# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Golden Eagle Trash Service Appeal

**Action Requested:** Motion

**Parties to the Agreement:**

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

**Summary:**

Please see attached Golden Eagle appeal draft and BOCC Resolution.

**Fiscal Impact:**

**Submitted by:** Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

**Finance Review:** ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

**County Attorney Review:** ◉ Required ○ Not Required

Comments:
ok db 12/13/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/13/2018 Certificate of Insurance Required

Yes ○ No ◉

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/13/2018

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 60

Agenda Date: 12/14/2018

*Revised April 2015*

| | |
|---|---|
| **TO:** | **Board of County Commissioners** |
| **SUBJECT:** | **Appeal of Minor Impact Decision<br>Golden Eagle Trash Service LLC<br>LUC-2018-00017** |
| **DATE:** | **December 14, 2018** |
| **PREPARED BY:** | **Cathie Pagano, Director of Community Development** |
| **PROPERTY OWNER:** | **Meldonna V. Cody<br>211 Marcus Ave. #4<br>Soldota, AK 99669** |
| **APPLICANT:** | **Alphonse and Carolyn Taramarcaz, Golden Eagle Trash Services, LLC<br>Represented by Attorney Michael C. Dawson** |

---

**PROJECT APPEAL:**

Golden Eagle Trash Service, LLC applied for a Land Use Change permit (LUC-18-00017) to operate the Golden Eagle Trash Service business at a site described as 690 County Road 18, approximately one mile northwest of the City of Gunnison, legally described as the NW1/4SW1/4 Section 3, Township 49 North, Range 1 West, NMPM.

On September 21, 2018 the Gunnison County Planning Commission approved a minor impact Land Use Change permit for Golden Eagle Trash Services, LLC to conduct a commercial operation on the subject parcel (described above). The project, is described in the Planning Commission decision:

- *"Consolidate the operations of Golden Eagle Trash Service from three separate locations to this site with parking of the operation's trash trucks, and outside storage of roll-offs, dumpsters and recycle equipment, and the use of the existing residence as an office.*
- *No trash or recycles would be stored or transferred onsite; only the parking of trash trucks and equipment used in the operation, except as noted below.*
- *Construction of a new, private loop road from County Road 18 to provide access to a new building and a 100' x 100' vehicle/equipment storage area.*
- *Construction of a three-bay, 50' x 75' storage building, which would be used to house three trash trucks, with the orientation of the building facing east, with three bay doors on the east side of the building.*
- *The storage yard would be enclosed with an eight- foot chain link/privacy fence.*
- *Traffic generated would include three to four compactor trucks that would leave in the morning and return in the afternoon, and approximately four roll-off trips per day.*
- *The business operates year-round, Monday – Friday, with service hours generally from 6:30 a.m. to 5 p.m. Office hours are Monday – Friday 8:00 a.m. – 5 p.m.*
- *The proposed storage building will have no water supply and will not generate any wastewater.*

- *No on-site mechanical repair or servicing, washing of trash trucks, dumpsters or roll-offs would be permitted.*
- *No trash is contained in the trucks or roll-offs, as they are emptied at the County landfill daily, with the exception of holidays, or when the County landfill is closed.*
- *No storage of fuel or flammable materials onsite.*
- *No exterior lighting on the west or south side of the storage building, or the office."*

Section 8-103: *Appeals* of the Gunnison County *Land Use Resolution* identifies a process for appeal of a Land Use Change decision.

On September 21, 2018 the Gunnison County Planning Commission approved a minor impact Land Use Change permit for Golden Eagle Trash Services, LLC to conduct a commercial operation on the subject parcel (described above).

On October 5, 2018 the Golden Eagle Trash Services decision was appealed by Ken and Rain Bodine, Lee Spann, Marielle and Rodney Rogers, and Jake Stone, in compliance with Section 8-103: B. *Standing to Appeal*. The appellants submitted a written appeal dated October 5, 2018.

The County prepared the record of the initial decision-making body (Gunnison County Planning Commission). Transcripts of all Gunnison County Planning Commission meetings on the Golden Eagle Trash Services, LLC Land Use Change application were prepared and are included as part of the record.

The Board of County Commissioners held a work session on the appeal on October 16, 2018 and had the option per Section 8-103: C.2.b.1. to conduct a public hearing. The Board determined that additional testimony or evidence submitted at a public hearing would be significant and may have an impact on the Board's final decision. The Board also decided to conduct a site visit as part of the public hearing.

The public hearing and site visit were held on November 29, 2018. The Board visited the subject parcel and reviewed the proposed location of the buildings and access roads, along with views from nearby properties. The Board considered the record and new evidence submitted at the public hearing. The Board shall choose to affirm, reverse, modify or remand in whole or in part the appealed action.

**SURROUNDING AND NEARBY LAND USES:**
North: Gunnison Sportsman's Association Gun Club (legal nonconforming commercial use)
South: Agricultural (Spann Ranches)
West: Residential
Northwest: Residential and Gunnison Alpine Contractors – existing commercial trucking business and storage facility (legal nonconforming use)
East: Vacant

**PLANS/REPORTS/SUBMITTALS:**
This review and Decision incorporates, but is not limited to, all the 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. Plans, reports, and other submittal documents informing this Decision include, but are not limited to:

- Minor Impact Land Use Change Application

- Revised Site/Road and Drainage Plan, prepared by Bob Williams, P.E., Williams Engineering, LLC – August 24, 2018.
- Revised Cost Estimate, Road, Building Pad and drainage improvements, prepared by Bob Williams, P.E., Williams Engineering, LLC – August 24, 2018.
- Brooke Vasquez, Wildlife Biologist, Sage-grouse comments, letter of March 27, 2018.
- Marlene Crosby, Gunnison County Public Works Director, email of July 3, 2018.
- Greg Larson, Chair, City of Gunnison Planning and Zoning Commission Comments, May 23, 2018.
- Letter of appeal from Ken and Rain Bodine, Lee Spann, Marielle and Rodney Rogers, and Jake Stone, dated October 5, 2018.
- Planning Commission meeting transcripts for subject application

**PUBLIC HEARING**
The Board of Commissioners heard testimony from the appellant, representatives of Golden Eagle Trash Services, LLC and other members of the public. Written comments were received from Jake Stone.

Mike Dawson, attorney for Golden Eagle Trash Services, LLC said that the Bodine parcel, to the east of subject parcel, is an existing commercial operation because Mr. Bodine operates his construction business from the parcel. Mr. Dawson submitted business registration forms from the State of Colorado for the record that showed Mr. Bodine's business address as 571 County Road 18.

Stacy McPhail, expressed support for the Taramarcazs and said the BOCC should support the decision of the Planning Commission.

Mari Rogers urged the BOCC to deny the application and said that it will devalue surrounding properties.

Sherry Redden said that the Taramarcazs are good people. She said that she has supported each of the BOCC members and they need to do the right thing and approve the project.

Corinne Stagl said that the project would improve the neighborhood and the subject parcel has been cleaned up recently and looks much better than it has in years.

Susan Whitehouse said the application should be denied because it would negatively impact the neighborhood.

Heather Develope said that Gunnison Alpine Contractors have been operating at their site for a very long time and that they run fewer trucks than in years past.

Jack Cullinan is an employee of Golden Eagle and said that he's worked one Saturday in past five years and that there are four trucks per day currently.

Bill Nesbitt said the BOCC should review planning regulations and address public health and safety.

Danny Long is an employee of Golden Eagle and said the Taramarcaz family are very good people.

**FINDINGS:**
Per Section 8-103: C. *Board Decision* of the Gunnison County *Land Use Resolution*, the Board having reviewed the documentation submitted to the County within the Community Development file relative to this application, including exhibits, references and documents as included therein, and the testimony and discussion at the public hearing, finds:

1. The Gunnison County Planning Commission erroneously found that the proposed location was well-suited to the specific use because:
   - "The site is located in an existing mixed-used residential/commercial neighborhood.
   - The nature of the business requires a large area for the parking of trucks and equipment associated with the business.
   - The site provides the ability to minimize impacts to the neighborhood.
   - The County Road access and traffic generated by the use has been determined to be adequate for this type of truck traffic.
   - The existing residence allows for conversion to an office for the business.
   - The location does not create significant impacts to Gunnison Sage-grouse.
   - Proximity to client base for the specific use within the City of Gunnison and surrounding areas."
2. The Planning Commission did not appropriately apply the alternative locational standards in that there are sites reasonable attainable in or adjacent to the nearest municipality or existing permitted business or industrial park.
3. The development of a commercial use in this neighborhood may set a future precedent by which additional future commercial uses could be viewed as compatible under Gunnison County regulations.
4. There are legal nonconforming uses in the vicinity of the subject parcel. Nonconforming uses include Gunnison Alpine Contractor's use of two parcels for commercial storage, trucking, and hauling operations and the Gunnison Sportsman's Association Gun Club which is a recreational shooting range. The legal nonconforming uses do not establish a basis by which a determination can be made of suitable uses pursuant to Section 10-104: C.1.c.
5. The proposed use does have significant net adverse effects including negative economic impacts to property values, negative aesthetic impacts to the neighborhood and increased noise and traffic from the proposed commercial operation.
6. The appellants, jointly, individually, and together have standing.
7. The appellants have met their burden on appeal under the Gunnison County *Land Use Resolution*.

**DECISION:**

The Gunnison County Board of Commissioners, having reviewed the documentation submitted to the County within the Community Development file relative to this application, including exhibits, references and documents as included therein and public hearing and having reached the above cited findings, reverses the Planning Commission decision and denies LUC-18-00017.

1. The original action was inconsistent with the applicable requirements of the Gunnison County Land Use Resolution.

   a. The Planning Commission erroneously found that the proposed location was well-suited to the specific use because the site is located in an existing mixed-use

residential/commercial neighborhood. The Planning Commission should not have considered legal nonconforming uses in determining the suitability of the site.

b. The proposed use will have a significant net adverse effect on adjacent land uses, County or other infrastructure, or public health, safety, or welfare, or the environment.

2. The Planning Commission exceeded its jurisdiction in that:

a. The Planning Commission erroneously found that the proposed location is well-suited to the specific use because the site is located in an existing mixed-use residential/commercial neighborhood. The Planning Commission should not have considered legal nonconforming uses in determining the suitability of the site.

b. The proposed use will have a significant net adverse effect on adjacent land uses, County or other infrastructure, or public health, safety, or welfare, or the environment.

3. The September 21, 2018 Planning Commission Decision on Golden Eagle Trash Services, LLC (LUC-18-00017) is reversed.

**BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY**
**RESOLUTION NO. 2018 -**

# A RESOLUTION REVERSING THE GUNNISON COUNTY PLANNING COMISSION DECISION ON THE GOLDEN EAGLE TRASH SERVICES, LLC APPLICATION (LUC-18-00017) AND DENYING THE APPLICATION

**WHEREAS,** Golden Eagle Trash Service, LLC applied for a Land Use Change permit (LUC-18-00017) to operate the Golden Eagle Trash Service business at a site described as 690 County Road 18, approximately one mile northwest of the City of Gunnison, legally described as the NW1/4SW1/4 Section 3, Township 49 North, Range 1 West, NMPM.

On September 21, 2018 the Gunnison County Planning Commission approved a minor impact Land Use Change permit for Golden Eagle Trash Services, LLC to conduct a commercial operation on the subject parcel (described above).

The Gunnison County *Land Use Resolution,* Section 8-103: *Appeals,* identifies the actions that may be appealed to the Board of County Commissioners, requirements for standing to appeal, the process for submittal and review of an appeal, the actions the Board is authorized to take, and the bases upon which action can be taken regarding those appeals.

On October 5, 2018 the Golden Eagle Trash Services decision was appealed by Ken and Rain Bodine, Lee Spann, Marielle and Rodney Rogers, and Jake Stone, in compliance with Gunnison County *Land Use Resolution*, Section 8-103: B. *Standing to Appeal*. The appellants submitted a written appeal dated October 5, 2018.

The County prepared the record of the initial decision-making body (Gunnison County Planning Commission). Transcripts of all Gunnison County Planning Commission meetings on the Golden Eagle Trash Services, LLC Land Use Change application were prepared and are included as part of the record.

The Board of County Commissioners held a work session on the appeal on October 16, 2018 and had the option per the Gunnison County *Land Use Resolution* Section 8-103: C.2.b.1. to conduct a public hearing. The Board determined that additional testimony or evidence submitted at a public hearing would be significant and might have an impact on the Board's final decision. The Board also decided to conduct a site visit as part of the public hearing.

The public hearing and site visit were held on November 29, 2018. The Board visited the subject parcel and reviewed the proposed location of the buildings and access roads, along with views from nearby properties. The Board has considered the record and all of the evidence submitted at the public hearing.

**WHEREAS,** the Gunnison County *Land Use Resolution*, Section 1-103: *Purposes,* identifies the purposes the *Land Use Resolution* is intended to achieve and among these are:

1. Protect the heritage of our rural character.

2. Provide for orderly use of land.

3. Preserve neighborhood character.

4. Promote compact development pattern.

**NOW, THEREFORE, BE IT RESOLVED** the Board of County Commissioners having reviewed the documentation submitted to the County within the Community Development file relative to this application,

including exhibits, references and documents as included therein, and the testimony and discussion at the public hearing, finds:

1. The Gunnison County Planning Commission erroneously found that the proposed location was well-suited to the specific use because:
   - "The site is located in an existing mixed-used residential/commercial neighborhood.
   - The nature of the business requires a large area for the parking of trucks and equipment associated with the business.
   - The site provides the ability to minimize impacts to the neighborhood.
   - The County Road access and traffic generated by the use has been determined to be adequate for this type of truck traffic.
   - The existing residence allows for conversion to an office for the business.
   - The location does not create significant impacts to Gunnison Sage-grouse.
   - Proximity to client base for the specific use within the City of Gunnison and surrounding areas."
2. The Planning Commission did not appropriately apply the alternative locational standards in that there are sites reasonable attainable in or adjacent to the nearest municipality or existing permitted business or industrial park.
3. The development of a commercial use in this neighborhood may set a future precedent by which additional future commercial uses could be viewed as compatible under Gunnison County regulations.
4. There are legal nonconforming uses in the vicinity of the subject parcel. Nonconforming uses include Gunnison Alpine Contractor's use of two parcels for commercial storage, trucking, and hauling operations and the Gunnison Sportsman's Association Gun Club which is a recreational shooting range. The legal nonconforming uses do not establish a basis by which a determination can be made of suitable uses pursuant to Section 10-104: C.1.c.
5. The proposed use does have significant net adverse effects including negative economic impacts to property values, negative aesthetic impacts to the neighborhood and increased noise and traffic from the proposed commercial operation.
6. The appellants, jointly, individually, and together have standing.
7. The appellants have met their burden on appeal under the Gunnison County *Land Use Resolution*.

**NOW, THEREFORE, THE BOARD DETERMINES:**

1. The original action was inconsistent with the applicable requirements of the Gunnison County *Land Use Resolution*.

   a. The Planning Commission erroneously found that the proposed location was well-suited to the specific use because the site is located in an existing mixed-use residential/commercial neighborhood. The Planning Commission should not have considered legal nonconforming uses in determining the suitability of the site.

   b. The proposed use will have a significant net adverse effect on adjacent land uses, County or other infrastructure, or public health, safety, or welfare, or the environment.

2. The Planning Commission exceeded its jurisdiction in that:

   a. The Planning Commission erroneously found that the proposed location is well-suited to the specific use because the site is located in an existing mixed-use residential/commercial neighborhood. The Planning Commission should not have considered legal nonconforming uses in determining the suitability of the site.

b. The proposed use will have a significant net adverse effect on adjacent land uses, County or other infrastructure, or public health, safety, or welfare, or the environment.

3. The September 21, 2018 Planning Commission Decision on Golden Eagle Trash Services, LLC (LUC-18-00017) is reversed.

**THIS RESOLUTION AND THE REVERSAL ISSUED HEREBY** shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

**INTRODUCED** by Commissioner _____, seconded by Commissioner _____, and adopted on this ____ day of _____, 2018.

**BOARD OF COUNTY COMMISSIONERS**
**OF GUNNISON COUNTY, COLORADO**

_____
**Phil Chamberland, Chairperson**

_____
**Jonathan Houck, Commissioner**

_____
**John Messner, Commissioner**

**ATTEST:**

_____
**Gunnison County Clerk and Recorder**