AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Restrictive Covenant for a Ridgeline Vantage; Cost

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

The Planning Commission unanimously approved a Minor Impact Land Use Change for the Coster Ridgeline Residence, on April 6th, 2018. A restrictive covenant was submitted, ensuring in perpetuity, the existence and replacement of the natural vegetation on the subject property.

Fiscal Impact:

Submitted by: Rachel Sabbato **Submitter's Email Address:** rsabbato@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 5/10/2018 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/10/2018

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 5

Agenda Date: 5/15/2018

Revised April 2015

Gunnison County Community Development Department
Offices of Planning, Building and Environmental Health
221 N. Wisconsin St., Ste. D
Gunnison, CO 81230
Phone: (970) 641-0360 Fax: (970)641-8585

May 9, 2018

TO: **Board of County Commissioners**
Matthew Birnie, County Manager
David Baumgarten, County Attorney

FROM: **Rachel Sabbato**
Planner II

SUBJECT: **Coster Ridgeline Residence**
LUC-18-00002
Review and sign restrictive covenant for a ridgeline vantage

The Planning Commission unanimously approved a Minor Impact Land Use Change for the Coster Ridgeline Residence, on April 6th, 2018. A restrictive covenant was submitted, ensuring in perpetuity, the existence and replacement of the natural vegetation on the subject property. The Certificate of Approval for Land Use Change (LUC-18-0002) will site this signed restrictive covenant and will then be recorded.

This ridgeline residence does not require BOCC approval as the site is fully screened as pursuant to *Section 11-108: Standards for Development on Ridgelines, I1c. Full Screening Exists and is Protected*. The County Attorney's office has reviewed and approved of the required restrictive covenant.

Attachments:
Planning Commission Decision
Coster Ridgeline Vantage- Certificate of Minor Impact Approval
Exhibit A – Restrictive Covenant

TO: **Planning Commission**

SUBJECT: **Minor Impact Decision**
Coster - Ridgeline
Lot 27- Star Mountain Ranch
LUC-18-00002

DATE: **Planning Commission meeting, April 6, 2018**

PREPARED BY: **Rachel Sabbato, Planner II**

APPLICANT: **John G. and Anne G. Coster**
13 Hartford Street
Dover, MA 02030

REPRESENTATIVE: **David Leinsdorf**

At its regular meeting on April 6th, 2018 the Planning Commission unanimously approved the following Minor Impact Recommendation, moved by Vince Rogalski and seconded by Kent Fulton:

PROJECT DESCRIPTION:
John and Anne Coster, represented by David Leinsdorf, have submitted a land use change permit application for the construction of a fully screened single-family residence and attached garage, in compliance with *Section 11-108: Standards for Development on Ridgelines*, *Gunnison County Land Use Resolution*. The average height above existing grade for the proposed residence will be 26 feet in height, with a garden level measuring 2,100 sq. ft. and the main level as 2,200 sq.ft. The attached garage would be one-story, of approximately 972 square feet. Exterior finishes will range from bronze to weathered grey/brown and Sonoran Telluride Stone.

Based upon the ridgeline analysis prepared by Meridan Design, Kurt Olson, the building site is fully screened by up to 428-1,288 feet of tree cover or the vantage angle is steep enough so that proposed residence is not visible. A recorded mechanism (e.g. protective covenant, conservation easement, bonding agreement) acceptable to the County must be provided to ensure, in perpetuity, the existence and replacement of the natural vegetation on the applicant's property used for screening would be required.

Consideration of and review of this application by the Planning Commission is based on all information contained within the Land Use Change File LUC-18-00002; including public hearing testimony, site visit and all other correspondence, documents and exhibits contained within the Planning Department file.

PARCEL LOCATION:
The land is located approximately 18 miles north of the City of Gunnison, east of Ohio Creek Road (County Road #730), legally described as Lot 27, in Star Mountain Ranch.

ACCESS:
Access is from entrances to Star Mountain Ranch, either from Ohio Creek or Carbon Creek Roads, via private roads; Eagle Drive to Star Mountain Ranch Drive.

SITE CHARACTERISTICS:
The property is a heavily treed site. From the ridgeling vantage described by the surveyor, there are from 428 feet to 1,288 feet of Aspen and Conifers concealing the homesite. The existing grade varies from 7% to 12%.

COMPLIANCE WITH *SECTION 11-108: STANDARDS FOR DEVELOPMENT ON RIDGELINES* OF THE GUNNISON COUNTY LAND USE RESOLUTION:
The applicant provided a detailed ridgeline analysis, including five points on Ohio Creek Road. This is identified on the ridgeline study, showing the directions from vantages on Ohio Creek, submitted with the application.

Road 730 (herein referred to as Ohio Creek Road) are "ridgeline vantages", pursuant to *Section 11-108: Standards for Development on Ridgelines. B. Applicability*. The proposed residence and garage fully screened from the identified vantages on Ohio Creek Road, pursuant to *Section 11-108: Standards for Development on Ridgelines I1c. Full Screening Exists and is Protected*.

SITE VISIT: The Planning Commission conducted a site visit on March 16, 2018. The Commission members visited the property and viewed the site from locations on Ohio Creek Road. The Commission visited five vantage points on Ohio Creek Road and they unanimously agreed that site is fully screened.

PUBLIC HEARING: The Planning Commission conducted a public hearing on April 6, 2018, at that time there was no public comment.

FINDINGS:
The Gunnison County Planning Commission, based on the facts set forth in this Decision and on the material facts represented by the applicant, whether or not repeated herein, and the results of an onsite visit and public hearing by the Planning Commission, finds that:

1. Star Mountain Ranch is a 35-acre tract development that is exempt from subdivision review under CRS 30-28-101 (10-C), and as defined by 30-28-101 (10-b).

2. A detailed ridgeline analysis prepared by Meridan Design, Kurt Olson, illustrates that the building site is fully screened by up to 428-1288 feet of tree cover or the vantage angle is steep enough so that proposed residence is not visible. This is identified on the site plan showing the vantages from Ohio Creek Road, submitted with the application in compliance with *Section 11-108: Standards for Development on Ridgelines. I1c. Full Screening Exists and is Protected.*

3. Pursuant to *Section 11-108: Standards for Development on Ridgelines*, *I1c. Full Screening Exists and is Protected,* the Planning Commission finds by clear and convincing evidence that the building meets or exceeds the following standard:

   > c. Any building on the ridgeline shall be <u>fully</u> screened by existing (as opposed to new) natural vegetation on the applicant's property, of such volume, density and species of tree cover, after provision of defensible space for wildfire hazard, so that no part of the building shall be visible from any ridgeline vantage, at any time of the year. A recorded mechanism (e.g. protective covenant, conservation

easement, bonding agreement) acceptable to the County must be provided prior to the approval of the Minor Impact Certificate to ensure, in perpetuity, the existence and replacement of the natural vegetation on the applicant's property used for screening;

4. The Planning Commission conducted a site visit on March 16, 2018. The Commission members visited the property and viewed the site from locations on Ohio Creek Road. The Commission visited five vantage points on Ohio Creek Road and they unanimously agreed that site is fully screened.

5. A recorded mechanism (e.g. protective covenant, conservation easement, bonding agreement) acceptable to the County must be provided prior to the approval of the Minor Impact Certificate to ensure, in perpetuity, the existence and replacement of the natural vegetation on the applicant's property used for screening would be required.

6. 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 comments at the public hearing, exhibits, references and documents as included therein.

8. 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.

9. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

10. Approval of this use is based upon the facts presented and implies no approval of similar use in a different location and with different impacts on the environment and community. Each such future application shall be required to be reviewed and evaluated on its own facts, subject to its compliance with current regulations, and its impact to the County.

DECISION:
The Gunnison County Planning Commission, having reviewed all exhibits, references and documents as included therein, conducted a properly noticed public hearing, and having reached the above cited Findings, that LUC-18-00002, John and Anne Coster, request for construction of a single-family residence and attached garage, located on Lot 27, Star Mountain Ranch, is classified as a Minor Impact Project, approved with the following conditions:

1. This permit is limited to the construction of the single-family residence and attached garage as depicted with this application. Expansion or change of this use 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.*

2. A recorded mechanism (e.g. protective covenant, conservation easement, bonding agreement) acceptable to the County must be provided prior to the approval of the Minor

Impact Certificate to ensure, in perpetuity, the existence and replacement of the natural vegetation on the applicant's property used for screening would be required.

3. 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 recorded within the Office of the Gunnison County Clerk and Recorder.

4. 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.

5. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

6. Approval of this use implies no approval of any such similar use on any other parcel. Review of this application has considered the impact of this proposed use in the context of cumulative impacts to the environment and the community in the context of its compliance with County land use standards. Approval of this use is based upon the facts presented and implies no approval of a similar use in a different location and with different impacts on the environment and community. Each such future application shall be required to be reviewed and evaluated on its own facts, subject to its compliance with current regulations, and its impact to the County.

GUNNISON COUNTY, COLORADO

CERTIFICATE OF MINOR IMPACT APPROVAL

CERTIFICATION NO. 01 SERIES 2018
AN ACTION APPROVING LAND USE CHANGE APPLICATION NO. 2018-00002
RIDGELINE VANTAGE RESIDENCE
LOT 27, 335 STAR MOUNTAIN DRIVE, IN STAR MOUNTAIN RANCH, GUNNISON, COLORADO.

WHEREAS, John and Anne Coster, represented by David Leinsdorf, have submitted a Land Use Change application for the construction of a single-family residence with an attached garage, in compliance with Section 11-108, Standards for Development on Ridgelines, Gunnison County Land Use Resolution.

The applicants provided a detailed ridgeline analysis prepared by Meridan Design, Kurt Olson, including detailed architectural drawings of the site. The drawings and site plans, as noted above, depict the location, form and scale of the proposed structures in relation to the existing trees on the parcel and the ridgeline vantage locations on Ohio Creed Road, County Road 730. The lot is predominately a mix of aspen and conifers.

The applicants have demonstrated through visual analysis that the structure will be fully screened, in compliance with *Section 11-108: Standards for Development on Ridgelines. I.1.c; Full Screening Exists And Is Protected*, with existing vegetation that is of such volume, density and species that no part of the proposed residence will be visible.

The Planning Commission finds that the proposed building is fully screened.

A restrictive covenant, attached as “Exhibit A”, will ensure in perpetuity, the existence and replacement of the natural vegetation on the applicant’s property used for screening. Additionally, the residence will not stand out among its surroundings, nor draw attention to themselves, through the use of a natural brown and green color scheme for siding, roofing and exterior doors that blend well with surrounding terrain.

The site is located on Lot 27, 335 Star Mountain Drive, in Star Mountain Ranch, approximately 18 miles north of the City of Gunnison, east of CR 730 (Ohio Creek Road).

WHEREAS, after a review of the visual analysis, all information, documentation and related to it, and on-site visit, the Gunnison County Planning Commission did, after a public hearing on April 6th, 2018 unanimously approved this Land Use Change application (LUC-18-00002).

1. The Commission has classified the application as a Minor Impact Project, based upon the impact classification found in Section 6-102: Projects Classified as Minor Impact Projects F. Development Requiring Detailed Ridgeline Vantage Visibility Analysis

2. A detailed ridgeline analysis prepared by Meridan Design, Kurt Olson, illustrates that the building site is fully screened by up to 428-1288 feet of tree cover or the vantage angle is steep enough so that proposed residence is not visible. This is identified on the site plan showing the vantages from Ohio Creek Road, submitted with the application in compliance with *Section 11-108: Standards for Development on Ridgelines. I1c. Full Screening Exists and is Protected*.

3. Pursuant to *Section 11-108: Standards for Development on Ridgelines, I1c. Full Screening Exists and is Protected*, the Planning Commission finds by clear and convincing evidence that the building meets or exceeds the following standard:

   > c. Any building on the ridgeline shall be fully screened by existing (as opposed to new) natural vegetation on the applicant's property, of such volume, density and species of tree cover, after provision of defensible space for wildfire hazard, so that no part of the building shall be visible from any ridgeline vantage, at any time of the year. A recorded mechanism (e.g. protective covenant, conservation easement, bonding agreement) acceptable to the County must be provided prior to the approval of the Minor Impact Certificate to ensure, in perpetuity, the existence and replacement of the natural vegetation on the applicant's property used for screening;

4. A restrictive covenant was submitted, ensuring in perpetuity, the existence and replacement of the natural vegetation on the subject property, attached as "Exhibit A".

5. The Planning Commission conducted a site visit on March 16, 2018. The Commission members visited the property and viewed the site from locations on Ohio Creek Road. The Commission visited five vantage points on Ohio Creek Road and they unanimously agreed that site is fully screened.

6. The proposed structures will use a natural brown and green color scheme for siding, roofing and exterior doors that blend well with surrounding terrain. No shiny metal roof shall be allowed, as identified in the restrictive covenant.

7. All exterior lighting shall be directed downward, as identified in the restrictive covenant.

8. 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 comments at the public hearing, exhibits, references and documents as included therein.

9. 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.

10. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

11. Approval of this use is based upon the facts presented and implies no approval of similar use in a different location and with different impacts on the environment and

community. Each such future application shall be required to be reviewed and evaluated on its own facts, subject to its compliance with current regulations, and its impact to the County.

CONDITIONS:
The Gunnison County Planning Commission, having considered the submitted analysis, site plan, site observations and public testimony, approves LUC-18-00002, Coster Ridgeline Residence, with the following conditions:

1. This permit is limited to activities described within the "Project Description" of this application, and as depicted on the Site Plan submitted as part of this application. Expansion or change of this use 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.

2. That this approval be recorded within the Office of the Gunnison County Clerk and Recorder.

3. A restrictive covenant ensuring, in perpetuity, the existence and replacement of the natural vegetation on the subject property, attached as "Exhibit A.", shall be executed prior to approval by the Board. The restrictive covenant shall be recorded contemporaneously with the Certificate of Minor Impact Approval, within the Office of the Gunnison County Clerk and Recorder.

4. 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.

5. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.

6. Approval of this use implies no approval of any such similar use on any other parcel. Review of this application has considered the impact of this proposed use in the context of cumulative impacts to the environment and the community in the context of its compliance with County land use standards.

7. Approval of this use is based upon the facts presented and implies no approval of a similar use in a different location and with different impacts on the environment and community. Each such future application shall be required to be reviewed and evaluated on its own facts, subject to its compliance with current regulations, and its impact to the County.

/s/
Rachel Sabbato
Planner II

ATTEST:

_____
Gunnison County Clerk and Recorder

RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned John G. Coster and Anne G. Coster ("Grantors") voluntarily agree, jointly and severally, for themselves, their heirs, representatives, successors and assigns, with the Board of County Commissioners of Gunnison County, Colorado ("County") that Lot 27, Star Mountain Ranch, according to the plat recorded February 23, 1993, bearing Reception No. 440815, County of Gunnison, State of Colorado ("Property") shall be forever burdened by and subject to the following restrictions:

1. No trees or other natural vegetation shall be removed from the Property except:

A. To clear the building site for construction of the improvements approved pursuant to Gunnison County Land Use Change No. LUC-18-00002;

B. To preserve and/or improve the health of the forest on the Property, except that no trees or other natural vegetation shall be removed or substantially altered which wholly or partially shield the building(s) on the Property from a ridgeline vantage (as defined in the Gunnison County Land Use Resolution) or which are seen behind the building(s) when viewed from a ridgeline vantage; and

C. To create defensible space for protection against wildfires.

In the event that any other trees or other natural vegetation that screen Grantors' building(s) from a ridgeline vantage are removed or substantially altered by Grantors, wildfire or other cause, Grantors shall replace such trees or other natural vegetation during the next planting season following such removal with trees or other natural vegetation of like kind and size and insure their survival. Star Mountain Ranch Association, Inc., a Colorado non-profit membership corporation, the homeowners association for Star Mountain Ranch, hereby approves this Restrictive Covenant and agrees to provide, at Grantors' expense, reasonable assistance to Grantors to facilitate and enable Grantors' performance of their obligations under this Restrictive Covenant.

2. All buildings shall have unobtrusive exterior colors and materials that blend as much as possible with the surrounding natural terrain and environment. No bright colors or materials shall be permitted.

3. The roof material shall be cedar shake, rusted metal or another comparably unobtrusive material. No shiny metal roof shall be allowed.

4. In addition to the requirements in the Gunnison County Land Use Resolution, all exterior lighting shall be directed downward. No unsheathed

exterior lighting shall be allowed. No mercury vapor or similar lighting shall be allowed.

5. The failure to enforce or obtain compliance as to any violation of this Restrictive Covenant shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of this Restrictive Covenant.

6. The terms and provisions hereof shall be enforceable by an action for damages, injunctive relief, specific performance and/or any other remedy available at law or in equity. All remedies shall be cumulative.

7. If any action is brought in a court of law to enforce, interpret or construe this Restrictive Covenant or any document provided for herein or relating hereto, the prevailing party in such action shall be awarded all reasonable attorneys' fees and expert witness fees as well as all reasonable costs incurred in the prosecution or defense of such action.

8. This Restrictive Covenant, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Restrictive Covenant is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

9. All contracts and agreements to sell or lease the Property, or any portion thereof, shall contain a provision incorporating therein the terms and provisions of this Restrictive Covenant and requiring that the purchaser or lessee of the Property, or any portion thereof, shall strictly observe the terms and provisions hereof.

10. The terms and provisions hereof shall forever inure for the benefit of Gunnison County, Colorado and be binding upon the heirs, representatives, successors and assigns of the Grantors and be appurtenant to and run with title to the Property as a perpetual covenant running with the land.

IN WITNESS WHEREOF, the undersigned have signed this Restrictive Covenant as of the 21st day of March, 2018.

GRANTORS

John G. Coster

Anne G. Coster

ASSOCIATION

Star Mountain Ranch Association, Inc., a Colorado non-profit membership corporation

By: Charles R. Welch

Charles R. Welch, Board Member

(01/31/18)\c\coster-restrictive.covenant

ACCEPTANCE

The Board of County Commissioners of Gunnison County, Colorado accepts the foregoing Restrictive Covenant this ____ day of _____, 2018.

Board of County Commissioners

By: _____

_____, ____ Chairperson

ATTEST:

_____

Gunnison County Clerk and Recorder

STATE OF Massachusetts)
) ss.
COUNTY OF Norfolk)

The foregoing Restrictive Covenant was hereby acknowledged before me this 21st day of March, 2018 by John G. Coster and Anne G. Coster.

Witness my hand and official seal. My commission expires:

_____
Notary Public

ROBERTO CASTILLO
MY COMMISSION EXPIRES MAY 8, 2020
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS

STATE OF Colorado)
) ss.
COUNTY OF Gunnison)

The foregoing Restrictive Covenant was hereby acknowledged before me this 27 day of April, 2018 by Charles R. Welch as Board Member of Star Mountain Ranch Association, Inc., a Colorado non-profit membership corporation.

Witness my hand and official seal. My commission expires:

_____
Notary Public

ELIZABETH E. MALONEY BERNHOLTZ
Notary Public – State of Colorado
Notary ID 20004012322
My Commission Expires Jan 24, 2021

(01/31/18)\c\coster-restrictive.covenant