TO: **Planning Commission**

SUBJECT: **Minor Impact Decision**
John Nichols
LUC #2007-02
Lot 4, Riverland Industrial Park Filing No. 1

PREPARED BY: **Neal Starkebaum, Assistant Planning Director**

DATE: **Planning Commission Meeting, February 15, 2008**

APPLICANT: **John Nichols**
P.O. Box 2972
Crested Butte, CO 81224

At its regular meeting of February 15, 2008, the Planning Commission unanimously approved the following Minor Impact Decision, as amended, moved by Ramon Reed and seconded by Richard Karas:

PROJECT DESCRIPTION:
John Nichols has submitted a land use application for the construction of a 16,000 square foot commercial/industrial structure on Lot 4, Riverland Industrial Park, F#1. Initial tenants will include an auto repair shop, a cabinet shop and an excavation company. The lower level will have 8000 square feet, in three work bays; two - 2500 square foot shop spaces and one 3000 square foot shop space. The upper level, 8000 square feet, will have multiple tenant spaces. The building will be excavated into the site, with the upper level (from grade) being approximately 23 feet in height to the highest point on the roof. An 8' berm will be constructed, with landscaping to screen the building from Highway 135. This, as shown on a site plan, titled "Replat of Riverland Lot 4", prepared by Meridian Design, submitted with the application, and architectural elevation renderings prepared by Todd Carroll Design, dated 10/25/2006.

LOCATION:
Lot 4, Riverland Industrial Park, Filing No. 1; located south of the Town of Crested Butte, west of Highway 135.

WATER:
The uses will be served by the Riverland Industrial Park central water system.

WASTEWATER:
Wastewater from the development is proposed to be treated by an individual sewage disposal system, subject to compliance with the *Gunnison County Individual Sewage Disposal System Regulations.* In a memo from Richard Stenson, Environmental Health Official, February 8, 2008, he notes:

> "During the review I found that it would be feasible to develop ISDS on the lot with the understanding that:
>
> 1. An engineered ISDS, including pretreatment for non-domestic wastewater will be designed;

2. Performance criteria and construction standards, applicable to **Part 15 of the Gunnison County Individual Sewage Disposal Regulations,** for the system will need to be a part of the design review;
3. This septic system is required to meet the approval of the **EPA Underground Injection Control (UIC) Program (40 CFR Part 144) and is considered as a Class V injection well.**

It is also noted that the public water system for the subdivision in currently under a **Compliance Advisory** according to the Safe Drinking Water Act as regulated by the Colorado Department of Public Health and Environment. My office requests that the Compliance Advisory be lifted prior to the issuance of any County permits."

An individual sewage disposal system permit application has been submitted and will include further review and assessment of the site for the type and design of ISDS to be installed.

Part XV 15-101 of the *Gunnison County ISDS Regulations* identifies the *Requirements for Business, Commercial, Industrial Waste Systems, Table 5 Point Source Operations Excluded from County ISDS Permits*. The applicant will record a deed restriction on Lot 4 identifying the list of tenant uses excluded. The initial tenant uses are not excluded under this regulation.

ACCESS:
Roads within Riverland Industrial Park are private. The applicant has legal access through Riverland Industrial Park to Highway 135.

Concerns were voiced at the public hearing by Bill Lacy regarding the safety of the south Riverland access. Comments were received in a letter from Dan Roussin, Region 3 Unit Permit Manager, CDOT, dated January 8, 2008, regarding the south access point for Riverland Industrial Park and Highway 135. Access to State Highway 135 is controlled by the Colorado Department of Transportation, which has the authority to regulate access onto the State Highway System. Mr. Roussin's letter states that he south Riverland access lacks a CDOT permit and notes several possible means of remediating the situation. The County has requested that CDOT review the overall situation with the south entrance to Riverland and take appropriate action; however, since the subject property does have proper and legal access to Highway 135 via the north Riverland access, the status of the south Riverland access is not considered in reaching the Commission's decision.

PROPERTY OWNERS ASSOCIATION APPROVAL:
Danny D'Aquilla, President, Riverland Lot Owners' Association, in a letter dated January 11, 2007, states that the Association approves the development plans for Lot 4.

COMPLIANCE WITH COUNTY LAND USE REGULATIONS:
This land use change application is partially exempted from the requirements of the *2001 Gunnison County Land Use Resolution*, pursuant to *Section 1-106 Partially Exempted Land Use Changes*. There are no unmitigable conflicts with County land use standards, so long as the structures and uses are maintained in compliance with the Declaration of Protective Covenants for Riverland Industrial Park and the *Gunnison County ISDS Regulations*.

COMPLIANCE WITH DIVISION 5-600: COMMERCIAL AND INDUSTRIAL USES:
The proposal complies with all standards within this Division.

RECLAMATION:
A reclamation permit must be obtained from the Gunnison County Public Works Department for all

newly disturbed areas.

LANDSCAPING:
Landscaping is required by the Covenants; each lot is required to have a minimum of 15 trees with a minimum average height of five feet within 18 months of being issued a building permit. Landscaping was previously installed when the building permit was issued. The applicant indicates that he will plant in excess of the required landscaping, as identified on the site plan, prepared by Meridian Design, submitted with the application, which shows 42 – 6' evergreens and 50 -10 to 12' deciduous trees. The landscaping along Highway 135 will be planted on an 8' high berm. All landscaping will be irrigated. Gunnison County requires a landscaping development improvements agreement to ensure installation and survival of the landscaping.

PUBLIC HEARING:
The Planning Commission conducted a public hearing on September 7, 2007. At that time Bill Lacy raised a safety issue with the southern Highway 135 intersection with Buckley Drive. Sue Oates, member of the County Beautification and Scenic Corridors committee asked about the screening of the building from Highway 135. The public hearing was then closed, and the written public comment period extended until October 12, 2007.

COMPLIANCE WITH COUNTY LAND USE POLICIES:
This land use change request is partially exempted from the requirements of the *Gunnison County Land Use Resolution*, pursuant to *Section 1-106 Partially Exempted Land Use Changes*. Compliance to the maximum extent feasible with provisions of Section 1-105: Sections Necessary for the Immediate Preservation of Public Health and Safety is required. There are no unmitigable conflicts with County land use standards, so long as the structure is constructed and maintained in compliance with the *Declaration of Protective Covenants for Riverland Industrial Park* and *Gunnison County ISDS Regulations*.

SECTION 11-103: *Development in Areas Subject to Flood Hazards.*
The parcel is not located in an area subject to flood hazards.

SECTION 11-104: *Development in Areas Subject to Geologic Hazards.*
The parcel is not located in an area subject to geologic hazards.

SECTION 12-107: *Protection of Water Quality*.
Not applicable.

SECTION 12-105: *Water Supply*.
This use will be served by the Riverland Industrial Park central water system.

SECTION 12-106: *Sewage Disposal/Wastewater Treatment.*
Wastewater from the new development is proposed to be treated by an individual sewage disposal system, subject to compliance with the *Gunnison County Individual Sewage Disposal System Regulations.*

In comments from Richard Stenson, Environmental Health Official, memo of February 8, 2008, he notes:

> "During the review I found that it would be feasible to develop ISDS on the lot with the understanding that:
>
> 1. an engineered ISDS, including pretreatment for non-domestic wastewater will be designed;

2. Performance criteria and construction standards, applicable to **Part 15 of the Gunnison County Individual Sewage Disposal Regulations,** for the system will need to be a part of the design review;
3. This septic system is required to meet the approval of the **EPA Underground Injection Control (UIC) Program (40 CFR Part 144) and is considered as a Class V injection well.**

It is also noted that the public water system for the subdivision in currently under a **Compliance Advisory** according to the Safe Drinking Water Act as regulated by the Colorado Department of Public Health and Environment. My office requests that the Compliance Advisory be lifted prior to the issuance of any County permits."

Part XV 15-101 of the *ISDS Regulations* identifies the *Requirements for Business, Commercial, Industrial Waste Systems, Table 5 Point Source Operations Excluded from County ISDS Permits*. The applicant will record a deed restriction on Lot 4 identifying the list of tenant uses excluded in Part XV. The initial tenant uses are not excluded under this regulation.

SECTION 12-107: *Fire Protection*.
The lot is located within the Crested Butte Fire Protection District. The District will review the building plans at submittal of building permit application. Staff conversation with Scott Wimmer, Fire Inspector, C.B.F.P.D., on September 7, 2007 indicated that he had reviewed the site and had no issues with the proposed grade of the driveway.

SECTION 11-209: D: *Domestic Animal Controls*; and *Section 5-206*: F.1.b.(6.): *Domestic Animal Controls*.
Applicable.

SECTION 13-107: *Installation of Solid Fuel-Burning Devices.*
Installation of any solid-fuel burning devices shall comply with the current regulations for solid fuel-burning devices.

SECTION 13-114: *Exterior Lighting*.
The applicant submitted a lighting plan, as shown on the architectural renderings, prepared by Todd Carroll Design, dated 10/25/2006. All lighting fixtures are full cut-off.

ADDITIONAL SECTION APPLICABLE TO PARTIALLY EXEMPTED COMMERCIAL, INDUSTRIAL OR OTHER NON-RESIDENTIAL LAND USE CHANGES. In addition to complying with the requirements listed at 1 through 9, above, new construction of, or expansion to, commercial, industrial or other non-residential land use changes that are partially exempted from this *Resolution* by Section 1-106: *Partially Exempted Land Use Changes,* shall comply to the maximum extent feasible with Section 5-303: *Road System*.

SECTION 12-103: *Road System*.
The applicant has legal access to State Highway 135.

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, finds that:

1. The Riverland Lot Owners Association has reviewed and approved of the proposed use, subject to their conditions identified in the letter, Danny D'Aquilla, President, Riverland Lot Owners' Association, dated January 11, 1007.

2. This land use change permit is in compliance with *Section 1-105 Sections Necessary For Immediate Preservation Of Public Health And Safety of the new Gunnison County Land Use Resolution.*

3. Roads within Riverland Industrial Park are private. Access will be via a driveway from Buckley Drive, to Riverland Drive, which connects to State Highway 135, at the northern access into Riverland. The applicant has legal access through Riverland Industrial Park to Highway 135, via the northern access intersection onto State Highway 135. Comments were received in a letter of from Dan Roussin, Region 3 Unit Permit Manager, CDOT, dated January 8, 2008, regarding the south access point for Riverland Industrial Park and Highway 135. The County has requested that CDOT review the overall situation with the south entrance to Riverland and take appropriate action.

4. Access onto State Highway 135 is controlled by the Colorado Department of Transportation, which has the authority to regulate access onto the State Highway System.

5. Use of individual lots must comply with the *Declaration of Protective Covenants* for Riverland Industrial Park, including, but not limited to, compliance with those provisions which may affect employees, parking, the hours of operation, provision of landscaping, snow storage and other aesthetic and public health and welfare concerns.

6. Comments have been received from Richard Stenson, Environmental Health Specialist regarding the feasibility of the installation of a septic system for the treatment of wastewater and the public water system for the subdivision in currently under a Compliance Advisory according to the Safe Drinking Water Act as regulated by the Colorado Department of Public Health and Environment.

7. Comments have been received from Scott Wimmer, Crested Butte Fire Protection District September 7, 2007 indicating that he had reviewed the site and had no issues with the proposed grade of the driveway.

8. The applicant will record a deed restriction on Lot 4 requiring exclusion of tenant uses identified in Part XV 15-101 Requirements for Business, Commercial, Industrial Waste Systems, Table 5 Point Source Operations Excluded from County ISDS Permits, and acknowledgement that in the event of septic absorption field failure, and no other suitable location is available on the lot, then the lot owner will provide for the removal of the absorption field materials, provide legal disposal, and provide for the reconstruction of a new absorption field with replacement materials in the same location.

9. Approval of the land use change permit does not constitute approval of a building or individual sewage disposal system permit. Each of those permits is required to be obtained by the applicants, and the construction and use of the improvements shall comply with the *Uniform Building Code*, *American Disabilities Act* and the *Gunnison County Individual Sewage Disposal System Regulations.*

10. 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. Any use other than that allowed by the *Declaration of Protective Covenants* for Riverland Industrial Park 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.*

11. 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.

DECISION:
The Gunnison County Planning Commission, having reviewed and evaluated this application and having reached the above Findings, determines that LUC #2007-02, Lot 4, Riverland Industrial Park, Filing No. 1, John Nichols, is approved with the following conditions and that approval be memorialized by a recorded Certificate of Minor Impact Approval, including the language of these conditions and notations:

1. This permit is limited to activities described within the "Project Description" of this application, and as depicted on the site plan titled “Replat of Riverland Lot 4”, prepared by Meridian Design, submitted with the application, and architectural elevation renderings prepared by Todd Carroll Design, dated 10/25/2006. 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. Uses on this lot shall comply with the *Declaration of Protective Covenants for Riverland Industrial Park*.

3. Uses on this lot shall comply with the *Gunnison County Individual Sewage Disposal System Regulations.*

4. No building or septic permits shall be issued until the applicant provides the Planning Department with documentation, recorded with the Gunnison County Clerk & Recorder, of a deed restriction on Lot 4, including:

    a. The exclusion of tenant uses identified in *Part XV 15-101 Requirements for Business, Commercial, Industrial Waste Systems, Table 5 Point Source Operations Excluded from County ISDS Permits*.

    b. Acknowledgement that in the event of septic absorption field failure, and no other suitable location is available on the lot, then the lot owner will provide for the removal of the absorption field materials, provide legal disposal, and provide for the reconstruction of a new absorption field with replacement materials in the same location.

5. No Certificate of Occupancy shall be issued until the applicant provides the Planning Department with documentation that the Compliance Advisory, according to the Safe Drinking Water Act, as regulated by the Colorado Department of Public Health and Environment, concerning the public water system for the subdivision is lifted.

6. No overnight parking of heavy equipment is allowed on the upper parking lot.

7. The applicant shall notify tenants and visitors that the north entrance to Riverland is the legal access to Highway 135.

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. A cost estimate for the landscaping stock, and labor for installation of the landscaping, and referencing the landscaping plan as shown on the submitted site plan shall be submitted, for

preparation of a Landscaping Development Improvements Agreement by the Gunnison County Attorney's office, which shall be executed by the Board of County Commissioners. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.

10. That a performance bond, letter of credit or other means of surety acceptable to the County, shall be submitted to cover costs of the landscaping, including stock and labor for installation, plus 25 percent and that said surety be retained by the County for a period of two growing seasons to ensure the survival of the landscaping. The Certificate of Minor Impact shall not be recorded until this condition is fulfilled.

11. 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.

12. Approval of this permit is not effective until the Certificate of Minor Impact Approval is recorded with the Gunnison County Clerk and Recorder.