

# **GUNNISON COUNTY PLANNING COMMISSION**

REVISED AGENDA: MARCH 17, 2006

- 8:30 a.m.**
- **Call to order; determine quorum**
  - **Approval of Minutes**
  - **Unscheduled citizens:** A brief period in which the public is invited to make general comments or ask questions of the Commission or Planning Staff about items which are not scheduled on the day's agenda.
- 8:45 a.m.**     **Overlook Trail and Oil and Gas Regulations,** Planning Commission executive session with County Attorney
- 9:00 a.m.**     **Thornton Estates Subdivision, Deloray, LLC, represented by David Leinsdorf,** continued joint public hearing/no action, Sketch Plan for 27 single-family lots on 13.57-acres, Tract M-1, Spring Meadows Subdivision; located approximately two miles north of the City of Gunnison, west of Highway 135, east of Spring Meadows Drive
- 10:30 a.m.**     **Shady Island Subdivision, Verzuh Ranch LLC, represented by David Leinsdorf,** work session/no action, Sketch Plan, request for 18 single-family residential lots, north of the City of Gunnison at 2776 Highway 135
- 11:30 a.m.**     **Richard Landry,** work session/possible action, Sketch Plan, development of a commercial year round resort, located on 35-acres, approximately 50 miles southwest of the City of Gunnison, west of Highway 149
- Noon**            **Lunch**
- 1:00 p.m.**     **Gunnison Energy Corporation, represented by Lee Fyock,** public hearing/no action, request for four natural gas exploration wells, located in the West Muddy area, west of State Highway 133
- 2:00 p.m.**     **Wyman,** public hearing/no action, request for commercial woodworking shop in a detached structure, at 1397 West Denver Avenue
- 2:30 p.m.**     **SG Interests I, Ltd., represented by Lynn Garner, Nika Energy Operating,** continued public hearing/no action, request for 8 exploratory natural gas wells, located in the West Muddy area, west of State Highway 133
- 3:30 p.m.**     **Horse Meadows Subdivision, represented by Jessica Stone,** work session/no action, preliminary plan presentation, subdivision of 48.56 acres into ten single-family residence lots and one common open space area of 7.22 acres, north of the City of Gunnison, north of Seneca Drive and east of Chekwa Way
- 4:30 p.m.**     **Horse River Ranch, Summerset Land Group, Inc., represented by Dick Bratton,** work session/possible action, approval of "Overlook Trail", constructed on the Horse River Ranch (35-acre) development, north of the City of Gunnison, west of Ohio Creek Road;

**Adjourn**

**GUNNISON COUNTY PLANNING COMMISSION**  
**Regular Meeting Minutes**  
**March 17, 2006**

The Gunnison County Planning Commission conducted a regular meeting March 17, 2006, in the Commissioners' Meeting Room In the Blackstocks Government Center. Present were:

Chairman-Dave Houghton	Director of Planning-Joanne Williams
Vice-Chairman- Jeff Wilkinson	Assistant Director of Planning-Neal Starkebaum
Commissioner- Ramon Reed	Planning Tech-Cathie Pagano
Commissioner- Ian Billick	Administrative Assistant-Beth Baker
Commissioner- Richard Karas	Others present as listed in text
Commissioner-Mike Potoker	
Commissioner-Nick Lypps	

Chairman Dave Houghton determined there was quorum present and opened the regular meeting of the Gunnison County Planning Commission, March 17, 2006 at 8:30 A.M.

**APPROVAL OF MINUTES:**

**MOVED:** by Billick seconded by Reed to approve the minutes of February 3, 2006 as amended. The motion passed unanimously.

**MOVED:** by Reed seconded by Karas to approve the minutes of February 17, 2006 as amended. The motion passed unanimously.

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**PLANNING COMMISSION EXECUTIVE SESSION:**

**Moved:** by Houghton, seconded by Potoker for the Commission to go into executive session with County Attorney David Baumgarten telephonically and Assistant Planning Director Neal Starkebaum for the purpose of discussing Horse River Ranch, Summerset Land Group, Inc., and Oil and Gas regulations. Motion passed unanimously.

The Commission went into executive session at 8:30 a.m. *Executive sessions of the Gunnison County Planning Commission are conducted as per C.R.S. 24-6-402(4). This specific session was conducted as per C.R.S. 24-6-402(4)(b).*

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Attorney Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402 (2)(d.5)(II)(B), I attest that I am the Gunnison County Attorney; that I represent the Gunnison County Planning Commission ; that I attended all of the above referenced executive session; that all of the executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4) and that, because in my opinion all of the discussion during the executive session constituted a privileged attorney-client communication, no record of the executive session was required to be kept and no such record was kept.

Date: March 17, 2006

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David Baumgarten  
Gunnison County Attorney

Chairperson Statement Regarding Executive Session

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Pursuant to C.R.S. 24-6-402(2)(d.5)(II)(B), I attest that I am the Chairperson of the Gunnison County Planning Commission; that I attended all of the above referenced executive session; and that all of that executive session was confined to the topic authorized for discussion pursuant to C.R.S. 24-6-402(4).

Date: March 17, 2006

\_\_\_\_\_  
David Houghton, Chairperson  
Gunnison County Planning Commission

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The Board came out of executive session at 9:05 a.m. Chairperson Houghton stated that the discussion had remained on the topic of the Horse River Ranch, Summerset Land Group, Inc., and Oil and Gas regulations.

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**THORNTON ESTATES SUBDIVISION:** The Commission held a continued joint public hearing to review the Thornton Estates Subdivision Sketch Plan. Applicant Mark Schumacher and Attorney David Leinsdorf were present to represent Deloray, LLC. They discussed the Sketch Plan for 27 single-family lots on 13.57-acres, Tract M-1, Spring Meadows Subdivision; located approximately two miles north of the City of Gunnison, west of Highway 135, east of Spring Meadows Drive.

Board Members Jim Starr, Hap Channell and Paula Swenson were present.

Commissioner Richard Karas requested a ruling on his ability to participate in this application. Chairman Dave Houghton noting Karas had been present for the previously held meetings authorized Karas's participation.

Houghton outlined the issues the Commission had directed the applicant to address at the last meeting;

- Density –number of units 27- 23 or 48
- Previous approval
- Verify the legal issues raised by attorney Trezise's letter
- The covenants – transfer of building rights, subdivision, cistern
- Entrance
- Clarify ditch location and set backs
- Building envelopes
- Water issues augmentation
- Permit renewal
- Water treatment crossing threshold.
- Wetlands
- Big picture on trails
- Fencing
- Single family occupancy requirement
- City of Gunnison letter

Commissioner Ramon Reed inquired whether the County Attorney had been able to address the issues previously presented by Attorney Art Trezise. Applicant's Attorney David Leinsdorf said he had not been able to reach the County Attorney.

Applicant Mark Schumacher said he has offered to reduce the number of lots to 23 to more closely match the density of North Elk Meadows.

The Commission reviewed a letter written by applicant's Attorney, John McClow, concerning the status of the protective covenants of Spring Meadows Subdivision. McClow determined the 1998 instrument used to amend the covenants was ineffective in amending the 1978 covenants, and in his opinion the 1978 covenants ceased to have any further force or effect on October 12, 1998; at which time they attempted to amend the covenants. Spring Meadow's Attorney, Art Trezise, said Schumacher's warranty deed states he takes title subject to the covenants in question. Trezise said he will submit a written response after reviewing McClow's letter dated March 8, 2006. Trezise's response will be reviewed by the County Attorney.

Resident of Spring Meadows, Terry Lennon, said previous owner of the parcel, Harold Ross, had said he was not going to pursue the development of the 48 units he had been approved for.

Assistant Director of Planning, Neal Starkebaum, commented he has spoken to the County Attorney about the previous approval for 48 units. He confirmed there is a standing County approval allowing for the development of 48 town home units; as identified in the Spring Meadows subdivision approval. Schumacher said there are two options; the application now being discussed or the 48 units previously approved. Leinsdorf added this is in effect an application to, "down zone" the property because of the lesser number of units being proposed.

Commissioner Mike Potoker acknowledged Schumacher's offer to reduce the number of lots to 23 is significant. Trezise said 23 units was not a large enough reduction; stating the lots are not really compatible in size to the adjacent lots. Commissioner Ian Billick observed the proposed subdivision will provide open space and the adjoining Spring Meadows subdivision does not. Potoker pointed out with the addition of the new sewer line extension, proposed density might be appropriate. Leinsdorf commented with the proposed reduction in the number of lots and increasing the size of the lots this subdivision would be substantially similar. Developer of Mountain Meadows, Marilyn McGill, replied the Mountain Meadows lots are larger and Mountain Meadows includes six acres of open space. Schumacher said the Mountain Meadows lot adjacent to Thornton Estates subdivision is a pond making it a larger buffer zone. Commissioner Nick Lypps questioned what part of the open space is usable and what is not.

Karas requested the County Attorney's interpretation of "substantially similar." Potoker agreed compatible and substantially similar are issues that will have to be tackled. Lypps observed there is different density on all sides. Board Member Hap Channel suggested the total number of lots should be looked at. Leinsdorf agreed the opinion of the County Attorney should be considered.

Resident of Spring Meadows, Tom Rizer, said the lots to the east and south of Thornton Estates are not substantially similar. Potoker commented the adjacent subdivision, Abril Meadows, allows for two residences per lot.

Houghton queried the Commission asking if the applicant has reached "substantially similar." Reed said it is not black and white issue and it will require interpretation. Karas described the densities on each boundary of the property; the West boundary is the issue, the North boundary is similar in density, the East boundary density is not very different, the South boundary is different but the owner is Schumacher and he is not objecting. He reiterated the need for the County Attorney's opinion. Potoker remarked this has been addressed in many different ways in the past, but now there is a sewer line and it could imply more density. He does not think the proposed density is way off or incompatible. Houghton concluded in terms of lot sizes net or gross it fails but with the boundary approach it comes close and with that approach it could be achievable; creating the effect of one house to one house. Billick asked Starkebaum how substantially similar has been looked at in the past. Starkebaum replied it has been looked at in many different ways by various Commissions, depending on the project. Billick remarked substantially similar was unlikely but he could conceivably look at the property borders approach previously detailed by Karas. Billick continued some of the issues are density and the cumulative impacts of more people. Lypps felt it is closer because of the sewer line but it is not substantially similar. Channell remarked the applicant is getting closer but he is still concerned with the potential density and the impacts of the people, cars and animals.

Billick questioned whether 13 acres was too small to achieve effective clustering. Potoker questioned if this proposal is clustered. Starkebaum said it could be considered clustered on the perimeter. Audience member, Shelly Pierson, urged the Commission to look closely at clustering; suggesting clustering can have a negative impact. Leinsdorf quoted the *Gunnison County Land Use Resolution's* definition of clustering. Houghton asserted there is flexibility in the definition and was not convinced this is not clustered. Billick remarked clustering is a tool to achieve something and it can provide a way to achieve the desired outcome. Reed reiterated there is a need to rethink what clustering is and what the purpose of clustering is in relation to a development proposal. Potoker said it also depends on the features of the property.

Schumacher asked for direction from the Commission. Houghton summarized the proposal is close using the boundary model but still off using the density model. He advised Schumacher to look at both of those models, consider less density on the Carroll boundary and maybe provide more density on the Abril Meadows side. Ginny Garza representing, developer of Abril Meadows, April Asta, disagreed with Houghton's suggestion of more density on the Abril Meadows side. Reed recognized the use of central utilities could allow greater density. Karas concurred with Houghton and was not bothered with boundary conditions but was concerned with the traffic implications of greater density. Potoker suggested the density does not have to be exactly the same; adding shifting of some of the lots could make it more compatible. He reiterated the new sewer line extension allows some justification for the proposed density. Lypps urged the applicant to look at reducing the density.

The Commission summarized their concerns:

06 March 17 PC Minutes  
06 April 07 PC Approved

- Reduce density to further reflect the adjacent properties
- Or look at reconfiguring the lots to achieve clustering
- County Attorney's interpretation of substantially similar and his opinion of the validity of the Spring Meadows covenants

Houghton continued the joint public hearing to April 7, 2006 at 1:00 P.M., with the approval of the applicant; noting continued public interest as the reason for the continuation.

**SHADY ISLAND SUBDIVISION:** The Commission held a work session with applicant Bill Lacy and Attorney David Leinsdorf representing Verzuh Ranch LLC. They reviewed their request for 18 single-family residential lots, north of the City of Gunnison at 2776 Highway 135.

Commissioner Nick Lypps recused himself citing a conflict of interest.

Chairman Dave Houghton directed Richard Karas to listen to the tape of the joint public hearing; stating Karas would then be eligible to participate in this application.

Applicant Bill Lacy summarized the changes they have made since the last meeting with the Planning Commission. They have moved the access to the south approximately 40 ft. to lessen the impact to the adjacent owners. A tree survey was done and a new map was prepared showing the location of each tree currently existing on the property. They will go to the Board for a waiver with the Commission's and Public Work's support of a waiver of road standards, for snow storage and emergency access to protect existing trees. Public Works representative, Alan Moores, responded they would have to see the current plans.

Planner Cathie Pagano advised the Commission Colorado Department of Transportation (CDOT) had submitted a letter to Planning stating in response to the applicant's new layout, they will not require a new highway access permit,.

Leinsdorf submitted a copy of page three and four of the Gunnison River Banks Ranch covenants stating the applicant is willing to adhere to the same conditions concerning the floating of the river. He explained it will then become a part of the approval and part of the covenants.

Lacy said they have not determined what will happen to the house on the property. Karas requested a letter from the Fire District concerning the new configuration.

Lacy agreed to the construction hours of 7 A.M., to 7 P.M., Monday through Friday, 7 A.M. to 4 P.M. on Saturday and no work hours on Sunday. Adjacent restaurant, Garlic Mike's, was discussed and the Commission suggested no work after 5 p.m. would be preferable on those lots that are close to the restaurant.

Pagano reviewed the Division of Wildlife (DOW) concerns and comments; deer and the threat from household pets, revegetation should take place a.s.a.p, fencing should be minimal and wildlife friendly and trash containers should be bear proof.

Commissioner Ramon Reed expressed concerns with open space and the reduced access to the river. Lacy suggested moving lots would allow for more open space. Leinsdorf quoted the definition of open space from the *Gunnison County Land Use Resolution* (LUR) stating this proposal does qualify as open space. Reed disagreed pointing out there is very little access to the river for the owners. Houghton also disagreed and commented no access to the river could potentially create conflict and trespass issues. Commissioner Ian Billick agreed all the residences should have access to the river. Lacy agreed to consider restoring the trail to access the river. Houghton said there should also be a trail along the side stream for access to lots three, four, five, six, seven and eight.

Houghton summarized the outstanding items of concern;

- Access to the river
- Open space
- Revised lot layout
- Construction hours
- Float river language
- DOW recommendations
- Restore the trail and maybe add a trail

- Easement to be considered

Billick encouraged the applicant to make his logic explicit as to concept of substantially similar density. Leinsdorf said the adjacent Clines Homesites is denser than this proposal.

Potoker said visual impacts from the Highway will be important and should be addressed at Preliminary Plan.

The Commission directed staff to prepare a draft approval recommendation of Sketch Plan for the next meeting with the applicant.

**EAGLE RIDGE RANCH/ COMMERCIAL:** The Commission held a work session with applicant Richard Landry representing Eagle Ridge Ranch. They reviewed the Sketch Plan, for development of a commercial year round resort, located on 35-acres, approximately 50 miles southwest of the City of Gunnison, west of Highway 149.

Commissioner Richard Karas advised the Commission he was not eligible to participate because he had not attended all the meetings.

Chairman Dave Houghton confirmed Landry had addressed the issues that were of concern to the Commission.

Commissioner Ramon Reed asked for clarification of the potential uses of the new house that will be built. Starkebaum explained the proposal allowed for either two 672 sq. ft. cabins or one 4000 sq. ft. house on the site where the travel trailer is currently located; the trailer will be removed. Landry thought one structure would be more limiting. Reed suggested restricting the house to a single family residence not a rental for the resort. Landry would rather limit the size of the house than the uses. The Commission suggested the new house be limited to 2000 sq ft. and Landry agreed to a 2000 sq ft rental unit with no limitation on the number of bedrooms. The Commission reviewed the revised map.

Houghton seated Reed for the vote.

**MOVED:** by Potoker seconded by Reed to approve the sketch plan recommendation of LUC- 2005-35 as amended. The motion passed unanimously.

*“A. **SKETCH PLAN IS EXPLORATORY.** Sketch Plan review provides an opportunity for the County, the applicant, and the public to engage in an exploratory discussion of a proposed land use change, to examine alternative approaches to development of the property, to participate in a process of joint planning and negotiation between the County and the applicant to promote development and land use change which is consistent with the intent and purposes of this Resolution.*

*“1. **SKETCH PLAN DESIGN CONCEPTS GUIDED BY THIS RESOLUTION.** Requirements of Sketch Plan direct the applicant to review specific sections of this Resolution in order to be able to submit a plan that has addressed issues important to the County. It should be expected that the proposal will evolve during Sketch Plan review.*

*“2. **ENGINEERED DESIGNS AND DETAILED PLANS NOT REQUIRED OR ACCEPTED AT SKETCH PLAN.** To encourage the consideration of alternatives and to allow the Sketch Plan to evolve, detailed engineering plans and other overly detailed information shall not be required or accepted by the County.”*

**Section 4-504: A., Gunnison County Land Use Resolution**

*“...Compliance of the proposed land use change with these standards shall be determined broadly and conceptually during Sketch Plan review, in detail during Preliminary Plan review, and definitively during Final Plan Review. “*

**Section 4-503, Gunnison County Land Use Resolution**

*“B. **PRELIMINARY PLAN PROVIDES DETAILED SOLUTIONS AND DESIGN.** Preliminary Plan review requires the applicant to formulate detailed, designed/engineered solutions to the issues and concerns identified during Sketch Plan review, and to address, in a site-specific manner, all other issues that are relevant to the Preliminary Plan. The burden in the Preliminary Plan review is on the applicant to provide detailed information and mitigation proposals for evaluation.”*

**Section 4-504: B., Gunnison County Land Use Resolution**

## PROJECT SUMMARY:

Richard Landry, as authorized by the landowner, Landry Ventures, LLC, Hubert and Margaret Landry, has submitted a Sketch Plan, dated September 7, 2005. This process is the first step of a multi-tiered review of an application seeking approval to develop the property as a year-round resort to be known as the "Eagle Ridge Ranch". The 35-acre subject parcel is located approximately 50 miles southwest of the City of Gunnison, 10 miles north of Lake City, on the west side of Colorado State Highway 149, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 11 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 14, Township 45 North, Range 4 West, N.M.P.M. The area to be developed is on a bench located above the North Fork of the Gunnison River and Colorado State Highway 149. The site is relatively flat, containing a mix of sagebrush and pasture, intermixed with Ponderosa pines along the edges of the pasture. As the review evolved, the applicant has amended the proposal, based upon comments from the public and Planning Commission, and those revisions are noted in this recommendation.

The initial proposal for the development of the Eagle Ridge Ranch resort, submitted in the Sketch application included:

1. A Site Plan – titled "Eagle Ridge Ranch", drafted by Richard Landry, dated August 2005.
2. Development of short-term overnight rental units, to include:
  - Nine rental cabin sites, in two areas; one area of five cabins, with kitchens, with a shower house and laundry, on the northern end of the property and one area of four cabins, with kitchens, in the central portion of the property, east of the existing road; constructed in two phases. The first phase would be the construction of the four cabin sites
  - Use of an existing residence, located on the southern end of the property
  - Two tepee sites, for overnight camping, located north of the four cabins
  - An existing travel trailer, located under a covered structure, west of the existing residence, to be used as the resort office
  - Use of the existing residence for short-term rental
3. A common outdoor recreation area, (volleyball, horseshoes, picnics or gatherings, to include a covered pavilion.
4. Installation of infrastructure, to include:
  - Drilling of a new well, with central water system for the five northern cabins and shower house/laundry
  - Central water system from the existing well for the four central cabins
  - Installation of individual sewage disposal system(s) for cabins
  - Road improvements to existing access road
  - Dry hydrant on proposed pond
  - Utility installations.
5. Equestrian facility for stabling of horses for overnight guests and guided horseback trips, open to the general public, with guided horseback trips originating from the property. An existing tack room and covered corral area would provide the central equestrian facility.
6. The pasture area would continue to be irrigated for horse pasture.
7. Construction of a small pond, to provide for fishing and for fire suppression.

Based upon public comment and discussion with the Planning Commission, the applicant, as identified in the following letters, has amended his proposal for the development of the Eagle Ridge Ranch:

Letter of November 13, 2005 from applicant Richard Landry, detailing changes to the plan as it was originally submitted.

Letter of November 28, 2005 from applicant Richard Landry, detailing changes to the plan as it was originally submitted.

Letter of January 14, 2005 from applicant Richard Landry, detailing changes to the plan as it was originally submitted, with amended site plan.

Letter of January 26, 2005 from applicant Richard Landry, detailing changes to the plan as it was originally submitted, with amended site plan.

Elements amended by the applicant, referenced in the above letters, for the development of the Eagle Ridge Ranch, include:

1. An Amended Site Plan – titled "Amend Plan - Eagle Ridge Ranch", drafted by Richard Landry, dated January 2006.
2. Elimination of the northern five cabins and laundry/shower house, thereby eliminating the proposed second well and individual sewage disposal system.

3. Elimination of the two tepee sites for overnight camping.
4. The addition of one cabin site to the area of the four proposed cabins, (each cabin limited to 672 square feet, 24' x 28') in the central portion of the property, east of the existing road, for year round use. (Total of five cabins)
5. Common outdoor recreation area, for picnics or gatherings, to include a covered pavilion, with tepee (not for overnight camping). Installation of vault privy at recreation area.
6. Installation of infrastructure, to include:
  - Central water system from the existing well for the four eastern cabins
  - Installation of individual sewage disposal system(s) for cabins
  - Road improvements to existing access road
  - Dry hydrant on proposed pond
  - Utility installations
7. Removal of the travel trailer and covered structure. Replacement with either two small cabins, (each limited to 672 square feet, 24' x 28') or one larger rental house (max. 4000 square feet).
8. Equestrian facility for stabling and pasture for horses of overnight guests. An existing tack room and covered corral area would provide the central equestrian facility, with a parking area for horse trailers.
9. Construction of a small pond, to provide for fishing and for fire suppression.
10. Development of the resort in three phases:
  - a. Construction of the five cabin sites (each limited to 672 square feet, 24' x 28'), with kitchens, located in the central portion of the property, east of the existing road.
  - b. Construction of outdoor recreation area, for picnics or gatherings, to include a covered pavilion, and tepee (No overnight camping). Installation of vault privy at recreation area.
  - c. Construction of either two small cabins, (each limited to 672 square feet, 24' x 28') or one larger rental house (max. 4000 square feet), in the area vacated by covered trailer.
11. The pasture area would continue be irrigated.
12. The use of the resort as a venue for commercial weddings is not a part of this request.
13. The existing residence will not be used as a short-term rental, in connection with the resort.

In summary, and for clarity, the Amended Sketch Plan contains:

1. An Amended Site Plan – titled “Amended Plan - Eagle Ridge Ranch”, drafted by Richard Landry, dated January 2006.
2. Development of year round short-term overnight rental units, five rental cabin sites, each with kitchen, (each limited to 672 square feet, 24' x 28') located in the central portion of the property, east of the existing access road.
3. Construction of a common outdoor recreation area, for picnics or gatherings, to include a covered pavilion, with tepee (not for overnight camping), and the installation of vault privy.
4. Removal of the travel trailer and covered structure. Replacement with either two small cabins, (each limited to 672 square feet, 24' x 28') or one larger rental house. At the March 17, 2006 Planning Commission the applicant agreed to reduce the maximum size of the house to 2000 square feet, with no restriction of the number of bedrooms.
5. Installation of infrastructure, to include:
  - Central water system from the existing well for the four eastern cabins.
  - Installation of individual sewage disposal system(s) for cabins.
  - Road improvements to existing access road.
  - Dry hydrant on proposed pond.
  - Utility installations.

6. Construction of a small pond, to provide for fishing and for fire suppression.
7. The pasture area would continue be irrigated for horse pasture.
8. Development of the resort in three phases:
  - a. Construction of the five cabin sites.
  - b. Construction of common outdoor recreation area, for picnics or gatherings, to include a covered pavilion, and tepee (No overnight camping). Installation of vault privy at recreation area.
  - c. Construction of either two small cabins, (each limited to 672 square feet, 24' x 28') or one larger rental house (max. 2000 square feet), in the area vacated by covered travel trailer.

In addition, the applicant has identified restrictions that would be placed upon the development to minimize impacts, identified as concerns of adjacent residents:

1. Noise – No use of ATV's, motorcycles, or snowmobiles would be permitted by guests at any time on the property. No maintenance or repair on ATV's, motorcycles, or snowmobiles will be permitted by guests on the property.
2. Lighting - Exterior lighting would be limited to one porch light, downward throw, completely shielded.
3. Trespass/Privacy - No guided horseback trips would originate from the property. No guest access, either pedestrian or equestrian, would be permitted to National Forest/Wilderness Area from the property. Equestrian facility limited to guests; no use by the public would be allowed.

The applicant will be required to identify in the Preliminary Plan submittal the specific restrictions, the instrument for identifying the restrictions to guests and the mechanisms for enforcement of the restrictions.

This review and recommendation incorporates, but is not limited to, all documentation submitted to the County and included within the Planning Department file relative to this application, including all exhibits, references and documents as included therein.

**WATER SUPPLY:**

The existing residence is currently served by an individual well, Colorado Division of Water Resources Permit No. 174036, drilled on March 3, 1994, permitted for the use of ground water limited to one single family dwelling, the irrigation of not more than one acre of home lawns and gardens and the watering of domestic livestock.

The development is proposed to be served by a central water system, with water provided by the existing well, re-permitted for commercial use.

In a letter of August 25, 2005, John R. Hill, Jr., Bratton & McClow, LLC, notes that:

“The ultimate replacement supply will be augmentation water purchase from the Upper Gunnison River Water Conservancy District (District) pursuant to Case No. 03CW49 which is pending in the District Court, Water Division No. 4 (Water Court). That case is a general plan for augmentation filed by the District to provide augmentation water users in the District, including the Lake “Fork drainage. The replacement supply in the District’s plan is a water service contract with the United States for water to be released from the Aspinnall Unit. In my opinion, the District will successfully pursue the application to decree. Pending entry of a final decree in Case No. 03CW49, augmentation for water users in Landry Ventures’ position is being accomplished through a Substitute Water Supply Plan under C.R.S. 37-92-308(4) approved by the State Engineer.

Landry Ventures will not have to file any application with the Water Court, it will be beneficiary of the decree being obtained by the District.

Landry Ventures’ proposed acquisition of augmentation water from the District will provide a lawful and adequate water supply for the project.”

The applicant has submitted estimated water demands for the development, and shall be required to demonstrate that the supply is legally and physically adequate in terms of quality, quantity dependability, and pressure for the development. This information is required in the Preliminary Plan submittal. The Planning Commission shall determine whether well testing is required.

**WASTEWATER TREATMENT:**

Wastewater will be treated by installation of individual sewage disposal systems. In a memo dated October 13, 2005, Richard Stenson, Environmental Health Official, noted that:

“On October 11, 2005 I conducted a Land Use Change site inspection for the proposal by Richard Landry to create a business at 35.077 A TRACT IN SE4SE4 SEC 11 & NE4NW4 SEC 14 45N4W #554819. During the inspection it was concluded that it is

feasible to develop a series of Gunnison County individual sewage disposal systems of the proposed cabins. Specific design for the system shall be done in accordance with the ISDS Regulations, part 15.

It should be noted that he is proposing "Tepee" sites. Each of the sites should be served by sanitary facilities if they are to be used as guest housing. Also, it is requested that the proposed recreation area have sanitary facilities."

**IRRIGATION DITCH:**

The owners hold a proportionate, undivided interest in and to the Copeland Elk Creek Ditch, and .25 cfs of water decreed thereto under Priority No. 16 in case No. 1319, with an adjudication date of November 1, 1905, Water Division Four, as identified in a Warranty Deed, recorded at Reception No. 547034, Gunnison County Clerk and Recorder, October 7, 2004.

**EASEMENTS:**

The owners hold a 10 foot wide easement for foot traffic, to the Forest Service Boundary, which is subject to conditions, as described in a Warranty Deed, recorded at Reception No. 547034, Gunnison County Clerk and Recorder, October 7, 2004.

**ADJACENT LAND USES:**

South: The applicant owns a 35-acre parcel with existing residence.

East: The parcel abuts State Highway 149. Across the highway is the Lake Fork of the Gunnison River and the eight lot Fourth of July Creek Estates.

North: A 54-acre property with an existing residence, owned by Ray & Anna Blaum.

West: A vacant 35-acre property, owned by Gerald Mos

Southwest: A vacant 35-acre parcel, owned by Douglas Tody.

**ONSITE VISIT:**

The Planning Commission visited the site as a group on October 20, 2005. The commission members walked the property and the viewed the existing structures, locations of the proposed cabins and the common recreation area.

**REVIEW COMMENTS BY OTHER AGENCIES**

**Gunnison County Fire Protection District:**

In a letter from Dennis Spritzer, Fire Marshal, Gunnison County Fire Protection District, dated September 23, 2005, he noted that,

"I have reviewed the sketch plan submitted by Richard A. Landry for fire protection and noted the following:

1. I was unable to determining from the plans submitted whether there will be adequate emergency vehicle access for this project. All access roads and private drives must meet all Gunnison County Road and bridge standards. If there are bridges, these must be able to carry all imposed loads of fire apparatus. Heaviest Gunnison Fire Apparatus is 42,000 Lbs or 21 tons.
2. The proposed dry hydrants shall be accessible year round for Fire Department use. This means Gunnison Fire Department water tenders shall be able to access this hydrant without any obstacles and with adequate space for maneuvering large water tenders. The hydrant thread type shall be compatible with Gunnison Fire Department water tender thread type. Diameter of all fittings shall also be compatible with all Gunnison Fire Department water tender fittings."

**Gunnison County Public Works Department:**

In a memo from Allen Moores, Gunnison County Public Works Department, dated March 2, 2006 he noted that:

"Our office has met with the applicant and discussed the road and right of way issues that will need to be addressed before our office could approved the planned development.

At this time our office has not received any plans on which to comment on.

We feel the Planning Commission should ask for comments from Sheriff Murdie in regards to the name of this proposal, and having duplicate names for developments."

Currently, there an existing development up Ohio Creek by the same name of this proposed development. The duplicate name of the development has been discussed with the applicant. This may necessitate a change in the name or modification to the name, so it does not create issues with emergency response.

**Colorado Division of Wildlife:**

06 March 17 PC Minutes  
06 April 07 PC Approved

In a phone conversation with staff, Lucas Martin, District Wildlife Manager, Colorado Division of Wildlife, December 7, 2005, he noted that:  
"I am familiar with the property and have no issues regarding wildlife or comments regarding the proposal."

#### **Gunnison County Environmental Health:**

In a memo dated October 13, 2005, Richard Stenson, Environmental Health Official, noted that:

"On October 11, 2005 I conducted a Land Use Change site inspection for the proposal by Richard Landry to create a business at 35.077 A TRACT IN SE4SE4 SEC 11 & NE4NW4 SEC 14 45N4W #554819. During the inspection it was concluded that it is feasible to develop a series of Gunnison County individual sewage disposal systems of the proposed cabins. Specific design for the system shall be done in accordance with the ISDS Regulations, part 15.

It should be noted that he is proposing "Tepee" sites. Each of the sites should be served by sanitary facilities if they are to be used as guest housing. Also, it is requested that the proposed recreation area have sanitary facilities."

#### **PUBLIC HEARING:**

All work sessions were open to the public and noticed by agendas published in local newspapers of general circulation, and by an e-mail notification list to those persons who have expressed interest in this application and submitted their email addresses to the Planning Department. Members of the public, both in support of and in opposition to the project, participated in those discussions; their comments are included in the public record of this application, as memorialized in Minutes for each meeting included within the Planning Department file.

A joint public hearing was conducted by the Planning Commission and Board of County Commissioners on November 18, 2005. Testimony that was presented and the full record of the hearing, including written letters and oral testimony, are hereby incorporated into this record; the minutes are attached to this Recommendation.

Substantial public comment was submitted, in written form, and the following letters or emails were entered into the public record:

Randy Willis, November 2, 2005, strongly in opposition to the request  
Gerald F. Johnson & Linda P. Lovegreen, October 28, 2005  
Doug Tody, Lindsay Davis, November 13, 2005, in opposition to the request  
Katheryn J. and Lee D. Teuber, November 9, 2005, in opposition to the request  
Stephen W. and Rebecca L. Firestone, November 9, 2005, in opposition to the request  
Phillip Virden, Lake City /Hinsdale Chamber of Commerce, November 16, 2005, in support of the request.  
Edward and Sarah Boettcher, November 14, 2005, in opposition to the request  
Ray and Anna Blaum, November 15, 2005, packet of information, in opposition to the request.  
Rebecca R. Thornton, M.D., November 17, 2005, in opposition to the request  
Gerald J. Mos, November 16, 2005, in opposition to the request  
Lake City Wine and Music Festival, Eric Nice, Events Coordinator, November 17, 2005 in support of request  
J. Wynne Breeden, November 17, 2005, in opposition to the request  
Scott Williams, November 23, 2005, in opposition to the request  
Elmo Robinson, email - November 21, 2005, in opposition to the request  
Elmo Robinson, letter - December 13, 2006 in opposition to the request  
Katheryn J. and Lee D. Teuber, December 13, 2005, in opposition to the request  
Rebecca R. Thornton, M.D., December 15, 2005, in opposition to the request  
Bob and Linda Inge, Rocky Top Lodge, December 14, 2005, in opposition to the request  
Doug Tody, Lindsey Davis, December 15, 2005, in opposition to the request  
Ray and Anna Blaum, December 16, 2005 in opposition to the request.

Catherine & Anthony Tarasewicz, Sportsman Outdoors & Fly Shop, October 27, 2005 supports the request  
Joe Marshall, Mayor of the Town of Lake City, October 26, 2005, letter of support  
Patrick and Christy Pickett, owners, Town Square Cabins, support the request  
Jeff Guthmiller, Lake City Auto & Sports Center, supports the request  
Paul Hudgeons, President, Silver river Inc., supports the request  
Bruce Vierheller, supports the request  
Lake City Wine and Music Festival, A. Danielle Worthen, Committee Member, December 5, 2005, retracting letter of support

In summary, issues identified in the letters, or raised during work sessions and the public hearing, have included, but are not necessarily limited to:

➤ compatibility with adjacent residential land uses;

- compliance of the proposal with locational and alternative locational standards;
- visual impacts, to adjacent residential sites,
- traffic impacts, horse trailer traffic and access onto Highway 149
- potential for noise pollution to adjacent property owners;
- impacts to property values of adjacent properties;
- light pollution, to adjacent property owners;
- suitability of other locations in and out of the Town, for this project;
- potential success and follow-through of enforcement of limitations by property owners and by the County.

**IMPACT CLASSIFICATION:**

By definition, this project is classified as a Major Impact project. Pursuant to Section 4-502 of the *Gunnison County Land Use Resolution*, this application is classified as a Major Impact. The Gunnison County Land Use Resolution involves a three-tiered process of review for Major Impact Projects: Sketch Plan, Preliminary Plan, and Final Plan, seeking a conceptual plan at the Sketch Plan level; an engineered plan that provides mitigation proposals at the Preliminary Plan level; a finalized design and supportive collateral at the Final Plan level. This application, then, is at the first of three review steps, and is the concept of this proposed development. Section 4-504: A. 2. specifically notes: “Engineered designs and detailed plans are not required or accepted at Sketch Plan. To encourage the consideration of alternatives and to allow the Sketch Plan to evolve, detailed engineering plans and other overly detailed information shall not be required or accepted by the County.” Pursuant to Sections 4-503 and 4-504, the applicant is required to submit a “detailed, designed/engineered solution to the issues and concerns identified during Sketch Plan review,” in the Preliminary Plan submittal.

**COMPLIANCE WITH APPLICABLE SECTIONS OF ARTICLE 5, GUNNISON COUNTY LAND USE RESOLUTION:**

**Section 5-102: *Locational Standards For Residential Development.***

Not applicable.

**Section 5-103: *Residential Density.***

Not applicable.

**Section 5-104: *Locational Standards For Commercial, Industrial And Other Non-Residential Development.***

The proposal is not located adjacent to a municipality or within a Three-Mile Plan Area of a municipality.

No determination can be made at this level of review that there is or is not an alternative site reasonably attainable within or adjacent to the Town of Lake City. A similar resort or business or alternative site that caters to a horse-oriented overnight resort that are currently for sale, or if a comparable site is available. Analysis based upon size of parcel needed, feasibility of necessary utilities and other infrastructure, and documentation of comparable sites is required to be submitted in the Preliminary Plan. Economic feasibility or practicality of comparable sites may be considered, but shall not be the deciding factor in determining suitability.

This location is not necessary because of specific circumstances including location of minerals, unique transportation needs or geologic conditions.

As noted, testimony has been submitted about whether the proposed location is “particularly well-suited for the specific use” and whether the proposed use is compatible with uses established in the impact area.

The location is adjacent to single-family homesites and to vacant 35-acre parcels that can be developed as single-family homesites, and in a general area where there are residential homesites and larger acreages. Those uses could be significantly and adversely impacted by the uses proposed within this project; by the location and operation of commercial use abutting those lands; by the potential visual impacts, activity and noise. The applicant has proposed mitigation via design elements and restrictions on use. These specific proposals will be expanded upon and detailed within the required submittals of Preliminary Plan.

**Section 5-203: *Development in Areas Subject to Flood Hazards.***

The property is not located within areas subject to Flood Hazards.

**Section 5-204: *Development in Areas Subject to Geologic Hazards.***

The property is not located within areas subject to geologic hazards.

**Section 5-205: *Development In Areas Subject to Wildfire Hazards.***

The project area is located within the Gunnison Fire Protection District.

**Section 5-206: Protection of Wildlife Habitat Areas.**

In a phone conversation with staff, Lucas Martin, District Wildlife Manager, Colorado Division of Wildlife, on December 7, 2005, noted that: "I am familiar with the property and have no issues regarding wildlife or comments regarding the proposal." The Preliminary Plan will be sent to the Colorado Division of Wildlife, as a formal referral agency review.

**Section 5-207: Protection of Water Quality.**

There are no existing water bodies that will be impacted by the development. The existing Copeland Elk Creek Ditch irrigation ditch is above and west of the proposed areas of disturbance.

**Section 5-208: Standards For Development On Ridgelines.**

Not applicable.

**Section 5-209: Development That Affects Agricultural Lands.**

Not applicable.

**Section 5-210: Development Of Land Beyond Snowplowed Access.**

The site is not located beyond snowplowed access.

**Section 5-211: Development On Inholdings In The National Wilderness.**

The site is not located on a National Wilderness inholding.

**Section 5-212: Development On Property Above Timberline.**

This site is not located above timberline.

**Section 5-213: Road System.**

The applicant is required to meet with the Public Works Department before submittal of the Preliminary Plan engineered plans for the road design, as are required by this section. In a memo from Allen Moores, Gunnison County Public Works Department, dated March 2, 2006 he noted that:

"Our office has met with the applicant and discussed the road and right of way issues that will need to be addressed before our office could approved the planned development.

At this time our office has not received any plans on which to comment on.

We feel the Planning Commission should ask for comments from Sheriff Murdie in regards to the name of this proposal, and having duplicate for developments."

In addition, the applicant will be required to obtain an approved CDOT access permit, and the proposed access road will be required to constructed in compliance with standards for a commercial functional classification, in compliance with the County road and bridge standards.

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**Section 5-214: Public Trails.**

No public trail currently exists on the subject property, nor is there existing access to public lands. No trail is required by this Section.

**Section 5-305: Water Supply.**

There is no documented existing water supply system that can supply a source of water to this proposed development. The Sketch Plan submittal prepared by the applicant's attorney, in a letter of August 25, 2005, John R. Hill, Jr., Bratton & McCLOW, LLC, notes that:

"The ultimate replacement supply will be augmentation water purchase from the Upper Gunnison River Water Conservancy District (District) pursuant to Case No. 03CW49 which is pending in the District Court, Water Division No. 4 (Water Court). That case is a general plan for augmentation filed by the District to provide augmentation water users in the District, including the Lake "Fork drainage. The replacement supply in the District's plan is a water service contract with the United States for water to be released from the Aspinall Unit. In my opinion, the District will successfully pursue the application to decree. Pending entry of a final decree in Case No. 03CW49, augmentation for water users in Landry Ventures' position is being accomplished through a Substitute Water Supply Plan under C.R.S. 37-92-308(4) approved by the State Engineer.

Landry Ventures' will not have to file any application with the Water Court, it will be beneficiary of the decree being obtained by the District.

Landry Ventures' proposed acquisition of augmentation water from the District will provide a lawful and adequate water supply for the project."

The supply source is also required to provide water adequate for livestock watering and to ensure that landscaping shall be maintained, as may be required by Section 5-411: *Landscaping and Buffering*, Amounts shall be calculated using the irrigation water criteria in Section 5-305:5.a. (1.): *Estimated Demand*. Documentation of a legally and physically adequate supply of water, in terms of quality, quantity, dependability, and pressure for the development. is required to be submitted in the Preliminary Plan.

**Section 5-306: Sewage Disposal/Wastewater Treatment.**

The application proposes the use of individual sewage disposal systems. In a memo dated October 13, 2005, Richard Stenson, Environmental Health Official, noted that:

“On October 11, 2005 I conducted a Land Use Change site inspection for the proposal by Richard Landry to create a business at 35.077 A TRACT IN SE4SE4 SEC 11 & NE4NW4 SEC 14 45N4W #554819. During the inspection it was concluded that it is feasible to develop a series of Gunnison County individual sewage disposal systems of the proposed cabins. Specific design for the system shall be done in accordance with the ISDS Regulations, part 15.

It should be noted that he is proposing “Tepee” sites. Each of the sites should be served by sanitary facilities if they are to be used as guest housing. Also, it is requested that the proposed recreation area have sanitary facilities.”

Engineered plans for the installation of the individual sewage disposal system(s), including design, construction, maintenance and operation of which complies with the County's regulations and with the standards of the Colorado Department of Public Health and Environment is required to be submitted in the Preliminary Plan.

**Section 5-307: Fire Protection.**

The project is located within the Gunnison Fire Protection District. However, initial emergency response would come from Lake City, Hinsdale County, which has a mutual response agreement with Gunnison County. Comments were received from Dennis Spritzer, Fire Marshal, Gunnison County Fire Protection District, dated September 23, 2005, he noted that,

- “I have reviewed the sketch plan submitted by Richard A. Landry for fire protection and noted the following:
1. I was unable to determine from the plans submitted whether there will be adequate emergency vehicle access for this project. All access roads and private drives must meet all Gunnison County Road and bridge standards. If there are bridges these must be able to carry all imposed loads of fire apparatus. Heaviest Gunnison Fire Apparatus is 42,000 Lbs or 21 tons.
  2. The proposed dry hydrants shall be accessible year round for Fire Department use. This means Gunnison Fire Department water tenders shall be able to access this hydrant without any obstacles and with adequate space for maneuvering large water tenders. The hydrant thread type shall be compatible with Gunnison Fire Department water tender thread type. Diameter of all fittings shall also be compatible with all Gunnison Fire Department water tender fittings.”

The Sketch Plan proposes a pond to provide a water supply for fire suppression, with a dry hydrant. Clarification of the proposed size of the pond, dry hydrant fittings and access to the pond and dry hydrant for year round access, is required as part of the Preliminary Plan submittal.

**Section 5-308: Impact Fees and Dedications.**

There are currently no required impact fees or dedications required of this development.

**Section 5-403: General Site Plan Standards And Lot Measurements**

Additional design detail is required to be addressed in the Preliminary Plan.

**Section 5-404: Setbacks from Property Lines**

The proposed cabin sites meet the minimum setbacks from property lines.

**Section 5-405: Residential Building Sizes and Lot Coverages**

The proposed structures meet the requirements.

**Section 5-407: Installation of Solid Fuel-Burning Devices**

Not applicable.

**Section 5-408: Open Space And Recreation Area.**

As a Major Impact project involving commercial and/or industrial uses, this project is required by this Section to provide open space only by including landscaping elements as required by Section 5-411: *Landscaping and Buffering*, and setbacks from property lines as required by Section 5-404.

**Section 5-409: Signs.**

There are no signs proposed as part of the submitted Sketch Plan. Sign elements as allowed by this section may be proposed within the Preliminary Plan.

**Section 5-410: Off-Road Parking And Loading.**

The Preliminary Plan is required to show compliance with this Section. Details of parking are appropriately required at Preliminary Plan level of review.

**Section 5-411: Landscaping And Buffering.**

A conceptual landscaping plan proposes additional landscaping. This is required to be identified in more detail, including maintenance provisions, within the Preliminary Plan submittal.

**Section 5-412: Snow storage.**

The designated snow storage areas are required to be less than six feet wide and, to the maximum extent feasible, located adjacent to the area of the project site from which snow is to be removed. The storage area shall not be included in any parking area as required by Section 5-410: *Off-Road Parking and Loading*, and is required to be free of fences, landscaping (except for ground cover), retaining walls, and other obstructions of similar nature. Locations of trash dumpsters are required to be shown on the plan and must be designed to allow access and maintenance of the dumpsters, but to not impede the free movement of trash removal vehicles.

Snow storage areas are required to be designed, constructed and maintained to comply with the requirements of Section 5-417: *Drainage, Construction and Post-Construction Storm water Runoff*.

**Section 5-413: Fencing**

Applicable.

**Section 5-414: Exterior Lighting.**

An exterior lighting plan is required to be submitted as part of the Preliminary Plan designed to meet the requirements of this section; and to indicate the locations of exterior lights within the development, and the type of lighting devices, fixtures, lamps, supports, reflectors and other devices; and to address the methods of shielding. The inclusion of a requirement for full cut-off fixtures within the Sketch Plan exceeds the current LUR requirements.

**Section 5-415: Reclamation And Noxious Weed Control.**

A reclamation permit will be required for all construction. A Noxious Weed Control Plan is required to be included within the Preliminary Plan, pursuant to this section.

**Section 5-416: Grading And Erosion Control.**

Construction of this project will require the applicant to secure a Reclamation Permit from the Public Works Department, pursuant to Section 5-415: *Reclamation and Noxious Weed Control*. The Preliminary Plan is required to show compliance with this Section. Details of grading and erosion control are appropriately required at Preliminary Plan level of review as elements of detailed engineered plans.

**Section 5-417: Drainage, Construction And Post-Construction Stormwater Runoff.**

This is a Major Impact project, and a plan pursuant to this Section is required to be submitted in the Preliminary Plan, certified by a qualified professional engineer licensed in the State of Colorado, indicating that this project meets the standards of this Section including methods to ensure that drainage will not injure adjacent lands. Documentation of whether a Stormwater Discharge Permit will be required for this project by the Colorado Department of Public Health and Environment and is also required to be submitted as part of that Plan.

Storm water runoff is required to be managed onsite, to direct runoff to stable, vegetated areas capable of maintaining sheet flow for infiltration, or to discharge to a storm water conveyance structure, designed to accommodate the projected additional flows from the proposed project, with treatment by a regional or other storm water facility before discharge off site.

**Section 5-418: Water Impoundments.**

Not applicable.

**Section 5-419: Standards to Ensure Compatible Uses.**

Public comment has identified potential conflicts between the proposed resort and the adjacent residential properties. The applicant has eliminated the location and number of rental units originally proposed on the northern end of the property, removed the travel trailer and eliminated the use of the existing residence as a rental unit. However, he has added two (possibly three) units to the central cabin sites. Additionally, the applicant has proposed several possible restrictions to be placed on the uses allowed at the resort to minimize potential conflicts to the surrounding neighborhood, including:

Noise – No use of ATV’s, motorcycles, or snowmobiles will be permitted by guests at any time on the property. No maintenance or repair on ATV’s, motorcycles, or snowmobiles will be permitted by guests on the property.

Lighting - Exterior lighting will be limited to one porch light, with downward throw, completely shielded in a cut-off fixture.

Trespass/Privacy – No guest access, either pedestrian or equestrian, to National Forest/Wilderness Area lands, would be allowed from the property. Equestrian facility will be limited to the use of guests, no use by the general public would be allowed.

How restrictions would be enforced by the applicant will need to be identified in the Preliminary Plan.

This Section notes that, “Proposed land use changes shall be designed, constructed, and maintained in a manner that will not adversely affect the character and tranquility of nearby residential or public use areas, [and] shall not subject other uses to undue noise, dust, fumes, odor, explosion, aircraft flight patterns, or other hazards or nuisances, whether the result of design, location, basic character, or of planned or reasonably expected growth, [and], land use changes shall eliminate or minimize or mitigate conflicts between adjoining land uses and to the maximum extent feasible, avoid changes that will result in significant net adverse impact to adjoining land.”

“Significant net adverse effect” is defined in the Land Use Resolution as, “...an impact of an action, after mitigation, which is considerable or substantial, and unfavorable or harmful; includes social, economic, physical, health, aesthetic and historical impacts, and biological impacts including but not limited to, effects on natural resources or the structure or function of affected ecosystems.”

The *Resolution* specifically excludes the term “mitigation” from the Sketch Plan submittal requirements but in Section 4-504: B.: specifically charges that, “The burden in the Preliminary Plan review is on the applicant to provide detailed information and mitigation proposals for evaluation.”

Further, this Section notes that, “...the applicable review body may recommend and the decision-making body shall be authorized to impose conditions that are necessary to minimize any potentially adverse impacts” as conditions of approval of a Permit, but does not require that those conditions be devised in actions taken on plans submitted in the phases of review that precede recommendation and/or action on a Permit (in this case, Sketch or Preliminary Plans for a Major Impact project). Conditions that may be imposed upon the Permit may include (meaning that, “...these are examples, not exhaustive lists of all possibilities,” pursuant to Section 1-111: H.8): Limitation on hours of operation and deliveries; relocation on a site of activities that generate potential adverse impacts on adjacent uses including noises and glare; appropriate placement of trash receptacles; appropriate location of loading and delivery areas; appropriate lighting location, intensity, and hours of illumination; appropriate placement and illumination of outdoor vending machines, telephones, and similar outdoor services and activities; the requirement of additional landscaping and buffering; the imposition of height and size restrictions to preserve light, privacy, views of significant features from public property and rights-of-way, and to ensure reasonable compatibility of structure sizes; preservation of natural lighting and solar.

These are significant issues of compatibility between the proposed and existing land uses. Elements to which this Section is applicable then, include, but are not necessarily limited to noise, traffic and visual impact. The applicant is required to submit information for determining whether the proposed uses are compatible as proposed, and whether, after mitigation, a significant net adverse effect would result from this development.

**Section 6-103: Right-to-Ranch Policy.**

Not applicable.

**FINDINGS:**

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The Commission finds that:

The submitted Sketch Plan relates to all of the 35-acres proposed for the development.

Section 4-504: A., of the *Gunnison County Land Use Resolution* prescribes that, “...Sketch Plan review provides an opportunity for the County, the applicant, and the public to engage in an exploratory discussion of a proposed land use change, to examine alternative approaches to development of the property, to participate in a process of joint planning and negotiation between the County and the applicant...” and that detailed engineering plans and other overly detailed information shall not be required or accepted by the County.”

This application, by definition, is classified as a Major Impact.

No determination can be made at this level of review that there is or is not an alternative site for these proposed uses reasonably attainable within or adjacent to the Town of Lake City. Analysis based upon size of parcel needed, feasibility of necessary utilities and other infrastructure, and documentation of comparable sites is required to be submitted in the Preliminary Plan. Economic feasibility or practicality of comparable sites may be considered, but shall not be the deciding factor in determining suitability.

Conflicting testimony has been submitted about whether the proposed location is “particularly well-suited for the specific use” and whether the proposed use is compatible with uses established in the area surrounding the subject property. The proposed resort is adjacent to existing single-family home sites or to vacant 35-acre tracts that may be developed as single-family home sites. Those uses could potentially be significantly and adversely impacted by the by the location and operation of a resort abutting those lands.

The application proposes a central well and central water system to serve the development. Documentation of a legally and physically adequate supply of water, in terms of quality, quantity, dependability, and pressure for the development is required to be submitted in the Preliminary Plan submittal. Engineered plans for the installation of the central water system, including design, construction, maintenance and operation of which complies with the standards of the Colorado Department of Public Health and Environment are required to be submitted in the Preliminary Plan.

The application proposes individual sewage disposal system(s) to serve the development. Engineered plans for the installation of the individual sewage disposal system(s), including design, construction, maintenance and operation of which complies with the County's regulations and with the standards of the Colorado Department of Public Health and Environment are required to be submitted in the Preliminary Plan.

The application proposes a pond to provide a year round water supply for fire suppression, with a dry hydrant. Clarification of the proposed size of the pond, dry hydrant fittings and access to the pond and dry hydrant for year round Fire Department access, Environment are required to be submitted in the Preliminary Plan

The location of the proposed two cabins or house may be visible from Highway 149.

The applicant proposes improvements to the existing access road to comply with the *Gunnison County Specifications for Road and Bridge Construction*. Engineered plans and identification of adequate right of way are required to be submitted in the Preliminary Plan. Approval of a commercial access from the Colorado Department of Transportation for Highway 149 will be required as part of the Preliminary Plan.

There are no signs proposed as part of the submitted Sketch Plan. Sign elements as allowed by this section may be proposed within the Preliminary Plan.

Currently, there an existing development up Ohio Creek by the same name of this proposed development. The duplicate name of the development has been discussed with the applicant. This may necessitate a change in the name or modification to the name, so it does not create issues with emergency response.

No building permit is on file for the conversion of a portion of the existing residence, referenced as the “bunkhouse”.

Integrating the standards of Section 5-419: *Standards to Ensure Compatible Uses*, as well as other measures to mitigate issues raised during this Sketch Plan review, is required within the Preliminary Plan submittal. In particular, mitigation is required to address the restrictions on permitted uses, noise, exterior lighting and issues of trespass to adjacent landowners.

The *Land Use Resolution* defines “significant net adverse effect/impact” as, “...an impact of an action, after mitigation, which is considerable or substantial, and unfavorable or harmful; includes social, economic, physical, health, aesthetic and historical impacts, and biological impacts including but not limited to, effects on natural resources or the structure or function of affected ecosystems.”

The *Resolution* specifically excludes the term “mitigation” from the Sketch Plan submittal requirements but in Section 4-504: B.: specifically charges that, “The burden in the Preliminary Plan review is on the applicant to provide detailed information and mitigation proposals for evaluation.” The Commission therefore finds that while the discussion of potential mitigation has constructively informed the exploratory discussion of this proposal, determination of whether the proposal will or will not result in a significant net adverse effect is appropriately not reached until mitigation is fully proposed and considered in compliance with the stated requirements of Preliminary Plan review.

Pursuant to Section 4-503 of the *Land Use Resolution*:

***This Sketch Plan application is generally consistent with the standards and requirements of the Resolution, pursuant to Section 5-403, i.e., compliance of the proposed land use change with the standards of the Resolution are required to be determined broadly and conceptually during Sketch Plan review. This***

***application has broadly addressed, and the Commission has broadly evaluated this submittal for its integration of the standards of the Resolution within its conceptual presentation of the proposed development. It is expected that, pursuant to Section 5-504: B., in the submittal of Preliminary Plan, the applicant shall formulate detailed, designed/engineered solutions to the issues and concerns identified during this Sketch Plan review, and shall address, in a site-specific manner, all other issues that are relevant to the Preliminary Plan. The burden in the Preliminary Plan review is on the applicant to provide detailed information and mitigation proposals for evaluation.***

***The proposed land use change is required to be compatible with, or to enhance the character of existing land uses in the area surrounding the subject property, and shall not adversely impact the future development of the area surrounding the subject property.***

Approval of this Sketch Plan application constitutes a final decision of approval for the general development concept only, but shall not constitute approval of any detailed design or engineering submittals or proposed solutions to specific problems revealed during the Sketch Plan review or later in the review process. Sketch Plan approval by the Board shall not constitute approval of the Major Impact project, or permission to proceed with construction of any aspect of the proposed land use change. Approval at this stage only authorizes the applicant to submit a Preliminary Plan application. If, during the Preliminary and Final Plan reviews, the applicants are unable to fulfill all of the requirements of this *Resolution*, then the application shall be denied at the Preliminary or Final Plan review stage.

The applicant shall be required to submit and actively pursue the completion of the Preliminary Plan application within 12 months after the date of approval of the Sketch Plan. Failure to submit a complete Preliminary Plan application within this time period shall render the Sketch Plan approval null and void, and require the applicant to begin the Sketch Plan review process again.

This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application; including all exhibits, references and documents as included therein.

The applicants are required to timely and fully obtain and comply with all applicable federal, state, municipal and other permits and terms and conditions of any municipal, state, federal permits required for the project.

#### **RECOMMENDATION:**

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The Gunnison County Planning Commission, having considered the submittals and record of the Eagle Ridge Ranch Sketch Plan, onsite observations and public testimony, has reached the above Findings, and recommends that LUC No. 2005-35 be classified as a Major Impact, and that the Amended Sketch Plan, dated January, 2006, submitted by the applicant, be approved with the following conditions:

The applicant shall demonstrate compliance with the standards of Section 5-104: *Locational Standards For Commercial, Industrial And Other Non-Residential Development*. An analysis based upon size of parcel needed, type of use, feasibility of necessary utilities and other infrastructure, and documentation of comparable sites is required to be submitted in the Preliminary Plan.

The applicant shall demonstrate compliance with the standards of Section 5-419: *Standards to Ensure Compatible Uses*, as well as other measures to mitigate issues raised during this Sketch Plan review, and is required to be submitted in the Preliminary Plan.

The applicant shall submit documentation of a legally and physically adequate supply of water, in terms of quality, quantity, dependability, and pressure for the development in the Preliminary Plan. Engineered plans for the installation of the central water system, including design, construction, maintenance and operation of which complies with the standards of the Colorado Department of Public Health and Environment shall be submitted in the Preliminary Plan.

Engineered plans for the installation of the individual sewage disposal system(s), including design, construction, maintenance and operation of which complies with the County's regulations and with the standards of the Colorado Department of Public Health and Environment shall be submitted in the Preliminary Plan.

The application shall provide clarification of the proposed size of the pond for fire suppression purposes, and compliance with standards for the dry hydrant, dry hydrant fittings and shall be submitted in the Preliminary Plan.

The applicant shall provide engineered plans and identification of adequate right of way and snow storage, and access to the pond for year round Fire Department access, in compliance with the *Gunnison County Specifications for Road and Bridge Construction*, and are required to be submitted in the Preliminary Plan. Approval of a commercial access from the Colorado Department of Transportation for Highway 149 will be required as part of the Preliminary Plan.

Sign elements as allowed by this section may be proposed within the Preliminary Plan.

A visual analysis of the location of the two cabins or house from Highway 149.

Documentation that the use of the "bunkhouse" has been discontinued.

An exterior lighting plan shall be submitted in the Preliminary Plan.

A landscaping plan shall be submitted in the Preliminary Plan.

The name of the development will be reviewed at Preliminary Plan. This may necessitate a change in the name or modification to the name, so it does not create issues with emergency services response.

The applicant is required to timely and fully obtain and comply with all applicable federal, state, municipal and other permits and terms and conditions of any municipal, state, or federal permits required for the project.

Approval of this Sketch Plan application shall constitute a final decision of approval for the general development concept only, but shall not constitute approval of any detailed design or engineering submittals or proposed solutions to specific problems identified during the Sketch Plan review or later in the review process. Sketch Plan approval by the Board shall not constitute approval of the Major Impact project, or permission to proceed with construction of any aspect of the proposed land use change. Approval at this stage only authorizes the applicant to submit a Preliminary Plan application. If, during the Preliminary and Final Plan reviews, the applicants are unable to fulfill all of the requirements of this *Resolution*, then the application shall be denied at the Preliminary or Final Plan review stage.

The applicant shall be required to submit and actively pursue the completion of the Preliminary Plan application within 12 months after the date of approval of the Sketch Plan. Failure to submit a complete Preliminary Plan application within this time period shall render the Sketch Plan approval null and void, and unless the approval is extended by the Board, require the applicant to begin the Sketch Plan review process again.

**GUNNISON ENERGY CORP/ OIL AND GAS:** The Commission met with Lee Fyock, Tony Gail and Judy Kohn representing Gunnison Energy Corporation. They held a public hearing to discuss their request for four natural gas exploration wells, located in the West Muddy area, west of State Highway 133.

Chairman Dave Houghton opened the public hearing.

Administrative assistant Beth Baker confirmed the applicant had submitted the affidavit and certified mailing receipts and the Planning Department had the notice published in the newspapers.

Fyock submitted a map of the area. He explained they have applied for four wells that would be about a mile off of Highway 133. He said the SG Interests applications are for wells north of these wells. They have submitted weed management plans. They will be upgrading the trails and roads. They have had the area surveyed for wildlife habitat. There are no geological hazards on these sites. Each well will be drilled to approximately 3,500 ft. except well # 18-22 which will be drilled to approximately 9000 ft. Each of the four wells will be cased 800 ft down the shaft and that has been approved by the State. There is one existing well there at this time. The four wells are exploratory wells. Their pipeline will be six miles long and connect with another system and then to the Rocky Mountain pipeline system. They will not use any County roads. They will access the wells off of Highway 133 and directly on to a private ranch road. There are three operators in that area each one is either on Forest Service land or privately owned land.

Houghton recognized a letter submitted by Emergency Management coordinator, Scott Morrill. Morrill confirmed he had reviewed their emergency plan and approved it.

Houghton stated Gunnison County enacted temporary Oil and Gas regulations. In a lawsuit regarding the Oil and Gas regulations the District Court ruled that State authority pre-empted the County's authority over every aspect of Oil and Gas operations except the roads/access and emergency service response. Gunnison County has appealed the Court's decision and the matter will likely be decided in the coming months. He reiterated at this time it is not within the County's authority to review anything except roads and emergency services.

Fyock said they have received a State access permit and summarized the amount of equipment to be used as a the drill rig, approximately three cement trucks and 14 to 15 trucks to bring in equipment; the rigging, sub base and loads of casings, etc.

Commissioner Ramon Reed inquired about the timing. Fyock said the deepest well will take approximately two weeks to drill and the others will take approximately one week to drill.

Commissioner Ian Billick asked what the County could review. Starkebaum said this review will only address emergency services, because the operator will not be using County roads for access.

When questioned about safety precautions Fyock replied all employees are trained and no unauthorized individuals are allowed on site. Smoking is not allowed within 150 ft of a well. There will be no flaring of these wells. There are blowout preventors placed on the casings. The wells are tested and the results are submitted to the State. A crew consists of a drilling manager, two tool pushers, the foreman, four laborers and a supervisor. Scott Morrill explained if there was an emergency in this area it would be dealt with by Delta County.

High Country Citizens Alliance (HCCA) public lands director, Dan Morse, said intensive industrial traffic will be present in this area, in the next three to five years and the County will have to manage that. He asked how the full field would develop over time, how many wells will fill the Bull Mt pipeline, how many roads will there be and how it will look. He urged the Commission to thoroughly plan for the expansion of the oil and gas well explorations. He commented this should not be an eyesore. He asked if there is a viable way to prepare a common strategy to make this a viable field. He submitted a CD containing spread sheets etc. prepared by Theo Colburn. He questioned the storm water management plan and asked if it could be made available to the public.

In response to Morse's comments; Fyock replied it takes two to three years to get a pipeline structure permitted. They have applied in advance for a pipeline to be able to respond if there is gas in the area. More wells are permitted than drilled because they do not know the results, until they have drilled several test wells. The number of wells that will ultimately be in the area will depend completely on the drilling results. Coal bed methane wells are usually drilled on 360 acres or 120 acre parcels. Gas wells have to be tested; a gas line can be tied in or it can be flared. A pipeline will not be constructed if the exploratory wells do not adequately produce. State regulations indicate flaring can only be used for testing. The storm water management plan has been filed with the State.

Houghton asked if there is revenue that comes back to the County. Fyock replied a property tax is paid. Once the production starts there is tax that goes to the State and then the County and Federal royalties come back to the County.

Potoker asked Morrill about the emergency plan, the private roads and the ability of emergency equipment to navigate those roads safely. Morrill confirmed he had looked at the plan with the Delta County emergency management office and is satisfied that they have a good effective plan. Fyock said the Bureau of Land Management (BLM) requires using erosion control, gravel and culverts when needed.

Commissioner Jeff Wilkinson joined the meeting.

Commissioner Nick Lypps stressed if the County's appeals case is won the County will go back to review more than roads and emergency access.

The Commission directed staff to prepare a draft approval decision for the next meeting with the applicants.

Houghton closed the public hearing.

**WYMAN/ COMMERCIAL:** The Commission met with applicant Beth Wyman. They held a public hearing to discuss her request for a commercial woodworking shop in a detached structure, at 1397 West Denver Avenue.

Chairman Dave Houghton opened the public hearing.

Administrative Assistant Beth Baker confirmed the applicant had submitted the certified mailing receipts and affidavit of posting. The Planning Department had the public hearing notice published in the Gunnison Country Times and the Crested Butte News.

Houghton said Wyman has been in contact with the City of Gunnison concerning her application. Starkebaum explained the Commission has defined this as a commercial use; therefore eliminating the set back issues associated with land use. The noise will be mitigated with insulation and sound proof board. The level of traffic will be that of a home occupation. There is no floor drain and all materials are to be properly disposed of by the applicant.

Wyman said there had been no changes to their plans.

Commissioner Ian Billick asked for clarification of the City's comments concerning the definition of commercial, industrial or home occupation. It was noted the City is primarily worried about precedent being set. Billick recommended making the language very specific as to how this was defined as commercial.

There were no members of the public present to make comments and no one from the City planning staff was present.

Houghton closed the public hearing.

The Commission directed staff to prepare a draft decision of approval for the next meeting with the applicant.

**SG INTERESTS/ OIL AND GAS:** The Commission met with Lynn Garner present at the meeting and telephonically Shaun Gordy and Robbie Gwyn of Nika Energy Operating, representing SG Interests I, LTD. They held a continued public hearing to discuss their request for eight exploratory natural gas wells, located in the West Muddy area, west of State Highway 133.

Chairman Dave Houghton opened the continued public hearing; stating it was continued because the notice had not been published in the Crested Butte News. It has since been published in the Crested Butte News.

Houghton stated Gunnison County enacted temporary Oil and Gas regulations. In a lawsuit regarding the Oil and Gas regulations the District Court ruled that State authority pre-empted the County's authority over every aspect of Oil and Gas operations except the roads/access and emergency service response. Gunnison County has appealed the Court's decision and the matter will likely be decided in the coming months. He reiterated at this time it is not within the County's authority to review anything except roads and emergency services.

Garner said they have provided a time line to the County for the maintenance of the roads. He is also working with Emergency Services to provide an adequate emergency management plan. There was a letter dated March 8, 2006 submitted by Emergency Services, Scott Morrill. Morrill commented good progress had been made with SG Interests on the emergency management plan. Morrill is convinced SG Interests is committed to a good emergency plan. He said a good base line is needed to help the operators in preparing an emergency plan. The issues identified in the previous plan were; specific direction or steps the employees would take and it was noted the oil and gas conservation guidelines would be referenced.

Commissioner Richard Karas asked whether the analysis of the capacity of the responders to meet emergency needs is complete. Morrill said all the fire departments are voluntary and they will address any injuries and forest fires also Delta County will respond to personal injuries. Garner was not aware of any catastrophic accidents involving SG Interests. Billick directed Garner to provide the Commission with an industry number.

Potoker asked where the wells will be located. Starkebaum presented a map prepared by the Colorado Oil and Gas Commission that identified all the existing wells in the area. Garner presented a map showing 320 acre spacing resulting in 50 to 60 wells on 320 acres. The overall unit is 20,000 acres. The five wells within the Bull Mountain unit are two disposal wells that will share roads and location. The remaining three wells are on Forest Service land and they have one additional well in Delta County.

Reed asked if SG Interests and the County are working on a road agreement. Moores said they met with SG Interests and identified what the County thinks are the most dangerous spots in the road. SG Interests has offered \$400,000 to fix these areas; they have spent \$200,000 and are now hiring a contractor to complete the road repairs. They have created pull outs and have taken some blind spots out. Public Works representative Allen Moores confirmed the County is satisfied with the progress so far.

Adjacent property owner, Mark Carter, said he had submitted comments at the previous hearing. Carter said he relies on Highway 265 as well County roads. He said this road in the past has been very dangerous. He asked for a description of the width of the road. Moores said most of the road is bordered by agricultural parcels that have ditches that run along side of them. Moores added the applicants have installed pull outs. Carter asked what type of detection equipment will be in operation should there be an accident. He was concerned with a possible serious fire. Carter also asked what the company uses for fracturing fluids and what measures are taken if a catastrophe occurs. He questioned who would do long term monitoring to detect problems. Carter urged the operator to be sensitive to the visual impact to his property.

Potoker reiterated the County is in the Court of Appeals and will address more issues if the County prevails in Appeals Court.

Potoker asked Morrill if Emergency Services has looked at fire dangers. Morrill responded they will have equipment on site to address fires; pumps, hoses, extinguishers, a 400 gallon water tank, hose and people to operate the equipment. He stated safety programs are in place.

High Country Citizens Alliance (HCCA) public lands director, Dan Morse, said this will cover between four and six townships in the Muddy Creek area and there could be as many as 600 wells. He questioned what the impacts of a 20 inch pipeline would be. He pointed out County Road 265 is the only road in and out of the area. He encouraged the County and the operators to work together.

Gunnison resident, Butch Clark, said the Commission should review the US Geological Survey. He said this is the beginning of a new industry; the Colorado joint review process allows for a joint review process along with the Counties to pull all the pieces together. He encouraged the Commission to review the EIS of other counties. He urged the Commission to plan for these wells. He urged the Commission to review the financial model from the Powder River to estimate the cost to local government. He said the joint review process was used with the AMAX project.

Mark Carter requested to see the emergency response report when it is complete.

Attorney David Leinsdorf noted the County is very close to agreeing on the emergency service plan and the applicants have gone above and beyond on the roads.

Karas asked if the County has 1041 powers in this situation. Starkebaum said he would ask for clarification from the County Attorney.

Houghton queried the Commission to gage if they were ready to direct staff to prepare a draft recommendation. Commissioner Jeff Wilkinson said it should be prepared contingent on additional information. Lypps concurred with Wilkinson. Billick remained confused on the 1041 implications and needed further clarification. Karas agreed to direct staff to prepare a draft decision, but wanted clarification on the County's 1041 powers. Houghton was ready for a draft decision but wanted the neighbors to have an opportunity to see the emergency response plan. Potoker said a decision could be prepared noting if there were problems it would not be approved. Reed agreed to prepare a draft decision, but wanted more time to discuss the issues of roads and traffic with Public Works.

The Commission directed staff to prepare a draft decision for the next meeting with the applicant. Houghton itemized the items needed for the next meeting;

- Draft decision of approval
- Comments from Scott Morrill, Gunnison County Emergency Services
- Comments from Allen Moores, Gunnison County Public Works
- A revised emergency response plan
- An opinion from the County Attorney concerning the County's 1041 powers

Houghton continued the public hearing to April 7, 2006 at 9:00 a.m.

**HORSE MEADOWS SUBDIVISION:** The Commission met with applicant John Stock and applicants Attorney Jessica Stone. They held a work session to review their Preliminary Plan presentation, subdivision of 48.56 acres into ten single-family residence lots and one common open space area of 7.22 acres, north of the City of Gunnison, north of Seneca Drive and east of Chekwa Way.

Commissioner Richard Karas recused himself citing a conflict of interest.

Planner Cathie Pagano summarized the history of this application including an additional four lot subdivision application that had been received on the same parcel. The four lot application that had previously been submitted by prior owner, Joe Alagna, has been withdrawn. The current owners submitted a preliminary plan based on the sketch plan approval of ten single family lots, on October 5, 2006. The latest date a preliminary plan for this application could have been submitted was October 8, 2006.

Stone explained this is a 48.56 acre parcel on which the owners are proposing a ten lot subdivision. The lots will be 2.4 acres to 4.6 acres in size. The City has defined this as rural residential. Stone submitted a map illustrating the subdivision and the irrigation ditches. They are addressing the water by irrigation throughout the property and there will be a pond. Stone and

the applicants have worked with an engineer and public works to come up with a cul-de-sac instead of a drive through intersection. The trail for access to the open space will not be dedicated to the public. The number of horses has been restricted to two per lot. Each lot will be served by individual wells and septic systems, however if the new sewer line extension reaches this subdivision the owners will be required to tie on to the sewer line. The septic systems will be above ground engineered systems.

Commissioner Mike Potoker commented this seems to be more dense than the surrounding parcels. Potoker asked why the open space has moved. Stock responded that the open space is now the wettest area of the parcel.

Adjacent owner, Jim Ruthven, was concerned with density, ten wells north of his water supply and the disruption of the historical irrigation patterns.

Adjacent owner, Alec Laird, was concerned with the density, water, the new septic systems fouling his well, and less water in the Hiezer Ditch.

Stone requested permission to combine the preliminary and final plan. The Commission reviewed the *Gunnison County Land Use Resolution* (LUR) requirements and Chairman Dave Houghton responded that it is unlikely the plans would be combined. Stone offered to bring an engineer to explain the availability of water and dry-up credits.

The Commission directed the applicant to address;

- Engineer to explain irrigation
- Map with neighborhood density
- Dry up credits how it relates to water
- Provide mitigation measures to get the density requested/ open space, landscaping, trails etc.
- Contact public works concerning the north sewer extension
- Consider allowing public access to the trail

**HORSE RIVER RANCH/ OVERLOOK TRAIL:** The Commission met telephonically with Attorney Dick Bratton and owner Scott Shirely, representing Horse River Ranch, Summerset Land Group, Inc. They held a work session to discuss the approval of "Overlook Trail", constructed on the Horse River Ranch (35-acre) development, north of the City of Gunnison, west of Ohio Creek Road;

The Commission reviewed the revised draft Minor Impact Decision.

Commissioner Ian Billick presented his observations of the process used during this application. He said the decision making process could have confused the applicant. He suggested the project coordinator should not be a negotiator; all agreements must be discussed with the Commission. He expressed his appreciation of all those who worked on the project.

**MOVED:** by Wilkinson seconded by Potoker to approve Minor Impact Decision LUC-2004-79 as amended. The motion passed unanimously.

#### **AUTHORIZATION OF LANDOWNERS:**

The individual owners of Lots 12, 14, 15, 16, and 17, Horse River Ranch, submitted notarized authorizations permitting Summerset Land Group, Inc. to act in their behalf in this land use change application to Gunnison County. The letters are contained in the Planning Department file. Summerset Land Group, Inc. is the owner of Lots 18 and 19, Horse River Ranch.

#### **BACKGROUND:**

In 2001 Westside Land and Timber Company, Inc., represented by John Hall, submitted a Land Use Change application for the construction of a private road to provide interior access to an 1185-acre parcel, formerly known as the Youmans Ranch. Horse River Ranch Drive was approved by the Gunnison County Planning Commission as a Minor Impact Review Project, Land Use Change Permit No. 2001-61, on October 4, 2002, to provide access to a maximum of thirty three, 35-acre tracts.

On April 21, 2004, Summerset Land Group, Inc. recorded a "Survey Plat of Horse River Ranch" with the Gunnison County Clerk and Recorder, at Reception No. 541061. The survey plat identified twenty five 35+ acre tracts. The plat also identified "Overlook Trail – a 60' Roadway and Utility Easement", accessing Lots 12, 14, 15, 16, and 17 Horse River Ranch.

The *Gunnison County Land Use Resolution, Section 4-402*, requires a Land Use Change Permit for the cutting or construction of any road and is classified as a Minor Impact Project. An application for a Land Use Change Permit must comply with the standards of *Article 5: Improvement Standards of the Land Use Resolution*.

In early May of 2004, County Staff met with Charles Smith, representative for Summerset Land Group, Inc., who acknowledged the recordation of the survey plat of Horse River Ranch. County staff advised Mr. Smith that the construction of "Overlook Trail" would require a Land Use Change Permit. Further, staff reiterated to Mr. Smith that the western portion of Horse River Ranch had previously been identified as sensitive wildlife habitat for the Gunnison Sage-Grouse, by the Division of Wildlife, during the Planning Commission review of Horse River Ranch Drive, LUC No. 2001-61. Staff directed the applicant to contact the local Colorado Division of Wildlife (CDOW) office for further information and consultation.

In early November of 2004 it was brought to the attention of the Gunnison County Planning Department that construction of "Overlook Trail" had commenced. On November 5, 2004 the Gunnison County Planning Department issued a Cease and Desist - Stop Order to Scott Shirley, Westside Land & Timber Company, Inc., requiring the immediate compliance with the stop order, and to cease and desist from further construction activity until such time that a Land Use Change Permit authorizing the construction of "Overlook Trail" was issued.

As a result of the enforcement action, an Agreement Regarding Modification of Stop Order was executed by the Board of County Commissioners and Summerset Land Group, Inc. on November 23, 2004, which provided surety in the amount of \$25,000 for removal and reclamation of Overlook Trail. No additional work was performed on Overlook Trail after the execution of this Agreement.

On November 9, 2004, Summerset Land Group, Inc. submitted a Land Use Change Application for the construction of Overlook Trail. As the review process progressed, the applicant has subsequently submitted revisions to the original application. The revisions are noted within this Decision document.

#### **PROJECT DESCRIPTION:**

The applicant requests the formal approval of the construction of Overlook Trail, to provide access to Lots 12, 14, 15, 16, 17, 18, and 19 of the Horse River Ranch development. The proposed road alignment, which is the location where the road is actually constructed, with driveway accesses, is shown on revised road construction plans submitted by the applicant titled "Overlook Trail – Plan and Profile", dated July 7, 2004, prepared by NCW & Associates, Sheets 1 of 1, and by narrative, dated August 12, 2002. Also included in the application submittal is an updated traffic study titled "Horse River Ranch – Traffic Analysis", dated November 14, 2005, prepared by NCW & Associates. In addition, this review and Decision incorporates, but is not limited to, all documentation submitted to the County and included within the Planning Department file relative to this application; including all exhibits, references, testimony and documents as included therein; the applicant and the County have agreed that relevant documents include the comments from Eric Petterson, Principal Ecologist, Rocky Mountain Ecological Services, Inc, letter dated November 14, 2005, comments from Clait Braun, Grouse Inc., dated January 10, 2006, the Final Mitigation Plan, including exhibits A & B, submitted February 14, 2006 and comments from Allen Moores, Gunnison County Public Works, memo of February 21, 2006

#### **EXECUTIVE SUMMARY:**

The original project description submitted with the application, and as shown on the "Survey Plat of Horse River Ranch" recorded with the Gunnison County Clerk and Recorder; Reception No. 541061, identified the location of Overlook Trail, with access to Lots 12, 14, 15, 16, and 17 from Overlook Trail. Access to Lots 18 and 19 was proposed from a separate point of access, further west on County Road #818 (Wylie Lane). Building envelopes were identified on each tract, as shown on the plat. The "Declaration of Protective Covenants for Horse River Ranch" development, which enumerates permitted uses and restrictions on each tract was recorded with the Gunnison County Clerk and Recorder, at Reception No. 549252, December 9, 2004.

Early in the County review process, County staff submitted the application to the Colorado Division of Wildlife for their review and comment. Initial comments from the Colorado Division of Wildlife verified that the road and the subject lots were located within critical habitat of the Gunnison Sage-Grouse. CDOW stated their concerns with the location and use of the road and particularly that the locations of the building envelopes posed potential impacts to the Gunnison Sage-Grouse and habitat, including nesting, brood rearing and winter habitat, but noting that mitigation was possible.

*Section 5-206: Protection of Wildlife Habitat of the Gunnison County Land Use Resolution*, requires that a Wildlife Habitat Analysis be performed for lands located within sensitive or critical wildlife habitat. The applicant hired Rocky Mountain Ecological Services, Inc. to provide that analysis. At that time, and as permitted by the land use regulations, Gunnison

County determined that an independent third party wildlife habitat analysis would be appropriate. The Board of County Commissioners engaged the services of Dr. Clait Braun, Grouse Inc. to provide the analysis.

Dr. Clait Braun, Grouse Inc. and Eric Petterson - Rocky Mountain Ecological Services, Inc., visited the site and surrounding area with representatives from Summerset Land Group, Inc., and Colorado Division of Wildlife and County staff, on May 9, 2005.

Members of the Planning Commission visited the site and area twice, on January 7 and August 5, 2005.

Eric Petterson, Principal Ecologist, Rocky Mountain Ecological Services, Inc. submitted a report titled "*Gunnison Sage-Grouse Potential Impact Report for the Horse River Ranch Tracts 12, & 14-17, dated May 2005*". The report evaluated the potential impact to the Gunnison Sage-Grouse from the construction of Overlook Trail and the construction of homes on Lots 12, 14, 15, 16, and 17, particularly focusing on the habitat. He submitted additional comments in a letter dated November 14, 2005.

Dr. Braun submitted a report, titled "Impacts of the Horse River Ranch Development on Gunnison Sage-Grouse Recommendations and Possible Mitigation, Gunnison County, Colorado" to the Planning Commission on June 21, 2005. The report discussed the habitat, impacts from the proposed development of the road and construction of the proposed residences, including recommendations. He submitted additional comments dated January 10, 2006.

Upon review of comments from the Division of Wildlife and reports from the consultants, and further discussions between the applicant and Division of Wildlife representatives, Scott Shirley submitted a letter and Mitigation Plan to the County Planning Commission on August 2, 2005.

Throughout this period of review, the County Planning Commission encouraged public comment and participation in the review process. A public hearing was conducted on February 4, 2005 and was continued on February 18, March 18, May 6, August 5, and finally closed on September 16, 2005.

The Division of Wildlife reviewed the mitigation plan submitted by the applicant and in comments from J Wenum, Area Wildlife Manager, Colorado Division of Wildlife, letter dated October 12, 2005 he noted: "

*When we were first asked to respond to this issue sometime late last year, our comments in my letter dated 3/17/05 were basically aimed at total avoidance for impacts which I covered in the "avoidance" portion of my recent letter. Subsequently, after all the snow had melted and we could see the ground, we have made several on site visits and numerous discussions with the developer. The three scenarios outlined in my recent September 3, 2005 letter were intended to explain three separate methods of addressing the impacts, any one of which I believe would satisfactorily address the impacts. The developer agreed to the plan outlined under the section entitled "minimization" of my recent letter which emphasizes minimization, but also includes some avoidance and some mitigation.*

*In addition, I understand that it was suggested at the September 16 Planning Commission meeting, and agreed to by the developer, that all buildings should be restricted to the building envelope. I also understand the developer offer to contribute \$10,000 for additional mitigation, which could pay for substantial mitigation on this property, if properly spent. We would recommend that the money be placed in a permanent mitigation fund for vegetation. The DOW would be willing to provide input on how the money should be spent to optimize the benefits of mitigation. The DOW does not wish to actually manage the mitigation account however. I feel that it is more appropriate for the County to oversee this fund as part of their regulatory authority in this matter.*

*In summary, this plan, which includes the proposed changes discussed in the preceding paragraph, exceeds what is acceptable to us and satisfactorily addresses the impacts from the proponent's proposed development.*

Additional elements of the Mitigation Plan were submitted to the County, by Scott Shirley, Summerset Land Group Inc., dated November 28, 2005, which were informed by all of the discussions between the applicant, representatives of the Colorado Division of Wildlife, consultants, and the Planning Commission.

In meetings with the applicant's representative with the Planning Commission Project Coordinator, County Staff – including representatives from Planning, Attorney, Public Works, the Sage Grouse Coordinator, and Natural Resource Conservation Service (NRCS) representative, the additional elements submitted with the Mitigation Plan were extensively reviewed, discussed and agreed upon, suggested changes were made to the Mitigation Plan, with a very specific, articulated intent to provide protection to the Gunnison Sage-Grouse habitat, while at the same time being attentive to the expectations of the owners of the subject lots. The Final Mitigation Plan is the product of that review and discussion.

**LOCATION:**

The area of subject lots and road, on a portion of the Horse River Ranch (35 acre development) is located on 250 acres, approximately three miles north of the City of Gunnison, west of County Road #730 (Ohio Creek Road), north of the Ohio Meadows development and generally described as being located within Sections 2, 3, and 10, Township 50 North Range 1 West N.M.P.M. The main portion of the development is located in existing irrigated hay meadows, with the extreme western portions containing both existing irrigated meadows and sagebrush steppe.

**ACCESS:**

Access to Lots 12-17 is proposed from one point of intersection with County Road #818 (Wylie Lane) via Overlook Trail. In the initial application, access to Lots 18 and 19 was proposed from a separate point of access, further west on County Road #818 (Wylie Lane). Subsequently, the access to Lots 18 and 19 was relocated to avoid direct impacts to the Gunnison Sage-Grouse and the habitat west of the Lone Pine Ditch and access is now from Overlook Trail.

**IRRIGATION DITCHES:**

The following irrigation ditches provide irrigation water to and cross several of the parcels, with the applicant holding water rights, if not wholly, in part:

- May Bohm Ditch
- Lone Pine Ditch
- 

**WETLANDS:**

The road, driveways and building envelopes do not impact any jurisdictional wetlands.

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**WILDLIFE:**

The road, driveways and building envelopes (and future residences) accessed by Overlook Trail are located within critical habitat for the Gunnison Sage-Grouse, as mapped by the Colorado Division of Wildlife.

This section is intended to provide a chronology of the Gunnison Sage-Grouse related issues, comments and mitigation that evolved as the review process progressed and to identify the data that informs this Decision. Copies of all letters, agency comments and consultant reports are contained within the Planning Department file and are part of the public record.

**Gunnison Sage-Grouse - Habitat**

The Gunnison Sage-Grouse uses a variety of habitats throughout the year but the primary component necessary is sagebrush (*Artemisia spp.*) (Braun 1995). The most important sagebrush are subspecies of big sagebrush (*A. tridentata*). Sagebrush is used for hiding and thermal cover as well as a major source of food in the winter (Hupp and Braun 1989). From mid-March to early June males will display on leks (strutting grounds) that are open areas with good visibility (for predator detection) and acoustics (for transmission of male display sounds). After mating, females will select nest sites, typically in relatively tall and dense stands of sagebrush from 183 meters (200 yards) to 8 kilometers (5 miles) away from the leks. Nest sites selected have residual grass and forbs that provide additional hiding cover. Hens with chicks remain in sagebrush uplands if hiding cover is adequate and if food consisting of succulent forbs and insects are available. As chicks mature and vegetation in the uplands desiccates, hens will move their broods to wet meadow areas that retain succulent forbs and insects through the summer (Klebenow 1969, Wallestad 1971). Preferred wet meadow areas also contain tall grasses for hiding and at least 165-yard wide (150-meter) sagebrush stands (Dunn and Braun 1986) along the periphery for hiding and foraging areas. Unsuccessful hens and males follow the same pattern but are less reliant on wet meadows. After significant rainfall events (greater than 0.5 centimeter (0.2 inch)) hens with broods will often use upland areas that have responded to the rain with additional succulent plant growth. From mid-September into November all Sage-Grouse will use upland areas with 20 percent or greater sagebrush cover and some green forbs. As winter progresses and snow cover is extensive (greater than 80 percent) and deep (greater than 30 centimeters (12 inches)), sage-grouse forage in tall sagebrush (greater than 41 centimeters (16 inches) in valleys and lower flat areas (Hupp and Braun 1989) and roost in shorter sagebrush along ridge tops. Roosting and foraging is typically restricted to south or west facing slopes where snow is often shallower and less extensive (Hupp and Braun 1989). Small foraging areas that have 30 to 40 percent big sagebrush canopy cover also are important.

**Threatened and Endangered Species Candidate List**

The Gunnison Sage-Grouse is a *candidate* for listing under the Endangered Species Act. It was placed on the candidate list in January 2000 shortly before the Fish and Wildlife Service received a petition for listing. On May 4, 2004, the U.S. Fish and Wildlife Service increased the candidate species priority rank for Gunnison sage grouse from "5" to "2".

### **March 17, 2005 - Colorado Division of Wildlife Comments**

Early in the review process, the Planning Department submitted the application to the local Colorado Division of Wildlife office for review and comments. Contact with the Division office resulted in a request for specific questions so that the Division could respond in a more detailed manner. J Wenum, Area Wildlife Manager, Colorado Division of Wildlife, in a letter dated March 17, 2005, responded to questions posed by Planning Department staff.

### **May 2005 - Rocky Mountain Ecological Services, Inc. Report**

The applicant hired Rocky Mountain Ecological Services, Inc. to evaluate the potential impact to the Gunnison Sage-Grouse from the construction of Overlook Trail and the construction of homes on Lots 12, 14, 15, 16, and 17, particularly focusing on the habitat. A report titled "Gunnison Sage-Grouse Potential Impact Report for the Horse River Ranch Tracts 12, & 14-17, dated May 2005", was prepared by Eric Petterson, Principal Ecologist, Rocky Mountain Ecological Services, Inc. The author states: "The report attempts to provide quantitative information as to the quantity and quality of habitat for brood rearing activities around Overlook Trail."

### **May 3, 2005 – Independent Wildlife Consultant Hired by Board of County Commissioners**

"From the May 3, 2005 Board of County Commissioners Minutes:

**Horse River Ranch Wildlife Consultant:** County Attorney Baumgarten noted that the Board had reviewed information during an April 26 work session from staff pertaining to the hiring of a wildlife consultant to review Sage-Grouse habitat related to the current Horse River Ranch land use change application regarding a road. At that time the Board agreed that Clait Braun would be the appropriate person for the County to hire. There has been no objection to that from the applicant. According to LUR Section 4-110, the Board may engage outside consultants and assess the applicant an additional fee to cover those costs.

Moved by Commissioner Swenson, seconded by Commissioner Channell to engage wildlife consultant Clait Braun regarding the Horse River Ranch land use change matter, and assess that fee to the land use change applicant. Motion passed unanimously."

### **May 9, 2005 On-Site with Consultants and CDOW**

Dr. Clait Braun visited the site and surrounding area, with representatives from Summerset Land Group, Inc., Eric Petterson - Rocky Mountain Ecological Services, Inc., representatives from the Colorado Division of Wildlife and County staff.

### **June 21, 2005 - Clait Braun Report**

Dr. Braun submitted his report, titled "Impacts of the Horse River Ranch Development on Gunnison Sage-Grouse Recommendations and Possible Mitigation, Gunnison County, Colorado" to the Planning Commission on June 21, 2005.

Note: The applicant paid \$2451.95 for Dr. Braun's consultation fee.

### **September 3, 2005 - Colorado Division of Wildlife Comments**

J Wenum, Area Wildlife Manager, Colorado Division of Wildlife, in a letter dated September 3, 2005, responded to a request for additional comments based upon the information contained in the Rocky Mountain Ecological Inc. report, the Clait Braun report, site visits by CDOW personnel and discussions with the applicant:

In summary, Mr. Wenum identified three strategies to mitigate impacts to the wildlife and wildlife habitat, as he noted in the letter:

"When we are asked to assess potential impacts to wildlife and wildlife habitat, and ways to mitigate those impacts we typically move through three tiers of planning. The first and typically best strategy is to avoid the impacts; the next approach is to minimize those impacts and the final option is to quantify and provide some form of mitigation to replace habitat that is lost to impact."

### **October 12, 2005 - Colorado Division of Wildlife Comments**

J Wenum, Area Wildlife Manager, Colorado Division of Wildlife, in a letter dated October 12, 2005, responded to a request from the Planning Commission to clarify the comments contained within the September 3, 2005 letter. In the letter he noted:

"I have been informed that there may have been some uncertainty relative to my letter dated 9/3/05 regarding the three methods of addressing impacts which were outlined in my letter (avoidance, minimization and mitigation). I am writing this letter to clarify the position of the Division of Wildlife regarding this issue.

When we were first asked to respond to this issue sometime late last year, our comments in my letter dated 3/17/05 were basically aimed at total avoidance for impacts which I covered in the "avoidance" portion of my recent letter. Subsequently, after all the snow had melted and we could see the ground, we have made several on site visits and numerous discussions with the developer. The three scenarios outlined in my recent September 3, 2005 letter were intended to explain three separate methods of addressing the impacts, any one of which I believe would satisfactorily address the impacts. The developer agreed to the plan outlined under the section entitled "minimization" of my recent letter which emphasizes minimization, but also includes some avoidance and some mitigation.

In addition, I understand that it was suggested at the September 16 Planning Commission meeting, and agreed to by the developer, that all buildings should be restricted to the building envelope. I also understand the developer offer to contribute \$10,000 for additional mitigation, which could pay for substantial mitigation on this property, if properly spent. We would recommend that the money be placed in a permanent mitigation fund for vegetation. The DOW would be willing to provide input on how the money should be spent to optimize the benefits of mitigation. The DOW does not wish to actually manage the mitigation account however. I feel that it is more appropriate for the County to oversee this fund as part of their regulatory authority in this matter.

In summary, this plan, which includes the proposed changes discussed in the preceding paragraph, exceeds what is acceptable to us and satisfactorily addresses the impacts from the proponent's proposed development."

#### **November 14, 2005 – Letter from Eric Petterson, Rocky Mountain Ecological Services, Inc.**

Eric Petterson, Principal Ecologist, Rocky Mountain Ecological Services, Inc, in a letter dated November 14, 2005, stated:

"I have reviewed the proposed Amended Plat of Horse River Ranch, the proposed amendments to the Covenants, amended plats and the proposed Mitigation Plan. In my opinion these satisfactorily minimize potential impacts, and provide mitigations to Gunnison Sage-Grouse habitat impacts that may result from the proposed Overlook Trail road or from residential structures proposed to be built in the newly delineated building envelopes.

It is my opinion that the proposed Land Use Change under the conditions and with the mitigations now prescribed would not lead to the continued decline or result in unacceptable loss of Gunnison Sage-Grouse habitat, or individual birds."

#### **November 28, 2005 – Additional Mitigation Proposed by Applicant**

Scott Shirley, in a letter dated November 28, 2005 submitted comments and additional information on the proposed mitigation plan.

#### **January 10, 2006 – Comments from Clait Braun, Grouse Inc. – Review of Proposed Mitigation**

County staff forwarded the November 28, 2005 proposed mitigation to Clait Braun for his comments. In his review, dated January 10, 2006, Clait Braun stated:

##### "Conclusions

I considered the overall area, the magnitude of the Gunnison sage-grouse resource potentially impacted by the Horse River Ranch Development, and what is presently known about successfully mitigating negative disturbance effects on any species of sage-grouse. It is clear from the literature that roads and occupied structures negatively affect sage-grouse and can lead to extinction in local areas. It is also clear that any loss of sagebrush can be negative, especially if the area with sagebrush is used during winter or in transition from one area to another (i.e., corridors). The Horse River Ranch Development inappropriately adds a road next to a sage-grouse use area (used in winter and as a corridor) and will result in occupied dwellings well within a 3.2 km (2 mile) radius of occupied breeding habitats and within 100-200 m of seasonally used habitats. Further, there is potential for negative effects on sage-grouse brood use of formerly suitable habitats. This has the strong possibility of reducing sage-grouse chick survival and recruitment to the breeding population.

The Proposed Mitigation Plan and the revised Plat map for the Horse River Ranch Development do not demonstrate that Gunnison sage-grouse will not be negatively impacted or that the expected impacts have been adequately mitigated. The proposed mitigation is inadequate. My earlier report dated 15 June 2005 (page 8, item 6) offers a recommendation for additional mitigation (voluntary conservation easement on adjacent property owned by the developer). This recommendation has merit and could compensate more fully for the expected negative impacts of the Horse River Ranch Development.

During my entire review, I carefully considered the comments of Summerset Land Group and those of the Colorado Division of Wildlife in reaching the finding the proposed mitigation is inadequate. I understand and respect the position of Summerset Land

Group and also that of the Colorado Division of Wildlife. Unfortunately, the latter appears to be value neutral at present with regards to wildlife. My recommendations are based on the demonstrable needs of Gunnison sage-grouse and are presented with the view they will help maintain populations of this species and the habitat upon which it depends.” (emphasis in original)

### **Final Mitigation Plan Proposal**

The proposed Final Mitigation Plan, informed by all of the content of the public hearing, and discussions between the applicant in meetings with the applicant’s representative with the Planning Commission Project Coordinator, County Staff – including representatives from Planning, Attorney, Public Works, the Sage Grouse Coordinator, and Natural Resource Conservation Service representative, and many Planning Commission work sessions. The submitted elements of the Mitigation Plan were extensively reviewed, discussed, and extensive suggested changes were made to the Mitigation Plan, with the very specific, articulated intent to provide protection to Gunnison Sage-Grouse habitat, while at the same time being attentive to the expectations of the owners of the subject lots. The applicant, County staff and others worked together to develop appropriate solutions that gave credence and weight to diverse and often irreconcilable initial positions and to effectively mitigate the impacts of this project. The Final Mitigation Plan is the product of that review and discussion.

The proposed Final Mitigation Plan follows the principles and priorities identified in the definition of “Mitigation” in the Land Use Resolution. The principles and priorities are:

In Section 2-102: Definitions of the Gunnison County Land Use Resolution the word “Mitigation” is defined as “the following actions, prioritized in order of preference:

- **AVOIDING IMPACTS** Avoiding an impact by not taking a certain action or parts of an action; or
- **MINIMIZING IMPACTS** Limiting the degree or magnitude of the action or its implementation, or by changing its location; or
- **RECTIFYING IMPACTS** Repairing, rehabilitating, or restoring the impact area, facility or service; or
- **REDUCING OR ELIMINATING IMPACTS** Reducing or eliminating the impact over time by preservation and maintenance operations; and
- **COMPENSATING FOR IMPACTS** Compensating for the impact by replacing or providing equivalent biological, social, environmental and physical conditions, or a combination thereof.”

The principal elements of the proposed Final Mitigation Plan include the following fundamental components:

1. **SAGE GROUSE HABITAT PROTECTION AREA**
2. **HABITAT ENHANCEMENT PLAN**
3. **BUILDING ENVELOPE MODIFICATIONS**
4. **PROTECTIVE COVENANT MODIFICATIONS**
5. **SAGE/WET MEADOW INTERFACE**

### ***OVERLOOK TRAIL***

### **FINAL MITIGATION PLAN**

1. **SAGE-GROUSE HABITAT PROTECTION AREA** An area containing 67.08 acres in the northern and western portion of the subject property has been identified as the area having the highest value for Sage-Grouse habitat and for a movement/migration corridor. The following has been proposed to protect this area:

1. The building envelopes on Homesteads 12 and 17 have been substantially reduced in size.
2. The building envelopes for Homesteads 12, 14, 17, 18 and 19 have been relocated, totally removed from the Sage-Grouse Habitat Protection Area.
3. Mitigation Areas #2 and #3, which are located at the intersection of Wiley Lane and Overlook Trail, have been established to enhance the habitat of the Sage-Grouse movement corridor, which is within the Sage-Grouse Habitat Protection Area.
4. The 60’ Non-Exclusive Access and Utility Easement for Westside Land & Timber Co. Inc. has been eliminated from the “Amended Plat of Horse River Ranch”.

5. The Declaration of Protective Covenants for Horse River Ranch will be amended in order to provide that (1) the Livestock Improvements Area for the subject Homesteads must be located within the Building Envelopes on the respective Homesteads, all of which are outside of the Sage-Grouse Habitat Protection Area, (2) the location of the Building Envelopes/Livestock Improvement Area for the subject Homesteads may be relocated only with Horse River Ranch HOA approval (consistent with all other lots) and with Gunnison County approval obtained pursuant to a formal Land Use Change Permit in which the proponent has demonstrated that the proposed change has no negative impact to the Gunnison Sage Grouse, and (3) livestock sheds may not be located within the Sage-Grouse Habitat Protection Area.

**SUMMARY OF LOTS ADJACENT TO SAGE-GROUSE HABITAT PROTECTION AREA**

**Lots 12, 14, 17, 18, 19  
(Homesteads)**

Lot	Acres within Lot	Original Bldg. Env.	Reduction of Bldg. Env.	% of Useable Acres	Remainder Acres	Unrestricted Acres
Lot #12	35.160	2.62	1.43	3.38%	33.970	1.19
Lot #14	35.055	4.08	1.56	7.19%	32.535	2.52
Lot #17	39.038	5.47	3.89	4.05%	37.458	1.58
Lot #18	35.050	3.99	2.34	4.71%	33.400	1.65
Lot #19	39.050	8.29	5.84	6.99%	32.605	2.45
<b>Total</b>	<b>179.358 ac</b>	<b>24.45 ac</b>	<b>15.06 ac</b>	<b>5.24%</b>	<b>169.968 ac</b>	<b>9.39 ac</b>

**2. HABITAT ENHANCEMENT PLAN**

A mitigation plan for the subject property has been developed to enhance the food, water and cover (habitat) of the Sage-Grouse which will mitigate some of the impacts which may result from the proposed land use change. The Mitigation Plan will be included in a separate Habitat Enhancements Agreement. The mitigation plan proposed by Summerset Land Group, Inc. (Applicant), is as follows:

The estimated cost of the habitat enhancement measures range from \$3,000 to \$5,000 based on preliminary estimates provided by local service providers. The Applicant agrees to escrow \$12,500 as part of the Habitat Enhancements Agreement. (To be included in a separate Habitat Enhancements Agreement)

This Habitat Enhancement Plan has been developed based on discussions with local CDOW and NRCS experts, and the Applicants consultant. The purpose of the Habitat Enhancement Plan is to enhance the habitat of the Gunnison Sage-Grouse to help mitigate possible impacts from the proposed land use change. Mitigation Areas 1, 2 and 3, Lone Pine Ditch, Overlook Trail, Wiley Lane and the respective homesteads are identified on Exhibit A, which is attached hereto and by reference incorporated herein.

**Mitigation Area 1**

This is the area associated with the irrigated meadow/sagebrush interface, which can be important brood rearing habitat for Sage-Grouse. Enhancement of this area through the inter-seeding of legumes and native forbs can be beneficial to the need by Sage-Grouse for high protein forage and insects during the raising of broods. Affected Homesteads are 17, 18, and 19; because Lone Pine Ditch runs through these three homesteads.

Implementation:

- Broadcast a mix of legumes, developed by a representative of said homesteads, and local CDOW and NRCS personnel, approved by NRCS, into the irrigated hay meadow portion of Mitigation Area 1 in the Spring prior to dragging the meadow. Then use dragging as a method of incorporating this seed into the soil surface, and irrigate following normal irrigation practices.
- In areas that are within Mitigation Area 1, but not part of the hay meadow, a mix of native forbs and grasses, approved by NRCS, will be broadcast into sites that lack competition from sagebrush and other native species. This should be completed after an on the ground field inspection by a representative of said homesteads, and

local CDOW and NRCS personnel have provided site specific recommendations that will lead to successful implementation of the practice.

- Irrigate meadow as historically irrigated from the Lone Pine Ditch to maintain brood rearing habitat that currently exists.

### **Mitigation Areas 2 and 3**

This is the area associated with the construction of Overlook Trail that is considered a corridor for Sage-Grouse movement down to the irrigated meadows. Restoration of this area will occur through the reclamation and re-vegetation of native plant species that will match the surrounding vegetation. This will provide cover needed by Sage-Grouse as they move back and forth from the sagebrush uplands to the irrigated meadow. Affected Homesteads are 12, 14, 15, 16, 17, 18 and 19, because the road is access to all homesteads.

#### Implementation:

- After the construction of Overlook Trail is completed, and the site has had the final grading and earthwork, a native seed mixture, approved by NRCS, will be planted on the disturbed site that will match the surrounding vegetation and provide as much of the same cover that existed before construction. Since this is a non-irrigated site mulching with certified weed-free hay will be required. Seeding of this site can occur from June 15<sup>th</sup> to July 15<sup>th</sup>, or after October 1<sup>st</sup>. An on the ground field inspection shall be conducted by a representative of said homesteads, and local CDOW and NRCS personnel, for the purpose of providing site specific recommendations that will lead to successful implementation of the practice.

Follow-up monitoring of the habitat enhancement areas shall be conducted by an on the ground field inspection by a representative of said homesteads, and local CDOW and NRCS personnel to assess success of the habitat enhancements. A report of this inspection will be provided to homestead owners by NRCS to be included in their annual report to the County of implementation efforts. The annual report is due to the County Planning Department by December 31<sup>st</sup>, of each year, and will contain information about implementation progress and success. Reporting will continue for five years or until implementation of the habitat enhancements are deemed a success by local CDOW and NRCS personnel. If is determined necessary by NRCS, the mitigation areas shall be replanted to assure that the habitat enhancement activities provide the intended mitigation. The funds for such replanting shall be paid from the above specified \$12,500 escrow fund.

### **Gunnison Sage-Grouse Habitat Protection Area**

An area containing 67.08 acres in the northern and western portion of the subject property has been identified as valuable for Sage-Grouse habitat and for a movement/migration corridor. The area has been identified on the plat as Sage-Grouse Habitat Protection Area, as identified on Exhibit A. Within this area and outside of Mitigation Areas 1-3, there are other practices and activities that can be accomplished that would be beneficial to Sage-Grouse habitat and would be above and beyond the agreed to mitigation plan.

#### Land Management:

- Prescribed Grazing: Grazing will be managed in a manner to maintain an average stubble height on grasses and forbs of 4 inches. This provides vegetative cover, soil erosion protection, and keeps weeds from invading the site.

#### Habitat Enhancement:

- Brush Control: Sagebrush removal to create a mosaic of open brood rearing and sagebrush dominated nesting habitat can improve the overall functional habitat for Sage-Grouse. This can be accomplished by mowing small areas within the larger sagebrush dominated vegetation to create more grass and forb understory.
- Range Seeding: The inter-seeding of grasses and forbs associated with the removal of sagebrush can enhance early brood rearing habitat associated with nesting and brood rearing habitat.
- Irrigation: The addition of areas above that normally irrigated by the existing irrigation system can improve vegetation and increase brood rearing habitat. Examples: The irrigation of pasture for livestock above the existing irrigation ditch; Lawns associated with a home; and drip irrigation for trees and shrubs.

-Water Developments: Watering of livestock with a trough can add just enough water to a dry site to enhance habitat for Sage-Grouse.

These practices/activities can be completed in conjunction with the Habitat Enhancement Plan Activities, either voluntarily at the homestead owners expense if he elects to do so, or after the Habitat Enhancement Plan has been completed with money leftover in the Habitat Enhancement Agreement escrow funds.

Habitat Enhancement Agreement escrow funds shall remain in a segregated interest bearing account, held by Gunnison County, until such time as those funds are used in their entirety for Sage-Grouse habitat enhancements on the referenced properties.

The exact location of the habitat enhancement, seed mixes, seeding dates, where and when to replant shall be provided in a plan developed on the ground with representatives of said homesteads and approved by local CDOW and NRCS personnel.

**Mitigation, habitat enhancement, monitoring funding** The escrow funds shall be used for the mitigation and habitat enhancement activities specified above. In addition, said funds may be used for compliance monitoring specified above for Mitigation Areas 1, 2 and 3 and may be used to perform monitoring within the Sage Grouse Protection Area to determine the effectiveness of the Mitigation Plan in protecting the sage grouse habitat and sage grouse population in the area. The exact activities and the use of said funds therefore shall be determined by Gunnison County, in its discretion, in cooperation with the CDOW and NRCS. The escrow funds shall be the only funds required to be provided by the applicant for the stated purposes, unless the owners of the Homesteads subsequently agree to provide further funding. The escrow funds shall remain in a segregated interest bearing account, held by Gunnison County, for the purposes specified in the Habitat Enhancements Agreement, until such time as those funds are used in their entirety for such purposes.

**3. BUILDING ENVELOPE MODIFICATIONS**

The following identifies modifications made to each Lot’s building envelope and the modifications shall be shown on the “Amended Plat of Horse River Ranch”:

**Homestead 12** - Building envelope reduced from 2.62 acres to 1.19 acres, or by approximately 54% of its original size  
 - Location of the building envelope was moved southwest, away from the May Bohm Ditch and from the sage grouse habitat and movement corridor

**Homestead 14** - Building envelope reduced from 4.08 acres to 2.52 acres, or by approximately 37% of its original size  
 - Approximately 50% of the Building Envelope was removed from the ditch interface

**Homestead 15** - No change in Building Envelope size or location

**Homestead 16** - No change in Building Envelope size or location

**Homestead 17** - Building envelope reduced from 5.47 acres to 1.58 acres, or by approximately 71% of its original size  
 - Location of building envelope moved south into meadow, away from Sage-Grouse movement corridor

**Homestead 18** - Building envelope reduced from 3.99 acres to 1.65 acres or by approximately 57% of its original size  
 - Location of building envelope moved southeast, into meadow away from Sage-Grouse habitat and ditch interface

**Homestead 19** - Building envelope reduced from 8.29 acres to 2.4 acres, or by approximately 70% of its original size  
 - Location of building envelope moved southeast, into meadow away from Sage-Grouse habitat and ditch interface

**SUMMARY OF BUILDING ENVELOPE REDUCTIONS**

All Lots  
 (Homesteads)

Lot	Acres within Lot	Original Bldg. Env.	Reduction of Bldg. Env.	% of Useable Acres	Restricted Acres	Unrestricted Acres
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<b>Lot #12</b>	35.160	2.62	1.43	3.38%	33.970	1.19
<b>Lot #14</b>	35.055	4.08	1.56	7.19%	32.535	2.52
<b>Lot #15</b>	35.050	2.74	0.00	7.82%	32.310	2.74
<b>Lot #16</b>	35.051	3.64	0.00	10.38%	31.411	3.64
<b>Lot #17</b>	39.038	5.47	3.89	4.05%	37.458	1.58
<b>Lot #18</b>	35.050	3.99	2.34	4.71%	33.400	1.65
<b>Lot #19</b>	35.055	8.29	5.84	6.99%	32.605	2.45
<b>Total</b>	<b>249.459 ac</b>	<b>30.83 ac</b>	<b>15.06 ac</b>	<b>6.32%</b>	<b>233.689 ac</b>	<b>15.77 ac</b>

- % Acreage Restricted from Future Development = 93.68%
- Sage-Grouse Habitat Protection Area = 67.08 acres

**4. PROTECTIVE COVENANT MODIFICATIONS**

A new article, entitled Article 18, Gunnison Sage-Grouse Mitigation, has been added to the Horse River Ranch, Declaration of Protective Covenants, specifically addressing changes which have been made to the covenants to enhance habitat. The changes are listed below:

1. Residential units reduced from 3 to 2 per Homestead
2. Livestock Improvements Area must be wholly within the Building Envelopes
3. Livestock sheds restricted to 2 per Homestead, maximum size 200 square feet and must be more than 150 feet from irrigated interface
4. Assurance that irrigation on the subject lands shall continue to maintain the irrigated interface
5. No physical improvements, including livestock sheds, may be in the Sage-Grouse Habitat Protection Area
6. The road designated on the plat as Limited Agricultural Road, which crosses Homesteads 18 and 19, within the Sage Protection Area, shall be limited to use for normal agriculture purposes, but may not otherwise be used for access to any Homesteads or other lands.

The specific provisions of the new Article 18 are as follows:

**AMENDMENTS TO THE DECLARATION  
OF PROTECTIVE COVENANTS OF HORSE RIVER RANCH**

The Declaration of Protective Covenants of Horse River Ranch is hereby amended by the addition of the following new article:

**ARTICLE 18: GUNNISON SAGE-GROUSE MITIGATION**

**18.1 Homesteads 12, 14, 15, 16, 17, 18 and 19.** The provisions of the within Article 18 shall apply only to the aforementioned 7 Homesteads, (referred to hereinafter in this Article 18 as said Homesteads) and no others. The other provisions of the Covenants shall continue to apply to said Homesteads, but where the provisions of the within Article 18 are more restrictive than other provisions of the Covenants, the within provisions shall control.

**18.2 Two residential units.** A maximum of two (2) residential units shall be permitted on each Homestead. No more than one Integrated Secondary Residence and Guest House per 35 acres may be permitted on each Homestead.

**18.3 Livestock Improvements area.** The Livestock Improvements Area for said Homesteads shall be wholly included in the Building Envelopes.

**18.4 Livestock sheds.** Not more than two (2) livestock sheds per Homestead, each with not more than three (3) sides and containing no more than two hundred (200) square feet, located more than one hundred fifty (150) feet from the irrigated interface area, shall be permitted outside of the Livestock Improvements Area, none of which may be

constructed within the Sage-Grouse Habitat Protection Area, identified on the Plat as Sage-Grouse Habitat Protection Area.

**18.5 Enforcement of Preservation and Administration of Water Rights.** It is the intent that the Property shall continue to be irrigated as it has been historically irrigated, subject to the provisions of the within Article 18. The lands which are currently being irrigated on said Homesteads and the ditches and appurtenant water rights used to irrigate them, are identified on Exhibits A and B, which are attached hereto and by reference incorporated herein. No change in the irrigation pattern outside of the building envelopes on said Homesteads, pursuant to either a change in plans or in operation, that alters the terms and conditions contained in this Article 18 shall be effective until approved by the Association and Gunnison County, which approval shall not be unreasonably withheld. In order to effectively implement this provision on said Homesteads, the following conditions shall be maintained:

**18.5.1** All of the water rights described in the attached Exhibit B shall be legally and physically maintained and shall neither be allowed to be abandoned nor conveyed to any third party nor used on other lands.

**18.5.2** Each of the ditches identified on the attached Exhibits A and B shall be legally and physically maintained on said Homesteads in a condition which shall permit them to carry each ditches appurtenant water rights during the irrigation season. To this end one person identified and engaged by the Association shall be responsible for the irrigation of said lands and that person shall be responsible for such irrigation, including the periodic cleaning and repair as may be necessary for such use.

**18.5.3** Subject to availability, water shall be applied (1) to the irrigated lands on said Homesteads as may be necessary to maintain grass production during the normal growing season, taking into consideration the need based on such factors as moisture occurring naturally, necessity to shut the water off for haying, pasture rotation and repairs; and (2) to maintain water in the ditches sufficient to maintain the wet interface along said ditches.

**18.5.4** The intent and criteria of success of this Article 18.5 shall be to follow the Best Management Practices of the local office of the Natural Resources Conservation Services.

**18.5.5** Annual reports delivered to the Gunnison County Planning Director describing the irrigation on said Homesteads shall be filed by the owners of said Homesteads by December 31 annually. Such reports shall include such matters as the dates when water has been applied to the land, including the turn on and turn off dates, the lands which have been irrigated, the name of the person who is responsible for the irrigation of said lands as provided for herein and the financial arrangements which have been made to assure the compensation for the irrigator. If the name of the person who will be responsible for irrigation for the succeeding year is not known at the time of such report, that name shall be provided not later than May 1 of the succeeding year.

**18.5.6** Gunnison County shall have the right to enter the property for the purpose of monitoring the irrigation of said Homesteads provided it gives not less than three days prior notice to the owners of said Homesteads in order that said owners shall have the opportunity to be present at such monitoring. In addition, in this regard a representative of the owners, Gunnison County and such Federal and State representatives as Gunnison County selects shall meet on the property during June of each year at a mutually agreeable time to monitor said irrigation.

**18.5.7** Nothing contained herein shall be construed to prevent the irrigation of additional lands on such Homesteads, including lands on said Homesteads which were not previously irrigated such as lands in the building envelopes, nor the completion of an augmentation plan proposed to mitigate evaporation losses on ponds on such Homesteads or on the Property.

**18.5.8** In the event of the failure or inability of the owners of said Homesteads to maintain such irrigated use, at the expense of said owners, either the Declarant during Declarants Control Period, the Homestead owners following Declarants Control Period, or Gunnison County, shall have the right to take such action as may be necessary to preserve and administer any water system and water rights within the property, to undertake such action as is required of said owners, but was not performed. In the event Gunnison County is required to take such action, the owners shall bear the cost thereof, including the legal and court costs required to enforce such use.

**18.5.9** In order to realize the intent of this Article 18, it may be necessary to amend its provisions from time to time, in which event the owners shall advise Gunnison County of any proposed amendments, together with evidence such as diversion records, historic aerial photographs and other information and data which may be useful in substantiating such proposed amendments.

**18.6 Sage-Grouse Habitat Protection Area.** No buildings or other structural improvements, including livestock sheds, may be constructed on those portions of said Homesteads which are located within that area which is identified on the Plat as the Sage-Grouse Habitat Protection Area. This provision shall not be construed to prohibit any habitat improvements which have been approved by the County in consultation with the local NRCS and DOW representatives.

**18.7 Existing access road to Lone Pine Ditch.** The existing road, which is identified on the Plat as Limited Agricultural Road, which is used for access from Wiley Lane to the Lone Pine Ditch may continue to be used for normal agriculture purposes, but may not otherwise be used for access to said Homesteads or other lands.

**18.8 County approval required to amend.** County approval pursuant to the provisions of the *Gunnison County Land Use Resolution* shall be required to amend the provisions of this Article 18. The location of the Building Envelopes/Livestock Improvement Area for the subject Homesteads may be relocated only with Horse River Ranch HOA approval (consistent with all other lots) and with Gunnison County approval obtained pursuant to a formal Land Use Change Permit in which the proponent has demonstrated that the proposed change has no negative impact to the Gunnison Sage Grouse.

**18.9 County right to enforce.** In the event of the failure of an owner of a Homestead to comply with any of the provisions of this Article 18, Gunnison County shall have the right to enforce such provision after first giving written notice to the violating owner and to the Horse River Ranch Homeowners Association and the failure to correct such violation within 10 days after service of such notice. The cost of enforcing such violation, including legal fees, shall be paid by such violating owner.

## **5. SAGE/WET MEADOW INTERFACE**

Several measures have been implemented in this Mitigation Plan to protect the critical sage/wet meadow interface along the Lone Pine Ditch and the May Bohm Ditch. They are summarized as follows:

- The building envelopes on Homesteads 12, 17, 18, 19 and a portion of Homestead 14 have been relocated away from the sage/meadow interface
- Mitigation Area #1 has been established along the Lone Pine Ditch

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**REVIEW COMMENTS:** This section identifies some, but no means all, of the review comments made both before and after the Final Mitigation Plan submittal.

### **GUNNISON COUNTY PUBLIC WORKS COMMENTS:**

#### **ROAD DESIGN REVIEW**

Initial comments were received from Allen Moores, Gunnison County Public Works, January 5, 2005, in a memo, which he noted that:

“...there are several issues that would need to be resolved before our office can give final approval.”

Allen Moores, Gunnison County Public Works, in a memo of February 21, 2006, noted that:

“Our office has reviewed the proposed road improvement plans and the submitted cost estimates for Overlook Trail and Wiley Lane road. The proposed improvements and cost estimates are adequate for the amount of traffic expected to be generated if Overlook Trail is approved.

There is an area of concern that will need to be addressed by the applicant. This area is approximately 1000 feet west of the Horse River Ranch Road on the Wiley Lane Road. There is a telephone pedestal that has had fill material placed around it and created a hole in the edge of the road. This will need to be addressed.

It needs to be noted that the section of Wiley Lane Road from C.R. 730 aka Ohio Creek Road to the first dwelling on the south side of the road has a problem of frost heaves on a regular basis. The applicant needs to be aware that Gunnison County has no plans now or in the future for reconstruction or repair of this section of road.

#### **GUNNISON COUNTY FIRE PROTECTION DISTRICT COMMENTS:**

Dennis Spritzer, Fire Marshal, G.C.F.P.D., in a letter of January 21, 2005, noted that:

“I have reviewed the proposed road for Horse River Ranch and found no problems with access for emergency vehicles”.

#### **SITE VISIT:**

The Planning Commission conducted a site visit to the property on January 7, 2005 and on August 5, 2005.

#### **PUBLIC HEARING:**

The Gunnison County Planning Commission conducted a public hearing February 4, 2005. The public hearing was continued on February 18, March 18, May 6, August 5, and the public hearing was closed on September 16, 2005. The minutes of the hearing are attached to this decision document, and all testimony, both written and verbal, are hereby incorporated as part of this record of review and evaluation.

At the September 16, 2005 public hearing, the Commission appointed member Nick Lypps to act as a Project Coordinator for the purpose of assisting in the development of the irrigation plan element of the Mitigation Plan.

Letters received by the Planning Department include:

Gunnison Sage-Grouse Working Group – letter of March 14, 2005

High Country Citizens' Alliance – letters of March 11 and September 16, 2005

Gerald and Gayle Burgess – letter of September 20, 2005

All letters are a part of the public record and are contained in the file.

#### **MITIGATION:**

The following is a summary of the mitigation actions identified in the proposed Mitigation Plan and are categorized in the context of the definition of Mitigation:

#### **AVOIDING IMPACTS**

- An area containing 67.08 acres in the northern and western portion of the subject property has been identified as the area having the highest value for Sage-Grouse habitat and for a movement/migration corridor. The following has been proposed to protect this area:
  - The building envelopes on Homesteads 12 and 17 have been substantially reduced in size.
  - The building envelopes for Homesteads 12, 14, 17, 18 and 19 have been relocated, totally removed from the Sage-Grouse Habitat Protection Area
- The Declaration of Protective Covenants for Horse River Ranch will be amended in order to provide that (1) the Livestock Improvements Area for the subject Homesteads must be located within the Building Envelopes on the respective Homesteads, all of which are outside of the Sage-Grouse Habitat Protection Area, (2) the location of the Livestock Improvement Area for the subject Homesteads may not be modified, and (3) livestock sheds may not be located within the Sage-Grouse Habitat Protection Area
- The building envelopes on Homesteads 12, 17, 18, 19 and a portion of Homestead 14 have been relocated away from the sage/meadow interface.
- The Declaration of Protective Covenants for Horse River Ranch will be amended in order to provide that (1) the Livestock Improvements Area for the subject Homesteads must be located within the Building Envelopes on the respective Homesteads, all of which are outside of the Sage-Grouse Habitat Protection Area, (2) the location of the Livestock Improvement Area for the subject Homesteads may not be modified, and (3) livestock sheds may not be located within the Sage-Grouse Habitat Protection Area.
- No physical improvements, including livestock sheds, may be in the Sage-Grouse Habitat Protection Area
- The 60' Non-Exclusive Access and Utility Easement for Westside Land & Timber Co. Inc. has been eliminated from the “Amended Plat of Horse River Ranch”.

## MINIMIZING IMPACTS

- The building envelopes for Homesteads 12, 14, 17, 18 and 19 have been relocated, totally removed from the Sage-Grouse Habitat Protection Area.
- The building envelopes on Homesteads 12, 17, 18, 19 and a portion of Homestead 14 have been relocated away from the sage/meadow interface.
- The Declaration of Protective Covenants for Horse River Ranch will be amended in order to provide that (1) the Livestock Improvements Area for the subject Homesteads must be located within the Building Envelopes on the respective Homesteads, all of which are outside of the Sage-Grouse Habitat Protection Area, (2) the location of the Livestock Improvement Area for the subject Homesteads may not be modified, and (3) livestock sheds may not be located within the Sage-Grouse Habitat Protection Area.
- The building envelopes on Homesteads 12 and 17 have been substantially reduced in size.
- Reduction in number of residences, from 3 to 2.
- The road designated on the plat as Limited Agricultural Road, which crosses Homesteads 18 and 19, within the Sage Protection Area, shall be limited to use for normal agriculture purposes, but may not otherwise be used for access to any Homesteads or other lands.
- Livestock sheds restricted to 2 per Homestead, maximum size 200 square feet and must be more than 150 feet from irrigated interface

## RECTIFYING IMPACTS

- **Mitigation Area 1** This is the area associated with the irrigated meadow/sagebrush interface, which can be important brood rearing habitat for Sage-Grouse. Enhancement of this area through the inter-seeding of legumes and native forbs can be beneficial to the need by Sage-Grouse for high protein forage and insects during the raising of broods. Affected Homesteads are 17, 18, and 19; because Lone Pine Ditch runs through these three homesteads.
- **Mitigation Areas 2 and 3** This is the area associated with the construction of Overlook Trail that is considered a corridor for Sage-Grouse movement down to the irrigated meadows. Restoration of this area will occur through the reclamation and re-vegetation of native plant species that will match the surrounding vegetation. This will provide cover needed by Sage-Grouse as they move back and forth from the sagebrush uplands to the irrigated meadow. Affected Homesteads are 12, 14, 15, 16, 17, 18 and 19, because the road is access to all homesteads.

## REDUCING OR ELIMINATING IMPACTS

- All of the actions described above.

## COMPENSATING FOR IMPACTS

- In addition the applicant has agreed to establish and fund an account in the amount of \$12,500 to be held in a segregated escrow account and administered by Gunnison County to fund the Habitat Enhancement Plan and reasonably ensure its success, and further to ensure that potential unanticipated impacts will be compensated by the funds in that account.

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## **COMPLIANCE WITH APPLICABLE SECTIONS OF ARTICLE 5, GUNNISON COUNTY LAND USE RESOLUTION:**

### **Section 5-203: *Development In Areas Subject to Flood Hazards.***

There are no flood hazards present on the subject property.

### **Section 5-204: *Development in Areas Subject to Geologic Hazards.***

The site is not located within areas subject to geologic hazards.

### **Section 5-205: *Development In Areas Subject to Wildfire Hazards.***

The proposed development is not located within an area subject to high wildfire hazards.

### **Section 5-206: *Protection of Wildlife Habitat Areas.***

The application meets the standards of F. Standards For Development In Wildlife Habitat Areas, by implementation of mitigation actions identified in the proposed Mitigation Plan.

06 March 17 PC Minutes

06 April 07 PC Approved

**Section 5-207: *Protection of Water Quality.***

The road construction will not impact any wetlands or water bodies located on the subject property.

**Section 5-208: *Standards For Development On Ridgelines.***

Each structure is reviewed at the time of building permit for compliance.

**Section 5-209: *Development That Affects Agricultural Lands.***

Hay will continue to be grown and is addressed in the covenants.

**Section 5-210: *Development Of Land Beyond Snowplowed Access.***

The property is not located beyond snowplowed access.

**Section 5-211: *Development On Inholdings In The National Wilderness.***

The property is not located on a National Wilderness inholding.

**Section 5-212: *Development On Property Above Timberline.***

This site is not located above timberline.

**Section 5-213: *Road System.***

The proposed road has been reviewed by the Gunnison County Public Works Department and is in compliance with the *Gunnison County Specifications for Road and Bridge Construction.*

**Section 5-214: *Public Trails.***

There is no public trail existing or proposed on this property.

**Section 5-305: *Water Supply.***

Individual wells will provide the water supply for the residences.

**Section 5-306: *Sewage Disposal/Wastewater Treatment.***

The future residences will be served by individual sewage disposal systems.

**Section 5-307: *Fire Protection.***

Fire protection is provided by the Gunnison Fire Protection District. The District has reviewed and approved the road access.

**5-403: *General Site Plan Standards And Lot Measurements.***

Each structure is reviewed at the time of building permit for compliance.

**Section 5-407: *Installation of Solid Fuel-Burning Devices***

Each structure is reviewed at the time of building permit for compliance.

**Section 5-408: *Open Space And Recreation Areas***

Not applicable.

**Section 5-409: *Signs.***

The applicant is required to install a sign identifying "Overlook Trail" at the intersection with County Road #818 (Wylie Lane).

**5-410: *Off-Road Parking And Loading.***

Each residence is required to provide two off-road parking spaces per parcel.

**Section 5-411: *Landscaping And Buffering.***

Not required.

**Section 5-412: *Snow storage.***

Sufficient area is provided for snow storage within the right-of-way and on the individual building sites.

**Section 5-413: *Fencing***

Not required.

**Section 5-414: Exterior Lighting.**

Each structure is reviewed at the time of building permit for compliance.

**Section 5-415: Reclamation And Noxious Weed Control.**

Obtaining a Reclamation permit is a requirement of this approval.

**Section 5-416: Grading And Erosion Control.**

The applicant shall provide erosion control during the construction and improvements to County Road #818.

**Section 5-417: Drainage, Construction And Post-Construction Stormwater Runoff.**

Applicable.

**Section 5-418: Water Impoundments.**

Not applicable.

**Section 6-103: Right-to-Ranch Policy.**

Applicable.

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**FINDINGS:**

The Gunnison County Planning Commission finds that:

1. The proposed Final Mitigation Plan was informed by: all of the content of the public hearing, and discussions between the applicant in meetings with the applicant's representative with the Planning Commission Project Coordinator, County Staff – including representatives from Planning, Attorney, Public Works, the Sage Grouse Coordinator, and Natural Resource Conservation Service representative, and many Planning Commission work sessions. The submitted elements of the Mitigation Plan were extensively reviewed, discussed, and extensive suggested changes were made to the Mitigation Plan, with the very specific, articulated intent to provide protection to Gunnison Sage-Grouse and its habitat, while at the same time being attentive to the expectations of the owners of the subject lots. The applicant, County staff and others worked together to develop appropriate solutions that gave credence and weight to diverse and initial positions and to effectively mitigate the impacts of this project. The Final Mitigation Plan is the product of that review and discussion.
2. The Planning Commission has reviewed and is informed by all the documentation submitted to the County and included within the Planning Office file relative to this application; including all exhibits, references and documents as submitted with this application, including road construction plans, Final Mitigation Plan, comments and reports from consultants, comments from the Colorado Division of Wildlife, Gunnison County Public Works, Gunnison County Fire Protection District, Natural Resources Conservation Service, Gunnison County Sage-Grouse Coordinator and the public.
3. The applicant has provided a plan to mitigate potential adverse impacts from the proposed construction of Overlook Trail and the development of the residences and residential use accessed from Overlook Trail that are located within lands determined to be sensitive or critical wildlife habitat. The application specifically meets the standards of F. Standards for Development in Wildlife Habitat Areas, by implementation of mitigation actions identified in the Final Mitigation Plan.
4. The application complies with all applicable standards of the *Gunnison County Land Use Resolution*.
5. The application complies with the *Gunnison County Standards and Specifications for Road and Bridge Construction* design elements.
6. This Land Use Change Permit is subject to compliance with the requirements of the *Gunnison County Land Use Resolution* and the *Gunnison County Road & Bridge Specifications for Road Construction*.
7. The County Public Works Department and Gunnison County Fire Protection District have reviewed and approved the

plans for the road construction.

8. Gunnison County Public Works advises the applicant that the section of Wiley Lane from C.R. 730 aka Ohio Creek Road to the first dwelling on the south side of the road has a problem of frost heaves on a regular basis and that Gunnison County has no plans now or in the future for reconstruction or repair of this section of road.
9. County road maintenance is not provided to this property as of the date of this approval. This approval shall not be interpreted to imply, nor shall it obligate the County to maintain or provide snowplowing in the future.
10. All maintenance, dust control and snowplowing shall be the responsibility of the property owner(s).
11. This review and decision, regarding the proposed road incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this application; including all exhibits, references and documents as included therein.
12. This permit is limited to the construction of the proposed road described within the "Project Summary" of this application, and as depicted on the plans and exhibits submitted as part of this application. Any uses other than those will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution*.
13. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
14. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) except as approved or required as part of this Permit, relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

**DECISION:**

The Gunnison County Planning Commission, having reviewed all the documentation submitted to the County and included within the Planning Office file relative to this application, including all exhibits, references and documents as included therein, including both written and verbal public comment at a public hearing and having reached the above cited findings, classifies LUC No. 2004-79, Horse River Ranch – Overlook Trail Road Construction, submitted by Summerset Land Group, Inc., as a Minor Impact Project and is hereby approved with the following conditions:

1. That this approval be memorialized within a Certificate of Minor Impact, and recorded within the Office of the Gunnison County Clerk and Recorder. Approval shall not be final until recordation of the Certificate of Minor Impact is recorded within the Office of the Gunnison County Clerk and Recorder.
2. This Land Use Change Permit is subject to compliance with requirements as may be included in a Reclamation Permit, required by *Section 5-415: Reclamation and Weed Control*, of the *Gunnison County Land Use Resolution*.
3. The applicant shall provide three 14" x17" copies of the "Amended Plat of Horse River Ranch" to the County Building Inspector for addressing of the Lots. No building or septic permits shall be issued until addresses have been assigned by the Building Inspector.
4. The applicant shall install a sign identifying "Overlook Trail" at the intersection with County Road #818 (Wylie Lane). No building or septic permits shall be issued until the sign has been installed and documentation of installation has been provided to the Planning Department.
5. County road maintenance is not provided to this property as of the date of this approval. This approval shall not be interpreted to imply, nor shall it obligate the County to maintain or provide road maintenance or snowplowing in the future.
6. All maintenance, dust control and snowplowing shall be the responsibility of the property owner(s).
7. Requires dust control not less than once a year on any road following the commencement of construction of any building served by such road and at any time that the use of any road within the Property is the cause of dust pollution, to provide

dust control in the form of the use of magnesium chloride, oil treatment or other suitable dust retardant.

8. The applicant shall record the amended "Declaration of Protective Covenants of Horse River Ranch" with the Office of the Gunnison County Clerk and Recorder. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
9. The applicant shall record the "Amended Plat of Horse River Ranch" with the Office of the Gunnison County Clerk and Recorder. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
10. A Development Improvements Agreement with Gunnison County shall be submitted by the applicant or his representative, subject to approval by the Gunnison County Attorney, referencing the construction design plans prepared by NCW & Associates titled "Horse River Ranch Road Construction Plans", dated August 8, 2002, Sheets 1-6, with cost estimates revised from Norman Whitehead, P.E., NCW & Associates for Overlook Trail and improvements to County Road #818, including provision of reclamation, as approved by Gunnison County Public Works Department, shall be executed by the Board of County Commissioners. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
11. A performance bond, letter of credit or other means of surety, acceptable to the County, shall be submitted to cover costs of construction plus 25 percent. Such costs to be detailed by the applicant's engineer and reviewed by the Gunnison County Public Works Department, and that surety be retained by the County to such date as is acceptable to the County Public Works Director to warrant integrity of the road construction. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
12. A Habitat Enhancements Agreement with Gunnison County shall be submitted by the applicant or his representative, subject to approval by the Gunnison County Attorney, referencing the proposed habitat enhancements, as identified in the Habitat Enhancements Plan, shall be executed by the Board of County Commissioners. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
13. That a performance bond, letter of credit or other means of surety acceptable to the County, shall be submitted in the amount of \$12,500 to be held by Gunnison County, for the purposes of ensuring the performance, and enforcement, including attorney fees, of the Habitat Enhancements Plan. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
14. Land Use Change applications for Building Envelope relocations, as referenced in the covenants, shall be reviewed by the Planning Commission as a Minor Impact Project.
15. The applicant shall pay the final invoice of Grouse, Inc., in the amount of \$300.00. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.
16. This permit is limited to the "Project Description" of this application, and as depicted on the plans and exhibits submitted as part of this application. Any uses other than those will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution*.
17. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
18. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative), except as required and approved as part of this Permit, relied on herein to mitigate a possible conflict, shall require a new or amended land use change permit.

The meeting was adjourned at 5:40 p.m.

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/S/ Beth Baker

06 March 17 PC Minutes  
06 April 07 PC Approved

Administrative Assistant  
Gunnison County Planning