TO: **Planning Commission**

SUBJECT: ***DRAFT* Planning Commission Decision**
Monson Creek Outfitters
LUC-12-00020

DATE: **April 5, 2013**

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

APPLICANT: **Monson Creek Outfitters**
O.A. (Pepper) Pesnell

PROJECT DESCRIPTION:
The applicant requests the use of the Monson Creek Ranch property as a guest ranch, with the two existing cabins closest to Highway 50, to be used for year-round guest lodging and for year-round seasonal sleigh and hay rides, which will be conducted on the property. The property would also be used seasonally (May – October) as a staging area for guided horseback tours onto adjacent BLM lands, and as a waypoint for jeep tours on adjacent Bureau of Land Management public lands, with jeep rentals originating in the City of Gunnison. No jeep rentals will be offered from the site and no public stables are proposed; the horseback trips are a tour with the outfitter. The applicant lives on-site, in the residence on the north end of the property.

LOCATION:
The site is located at 59005 Highway 50; north of Highway 50, legally described as being located in the NW/4NE/4, NW/4 Section 1, N/2SW/4, the SE/4SW/4, part of SW/4 Section 1 and NE/4, NE/4SE/4 lying north of Highway 50 Section 2, Township 48 North, Range 3 East, N.M.P.M., 465-acres; 19 miles east of the City of Gunnison, near Doyleville.

PREVIOUS LAND USE CHANGE APPROVALS:
A Minor Impact approval was granted for the use of a 3,416 square foot single-family residence, with a 1536 square foot garage, as a third residence on the property, Certificate of Minor Impact No. 7 Series 2008, recorded with the Office of the Clerk and Recorder, Reception No. 585593, August 4, 2008.

PLANS/REPORTS/SUBMITTALS:
Plans, reports, letters and other submittal documents informing this decision include, but are not limited to:

- Site plan, maps and exhibits, submitted as part of the Land Use Change application.
- Allen Moores, Gunnison County Public Works, memo of February 1, 2013
- Cheryl Cufre, Colorado Open Lands, letter of February 22, 2013
- Susan Lohr, Lohr Associates, Inc., letter of January 12, 2013
- Susan Lohr, Lohr Associates, Inc., letter of February 11, 2013
- Bureau of Land Management (BLM) Special Recreation Permit No. C01601512002, issued by the Gunnison BLM office, July 3, 2012
- Megan Sullivan, Colorado Division of Water Resources, memo of January 25, 2013
- J Wenum, Area Wildlife Manager, Colorado Parks and Wildlife, letter of February 14, 2013
- Jim Cochran, Wildlife Conservation Coordinator, memo of January 8, 2013
- Dennis Spritzer, Fire Marshall, Gunnison County Fire Protection District, email of February 1, 2013

CONSERVATION EASEMENT:
Colorado Opens Lands (COL) holds the conservation easement on the property, "Deed of Conservation Easement – Puckett Ranch North Property", recorded with the Office of the Gunnison County Clerk and Recorder, Reception No. 524120, September 26, 2002. The deeded easement is for the protection and preservation of the land's conservation values including agriculture, wildlife habitat and open space. Provisions within the Deed of Easement allow for commercial uses, including guiding and outfitting, provided the uses are consistent with the conservation values of the property. COL engaged Susan Lohr, Lohr Associates, Inc. to provide an analysis of the impacts of the proposed uses to the conservation values on the property, and her responses are contained in letters of January 12 and February 11, 2013. Cheryl Cufre, Director of Land Stewardship, COL submitted a letter, dated February 22, 2013, noting COL's approval, with identified limitations on timing and scope of the proposed uses.

ACCESS:
The Colorado Department of Transportation issued State Highway Access Permit No. 312126 on October 20, 2012, allowing access onto Highway 50, for the proposed guest ranch/outfitting business uses. Allen Moores, Gunnison County Public Works, notes in comments, dated February 1, 2013 that the existing driveway access will require minor widening and surfacing to be brought up to standards in the *Gunnison County Standards and Specifications for Road and Bridge Construction*.

WATER SUPPLY:
Well permit No. 289636, issued October 23, 2012, allows for the use of the well to supply water for three single-family residences, watering of livestock and not more than (1) acre of gardens or lawns. Comments from Megan Sullivan, Colorado Division of Water Resources, memo of January 25, 2013 indicate that a commercial well permit, relative to guest lodging, is required for short-term rentals (less than 30-days), but not for long-term rentals (more than 30-days). As the Tomichi Creek basin and its tributaries are over-appropriated, the use of the well for short-term rentals cannot occur without a water court approved plan for augmentation.

SPECIAL RECREATION PERMIT - BUREAU OF LAND MANAGEMENT:
The applicant obtained a Bureau of Land Management (BLM) Special Recreation Permit No. C01601512002, issued by the Gunnison BLM office, July 3, 2012, for Monson Creek Ranch, Inc. to conduct day-use horseback rides and jeep tours on open routes on BLM lands, in the Wood Gulch and Monson Gulch areas. According to information in the BLM permit, the permit is issued on an annual basis, and after three years of successful operations, the operation is eligible for a five year permit status.

WILDLIFE / SAGE-GROUSE:
The subject site, as well as the lands identified for use in the BLM special recreation permit, is located within occupied Gunnison Sage-grouse habitat. Comments were received from Jim Cochran, County Wildlife Conservation Coordinator, January 8, 2013 noting his analysis of the impacts to Sage-grouse, with recommended mitigation and conditions of approval to minimize impacts. J Wenum, Area Wildlife Manager, in a letter of February 14, 2013, references Jim Cochran's comments and supports the conditions identified to assist in avoiding and minimizing impacts to Sage-grouse. The applicant was advised that the Gunnison Sage-grouse has been listed as a candidate for listing under the Endangered Species Act (ESA).

IMPACT CLASSIFICATION:
The project, by definition, is a Minor Impact Project pursuant to *Section 6-101: N. New Commercial, Industrial Larger than 5,000 sq. ft., or Five Acres.*

MEETING DATES:
The Planning Commission held work sessions and public hearings to discuss the application on the following dates:

- January 18, 2013 Work session
- March 1, 2013 Public Hearing
- April 5, 2013 Work session

SITE VISIT:
The Planning Commission conducted a site visit on February 1, 2013. The Commission viewed the existing cabins, the access road, the staging area, the location of the transmission road and adjacent BLM lands.

PUBLIC HEARING:
The Planning Commission conducted a public hearing on March 1, 2013. At that time, no members of the public were present. Written comment was received from Stan Irby, Irby Ranches LLC, dated February 25, 2013, noting concerns with impacts to sage-grouse from the operation of the outfitting business on adjoining BLM lands.

REVIEW AGENCY REFERRAL COMMENTS:
A referral was sent to the Division of Water Resources, Colorado Open Lands, Colorado Parks and Wildlife, Colorado Department of Transportation, Gunnison County Fire Protection District, and Gunnison County Public Works. The following agencies provided comments:

Gunnison County Fire Protection District:
Dennis Spritzer, Fire Marshall, notes in an email of February 1, 2013, that he has no fire issues with the Monson Creek Outfitters proposal.

Gunnison County Public Works:
Allen Moores submitted comments on February 1, 2013, noting that the driveway would need to widened to 22 feet, with placement of 6 inches of gravel to meet the Driveway Design Standards in the *Gunnison County Standards and Specifications for Road and Bridge Construction.*

Gunnison County Wildlife Conservation Coordinator:
Jim Cochran, County Wildlife Conservation Coordinator, submitted comments in a memo of January 8, 2013 noting his analysis of the impacts to Sage-grouse and conditions of approval to minimize impacts.

Colorado Parks and Wildlife:
J Wenum, Area Wildlife Manager, submitted comments in a letter of February 14, 2013, references Jim Cochran's comments of January 8, 2013 and supports the conditions identified to assist in avoiding and minimizing impacts to Sage-grouse.

Colorado Division of Water Resources:
Megan Sullivan, Team 4, 5 & 6, Water Supply Branch, submitted comments in a memo of January 25, 2013, provided comments on the proposed use of the existing well at the Monson Creek Ranch.

COMPLIANCE WITH APPLICABLE SECTIONS OF THE *GUNNISON COUNTY LAND USE RESOLUTION:*

Section 9-301: *Commercial and Industrial Uses.*
The applicant is proposing a commercial guest ranch.

D. General Standards:

D.1: Non Residential Accessory Uses: The proposed use is not accessory to a residential use; nor is any new residential use proposed.

D.2: Food Service Requirements: No food service is proposed as part of this application.

D.3: Electrical Disturbances: No use of equipment that creates electrical disturbances is anticipated at the site.

D.4: Fire and Explosive Hazards: No materials or products that decompose by detonation are proposed to be stored at the site.

D.5. Glare and Heat: No glare or heat producing activities are anticipated or expected at the site.

D.6. Exterior Lighting: The exterior lighting shall be designed so that all direct rays and glare are confined to the subject parcel.

D.7. Odors: No odors are anticipated or expected.

D.8. Radioactivity: No radioactive materials are proposed to be stored on site.

D.9. Vibration: No activities that cause vibration are expected to occur along the property boundaries.

D.10. Noise: No new noise is anticipated as a result of this application.

Section 9-303: *Dude Ranch or Resort.*

A. Access to public land.
The applicant has direct access to adjoining public lands from the subject property. The horseback and jeep tours on BLM lands require a Special Recreation Permit from the Bureau of Land Management.

B. Cooking and dining facilities.
The cabins have kitchens.

C. Limitations on Occupancy.
Due to limitations with the water supply of the existing well, only long term (longer than 30 days) rentals are permitted. If the applicant obtains a commercial well permit, short term (shorter than 30 days) will be permitted.

D. Compliance with Building Code and Applicable Fire Protection District Requirements.
Dennis Spritzer, Fire Marshall, notes in an email of February 1, 2013, that he has no fire issues with the Monson Creek Outfitters proposal.

E. Compatibility with Neighborhood Uses.
The operation of the guest ranch, including horseback tours, and hay and sleigh rides will generate limited impacts and are compatible with the surrounding agricultural uses and open lands in the vicinity.

Section 9-400: *Exploration, Extraction and Processing of Minerals and Construction Materials.*
Not applicable. No exploration, extraction or processing of materials is proposed.

Section 9-500: ***Miscellaneous Uses and Activities.***
Not applicable. No miscellaneous uses or activities are proposed.

Section 10-102: ***Locational Standards for Residential Development.***
Not applicable, no new residential development is proposed as part of this application.

Section 10-103: ***Residential Density.***
Not applicable, no new residential development is proposed as part of this application.

Section 10-104: ***Locational Standards for Commercial, Industrial or Other Non-Residential Development***
The proposed location complies with the alternative locational standards. The location is particularly well suited to the specific use as a guest ranch, due to its location and proximity to adjacent public lands for the horseback tours.

Section 11-103: ***Development in Areas Subject to Flood Hazards*****.**
Not applicable, the subject parcel is not in the 100-year floodplain.

Section 11-104: ***Development in Areas Subject to Geologic Hazards*****.**
Not applicable, the subject parcel is not in an area of geologic hazards, according to Gunnison County mapping.

Section 11-105: ***Development in Areas Subject to Wildfire Hazards.***
The subject parcel is in an area of low to moderate wildfire hazards. A copy of the application was sent to the Gunnison County Fire Protection District. Comments were received from Dennis Spritzer, Fire Marshall, email of February 1, 2013, in which he notes that he has no fire issues with the Monson Creek Outfitters proposal.

Section 11-106: ***Protection of Wildlife Habitat Areas.***
The application was referred to the Colorado Parks and Wildlife. Please see comments from Jim Cochran, County Wildlife Conservation Coordinator, memo of January 8, 2013 and J Wenum, Area Wildlife Manager, letter of February 14, 2013.

Section 11-107: ***Protection of Water Quality*****.**
Not applicable, the proposed use is not within 125 feet of a waterbody.

Section 11-108: ***Standards for Development On Ridgelines.***
Not applicable. The site is not located on a ridgeline.

Section 11-109: ***Development that Affects Agricultural Lands.***
The proposed uses will be a compatible use to the agricultural uses on the property. The applicant indicates that they will also raise sheep on the subject parcel.

Section 11-110: ***Development of Land Beyond Snowplowed Access*****.**
Not applicable, the site is not located beyond snowplowed access.

Section 11-111: ***Development on Inholdings in The National Wilderness.***
Not applicable, the site is not located on a National Wilderness inholding.

Section 11-112: ***Development on Property Above Timberline.***
Not applicable, the site is not located above timberline.

Section 12-103: *Road System*.
The Colorado Department of Transportation issued State Highway Access Permit No. 312126 on October 20, 2012, allowing access onto Highway 50 for the proposed uses. The existing driveway access will require minor grading and surfacing to be brought up to *Gunnison County Standards and Specifications for Road and Bridge Construction*.

Section 12-104: *Public Trails*.
There is no public trail existing or proposed on this site.

Section 12-105: *Water Supply*.
Well permit No. 289636, issued October 23, 2012, allows for the use of the well to supply water for three single-family residences, watering of livestock and not more than (1) acre of gardens or lawns. Comments from Megan Sullivan, Colorado Division of Water Resources, memo of January 25, 2013 note that a commercial well permit is required for short-term rentals (less than 30-days), but not for long-term rentals (more than 30-days). As the Tomichi Creek basin and its tributaries are over-appropriated, a well permit for short-term rentals cannot be issued with a water court approved plan for augmentation

Section 12-106: *Sewage Disposal/Wastewater Treatment.*
ISDS Permit No. 10-0001 was issued for the new larger cabin, in compliance with the regulations.

Section 12-107: *Fire Protection*.
The proposed development is located within the Gunnison County Fire Protection District. A copy of the application was sent to the Gunnison County Fire Protection District. Comments were received from Dennis Spritzer, Fire Marshall, email of February 1, 2013, in which he notes that he has no fire issues with the Monson Creek Outfitters proposal.

Section 13-103: *General Site Plan Standards and Lot Measurements.*
The site plan for this proposed development meets the criteria of this section.

Section 13-104: *Setbacks from Property Lines and Road Rights-of-Way.*
This section applies; no improvements are proposed.

Section 13-105: *Residential Building Sizes and Lot Coverages.*
Not applicable, no new residential buildings are proposed.

Section 13-106: *Energy and Resource Conservation.*
Not applicable, this section only applies to residential buildings.

Section 13-107: *Installation of Solid Fuel-Burning Devices*
Not applicable, no solid fuel burning device is proposed as part of this application.

Section 13-108: *Open Space and Recreation Areas*
Not applicable, no requirement of open space is required for this application.

Section 13-109: *Signs.*
Sign Permit No. 11-008, for the Monson Creek Ranch, was issued on September 14, 2011.

Section 13-110: ***Off-Road Parking and Loading.***
Applicable, the proposed parking is depicted on site plan and meets the standards.

Section 13-111: ***Landscaping and Buffering.***
The applicant proposes to maintain the existing native vegetation at the site. No additional landscaping is required.

Section 13-112: ***Snow storage****.*
Applicable, adequate room for snow storage is available and a copy of this application was referred to Gunnison County Public Works for review.

Section 13-113: ***Fencing***
Not applicable, no new fencing is proposed.

Section 13-114: ***Exterior Lighting.***
Applicable, this section applies and any exterior lighting shall comply with this section and shall be wholly confined to the site.

Section 13-115: ***Reclamation and Noxious Weed Control.***
A reclamation permit is required for road cutting and/or construction, homesite clearing and berm construction, or installation of an individual sewage disposal system.

Section 13-116: ***Grading and Erosion Control.***
Only minor grading activities are necessary to improve the driveways. A Reclamation Permit, pursuant to Section 13-115: *Reclamation and Noxious Weed Control*, may be required by the Public Works Department

Section 13-117: ***Drainage, Construction and Post-Construction Stormwater Runoff.***
Not applicable, the existing building is not within 100 feet of a water body or mudflow.

Section 13-118: ***Water Impoundments.***
Not applicable, this project does not propose a water impoundment.

Section 13-119: ***Standards to Ensure Compatible Uses.***
The proposed development has been designed and mitigation identified so that the operation of the guest ranch will not adversely affect the character of surrounding land uses.

Article 15: ***Right-to-Ranch Policy****.*
This section is applicable.

FINDINGS:
The Gunnison County Planning Commission finds that:

1. This project is classified as a Minor Impact Project.

2. There is an existing primary and two secondary residences on the parcel, which have been previously approved by Gunnison County.

3. Comments have been received from the Gunnison County Wildlife Conservation Coordinator and the Colorado Parks and Wildlife, concerning potential impacts to Gunnison Sage-grouse, including

recommended mitigation and conditions of approval to avoid and minimize impacts to the Sage-grouse.

4. The proposed uses have been evaluated and reviewed by Colorado Open Lands, holder of the Conservation Easement, and specific restrictions have been identified to ensure that the uses are consistent with the preservation and protection of the Conservation Values on the property. Incorporation of those restrictions as conditions of the Planning Commission approval is therefore appropriate.

5. The application complies with the standards and requirements of the *Gunnison County Land Use Resolution*.

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 exhibits, references and documents as included therein.

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, and having reached the above findings, classifies LUC-12-00020 Monson Creek Outfitters as a Minor Impact project, and approves it 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 and information 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. The applicant shall provide a copy of the current Bureau of Land Management - Special Recreation Permit to the Community Development Department.

3. The applicant shall improve the driveway access to comply with the applicable standards in the *Gunnison County Standards and Specifications for Road and Bridge Construction*. Inspection and approval from Gunnison County Public Works of the driveway improvements shall be obtained prior to initiation of the business activities.

4. The use of the cabins for lodging is limited to long-term (30 day or longer) minimum rentals, until such time as the applicant can provided documentation from the Colorado Division of Water Resources that a legal water supply for the commercial use of well is obtained allowing for short-term (less than 30 day) rental of the cabins. The applicant shall provide copies of lodging lease documentation, upon request by Gunnison County.

5. No jeep rentals are permitted from the property.

6. No public stables are contemplated or permitted by this approval.

7. To ensure that the uses and activities are consistent with the preservation and protection of the conservation values of the property, in compliance with the Deed of Conservation Easement, the following conditions shall apply:

a. Jeep and horseback tours are only allowed between May 15 and October 15th.

b. No more than two jeep or horseback tours allowed per day.

c. Jeep and horseback tours shall take place at the same general time of day so that wildlife can become accustomed to the regularity of the activity.

d. Access to public lands directly from Monson Creek Ranch for the purposes of guided jeep or horseback tours shall be only by the "powerline" road, as described on the BLM permit maps.

e. No jeeps trips or horseback tours shall be undertaken on any other portion of the property.

f. Hay and sleigh rides are limited to no more than three per week and are limited to the existing, established agricultural roads.

g. Hay and sleigh rides take place at the same general time of day so that wildlife can become accustomed to the regularity of the activity.

h. No new roads shall be constructed.

i. Existing agricultural roads shall be maintained to the lowest level required to provide safe passage.

8. To help minimize the impacts of the proposed uses and activities on Gunnison Sage-grouse, the following conditions shall apply:

a. Per Section 11-106 G.3.d.1. of the *Gunnison County Land Use Resolution,* dogs and cats must be kept under appropriate control, by means which may include kenneling or other physically secure methods to ensure that negative effects to wildlife from pets do not occur.

b. Per Section 11-106 G. e. of the *Gunnison County Land Use Resolution,* unless pre-empted by Federal or State law, all non-indigenous gallinaceous game-birds (including but not limited to pheasants, chukar, and quail), shall be imported only from a source certified by the State of Colorado to be disease free. Prior to importation of any species of gallinaceous game-birds to this parcel, the person proposing such action shall submit a list of species, with numbers proposed, and a disease certification, with a listing of diseases certified, from the source proposed. No importation (movement onto the property) of any wild birds, as defined above, shall occur without written approval by Gunnison County.

a. No jeep or horseback tours may occur during the period March 15 to May 15 annually, in order to minimize impacts to the breeding activities of Gunnison Sage-grouse.

b. No dogs shall accompany any tour (jeep or horseback), at any time.

c. Access to public lands directly from Monson Creek Ranch for the purposes of guided jeep or horseback tours shall be only by the "powerline" road, as described on the BLM permit maps.

d. A report of tour activity shall be submitted to the Community Development Department annually to allow evaluation of the level of impact to Gunnison Sage-grouse. At a minimum this report shall include the type and number of tours accomplished, by day, and time, with the number of participants. Gunnison County may additionally condition authorizing permits to minimize impacts to Gunnison Sage-grouse based upon this information.

9. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.

10. 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.

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 use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.