owners that try to artfully interpret the County’s zoning regulations to avoid enforcement. Vague language and ambiguities should be clarified now to simplify administration of the Zoning Regulation and allow any needed enforcement. The clarifications also will enable landowners to recognize the required standards and whether they are in compliance.

d. Lack of Requirements for Long Term Rentals

Last, the ZTA only imposes the new standards on Short Term Rentals (rentals 30 days or less). There are no requirements imposed on Long Term Rentals (rentals 31 days or more). This differing treatment is unreasonable and, as a result, potentially arbitrary and capricious.

Proposed Section 4.2. (AE Permitted Uses), Section 5.2 (RF Permitted Uses), and Section 12.2 (General Development Standards – ADUs) only require that Short Term Rentals comply with the additional requirements at new Section 12.14 (Short Term Rental Requirements). There is no requirement that Long Term Rentals comply with these requirements.

In addition, the proposed amendments to Section 12.2.e will allow an Accessory Dwelling Unit to be rented separately from the Principal Dwelling Unit. With no requirements or standards for Long

Term Rentals, the possibility exists that both Short Term and Long Term Rentals could occur on the same property.

Proposed Section 12.14.d(2)(B) requires that only one Short Term Rental is permitted for each parcel; it is silent as to Long Term Rentals. However, “Long Term Rental” is defined such that someone could use the rental like an extended-stay hotel, for one or more months at a time. A landowner could then rent their Principal Dwelling Unit as a Long Term Rental for 31 day cycles and the Accessory Dwelling Unit on the same parcel for 30 days or less, or vice versa. If a parcel has more than one Accessory Dwelling Unit, the landowner could conceivably have multiple Long Term Rentals and one Short Term Rental.

In addition, Long Term Rentals are not required to comply with the standards for Short Term Rentals that otherwise would be required by proposed Section 12.14.d(2). The Long Term Rental is not required to: (A) keep the public accommodation license and septic permitting current, (C) limit lodging to inside the Dwelling Units; (D) maintain documentation for rules and regulations affecting the property; (E) provide occupants and neighbors contact information for responsible parties; and (F) not use the Long Term Rental as a Special Event Facility.

The ZTA provides no intent or purpose statement explaining why Long Term Rentals are treated more deferentially than Short Term Rentals. The County must identify some legitimate interest for the different treatment. Because “the State cannot use its power to take an unreasonable, arbitrary or capricious action against an individual, a statute . . . must be reasonably related to a permissible legislative objective in order to satisfy guarantees of substantive due process.” *Mont. Cannabis Indus. Assn. v. State*, 2016 MT 44, ¶ 21, 382 Mont. 256, 368 P.3d 1131.

No legitimate purpose exists for so-called “transient guests,” renting the Long Term Rental like an extended-stay hotel, to avoid compliance with the standards. These standards are proposed to mitigate impacts to neighboring properties and the community. Requirements like maintaining accommodation licensing, septic permitting, and precluding rentals as Special Events Facilities should apply to both Short Term and Long Term Rentals.

### **Inconsistency with the General & Base Area Plans**

Finally, the ZTA is inconsistent with the General Plan and the Base Area Plan. Relevant excerpts from the Plans are attached hereto as Exhibits B and C. Both Plans contemplate that Recreational Housing and Overnight Accommodations should be located only in the Base Area. Both Plans also clearly limit density outside of the Base Area to one single-family residence per 40 acres or lawfully existing parcel. The ZTA’s proposal to strike the no-rental provision for ADUs will violate this density restriction.

To adopt a ZTA, the Planning & Zoning Commission must determine it is consistent with the General Plan and the Base Area Plan. Section 14.3.a.iv of the Administrative Regulation requires the Planning & Zoning Commission to conclude the “proposed amendment is consistent with the District Regulation and applicable growth policy or neighborhood plan . . .” The applicant acknowledges this requirement but completely neglects to analyze either Plan.

The applicant concludes the ZTA “will not require an amendment to the Plan, nor will the ZTA result in any change in the development pattern for the physical and economic development of the Zoning District, as the ZTA will simply expand the explicitly listed conditions of habitation for already permitted dwellings as a lawful use within the AE and RF Sub-districts.”<sup>13</sup>

The application, however, does not even analyze the General Plan and neglects any reference to the Base Area Plan. Instead, the application vaguely references “the Plan” and quotes § 76-2-104, MCA, requiring the County to adopt a development pattern. Contrary to the applicant’s conclusion, the ZTA contradicts both Plans and changes the development pattern specifically described therein.

The B-2, B-3, and B-4 Subdistricts were originally contemplated and still remain the only subdistricts allowing short-term rentals. The ZTA contradicts this development pattern by allowing Short Term and Long Term Rentals in the AE and RF Sub-districts.

The General Plan originally was adopted in 1971, followed by the Zoning Regulation in October 1972.<sup>14</sup> The General Plan establishes the development pattern for the Zoning District with which the Zoning Regulation and any amendments thereto must comply.<sup>15</sup> The General Plan adopts and incorporates by reference the Base Area Plan.<sup>16</sup>

The Base Area Plan was adopted in October 1985.<sup>17</sup> The Base Area Plan and Zoning Regulation were both amended in 1989 to allow Overnight Accommodations and Recreational Housing specifically in the Base Area.

The General Plan explains the Zoning Regulation’s intent as follows, with emphasis added:

*EXISTING ZONING: The Bridger Canyon Zoning Regulation was officially*

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<sup>13</sup> Cover Letter Supporting Application, p. 3; see also, p. 4 (concluding the ZTA “maintains conformance with the Plan.”)

<sup>14</sup> Bridger Canyon General Plan & Development Guide, 1 (adopted Feb. 23, 1989).

<sup>15</sup> §§ 76-2-104 and 76-2-107, MCA.

<sup>16</sup> General Plan at 22.

<sup>17</sup> *Id.* at 21.

*adopted in October of 1971, and has been amended on a periodic basis. **The intent of the Zoning Regulation is to regulate and promote orderly development of the area. Agricultural preservation is a primary goal which is to be accomplished by limiting development to one (1) dwelling unit per 40 acres or one (1) dwelling unit per twenty (20) or ten (10) acres with a planned unit development except as provided in the Bridger Bowl Base Area.** The forty (40) acre minimum lot size, except as allowed through a planned unit development, is based on limiting population so that the capacity of the two (2) lane highway is not exceeded. Prior to the adoption of the Zoning Regulation, development was concentrated in parcels less than 20 acres. The Bridger Canyon Property Owners Association continues to monitor and support regulations that institute proper conservation measures and orderly growth.*

The General Plan also explains that development rights are allocated within the Base Area per their original 1989 allocation.<sup>18</sup> The allocation allows for “200 development rights for recreational housing (25%) and 600 development rights for overnight accommodations (75%).”<sup>19</sup>

In explaining population densities, the General Plan again states:

Permanent housing in those areas of the Bridger Canyon Zoning District outside the Base Area is limited to one (1) dwelling unit per 10, 20 or 40 acres depending upon criteria set in the Zoning Regulation. Permanent housing in the Base Area is limited to a maximum number of recreational houses in accordance with the density set forth in the Base Area Plan and the Base Area Planned Unit Development Section of the Zoning Regulation.<sup>20</sup>

In contrast to the rural residential and agricultural character of the land outside the Base Area, the Base Area was intended for development of Recreational Housing and Overnight Accommodations.<sup>21</sup> The Base Area Plan seeks to encourage “year-round recreational activities, controlling traffic on Bridger Canyon Road, and conserving natural resources,” while coordinating the potential development of 800 density units.<sup>22</sup> These development rights were allocated as 200 development rights for recreational housing (25%) and 600 development rights for overnight accommodations (75%).<sup>23</sup>

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<sup>18</sup> *Id.* at 22.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 24.

<sup>21</sup> Bridger Bowl Base Area Plan, p. 7.

<sup>22</sup> *Id.* at 23, 5.

<sup>23</sup> *Id.* at 5.

Interestingly, the ZTA application narrative relies on an excerpt from the original April 1971 version of the General Plan.<sup>24</sup> This excerpt, in discussing “Economic Factors” and “Agricultural Values,” suggests that agricultural uses are “in jeopardy,” and considers whether landowners may need to build rental housing on portions of their land to augment income from the agricultural pursuits.<sup>25</sup>

While the narrative describes this as a favorable indication of intent to provide rentals, including only that excerpt is misleadingly incomplete. The ZTA application omits the subsequent findings from the current 1989 General Plan, which declines to recommend rentals.

The current General Plan adopted much of the language from the 1971 Plan section titled “Economic Factors,” but retitled as “Economic Constituents.” While continuing to acknowledge the challenges of agricultural production, the updated Plan struck any reference to rentals and instead made the following recommendations:

*ECONOMIC CONSTITUENTS: Income from agricultural practices in Bridger Canyon is limited. Most landowners can only maintain their land in agricultural production with the help of outside incomes. No change in this situation is expected in the foreseeable future. The agricultural uses which create open spaces and contribute to the appearance of the canyon are in jeopardy.*

*Recommendations: Determine methods to keep a healthy agricultural and residential atmosphere in Bridger Canyon.*

*Encourage cluster developments, preserving open space.*

*Strictly enforce the Zoning Regulation to ensure land subdivision in conformity with the General Plan.*<sup>26</sup>

Consequently, the Base Area Plan “allow[s] for a variety of overnight accommodations and recreation housing **in the Base Area**,” and encourages “the most dense development near the Ski Base Facilities.”<sup>27</sup> Development then becomes less dense “as it approaches the boundaries of the Base Area and is thus adjacent to lands zoned for recreation or very low density residential.”<sup>28</sup>

---

<sup>24</sup> Cover Letter Supporting Application at 7 and Appendix A (excerpt from 1971 General Plan).

<sup>25</sup> *Id.*

<sup>26</sup> General Plan at 25.

<sup>27</sup> Base Area Plan at. 25 (emphasis added).

<sup>28</sup> *Id.*

This objective is accomplished in part because “the location of overnight accommodations/recreational housing is allocated to specific zones.”<sup>29</sup>

It is clear the General Plan and Base Area Plan contemplate that Overnight Accommodations and Recreational Housing are limited to the Base Area. The BCPOA does not, in general, oppose a ZTA that allows for short-term and long-term rentals in other sub-districts. However, such amendment should respect the foundational documents of the Zoning District and the Zoning Regulation. The ZTA should not be adopted inconsistent with the General Plan and Base Area Plan. Doing so is contrary to the required criteria for amending the Zoning Regulation and unnecessarily opens the amendments to challenge. It also creates uncertainty as to the application and implementation of the Zoning Regulation.

The BCPOA requests the Planning & Zoning Commission deny the ZTA. BCPOA is not opposed to short term rentals per se, and indeed the organization supported earlier draft standards. However, a standard that violates the General Plan provisions for density and commercial use, lacks enforceable language, and creates administrative challenges from ambiguities is not acceptable. BCPOA is prepared to submit a more acceptable alternative and would welcome the input of the current applicant as well as other constituents in Bridger Canyon.

SINCERELY,  
GALLIK & BREMER, P.C.

  
Erin L. Arnold, Attorney at Law

Cc: Client  
LeeAnn Certain, Chief Deputy County Attorney ([LeeAnn.Certain@gallatin.mt.gov](mailto:LeeAnn.Certain@gallatin.mt.gov))  
Stephanie Baucus, Counsel for Bridger Canyon Property Rights Coalition (Dickson)  
([Stephanie.Baucus@moultonbellingham.com](mailto:Stephanie.Baucus@moultonbellingham.com))

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<sup>29</sup> *Id.*



**Exhibit A**

**FILED**

01/25/2024

Peg L. Allison  
CLERK

Flathead County District Court  
STATE OF MONTANA

By: Crystal Boyd

DV-15-2022-0000674-DK

Ulbricht, Heidi J

57.00

1 Judge Heidi Ulbricht  
2 District Judge, Department 3  
3 Flathead County Justice Center  
4 920 S. Main, Suite 310  
5 Kalispell, Montana 59901  
6 Telephone: (406) 758-5906

7 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT  
8 OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

9 \* \* \* \* \*

10 SHARON MORRISON, MOLLY AND  
11 WILLIAM HOBGOOD, LORELLE AND  
12 KENNETH KITZMILLER,  
13 DOROTHEA LeDONNE, MIKE AND  
14 TERI MCDONALD, VIRGINIA and  
15 RODERICK FARMER, and KIRSTEN  
16 AND REID SABIN,

17 Plaintiffs,

18 v.

19 CHRISTA and WILLIAM BEVERIDGE,

20 Defendants.

Cause No.: DV-15-2022-674C

ORDER AND RATIONALE ON CROSS  
MOTIONS FOR SUMMARY JUDGMENT

21 THIS CAUSE is before the Court on the parties' cross motions for Summary Judgment.

22 Having considered the briefs in support and opposition, the record, and oral argument held on  
23 January 18, 2024, and being fully advised in the premises, the Court now enters the following:

24 ORDER

25 Plaintiffs' motion for summary judgment is GRANTED as set forth in the rationale  
26 below.

27 Defendants' motion for summary judgment is DENIED.  
28

1  
2  
3 RATIONALE

4 **Background**

5 The parties own properties in the Northwoods 4 subdivision north of Whitefish. Plaintiffs  
6 seek a declaration that Defendants Christa and William Beveridge's use of 825 Cantrell Court as  
7 a short-term rental is prohibited by the subdivision's Covenants, Conditions and Restrictions  
8 (CC&Rs), and to enjoin such use. They also ask for their attorney's fees and other relief as the  
9 Court deems just and proper.

10  
11 Defendants' Answer and Counterclaim states that the CC&Rs speak for themselves and  
12 that their interpretation is for the Court to decide. *Ans. and Counterclaim*, ¶¶ 11-12, dkt. 4. They  
13 counterclaim for a declaratory judgment as follows:

- 14  
15 1. Defendants seek a declaratory judgment that their use of the property is allowed.  
16 2. Any tenant who rents the property use the property as a residence.  
17 3. Defendants are not selling goods, items or services out of the property.  
18 4. The use of the property is residential.  
19 5. The use of the property complies with the covenants.  
20 6. Pursuant to M.C.A. § 27-8-201, the court has the authority to declare the rights,  
21 status and legal relations of the parties.  
22 7. The parties are interested under deeds and the covenants.  
23 8. Defendants' rights, status, or other legal relations are affected by statues and  
24 recorded documents, an actual controversy has arisen regarding the interpretation of the  
25 documents and applicable laws, and Defendants are entitled to a declaration of their  
26 rights, status or other legal relations thereunder.  
27 9. Defendants are entitled to a declaration that their use of their property complies  
28 with the covenants.

29 *Ans. and Counterclaim* at 4-5, dkt. 4.

30 Defendants' pleading does not allege that the CC&Rs are invalid or illegitimate.

1 Northwoods 4 subdivision is a heavily wooded rural neighborhood north of Whitefish.  
2 Built on a steep hillside, its roads are narrow and hilly (MSWD 0088, attached as Ex. A to Pls.’  
3 Errata to Mot. for Summ. J., dkt. 41), with no on-street parking available. It is subject to CC&Rs  
4 (See generally MSWD 0257-298), recorded in 1980 with amendments recorded in 1997, which  
5 generally declare that the lots would be held, sold, and conveyed subject to the following  
6 easements, restrictions, covenants and conditions,  
7

8 [A]ll of which are for the purpose of enhancing and protecting the value,  
9 desirability and environmental restrictions and conditions shall run with the real  
10 property and shall be binding on all parties having or acquiring any right, title and  
11 interest in the described properties or any part therefor.

12 (MSWD 0257.)

13 Article I, Section 8 of the original CC&Rs states:

14 Section 8. Commercial Usage Prohibited: No store, office  
15 business, manufacture, commercial enterprise, hospital, sanitarium,  
16 rest home, theater, or saloon of any kind, or anything of the  
17 nature thereof, shall be carried on or conducted on any lot.  
18 However, for a period of fifteen (15) years from the date of this  
19 declaration, the Declarants shall be permitted to maintain within  
20 the area sales office, either a model home or a specifically  
21 constructed building, to be utilized for the purpose of promoting  
22 the development of the Northwoods Subdivision No. 4 area.

23 (Flathead County Clerk and Recorder Records Book 705, page 704; MSWD 0259.)

24 The drafters of the covenants made one exception from the commercial/business  
25 proscription for a sales office for Northwoods 4 lots, for a period of fifteen years. (MSWD 259,  
26 Section 8.) No other exception was made to allow anything commercial that brought customer  
27 traffic into the neighborhood.

28 Northwoods 4 amended Article I, Sections 2 through 6 of the CC&Rs in 1995 (hereafter  
“the 1995 Amendments”). The 1995 Amendments were approved by the Flathead County Board  
of Commissioners on January 8, 1997, and recorded on March 24, 1997. The 1995 Amendments  
in relevant part amended Article I, Section 4 of the original CC&Rs as follows:

1           Section 4. Land Use Restrictions.

2           **A. Platted Residential Lots shall be used for single family residential purposes only. Bed**  
3           **and breakfasts or businesses receiving customer traffic are prohibited.**

4 (Flathead Clerk and Recorder reception number 1997083 12140; MSWD 0281.)

5           On or around June 2021, Defendants Christa and William Beveridge purchased 825  
6 Cantrell Court, Whitefish, MT 59937, a Northwoods 4 property, from Marguerite Kaminski.  
7 Kaminski attests that she informed the Defendants’ realtors that no short-term rentals were  
8 allowed. (Aff. of Marguerite Kaminski ¶ 5, dkt. 38.) Plaintiffs provide undisputed evidence that  
9 the subdivision has historically not tolerated short term rentals when it has become aware of them.  
10 (Aff. of Allen Engle, dkt. 37; Aff. of Gail Godwin, dkt. 31.)

11           Before closing, on June 1, 2021, the Defendants entered into a contract with Vacasa, a  
12 vacation rental management company, to manage 825 Cantrell Court. (Defs.’ Resp. to Request  
13 for Admission No. 12, attached as Ex. B to Aff. of David K. Wilson, dkt. 34.) Vacasa called itself  
14 a “business partner” with the Defendants. (BEVERIDGE00068, attached as Ex. C to Aff. of David  
15 K. Wilson, dkt. 34.) Vacasa made the property available for rental through short term rental  
16 booking companies such as VRBO, AirBNB, and Booking.com. (Defs.’ Resp. to Req. for  
17 Admission No. 15.) The Defendants only stayed at the property for approximately 23 days in  
18 2021, 21 days in 2022, and 20 days in 2023. (Defs.’ Resp. to Interrogatory No. 27.) Counsel for  
19 the Defendants informed the Court at oral argument that they were at the property additional time  
20 over the recent Christmas holidays. To stay at the property, the Defendants have to “reserve” the  
21 home. (Defs.’ Resp. to Interrogatory No. 27.)

22           The subdivision is in Zoning District R-2.5, which does not allow for short-term rentals,  
23 so Vacasa agreed to apply for necessary permits on Defendants’ behalf. (See BEVERIDGE00072-  
24 00074.) The Defendants obtained a Conditional Use Permit and received a “Public  
25  
26  
27  
28

1 Accommodation” license for a 3 unit “Tourist Home” from Flathead County, identifying the  
2 property as “Cantrel Chalet.” (BEVERIDGE00169.) In answering Plaintiff’s Interrogatory 25,  
3 Defendants aver that they made the property available for rental for 11 days in 2021, 335 days in  
4 2022 and 343 days in 2023. (Defs.’ Responses to Plaintiff’s Second Combined Discovery, Ex.  
5 B. to Aff. of David K. Wilson, *supra*.) Vacasa initially controlled the rentals of 825 Cantrell Court  
6 and paid a net return to Defendants after deducting its management fee and costs from the rent it  
7 received from guests. (*See, e.g.*, BEVERIDGE00257.)  
8

9  
10 Between January and October 2022, the Defendants netted between \$276 and \$11,037 in  
11 proceeds, from property manager Vacasa, per month. (BEVERIDGE00255-264.) Vacasa’s  
12 commission, before proceeds, was 31%. (BEVERIDGE00048.) The Defendants informed Vacasa  
13 they would terminate their relationship with Vacasa 90-days from July 19, 2022.  
14 (BEVERIDGE00116-117.) The reason stated was that “Vacasa’s contract is set up in such a way  
15 that we don’t receive any of the cancelation money from the renters, which could mean thousands  
16 of dollars of lost rental income for us.” *Id.* At some point in 2022, the Defendants began using  
17 Glacier Getaway to manage and advertise the property as “Lingonberry Log Lodge.” (Defs.’ Resp  
18 to Req. for Production no. 8.) It is undisputed that both property management firms with whom  
19 the Defendants have contracted provide cleaning services in between guest stays.  
20

21  
22 The Defendants declared under oath in their 2021 Federal Taxes that the property was a  
23 Vacation/short term rental as opposed to a Single-Family Residence, and that the property had  
24 122 “Fair Rental Use” days and 17 “Personal Use” days. (BEVERIDGE00372.) In their 2022  
25 Federal depreciation and amortization report (Form 4562), the Defendants declared the property  
26 as 80% business use to arrive at a 520,000 depreciable basis. (BEVERIDGE00637.) The record  
27 shows that the Defendants continue to rent the property, sometimes for as little as 2 nights at a  
28

1 time. (BEVERIDGE00704.) 825 Cantrell Court is not the Defendants' primary residence, nor  
2 do they control the rentals. (Resp. to Req. for Admissions No. 3.)

3  
4 Since the Defendants purchased the property, numerous customer vehicles have gotten  
5 stuck in the winter, blocking access for other residents for periods of time. Lorelle Kitzmiller's  
6 Affidavit sets forth four examples of 825 Cantrell customers being stuck and blocking her  
7 property's access during the first two months of operation in 2022 alone. (See Aff. of Lorelle  
8 Kitzmiller, dkt. 33; MSWD 0182-193.) The blockages were not trivial, ranging from over an hour  
9 to overnight when an airport shuttle van became stuck in their driveway. The Affidavit of Teri  
10 McDonald describes the noise coming from the Short-Term Rentals. (Dkt. 35.) Sharon Morrison,  
11 one of the original owners in the subdivision, attests that her property directly abuts 825 Cantrell  
12 Court. She states that the Amendments to the CC&Rs were intended to "further reinforce[] the  
13 original proscription of business or commercial use, because of the unsuitability of the  
14 neighborhood for any type of business use, including lodging or other businesses receiving  
15 commercial traffic." (Aff. Of Sharon Morrison ¶ 9, dkt. 36) Ms. Morrison states that she has  
16 been and will continue to be affected by the short-term rentals and provides examples in her  
17 affidavit. Additionally, she notes national and Montana news reports of crimes and criminal  
18 activity being associated with short-term rentals. "These are precisely the types of reasons and  
19 activities which prompted the developers and then the HOA to prohibit lodging and business  
20 activity in the first place. It is not inconceivable that such illegal activity could occur in our  
21 isolated neighborhood, precisely because the neighborhood is isolated." (Aff. of Sharon Morrison  
22 ¶ 13.) Morrison states that the subdivision is unpoliced and voices concerns about danger to the  
23 subdivision during high fire risk periods given that common activities present major risks if  
24 people don't understand fire dynamics. (Aff. of Sharon Morrison ¶ 10.)  
25  
26  
27  
28

1           The parties move for summary judgment. Defendants attack the legitimacy of the CC&Rs  
2 and assert that they are not violated by renting the property as a residence but expressly allow for  
3 that use. Plaintiffs contend that the CC&Rs and their amendments unambiguously forbid  
4 “commercial” “Business” or “bed and breakfasts or businesses receiving customer traffic.”  
5

6  
7 **Legal Standard**

8           Any person whose rights, status, or other legal relations are affected by a contract may  
9 have determined any question of construction or validity arising under it and obtain a declaration  
10 of rights, status, or other legal relations thereunder. *See* § 27-8-202, MCA.  
11

12           Summary judgment is appropriate when there is no genuine issue as to any material fact  
13 and the moving party is entitled to judgment as a matter of law. M.R.Civ.P. 56(c)(3). When faced  
14 with cross-motions for summary judgment, a district court is not required to grant judgment as a  
15 matter of law for one side or the other. . . ." Rather, the court must evaluate each party's motion  
16 on its own merits, taking care in each instance to draw all reasonable inferences against the party  
17 whose motion is under consideration." *Hajenga v. Schwein*, 2007 MT 80, ¶18, 336 Mont. 507,  
18 155 P.3d 1241 (citing *Ike v. Jefferson Nat. Life Ins. Co.* (1994), 267 Mont. 396, 399-400, 884  
19 P.2d 471, 474).  
20

21           General rules of contract interpretation apply to restrictive covenants. *Brewer v.*  
22 *Hawkinson*, 2009 MT 346, ¶ 22, 353 Mont. 154, 221 P.3d 643. The interpretation of a contract is  
23 a question of law, *Boulder Hydro Ltd. P'ship v. Nw. Corp.*, 2018 MT 248, ¶ 8, 393 Mont. 85, 428  
24 P.3d 250, and whether an ambiguity exists in a contract is a question of law. *Krajacich v. Great*  
25 *Falls Clinic, LLP*, 2012 MT 82, ¶ 19, 364 Mont. 455, 276 P.3d 922. The whole of a contract is  
26 to be taken together so as to give effect to every part if reasonably practicable, each clause helping  
27  
28

1 to interpret the other. § 28-3-202, MCA. Words of a contract are generally interpreted in their  
2 ordinary and popular sense rather than according to their strict legal meaning unless used by the  
3 parties in a technical sense or unless a special meaning is given to them by usage, in which case  
4 the latter must be followed. § 28-3-501, MCA. If the language of a contract is unambiguous, the  
5 duty of the court is to apply the language as written. *Associated Mgmt. Servs. v. Ruff*, 2018 MT  
6 182, ¶ 33, 392 Mont. 139, 424 P.3d 571. Restrictive covenants are strictly construed and  
7 ambiguities in covenants are resolved to allow free use of property. *Creveling v. Ingold*, 2006 MT  
8 57, ¶ 8, 331 Mont. 322, 132 P.3d 531. The free use of the property, however, "must  
9 be balanced against the rights of the other purchasers in the subdivision." *Lewis & Clark Cty. v.*  
10 *Wirth*, 2022 MT 105, ¶ 18, 409 Mont. 1, 510 P.3d 1206. Finally, "an ambiguity does not exist in  
11 a contract simply because the parties to the document, or their attorneys, have or suggest opposing  
12 interpretations of the language contained therein." *Phelps v. Frampton*, 2007 MT 263, ¶ 45, 339  
13 Mont. 330, 170 P.3d 474.

## 17 **Discussion**

18  
19 It is undisputed that the Northwoods 4 subdivision's CC&Rs and its 1995 Amendments  
20 were a matter of public record on file with the Office of the Clerk and Recorder for decades before  
21 Defendants purchased property in that subdivision. In *Kosel v. Stone*, the Montana Supreme Court  
22 held that constructive notice applies to CC&Rs. The Court determined, under Montana's  
23 constructive notice statutes, that since defendants' deed described the property as being located in  
24 the subdivision according to the official plat on file, the official plat became "as much a part of  
25 the deed as if fully incorporated therein, and the same situation applies to the declaration of  
26 restrictions." *Kosel v. Stone*, 146 Mont. 218, 222, 404 P.2d 894, 897 (1965). That determination  
27 was based largely on the fact that the term "conveyance" was defined to embrace every instrument  
28



1 in writing by which any estate or interest in real property is created, aliened, mortgaged, or  
2 encumbered or by which the title to real property may be affected, except wills. Our statutes still  
3 define “conveyance” that way, § 70-21-301, MCA, and the same conclusion holds. Defendants  
4 accordingly had constructive notice of the CC&Rs and their amendments.  
5

6 Defendants devote seven pages of the “Background and Uncontested Facts” in their brief  
7 in support of their motion for summary judgment to allegations that the 1995 Amendments may  
8 be illegitimate and invalid. This contention was not made in their Answer or Counterclaim.  
9 Summary judgment seeks judgment on the pleadings, not on new theories for relief first  
10 introduced in the motion itself. Motions and briefs are not pleadings under Rule 7(a), M.R.Civ.P.  
11 A pleading is “[a] formal document in which a party to a legal proceeding (esp. a civil lawsuit)  
12 sets forth or responds to allegations, claims, denials, or defenses” while a motion is “[a] written  
13 or oral application requesting a court to make a specified ruling or order.” *Bekkedahl v.*  
14 *McKittrick*, 2002 MT 250, ¶25, 312 Mont. 156, 58 P.3d 175 (citations omitted). The arguments  
15 that the amendments are invalid are inappropriate and will not be considered. Moreover, Plaintiffs  
16 response thoroughly addressing the alleged issues with the 1995 Amendments remained  
17 unanswered in Defendants’ reply and at oral argument.  
18  
19

20 There remains the question of whether the 1995 Amendments of Article I, Sections 2-6,  
21 and Article III augmented or replaced the sections they modified. The 1995 Amendments do not  
22 say that they were to be read as additions to the sections they modified and many of the section  
23 subjects in the 1995 Amendments are entirely different than those in the original CC&Rs. For  
24 example, Article I, Section 5 in the original CC&Rs was limited to sewage while the 1995  
25 Amendments’ Article I, Section 5 is labeled “Building Restrictions” and conceivably  
26 encompasses sewage in the requirement that a lot owner first obtain permits from the proper local  
27  
28

1 governmental authority before building. Article I, Section 6 of the original CC&Rs was limited  
2 to nuisances while the 1995 Amendments' Article I, Section 6 concerned Interpretation,  
3 Administration and Enforcement of Covenants. The replacement of these two sections by the  
4 1995 Amendments is not clearly unreasonable since those sections in the original CC&Rs  
5 concerned subjects that could have been deemed in 1995 to be sufficiently governed by existing  
6 regulations and law. The marked disparity between the subjects of the original and amended  
7 sections, the absence of a stated intent to augment, rather than replace, and the significant  
8 differences in formatting of the 1995 Amendments compared to the original CC&Rs point to an  
9 intent to supplant, rather than add to, certain sections of the original CC&Rs. Consequently,  
10 Article I, Section 4, of the original CC&Rs was supplanted by Article I, Section 4 of the 1995  
11 Amendments. The 1995 Amendments did not affect Article I, Section 8 of the original CC&Rs.  
12

13  
14 Article I, Section 8, of the CC&Rs prohibits commercial usage and commercial  
15 enterprises carried on or conducted on any lot. Article I, Section 4 of the 1995 Amendments  
16 prohibits bed and breakfasts or businesses receiving customer traffic. The language is  
17 unambiguous and does not conflict with the requirement that the residential lots be used for  
18 residential purposes only. Where the language of a covenant is clear and explicit," extrinsic  
19 evidence is not considered, and "the Court must apply the language as written." *Creveling v.*  
20 *Ingold*, 2006 MT 57, ¶ 8, 331 Mont. 322, 132 P.3d 531 (citation omitted); § 1-4-101, MCA (the  
21 court's role is not "to insert what has been omitted or to omit what has been inserted."). The  
22 general rule of excluding extrinsic evidence, however, "does not preclude consideration of  
23 surrounding circumstances" to initially determine whether an instrument contains an  
24 ambiguity. *Mary J. Baker Revocable Tr. v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶  
25 47, 338 Mont. 41, 164 P.3d 851. The circumstances surrounding the creation of the Original  
26  
27  
28

1 CC&Rs and the 1995 Amendments create no ambiguity with respect to the provisions at issue.  
2 The clear and explicit plain language of the CC&Rs and 1995 Amendments unambiguously  
3 prohibit commercial enterprises and businesses receiving customer traffic.  
4

5 The Defendants deny that they are operating their property in the Northwoods 4  
6 Subdivision as a “Tourist home.” They have obtained a license from the State that is required  
7 for “private home[s]” that are “rented, leased, or furnished in its entirety to transient guests on a  
8 daily or weekly basis.” § 50-51-101, MCA. A “Tourist home” means “a private home or  
9 condominium that is not occupied by an owner or manager and that is rented, leased, or furnished  
10 in its entirety to transient guests on a daily or weekly basis.” § 50-51-102(12), MCA. “Transient  
11 guest” means a guest for only a brief stay, such as the traveling public. § 50-51-102(13), MCA.  
12 It should go without saying that the use of a residence by “transient guests” such as the traveling  
13 public does not make the property their residence.  
14

15 Defendants, through their property management company, advertise and provide  
16 temporary lodging to transient guests. Like a hotel or motel, the product or service they market  
17 as the Cantrel Chalet or Lingonberry Log Lodge is temporary lodging.  
18

19 The occupant is the consumer since he purchases the service. No title changes  
20 hands, but the consumer comes into temporary possession of the room. A tax placed  
21 on that transaction is a sales tax.

22 *Mont. Innkeepers Ass'n v. Billings*, 206 Mont. 425, 430, 671 P.2d 21, 23 (1983).

23 There is a 4% sales tax on accommodations in Montana, § 15-68-102(1)(a), MCA, and “[t]he  
24 sales tax is imposed on the purchaser and must be collected by the seller and paid to the  
25 department by the seller. The seller holds all sales taxes collected in trust for the state. The sales  
26 tax must be applied to the sales price.” § 15-68-102(2), MCA. “Accommodations” includes short-  
27 term rentals “offered for overnight lodging periods of less than 30 days to the general public for  
28 compensation.” § 15-68-101(1)(a), MCA.

1 Accommodations include units located in property represented to the public as a  
2 hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest  
3 ranch, hostel, public lodging house, bed and breakfast facility, vacation home,  
4 home, apartment, timeshare, room, or rooms rented by or on behalf of the owner  
5 or seller.

6 § 15-68-101(1)(b), MCA.

7 The short-term rental of the property is taxable commerce under State law in which the  
8 Defendants are sellers of a product and/or service and their transient guests are purchasers upon  
9 whom the tax is imposed. This commerce generates customer traffic by Defendants' transient  
10 guests to access the Defendants' product and/or service, as well as traffic in between the guests'  
11 stays to clean the property. Defendants offer no evidence or raise genuine issues of material fact  
12 to rebut the fact that they and their property management company operate the property as a  
13 business. Based on the facts set forth above, the Court finds that the Defendants own and operate  
14 the property at 825 Cantrell Court as a business and commercial enterprise that generates  
15 customer traffic. It accordingly violates the Northwoods 4 subdivision's CC&Rs and their 1995  
16 Amendment.

17 Defendants argue that *Craig Tracts Homeowners' Ass'n v. Brown Drake*, 2020 MT 305,  
18 402 Mont. 223, 477 P.3d 283, prevents the Plaintiffs here from enforcing the commercial and  
19 business prohibition in their CC&Rs. *Craig Tracts*, however, is distinguishable.  
20

21 First, the CC&Rs in *Craig Tracts* did *not* contain a business and commercial prohibition.  
22 *Craig Tracts*, ¶ 16. As discussed above, here the CC&Rs do contain such a prohibition.  
23

24 Second, in *Craig Tracts*, the Court found that previously, the HOA in *Craig Tracts* had  
25 allowed short term rentals, including a short-term rental rented out by "none other than" the  
26 former President of the HOA. *Id.*, ¶ 17. The record here shows that previous efforts in the  
27

1 Northwest 4 subdivision to engage in the short-term rental of properties were stopped as soon as  
2 the HOA heard about the improper use.

3 Third, in *Craig Tracts*, the owners stayed at the property “on and off, throughout the  
4 majority of the year.” *Id.*, ¶ 18. Here, the Defendants only have stayed at the property infrequently,  
5 for less than a month out of each year, and they must reserve the property through the property  
6 management firm.  
7

8 Fourth, in *Craig Tracts*, the Court noted that “the HOA does not claim that the Lodge is a  
9 source of disturbance or intrusive, nuisance-like activity. There is no evidence that the Lodge’s  
10 use detracts from other neighborhood members’ enjoyment of their own property.” *Id.* Here, the  
11 Affidavits submitted by Plaintiffs, especially those submitted by Lorelle Kitzmiller, document  
12 specific instances where the customers of 825 Cantrell Court have blocked roads and driveways,  
13 for hours at a time, and added disturbances to the neighborhood that previously did not exist.  
14

15 Fifth, in *Craig Tracts*, the Court noted that there was no “indicia of business use” by the  
16 Lodge. *Id.* Here, in contrast, as detailed in the previous section of this opinion, there is significant  
17 indicia of business use of the property, including the Defendants’ tax treatment of it as a business.  
18

19 The Defendants argue that they had a “reasonable expectation” that they could use the  
20 property as a short-term rental, citing ¶ 17 of *Craig Tracts*. However, the Defendants had  
21 constructive knowledge of the CC&Rs and its amendments which, unlike in *Craig Tracts*,  
22 prohibit commercial enterprises and businesses receiving customer traffic. The Defendants’  
23 expectation is apparently based solely on a text between the realtors. Defendants did not lay any  
24 foundation for this text or its authenticity and it accordingly cannot be considered. *See Smith v.*  
25 *Burlington Northern & Santa Fe Ry.*, 2008 MT 225, ¶¶ 47-48, 344 Mont. 278, 187 P.3d 639.  
26  
27  
28

1 Moreover, the statement in the text is belied by the testimony of the seller, Marguerite Kaminsky  
2 that she informed Defendants' realtors that no short-term rentals were allowed.

3 In summary, the Court finds that *Craig Tracts'* holding that the use of the Lodge therein  
4 was allowed based on language in Craig Tracts' CC&Rs that solely prohibited non-residential  
5 use, but did not explicitly prohibit commercial or business use, does not apply or control in this  
6 instance where the Northwoods 4 CC&Rs restrict uses to single family residential and expressly  
7 prohibit business and commercial use and businesses receiving customer traffic.  
8

9 Accordingly, Plaintiffs' *Motion for Summary Judgment* is GRANTED, consistent with  
10 the rationale set forth above, and Defendants' *Motion for Summary Judgment* is correspondingly  
11 DENIED.  
12

13 Briefing on further remedies, as requested by the parties, shall be provided by the parties  
14 as follows: (1) the Plaintiffs shall submit briefing on requested remedies by February 23, 2024;  
15 (2) the Defendants shall submit any response briefs by March 15, 2024; and (3) the Plaintiffs shall  
16 submit any reply briefs by March 29, 2024.  
17

18  
19 ELECTRONICALLY SIGNED AND DATED BELOW.  
20  
21  
22  
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24  
25  
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28

# **Exhibit B**

## **GENERAL PLAN AND DEVELOPMENT GUIDE**

### **BRIDGER CANYON BOZEMAN, MONTANA**

PREPARED BY

GALLATIN COUNTY LAND USE PLANNING STAFF

FOR

BRIDGER CANYON PLANNING AND ZONING COMMISSION

GALLATIN COUNTY, MONTANA

ADOPTED FEBRUARY 23, 1989

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## INTRODUCTION

With the increasing demand for desirable homesites, suburban and rural land development is rampant throughout the western United States. In Montana, not only is water endowed land in high demand, but view-property, wooded lots, and wetlands are also undergoing significant land subdivision. Notable environmental degradation often parallels land development schemes. In order to achieve proper design, an extensive resource inventory and development plan is a necessary base upon which to build.

Bridger Canyon is predominantly an agricultural valley enriched with trout streams, rolling pastures and forested foothills--characteristic of mountain environments. Throughout the entire year, the area is enjoyed by an increasing number of residents and tourists. For the past twenty years, Bridger Canyon has experienced a period of accelerated demand for a variety of land uses. In order to preserve the natural, physical character of the canyon, and to ensure orderly growth, a general plan and development guide for Bridger Canyon has been established.

A development plan for Bridger Canyon was originally petitioned by area residents. Concerns focused on the growth of the ski area and on the potential traffic capacity of the canyon road. Additional concerns led to the formation of the Bridger Canyon Property Owners Association. The underlying objective was to form a plan favoring the conservation of natural resources, preservation of open space and agricultural uses, and limited, controlled growth. The Property Owners Association selected Murray and McCormick, Inc., a planning-engineering firm from Sacramento, California to create a general plan and development guide for Bridger Canyon.

The General Plan and Development Guide for Bridger Canyon was officially adopted in 1971. During July of the same year, the Bridger Canyon Zoning District was created by resolution of the Board of County Commissioners. In October, 1972, the Bridger Canyon Zoning Regulation, pursuant to R.C.M. 16-4101, was incorporated into the general plan. In accordance with M.C.A. 76-2-106, the above zoning Regulation and Plan have undergone periodic amendments.

The following General Plan and Development Guide embodies a complete physical and cultural resource analysis, economic and demographic data, and land use development standards. In total, the plan offers guidelines to manage development impacts on the natural environment of Bridger Canyon.

Large resource information maps are available for inspection at the Gallatin County Subdivision Review Office. The Construction Development Guide is available at the County Planner's Office or with the Bridger Canyon Property Owners Association.

## GENERAL PLAN OBJECTIVES

The primary objectives of this plan are to guide future physical growth within Bridger Canyon and to protect the natural beauty and agricultural open space character of the area. In order to provide the greatest opportunities for orderly growth and to retain the environmental nature, it is essential to give intelligent forethought to the design of the area.

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.

This plan has the majority support of the residents and property owners of Bridger Canyon. This plan is intended to be used as a guide both to government agencies and private enterprise. As the pressures of growth continue, the canyon residents will find it necessary to guide this growth in an orderly and logical manner through the planning and zoning process.

The Bridger Canyon property owners are interested in a general plan indicating future land uses, population density, major roads, public facilities, and suggested conservation measures required to maintain a balance between natural resources and population growth. The following includes the property owners' list of goals and development standards to the General Plan:

## PROPERTY OWNERS' GOALS

1. To maintain continuous coordination and cooperation between citizens and public and semi-public agencies operation in and around the Canyon.
2. To secure increased citizen participation in the planning process and, if necessary, to work for legislation which will offer protection from the adverse effects of urbanization.
3. To preserve and protect those environmental qualities that are resources of the zoned area.
4. To maintain high water quality standards through constant monitoring.
5. To encourage agricultural land preservation and the needs of the rancher.
6. To disseminate information on good logging practice and silviculture so that timber resources can be conserved.

7. To set limits on areas of high intensity recreational use based on access, sensitivity of surrounding uses, influence on water quality, traffic generation, fire hazard, and environmental effects.
8. To insist on attention to vegetation, sanitation, wildlife habitat, erosion, and public safety concerns for new development.
9. Elements of community design (roads, utilities, etc.) should be planned to include environmental factors in addition to usual safety and engineering considerations.
10. New residential development will be encouraged in low density tracts or clusters.
11. Residences, commercial facilities, public buildings, street signs, etc., shall be designed to fit the rural character of the area.

## CULTURAL RESOURCES

EXISTING LAND USES: Scattered rural development and agriculture are the two primary land uses in Bridger Canyon. Agriculture dominates as an existing use in the lower elevations of the canyon. Agricultural uses presently being practiced in the planning area include irrigated and dryland hay production, livestock raising, and tree farming.

Residential structures are found in a widely dispersed pattern of single locations throughout the canyon, and are generally spread out along the main roads.

Currently commercial ventures in Bridger Canyon are located at Crosscut Guest Ranch, the Silver Forest Bed and Breakfast establishment, the Flaming Arrow Lodge Special Events Center, and the base facilities at the Bridger Bowl Ski area. There are no existing industrial land uses in the canyon.

There is land allotted for public facilities lying within the planning area. Under provisions outlined in the Zoning Regulation, public facilities, i.e., fire and police stations, municipal buildings, parks, etc., are allowed as a matter of right. As of this date, Malmborg Elementary is the only school in the planning area; all other students are bussed to schools in Bozeman. Bridger Canyon has its own fire protection facility and community center.

Land use maps for the Bridger Canyon Zoning District are provided in Appendix I. The maps show all state and county roads, land subdivision, subdivision roads, residences and public facility structures. All remaining land uses in the canyon are either hay fields or pasture. Land uses in the higher elevations of the canyons are predominantly forest related.

LAND OWNERSHIP: The land ownership map shown in Appendix J, displays the large property holdings in the Bridger Canyon planning area. These ownerships and their boundaries have slight relationship to natural features such as streams, ridges, slopes and meadows.

EXISTING ZONING: The Bridger Canyon Zoning Regulation was officially adopted in October of 1971, and has been amended on a periodic basis. The intent of the Zoning Regulation is to regulate and promote orderly development of the area. Agricultural preservation is a primary goal which is to be accomplished by limiting development to one (1) dwelling unit per 40 acres or one (1) dwelling unit per twenty (20) or ten (10) acres with a planned unit development except as provided in the Bridger Bowl Base Area. The forty (40) acre minimum lot size, except as allowed through a planned unit development, is based on limiting population so that the capacity of the two (2) lane highway is not exceeded. Prior to the adoption of the Zoning Regulation, development was concentrated in parcels less than 20 acres. The Bridger Canyon Property Owners Association continues to monitor and support regulations that institute proper conservation measures and orderly growth.

In 1979 the Bridger Bowl Base Area Conceptual Plan was adopted. In October of 1985 the Bridger Bowl Base Area Plan ("Base Area Plan") was updated and adopted. In 1989 the Base Area Plan and Zoning Regulation were amended to allow for both recreational housing and overnight accommodations in the Bridger Bowl Base Area ("Base Area"). Recreational housing is defined as

housing which does not have restriction on length of stay and includes attached and detached single family units. When the Zoning District was created single family dwelling units were allowed in the Base Area through the Recreation and Forestry (RF) District designation attached to the Base Area. In the Base Area Plan and Zoning Regulation the development rights were allocated to the property in the Base Area. Generally, twenty-five percent (25%) were allocated to recreational housing the seventy-five percent (75%) were allocated to overnight accommodations. The Base Area Plan is a site specific plan for the Base Area and is adopted as part of this General Plan and Development Guide and by this reference is incorporated herein.

Originally, the Base Area consisted of approximately 400 acres. When the General Plan and Development Guide and the Bridger Canyon Zoning Regulation were adopted a development right of two (2) dwelling units per acre (approximately 800 dwelling units) with a planned unit development was established for the Base Area. In 1989 200 development rights for recreational housing (25%) and 600 development rights for overnight accommodations (75%) were allocated to the property in the Base Area.

In 1990 the Base Area was expanded with the addition of the 100 acre North Base Area. As a condition of that approval the total number of Base Area development rights did not change and a covenant was placed on the 100 acre parcel requiring any development proposal to include a second ski base. In 1991 a second addition to the Base Area was approved for a 260 acre parcel located at the northeast corner of the Base Area and commonly referred to as the Hammersmark property. As a condition of that approval the total number of Base Area development rights did not change, that a single planned unit development proposal was required for all properties owned by the applicant, that the development of the property was limited to 70 units which must be served by the Base Area central sewer and water systems and that residential structures on the property must be set back 400 feet from Bridger Canyon Road.

The condition that the 260 acre parcel, commonly referred to as the Hammarsmark property, be served by the Base Area central and community water system was eliminated following public hearings before the Planning and Zoning Commission and Gallatin County Commission. (Amended: County Commission Resolution No. 1995-52).

With these expansions of property the Base Area consists of approximately 760 acres with approximately 800 development rights as set forth and allocated in the Base Area Plan and Zoning Regulation. (Amended: County Commission Resolution No. 1995-25).

In 1996 the expansions of the 1990, 100 ± acre North Base Area and the 1991, 260 ± acre Hammarsmark property were de-annexed from the Base Area. The Base Area development rights remain the same as the 1989 development right allocation. This allocation allows 200 development rights for recreational housing (25%) and 600 development rights for overnight accommodations (75%). (Amended: County Commission Resolution No. 1996-4).

## DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS

POPULATION GROWTH: Gallatin County and the City of Bozeman are growing at a rate faster than either the State of Montana or the United States. While Montana grew 13.4 percent in the ten-year period from 1970-1980, Gallatin County increased 31.9 percent and Bozeman increased 15.9 percent. The following table displays Montana, Gallatin County, and Bozeman's population growth from 1960 through 1980.

	<u>YEAR</u>			<u>PERCENT CHANGE</u>	
	<u>1960</u>	<u>1970</u>	<u>1980</u>	<u>1960-1970</u>	<u>1970-1980</u>
MONTANA	675,000	690,000	786,690	2.80%	13.35%
GALLATIN COUNTY	26,045	32,505	42,865	24.80%	31.90%
BOZEMAN	13,361	18,670	21,645	39.70%	15.93%

Based on past trends and current development, the population of Bozeman and Gallatin County is expected to increase at a 2.0% annual growth rate. Growth should be evenly distributed through the year 2000. If a major boost in the economy occurs and a major industry locates in Bozeman, an upswing in population could occur adding to increased land development in Bridger Canyon. The following table displays population projections for Gallatin County and Bozeman from 1985 through 2000.(9)

	<u>1985</u>	<u>1990</u>	<u>1995</u>	<u>2000</u>
GALLATIN COUNTY	47,151	53,045	59,676	67,135
BOZEMAN	23,809	26,190	29,333	32,853

In 1971, the population of the Bridger Canyon planning area was approximately 300 persons. For the most accurate determination of population growth in the area, a land use permit analysis was conducted which tabulates the number of dwelling units and population added each year since 1972. (10)

<b>YEAR</b>	<b>NEW DWELLING UNITS</b>	<b>ADDED POPULATION (11)</b>
1972	8	20
1973	10	25
1974	8	20
1975	8	20
1976	8	20
1977	12	30
1978	18	45
1979	15	37.5
1980	6	15
1981	7	17.5
1982	5	12.5
1983	4	10
1984	5	12.5
1985	6	15
1986	5	12.5
1987	4	10
<b>TOTAL:</b>	<b>129</b>	<b>327.5</b>

Since 1971, 129 single family dwelling units have been constructed in Bridger Canyon, adding approximately 327 new residents to the planning area. The present population of the area is estimated at 600 people.

Estimations for future growth in Bridger Canyon can be most accurately based on the average number of new dwelling units during the previous five (5) years. By referring to the previous table, an average of five (5) dwelling units and twelve (12) residents per year are added to the Bridger Canyon Planning area.

The following table shows the estimated population of Bridger Canyon through the year 2000.

<b>YEAR</b>	<b>POPULATION</b>
1987	600
1990	637
1995	699
2000	761

**POPULATION DENSITIES:** Permanent housing in those areas of the Bridger Canyon Zoning District outside the Base Area is limited to one (1) dwelling unit per 10, 20 or 40 acres depending upon criteria set in the Zoning Regulation. Permanent housing in the Base Area is limited to a maximum number of recreational houses in accordance with the density set forth in the Base Area Plan and the Base Area Planned Unit Development Section of the Zoning Regulation. (Amended: County Commission Resolution No. 1995-25).



Recreational accommodation densities are as follows:

- a. Ski base: up to an average of eight (8) persons per acre;
- b. Guest Ranches: up to an average of one (1) person per acre, (excluding ski base area) depending upon the amount of on-site facilities to minimize off-site impacts and depending upon requirements set forth in the General Plan. Maximum accommodations for Bridger Bowl and guest ranches at one thousand (1,000) persons;
- c. Campsites: up to twelve (12) persons per acre. The maximum number of campsites shall not exceed 250.

ECONOMIC CONSTITUENTS: Income from agricultural practices in Bridger Canyon is limited. Most landowners can only maintain their land in agricultural production with the help of outside incomes. No change in this situation is expected in the foreseeable future. The agricultural uses which create open spaces and contribute to the appearance of the canyon are in jeopardy.

Recommendations: Determine methods to keep a healthy agricultural and residential atmosphere in Bridger Canyon.

Encourage cluster developments, preserving open space.

Strictly enforce the Zoning Regulation to ensure land subdivision in conformity with the General Plan.

## **RESIDENTIAL AND COMMERCIAL DEVELOPMENT**

RESIDENTIAL: To reach the goals of maximizing the attractiveness of the developed areas and preserving the farm-ranch rural atmosphere, residential development must be planned with care and creativity. Generally, the residential areas in those areas of the Bridger Canyon Zoning District outside the Base Area are expected to accommodate one (1) dwelling unit per forty (40) acres or one dwelling unit per twenty (20) acres or ten (10) acres with a planned unit development. The residential areas in the Base Area are expected to accommodate a combination of recreational housing and overnight accommodations. In the Base Area the residential areas are expected to accommodate approximately 200 recreational housing units and 600 overnight accommodation units. The specific information pertaining to residential densities are located in the Zoning Regulation and the Base Area Plan. The ski area is expected to accommodate 3,000 visitors in overnight accommodations and recreational housing within the Base Area. Here, multiple clustered housing which does not impair scenic values is essential to accommodate the increasing number of seasonal and permanent residents. (Amended: County Commission Resolution 1995-25). (Base Area owner density rights amended by Resolution 1999-1 on January 26, 1999.)

While vast areas of public land in Bridger Canyon are best preserved by remaining relatively undeveloped, more intensive use of the buildable forested areas is encouraged. It is proposed that the residential areas be developed in such a way as not to interfere with the open meadows, and well

away from the wetland areas along the stream beds. Public use for recreational activities should be permitted on public lands, but only on a planned basis.

In the allocation of land areas for residential development, basic concepts were formulated to indicate preferences in the use of each land allotment. The following concepts are all based on the premise of maintaining the existing canyon character as much as possible:

#### CONCEPT A: PRIME BUILDING SITES

These sites, considered to be best for residential development, are based on:

1. Adequate vegetative (tree) cover and/or sufficient local topographic relief to screen or soften visual impacts of development.
2. Slope and soil stability.

A cluster design is possible and encouraged here.

#### CONCEPT B: SECONDARY BUILDING SITES

These sites are considered to be next best for residential development and are based on:

1. Lower topographic slope conditions - not to exceed 20% slope and/or limited vegetative (tree) cover to soften development.
2. Slope and soil stability.

#### CONCEPT C: TERTIARY BUILDING SITES

These sites are considered to be best for low density development due to:

1. Lack of vegetative (tree) cover and lack of sufficient local topographic relief to visually screen or soften development.
2. And/or unstable slope and soil conditions.

These sites are considered to be the most suitable for single family residential development.

#### CONCEPT D: WETLANDS

These sites deserve special treatment due to their sensitive qualities.

1. Only low density residential development will be allowed, no more than one (1) unit per 40 acres.

2. Allow no dense build-up of buildings in any one (1) place, prefer no cluster developments.
3. In all cases, the streamside vegetation should be left undisturbed.

It is not the intention of the preceding concepts to permit development only in acceptable areas. They are merely designated as those areas most able to handle development, under the parameters set forth. They are meant to be used as a guide in locating buildings within the canyon. Prime and secondary buildable sites along with wetlands are outlined in the context of a development guide.

RESIDENTIAL DEVELOPMENT CRITERIA:

1. Non-clustered development of 40 acre and larger homesites will occur as a "matter of right" pursuant to locations set out in the Zoning Regulation for this use. If permitted by terrain, a minimum setback of 200 feet should be observed from Bridger Canyon, Jackson Creek, and Kelly Canyon roads for the homesite itself. Homeowners are urged to maximize distances of structures from roads. Thus the agricultural character of the valley will be emphasized and the visual influence of having structures diminished.
2. Clustered development of homesites should occur under development standards requiring the preparation of specific plans for review by the Bridger Canyon Planning Zoning Commission. Design criteria for such development should include:
  - a. retention and management of open space,
  - b. development of on-site recreational facilities,
  - c. separation of automobile and pedestrian-equestrian travel on the site,
  - d. limited access to Bridger Canyon, Kelly Canyon, and Jackson Creek roads,
  - e. parking areas or other large paved areas to be fringed with natural or man-made landscaping,
  - f. building clusters to be hidden from view to motorists on the canyon's arterial roads by:
    - (1) natural vegetation,
    - (2) landscaping,
    - (3) terrain, or,
    - (4) a setback of at least 500 feet from such roads.
  - g. erosion control measures for building, road, parking lot and recreational facilities,
  - h. fire suppression and control,
  - i. installation and management of water and sewage facilities,
  - j. underground locations for power and telephone service,
  - k. studies of surface geology and soils to indicate problems and their solutions relating to development,
  - l. solid waste disposal plan.

NEIGHBORHOOD COMMERCIAL FACILITIES: Other than the Bridger Bowl Base Area facilities, it is highly improbable that there will be sufficient trading activity in the canyon to warrant much in the way of commercial establishments. At most, one centrally located, five (5) acre maximum neighborhood facility is anticipated. This development would provide for servicing daily living needs.

What is considered to be an optimum site for this facility is located at the intersection of Bridger Canyon and Jackson Creek roads. The location is shown on the General Map Plan.

COMMERCIAL DEVELOPMENT CRITERIA:

1. Neighborhood commercial facilities: Not more than five (5) acres of this type of use are required to serve the needs of the residents at full development. Basically, the same criteria as proposed for cluster residences will apply in the case of neighborhood commercial facilities. They are:
  - a. Select an architectural style and building materials compatible to the canyon;
  - b. Make provisions for landscaping, erosion control, weed control, fire protection, safe sewer and water operation;
  - c. access limitations based on safety to travelers on the main roads;
  - d. Underground power and telephone services;
  - e. Signs to be restricted in size, with flashing or oscillating signs prohibited. Signs shall only be lighted from the exterior.
  
2. Ski Base Facilities, including commercial outlets: Since the ski base concentrates activities at the top of the canyon's watershed, its design and construction is critical to all residents in the lower canyon. Development criteria should include:
  - a. Adherence to Base Area Plan densities and day use parking limitations;
  - b. Strict limitations on treatment and disposal of sewage effluent.
  - c. Hide buildings from view of motorists on Bridger Canyon Road by retention of natural vegetation or installation of landscaping;
  - d. Preparation of and adherence to erosion control plans for all construction including : ski slopes, commercial and residential buildings, roads, parking lots, service and recreational areas, based on soils and geology studies;
  - e. Underground power and telephone service;
  - f. Re-vegetation and weed control of areas which are now or may in the future become denuded due to construction activities;
  - g. Selection of architectural styles and materials compatible with the natural landscape;
  - h. Building designs which take into account snow loads of up to 200 pounds per square foot;
  - i. Fire control measures for structures and escape routes for residents;
  - j. Separation of pedestrian and vehicular movements within the base area insofar as possible;
  - k. Solid waste disposal plan;
  - l. Sign control (i.e., limit sizes and prohibit flashing or interior lighted signs).

CIRCULATION SYSTEM: The General Plan calls for no basic changes in the existing road network in the canyon. Bridger Canyon, Jackson Creek, and Kelly Canyon Roads are the only arterial roadways. These three (3) roads will act as a circulation spine servicing all the necessary secondary, or subdivision roads to residential developments. No additional arterial to the canyon will be constructed or designed.

A trail system has been suggested the General Plan to link most existing and proposed recreational development. This trail system would provide for safe pedestrian-equestrian movement with ties to trails beyond the canyon. Future plans would like to provide for an extended right-of-way- along Bridger Canyon road to serve the needs for recreationalists, i.e., joggers, hikers and bicycle riders.

VACANT HOMESITE ASSESSMENT: In February, 1989, there were seventeen (17) platted subdivisions in the Bridger Canyon Planning Area. The lot sizes range from less than five (5) acres to greater than 40 acre tracts. Many of the lots that are less than 20 acres were created prior to the 1971 Zoning Regulation.

In February, 1989, data compiled from field reconnaissance and building permit analysis shows that their are currently nine (9) vacant homesites less than five (5) acres, 80 vacant homesites in the 5 to 20 acre range, and 39 vacant homesites being greater than 20 acres in size. The majority of those homesites in the later group are 40 acre tracts. (Amended: County Commission Resolution No. 1995-25).

# Exhibit C

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## INTRODUCTION

The Bridger Bowl Base Area is located approximately fifteen (15) miles northeast of Bozeman, and encompasses approximately 400 acres. The need for a plan to guide development in the Base Area was recognized as early as 1971. In 1978, the Bridger Bowl Base Area Conceptual Plan was prepared, and was officially adopted in May of 1979.

This update was undertaken at the request of the Bridger Canyon Planning and Zoning Commission. The Commission asked that the Plan reflect the changes that had occurred in the five years since its adoption, and that various issues be clarified.

A Citizens Study Committee was appointed to advise County Staff on revisions to the Plan. This revised document contains substantial information from the original Plan adopted in 1979, which was prepared by Joel Shouse and James Morton.

The purpose of this Plan is to provide information to guide decision making, and to set forth policy direction to respond to the special needs, problems, and future development of the Base Area. The Bridger Canyon Zoning Regulation provides the framework for the implementation of this Plan.

## BACKGROUND

In 1970 and 1971 the firm of Murray and McCormick, Inc., Sacramento, California, developed a General Plan, Development Guide and Zoning Regulation for the Bridger Canyon area. This effort was completed in April of 1971 and adopted the following October.

The Murray and McCormick Plan designated the Bridger Bowl Base Area as Recreation and Forestry, with a basic density right of one unit per 40 acres. It also established a Planned Unit Development (P.U.D.) designation for the Base Area of 800 total units for overnight accommodations if the development was in compliance with the standards and intent of the P.U.D. Section of the Bridger Canyon Zoning Regulation. The rationale for this high density allocation with overnight qualification (the balance of the Bridger Canyon area has an allowable P.U.D. density of only one unit per 20 acres, except for a small portion of land located in the southwest corner of the Zoning District, which has a P.U.D. density of one unit per 10 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. (County Commission Resolution No. 1995-25)

The Murray and McCormick Plan set out a number of recommended guidelines for development in the Base Area. These included an overall plan for sewage treatment and disposal, hiding buildings from view of motorists on the Bridger Canyon Road, preparation of and adherence to an erosion control plan for all construction, and several other guidelines. Murray and McCormick also recommended, and the Bridger Canyon Property Owners agreed, that there should not be additional development with the Base Area until a Master Plan was prepared. It was felt that the

preparation of this plan should be left to the Base Area Property Owners as it would require mutual cooperation in order to develop a workable plan.

Work on a Base Area planning effort was begun in 1977. In the fall of 1977, a County Water and Sewer District was organized for the Base Area. A water supply, sewer collection and sewage treatment facility study as completed in January 1979 by the firm of Morrison-Maierle, Inc.

The Bridger Canyon Property Owners Association responded to the water and sewer study by indicating that they felt it was a positive step forward in the development of a master plan for the Base Area, but that it was only one element of the plan.

For various reasons, all parties to the Bridger Bowl County Water and Sewer District have withdrawn from the District. Thus, the possibility of a central sewer system to serve all the Base Area is greatly diminished. While the ultimate development of a central sewer system is a worthwhile goal, it appears that for the present, sewer systems which serve a minimum of two property owners are more feasible and should be encouraged where possible.

In the spring of 1978, the Bridger Bowl Ski Area applied for a Use Permit to construct parking and ski facilities and again the issue of lack of a master plan was brought forth.

In response to the various development requests and the interest in seeing a master plan developed for the Base Area, the Gallatin County Commissioners in May of 1978, commissioned Joel Shouse and James Morton to prepare a Conceptual Plan for the 400 acre parcel. All Base Area property owners were notified of the planning effort taking place and their input was requested. In July of 1978, a meeting of the Bridger Canyon Planning and Zoning Commission was held for input and discussion of the Base Area Plan and Shouse and Morton submitted their plan. Several of the Base Area property owners requested time to hire their own consultants to study the area and make recommendations. Morrison-Maierle and Gage Davis and Associates were engaged by the property owners. Several more meetings were held and Gage Davis and Associates presented their plan on December 13, 1978. The Bridger Canyon Planning and Zoning Commission voted to turn over both plans and all accompanying information to the County Staff and a final conceptual plan be drafted to be presented at a public hearing.

A final Conceptual Plan was drafted and was adopted in May of 1979. Because there had been several major changes that had occurred in the years since the adoption of the Base Area Plan, the Bridger Canyon Zoning Commission amended the Base Area Plan in 1985. (Amended: County Commission Resolution No. 1995-25)

In 1989 the Base Area Plan and Zoning Regulation were amended to allow for both recreational housing and overnight accommodations in the Bridger Bowl Base Area ("Base Area"). Recreational housing is defined as housing which does not have restriction on length of stay and includes attached and detached single family units. When the Zoning District was created single family dwelling units were allowed in the Base Area through the Recreation and Forestry (RF) District designation attached to the Base Area. In the Base Area Plan and Zoning Regulation the development rights were allocated to the property in the Base Area. Generally, twenty-five percent (25%) were allocated to recreational housing the seventy-five percent (75%) were allocated to



overnight accommodations. This Base Area Plan is a site specific plan for the Base Area and is adopted as part of the General Plan and Development Guide. (Amended: County Commission Resolution No. 1995-25)

Originally, the Base Area consisted of approximately 400 acres. When the General Plan and Development Guide and the Bridger Canyon Zoning Regulation were adopted a development right of two (2) dwelling units per acre (approximately 800 dwelling units) with a planned unit development was established for the Base Area. In 1989 200 development rights for recreational housing (25%) and 600 development rights for overnight accommodations (75%) were allocated to the property in the Base Area. (Amended: County Commission Resolution No. 1995-25)

In 1990 the Base Area was expanded with the addition of the 100 acre North Base Area. As a condition of that approval the total number of Base Area development rights did not change and a covenant was placed on the 100 acre parcel requiring any development proposal to include a second ski base. In 1991 a second addition to the Base Area was approved for a 260 acre parcel located at the northeast corner of the Base Area and commonly referred to as the Hammersmark property. As a condition of that approval the total number of Base Area development rights did not change, that a single planned unit development proposal was required for all properties owned by the applicant, that the development of the property was limited to 70 units which must be served by the Base Area central sewer and water systems and that residential structures on the property must be set back 400 feet from Bridger Canyon Road. (Amended: County Commission Resolution No. 1995-25) The condition that the 260 acre parcel, commonly referred to as the Hammersmark property, be served by the Base Area central and community water system was eliminated following public hearings before the Planning and Zoning Commission and Gallatin County Commission. (Amended: County Commission Resolution No. 1995-52)

In 1996 the expansions of the 1990, 100 ± acre Hammersmark property were de-annexed from the Base Area. The Base Area development rights remain the same as the 1989 development right allocation. This allocation allows 200 development rights for recreational housing (25%) and 600 development rights for overnight accommodations (75%). (Amended: County Commission Resolution No. 1996-4)

With these expansions of property the Base Area consists of 760 acres with approximately 800 development rights as set forth and allocated in the Base Area Plan and Zoning Regulation. (Amended: County Commission Resolution No. 1995-25)

## BRIDGER CANYON GENERAL PLAN

When drafting a plan for the Bridger Bowl Base Area, it is necessary to consider the intents and purposes of the General Plan and Development Guide adopted for the entire Canyon. 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."

To achieve this end, the Bridger Canyon General Plan sets out development criteria for all types of development allowed in the Canyon. These criteria are based primarily on the physical determinants such as slope, soils, vegetation, hydrology, etc. Existing land use is also used as a basis

for the criteria. Because the Plan determined that much of the desirability of the Canyon is derived from its natural beauty and rural atmosphere, the development criteria and the subsequent zoning strive to protect those important qualities.

The entire Bridger Canyon Zoning District has been given a basic density right of one unit per forty (40) acres, with a planned development designation of one unit per twenty (20) acres throughout the Zoning District, with the exception of those portions of the Zoning District which a P.U.D. density of one per ten (10) acres and the Base Area, which has a planned unit development of approximately 200 recreational housing units and 600 overnight accommodation units. This P.U.D. density is only allowed when a development meets special conditions. The conditions are designed to allow higher density cluster housing with large areas designated as open space, in order to maintain as much of the natural environment as possible. (Amended: County Commission Resolution 1995-25)

The plan does, however, recognize the recreational potential of the Canyon, especially the ski area potential. Bridger Bowl is estimated to have an ultimate potential for 7,000 to 8,000 skiers per day. A major concern of the original planners and the Bridger Canyon residents was that the existing Bridger Canyon Road would not handle the traffic that would be generated by 7,000 to 8,000 day skiers. The construction of an adequate road to handle those numbers was determined to be contradictory to the intent of the General Plan. To resolve this problem, the plan provided for full expansion of the ski area by designating 800 units of one unit per half acre. This high density area was included in order to allow enough overnight facilities to maintain a low daily traffic volume on the Bridger Canyon Road. The plan proposes 1,500 car parking spaces for 4,500 day visitors and a possible P.U.D. density for 800 units to serve an estimated 3,000 overnight visitors. (Amended: County Commission Resolution No. 1995-25)

Mass transportation could also be used in conjunction with day skier parking and overnight accommodations to achieve the 7,000 to 8,000 skiers.

## GOALS AND OBJECTIVES

A plan for the Bridger Bowl Base Area should reflect many of the same goals and objectives as the Bridger Canyon General Plan. In other words, this Plan should be an extension of the General Plan. 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. To this end, the following goals and objectives for the Base Area have been adopted. Goals are a general statement of a desirable end to be attained; objectives set forth more specific ways to attain the goals. The goals and objectives provide a broad and basic framework for determining the merits of development proposals.

### GOALS AND OBJECTIVES FOR BRIDGER BOWL BASE AREA

GOAL: Encourage quality year-round recreational activities within the Base Area.

OBJECTIVES:

- 1). Develop an economic base for overnight accommodations.
- 2). Encourage diversified recreation as a partner to the existing economic base of agriculture and cottage industry in Bridger Canyon.
- 3). Maintain a balance between recreational and residential traffic.
- 4). Support the establishment of recreational uses consistent with the natural setting.
- 5). Set limits on areas of high intensity recreational use based on access, sensitivity of surrounding uses, water quality, fire hazard, and environmental effects.

GOAL: Help control traffic within the limits of two lane Bridger Canyon Road.

OBJECTIVES:

- 1). Encourage the development of up to 1,500 parking spaces for Alpine day skiers.
- 2). Encourage the development of up to 800 units for accommodations in the Base Area, except for bonus for hotel and motel units.
- 3). Encourage ride-sharing programs.
- 4). Allow the expansion of recreational facilities to their ultimate capacity without exceeding vehicular capacity of two-lane road.
- 5). Develop the Base Area for overnight accommodations.
- 6). Encourage the provision of employee housing.
- 7). Encourage the development of services needed for recreationists, while limiting the B-2 Commercial area to five acres.
- 8). Allow the construction of bus parking as needed.
- 9). Encourage the development of up to 200 parking spaces for Nordic skiers.

GOAL: Conserve the natural resources within the Base Area and Bridger Canyon in general.

OBJECTIVE:

- 1). Provide for the preservation of stream areas and wetlands, and protect the water quality of Bridger Creek.

- 2). Encourage the eventual provision of central water and sewer systems.
- 3). Minimize soil erosion by requiring erosion control plans for all construction.
- 4). Maintain as much of the natural environment as possible by encouraging cluster development.
- 5). Require that all signs be designed in accordance with the guidelines in the Bridger Canyon General Plan.
- 6). Direct development to those areas most suitable for development in accordance with the Base Area Plan.
- 7). Develop a transit system to take those staying in overnight accommodations to the ski areas.
- 8). Encourage non-motorized recreation.

#### DESCRIPTION OF BASE AREA

The Bridger Bowl/Base Area as it was expanded in 1990 and 1991 is shown on the map attached hereto as Appendix A. The official map of the Bridger Canyon Zoning District, including the Base Area, is on file in the Gallatin County Clerk and Recorder's Office. The maps (Map 1 through Map 8) which are included in the text of this Base Area Plan show the original Base Area and are included for purposes of discussion of the original Base Area. They do not show the extended Base Area and are not intended to represent the Base Area as it presently exists. Current development consists of the Bridger Bowl Ski Area facilities, a ski shop, the Crosscut Ranch, a summer cabin on the Hepburn property, and the Bridger Pines Condominium and Homesite Development.

Appendix A illustrates the various property ownerships in the Base Area and the development rights that could be allocated upon approval of a planned unit development. The following chart shows the development rights in the Base Area that could be allocated upon approval of a planned unit development. The chart reflects density units that have been transferred as of June 1, 1984. (Amended: County Commission Resolution No. 1995-25). (Amended: County Commission Resolution No. 1999-01 on January 26, 1999).

<u>OWNERSHIP</u>	<u>APPROX ACRES</u>	<u>UNITS UNDER BASIC ZONING</u>	<u>REC. HOUSING</u>	<u>OVERNIGHT UNITS</u>	<u>RESERVE OVERNIGHT</u>
360 Ranch			50****		
Tract 1					
Financial Dev. Corp	32.5	1	****	23	26
Tract 2					
Crosscut Ranch	61.5	1	****	5	6
Tract 3					
Simkins and Haggerty	80.0	4	****	90	103
Tract 4					
Montana Blesco North	20.0	1	****	52	59
Tract 5					
Montana Blesco South	65.5	1	****	41	47
Bridger Bowl**	87.0	1	16	23	25
Hepburn	3.5	1	2	2	3
Lachenmaier	25.0	1	13	17	20
Bridger Pines***	29.0	1	---	---	---

\*\* Ownership of two separate parcels

\*\*\* Previously developed for 60 units

\*\*\*\* The 50 Recreational Housing Development Rights granted to the 360 Ranch Corporation owned properties can be used within Tracts 1-5.

(Amended: County Commission Resolution No. 1996-4)

(Amended: County Commission Resolution No. 1999-1 on January 26, 1999)

Public lands shown on any map as being in the Base Area do not have any development rights of one (1) dwelling unit per one-half (0.5) acre. Public lands shown on any map as being in the Base Area are classified as RF and have a basic development right of one dwelling unit per forty (40) acres as allowed in the regulation. (Amended: County Commission Resolution No. 1995-25).

Transfer of development rights is allowed for in the Bridger Canyon Zoning Regulation. The development rights assigned within the Base Area may only be transferred within the boundaries of the Base Area. The value of development rights is set by the private market and the rights may be conveyed and reconveyed.

The purpose of the transfer of development rights is to encourage more intense development in those locations suited for such development. Transfers must be approved by the Bridger Canyon Zoning Commission in accordance with the procedures set forth in the Zoning Regulation.

Existing and proposed guest ranches in the Base Area are subject to the assigned development rights, and not to the general discussion of guest ranches in the General Plan. As such, guest ranches would also be eligible for the hotel/motel density bonus provided for in the zoning regulation.

## BASE AREA PLAN

This plan has been developed through a review of the Conceptual Plan adopted in 1979, a study of the existing resources and their capabilities, and through consideration of comments from various public meetings. The elements of the Base Area Plan have also been considered in light of the purpose and intent of the Bridger Canyon General Plan and Development Guide, and with consideration of the previously stated goals of this Plan: encouraging year-round recreational activities, controlling traffic on Bridger Canyon Road, and conserving natural resources. Therefore, with this information, the plan has been developed to be a guide for the future development of the Base Area.

The basic intention of the plan is to coordinate the potential development of 800 density units with the development of year-round recreational facilities.

Bridger Bowl remains the major catalyst for development in the Base Area. However, since the adoption of the Bridger Canyon General Plan and the Base Area Conceptual Plan, there have been three significant changes that affect the Base Area.

First, Bridger Bowl has begun to more actively pursue the non-local skier. Bridger Bowl does still have a primary goal of providing quality skiing for Bozeman/Gallatin County residents. However, to keep costs to the local skiing public affordable and to make efficient use of the existing facilities, it is necessary to attract the weekday, vacationing skier.

Second, cross country skiing has enjoyed a recent surge in popularity. Crosscut Ranch, formerly the Bridger Mountain Guest Ranch, attracts a significant number of persons to its cross country ski facilities. The Crosscut Ranch also offers a number of year-round recreational facilities, a restaurant, and overnight accommodations, which draw people to the Base Area on a year-round basis.

Third, Montana Blesco has received preliminary plat approval for 110 units of overnight accommodations. Plans call for the 110 units to be built in four phases, with completion scheduled for 1988.

These three changes have raised many questions as to the future of the Base Area. A plan which suggests a direction for future land use development is shown on Map 8. This plan is based on the resource capabilities shown on previous maps, the 1979 Conceptual Plan and the changes noted since its adoption, and the expressed and anticipated needs for development in the Base Area.

As Map 8 shows, the plan addresses the location of five major types of land use in the Base Area - commercial, overnight facilities, open space, recreation, and housing. The plan is intended to serve as a guide for land use development and zoning decisions, and to be a diagram of where uses could appropriately be located. The plan is not intended to show precise boundaries or sites.

## COMMERCIAL/OVERNIGHT ACCOMMODATIONS

The location and type of commercial activity in the Base Area has been a controversial issue. Previous plans have suggested that the amount of land for Commercial use be limited to five acres. However, the issue of commercial uses outside of the five acres was not clearly addressed. As a result, the Bridger Canyon Planning and Zoning Commission did not have clear guidelines when considering various requests for "accessory" commercial uses outside of the area designated as "Base Area Commercial." This plan recognizes that there are three different types of commercial activity that are necessary to encourage the development of year-round recreational activities in the Base Area.

First, there is the commercial activity which provides a central area for the ski area's business and service activities. This is the five acre commercial designation referred to in prior plans, and would be the ski hill's "downtown". The type of use included in this area are bakeries, beauty shops, restaurants, lounges, gift shops, galleries, retail sales, and rental of sports equipment.

On Map 8, this area is shown as being located on the north and west sides and one third of the south side of the skier parking area. While an area greater than five acres is shown, there are sites that would be suitable for this type of commercial activity. However, no more than five acres should be rezoned for base area commercial use.

The second type of commercial activity that is necessary to the Base Area is large scale recreation activity and the small retail and service activities that are frequently required by users of the recreational facilities. Large scale recreation activities would include downhill and cross country skiing, tennis, etc. Rental of sports equipment, limited retail sales, restaurants, lounges and instruction in sports skills would be among the uses permitted in this area. This type of use would be permitted at the two existing Base Area recreational centers, Bridger Bowl and Crosscut Ranch, and at other large scale recreational facilities that might develop.

Overnight accommodations are a third type of commercial activity that are necessary in the Base Area. As shown on Map 7, there are suitable areas for overnight accommodations on both parcels owned by Montana Blesco, as well as on the properties owned by Lachenmaier, Simkins and Haggerty, Crosscut Ranch, Financial Development Corporation, and Bridger Bowl.

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.

The General Plan refers to overnight accommodations in a number of different ways. On Page 29 of the Plan it is stated:

"The Ski Area is expected to accommodate 3,000 persons in overnight accommodations on 400 acres...here, multiple clustered housing which does not impair scenic values is essential to accommodate the increasing number of seasonal residents."

Design guides for the Ski Base Area specifically refer to condominium development, and stresses "do not build undersized facilities."

It seems reasonable to conclude that the writers of the General Plan felt there was a wide range of overnight accommodations that would be acceptable in the Base Area. Reference to "seasonal residents" would further seem to indicate that a strict limit on length of visitor stay was not anticipated.

Employee housing and the hotel/motel density bonus are two additional aspects of overnight accommodations that must be considered. Employee housing will become necessary as more development occurs in the Base Area, and will help reduce traffic on Bridger Canyon Road. Employee housing should be located outside of the central base area commercial district, and should not be considered as using density rights (which are only for public overnight accommodations). All proposals for employee housing should be reviewed through the conditional use permit procedure and should have provisions to ensure that all occupants are employees in the Base Area and not members of the general public.

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. Bonus units are not counted against assigned development rights.

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. It is further the intent of this Plan to ensure that water, sewer and land capabilities are adequate for proposed uses. To meet these intents, locational standards, specific development standards, and a reserve system for development rights are set forth in the Bridger Canyon Zoning Regulation.

Overnight accommodations are defined in Section 3.34 of the Bridger Canyon Zoning Regulation. Overnight accommodations include hotels, motels, hostels, cabins, bed and breakfast inns and time-sharing units, and require the use of a reservation and check-in facility. Of the overnight accommodations, hotels and motels are eligible for a density bonus if the criteria set forth in the Zoning Regulation are met. Recreational housing has no restrictions on the length of stay; is not eligible for the hotel/motel density bonus; is a dwelling unit with a kitchen and bath(s); and must be clustered. (Amended: County Commission Resolution No. 1995-46).

Development of accommodations/housing should be most dense near the commercial area and base facilities. Development should then become less dense as it approaches the boundaries of the Base Area and is thus adjacent to lands zoned for recreation or very low density residential. To meet these objectives, two methods are set forth in the Zoning Regulation. First, the location of overnight accommodations/recreational housing is allocated to specific zones. Second, setbacks and vegetation requirements are set forth.



To ensure that the Base Area does not develop exclusively for recreational housing, a cap on the number of recreational housing units is set forth in the table below. Because the Bridger Canyon General Plan is designed to allow 3,000 persons in ski area accommodations, population is allocated to each development right. The table shows the number of units allocated for recreational housing, total population allocated and population allocated to recreational housing.

#### DEVELOPMENT RIGHTS ALLOCATION

<u>OWNERSHIP</u>	<u>APPROX. ACRES</u>	<u>UNITS UNDER BASIC ZONING</u>	<u>REC. HOUSING</u>	<u>OVERNIGHT UNITS</u>	<u>RESERVE OVERNIGHT</u>
360 Ranch			50****		
Tract 1					
Financial Dev. Corp.	32.5	1	****	23	26
Tract 2					
Crosscut Ranch	61.5	1	****	5	6
Tract 3					
Simkins and Haggerty	80.0	4	****	90	103
Tract 4					
Montana Blesco North	20.0	1	****	52	59
Tract 5					
Montana Blesco South	65.5	1	****	41	47
Bridger Bowl**	87.0	1	16	23	25
Hepburn	3.5	1	2	2	3
Lachenmaier	25.0	1	13	17	20
Bridger Pines***	29.0	1	---	---	---

\*\* Ownership of two separate parcels

\*\*\* Previously developed for 60 units

\*\*\*\* The 50 Recreational Housing Development Rights granted to the 360 Ranch Corporation owned properties can be used within Tracts 1-5.

(Amended: County Commission Resolution No. 1995-25).

(Amended: County Commission Resolution No. 1996-4).

(Amended: County Commission Resolution No. 1999-01 on January 26, 1999).

Twenty-five percent (25%) of all dwelling units and twenty-five percent (25%) of the population are allocated for recreational housing. Forty percent (40%) of the remaining overnight development rights and population allocation are held in reserve until it is shown that water, sewer, and land capabilities are adequate for their use. Population and housing type information is required as part of the development review procedure set forth in the Zoning Regulation. This allocation system should be reviewed for its effectiveness, and modified, if necessary, when any property owner meets their allocation of recreational housing. The review shall analyze whether recreational housing is being used on a temporary basis or for year round, permanent residences.

#### Open Space

Bridger Canyon is an area of unique natural beauty with low population density. Many of the goals of the Bridger Canyon General Plan are directed toward preserving this special atmosphere of the Canyon. As stated earlier, the goals and objectives of this Plan are also aimed at conserving the natural resources within the Base Area and in Bridger Canyon.

To further these goals, various areas are designated on the Plan to remain as open space and to be retained in a natural state. Recommended locations for land to be retained in a natural state include a buffer strip along the Bridger Canyon Road and the road into the ski area. This buffer strip will make it possible to screen development.

A second area which should be kept in a natural state is along all streams and ponds. This will protect the water quality of the streams.

### Recreation

The development of quality year-round recreational activities within the Base Area is one of the goals of this Plan. Recreation is the reason for the existence of the Base Area. Areas which are designated for Recreation on Map 8 are generally those with severe soils limitations. These lands are not suited for development without further soils testing, but could be used for recreation. Appropriate uses would include ski trails, hiking, horseback trails, etc. Non-motorized recreation uses are encouraged in the Base Area, as these types of uses are more compatible with the atmosphere of the Base Area and the adopted goals and objectives.

Bridger Bowl's lift facilities are presently located in areas designated for recreation and commercial use. Should Bridger Bowl move its ski base facilities to the existing Bridger Lift facilities, it would no longer be located in the area covered by the Base Area Plan. If the move does occur, consideration should be given to expanding the Base Area boundaries to include Bridger Bowl's base operation. However, no additional density units should be allowed.

### Housing

The areas shown for housing are the sites of either existing housing or are subdivided for housing. The underlying zoning for the Base Area is one (1) dwelling unit per forty (40) acres, with one dwelling unit per twenty (20) acres through the standard P.U.D. process of the Zoning Regulation or with those development rights allocated to the individual tracts through the Base Area P.U.D. process of the Zoning Regulation. The allocation of development rights through the P.U.D. process for recreational housing and overnight accommodations in the Base Area is 25% recreational housing and 75% overnight accommodations. This allocation is consistent with the goals of this Plan to encourage the development of high density overnight accommodations in the Base Area.

(Amended: County Commission Resolution No. 1995-25).

### Employee Housing

Providing affordable housing for employees is a problem common to recreation areas. However, the Bridger Bowl Base Area is located within a reasonable commuting distance of Bozeman, which is where the majority of Base Area employees live. To provide a choice for seasonal employees, the Zoning Regulation requires that employers provide rental housing for 10% of their employees.

Employee housing is required to meet a number of standards. It is to be located in dispersed rather than concentrated locations and must meet appearance standards for the Base Area. Employee housing is to function and have the appearance of multiple unit housing rather than single units.

In addition, employee housing can only be leased and not sold. Studio or efficiency and one bedroom units are allowed. Maximum and minimum sizes are specified. Employee units are only for the use of those who work in the Base Area and not the general public.

The requirements for employee housing are intended to have a certain amount of flexibility. Employers may choose the mix of studio/ one bedroom units that will be provided. Housing does not have to be located on the job site, but must be within walking distance or served by a shuttle service.

Employee housing must be provided to meet peak seasonal demand. However, employers may enter into agreements with other employee housing providers to meet the requirements of the Regulation. For example, if a summer only use were proposed, the developer could contract to use employee housing that is only occupied during the winter.

## Roads

The roads within the base area are basically proposed as shown on Map 7. The arterial access to the area will continue to be served by the existing single access road from the Bridger Canyon Road. From this main road, various collector roads are shown to and through development areas. In most cases, existing roads will be utilized to eliminate the construction and disturbance involved in road building. It is also important to minimize stream crossings and hillside cuts because of the increased potential for degradation. Many of the soils in the area are very susceptible to erosion. Access roads should also be upgraded to a county standard, providing appropriate roads and right-of-way widths, adequate ditches, and culverts to carry runoff.

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.

Access to the Simkins and Haggerty, Lachenmaier and Montana Blesco property is proposed to utilize the existing access road possible looping west and continuing back to the main road below or east of the parking lot.

The access to the Crosscut Ranch, Financial Development Corporation, Bridger Bowl (formerly Pinkerton) and Montana Blesco property would utilize the two existing accesses. The one present access is off the ski area access road and the other is from the Bridger Canyon Road near the Forsythe Home.

Access to the ski base itself would continue as now existing with the clockwise flow in the present parking lot past the base facilities and down in front of the St. Bernard and any other commercial development.

Another option shown on the plan is an additional road to serve the commercial area on the north side. This would allow access to the commercial development with employee and customer parking on the north side instead of having people using the ski area parking. The possible problems with the construction of this road are the location in the stream influence area and the grade of the present area. If these aspects could be overcome, the construction of the road would be a desirable feature. If Bridger Bowl should move its base further up the hill, a road system would be necessary. The existing road used only in the summer could be improved to County standard, and form a loop system which utilizes an existing easement to the south of the existing base. This road is also shown on Map 7.

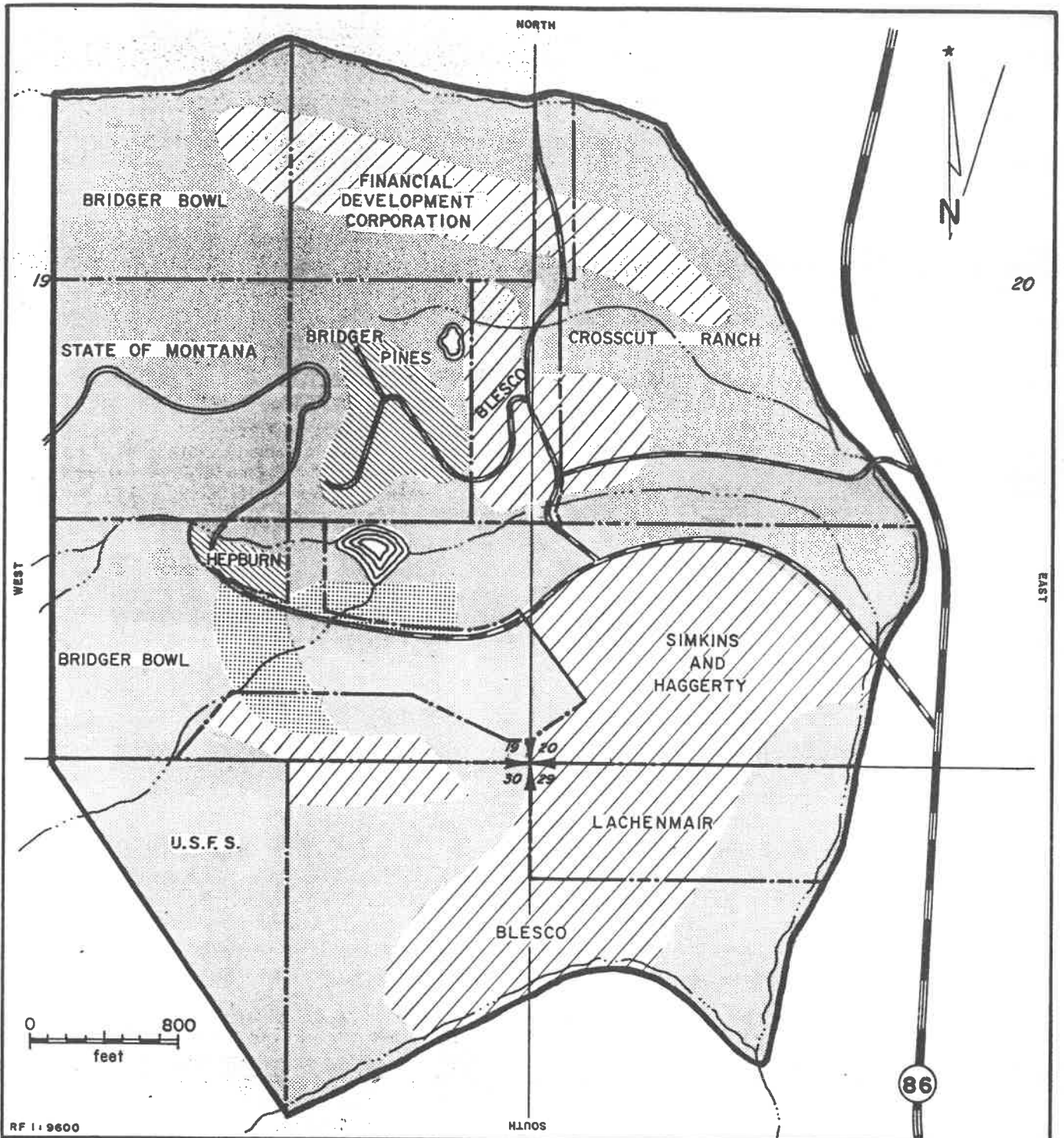
The road plan shown on Map 7 reflects the requirement in the Subdivision Regulations that newly subdivided parcels must provide suitable access to neighboring land. Access concerns are a part of the process when a development proposal is reviewed.

Besides the basic road system for the area, other transportation related issues should be touched on. The most important one is dealing with the overnight facilities access to the ski area. If the area ever were developed with 800 units or even half that, there would be a severe problem if all the people drove from their overnight accommodations to the ski area parking to go skiing.






The best solution seems to be a shuttle service or a ski lift to transport people from their accommodations to the ski base.

The last thing that should be briefly mentioned in this section is that of busses and bus transportation. Bussing should continually be encouraged and expanded. The basic concept not only complies with new energy policies, it also complies with the Bridger Canyon General Plan by allowing continued intensive recreational use without leading to the eventual over capacity of the Bridger Canyon Road. Therefore, the bussing program is a very positive aspect that should be encouraged.

map 8

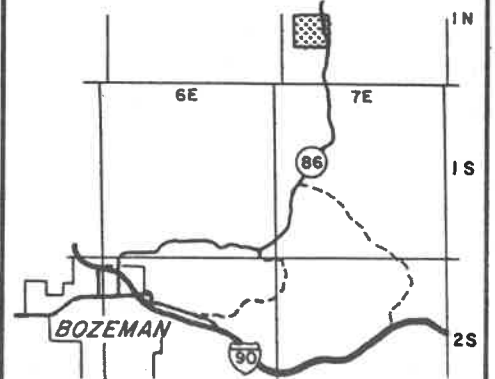


**SUGGESTED LAND USE LEGEND**

-  COMMERCIAL
-  HOUSING
-  OPEN SPACE
-  OVERNIGHT
-  RECREATION

**MAP 8**

**VICINITY SKETCH**



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