

## ROUTT COUNTY PLANNING COMMISSION

### FINAL MINUTES

**FEBRUARY 20 , 2020**

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Chairman Steve Warnke, Bill Norris, Troy Brookshire, John Merrill, Peter Flint, Billy Mitzelfeld, Roberta Marshall, Greg Jaeger and Andrew Benjamin Commissioners Brian Kelly was absent. Interim Planning Director Kristy Winser and staff planner Tegan Ebbert also attended. Sarah Katherman prepared the minutes.

#### **PUBLIC COMMENT**

There was no public comment.

#### **MINUTES - January 16, 2020**

Commissioner Norris moved to approve the minutes of the Routt County Planning Commission meeting cited above, as written. Commissioner Merrill seconded the motion. **The motion carried 9 - 0.**

**ACTIVITY: PL-19-200**

**PETITIONER: Todd Moore**

**PETITION: Special Use Permit for a Motor Vehicle Home Industry**

**LOCATION: Approximately 1,000 ft. southwest of the intersection of CR 27 and CR 51B**

Ms. Cari Hermacinski, representing the petitioner, reviewed the request and the location, and described the surrounding properties, which include Hayden Station immediately to the north. She presented a vicinity map, noting that Yampa Valley Regional Airport (YVRA) is also nearby. Ms. Hermacinski presented a site plan and photos of the existing warehouse, which is located within the 5-acre fenced portion of a 10-acre parcel. She reviewed the history of the parcel and its uses, as outlined in the staff report. She noted that the SUP for the former coal haul operation had expired, and since 2015 the site has been vacant and out of conformance with County regulations. Ms. Hermacinski stated that the petitioner is requesting a permit for a Home Industry vehicle storage operation. She said that the petitioner is working with the Building Department to determine if the residence will be located within the existing structure, which contains several offices, bathrooms and a kitchen, or whether a separate single-family residence will be built on the site within the fenced area. The dwelling would be occupied by the on-site manager of the facility.

Ms. Hermacinski stated that the proposal is to store approximately 20 vehicles inside the existing warehouse and to construct three new pole barns with individual stalls for vehicles. The capacity of the proposed new buildings would be 42 additional vehicles. No outdoor storage is being proposed. Ms.

Hermacinski stated that the proposed use would generate significantly less traffic than the former coal haul operation and is compatible with the surrounding land uses. She stated the warehouse is in excellent condition and that the access road to the site is paved. Ms. Hermacinski stated that there is high demand for the proposed use.

Ms. Ebbert stated that Ms. Hermacinski had provided an accurate history of the site and its former uses. She offered that the main question regarding the application is whether the proposed use is appropriate for this specific site. She reviewed the vicinity map and indicated the location of Hayden Station, YVRA, the Town of Hayden boundary and US Highway 40. She indicated the access road and described the zoning of the nearby parcels.

Ms. Ebbert stated that the permit request includes three elements: 1) the single-family residence (to be located either inside the warehouse or adjacent to it); 2) the use of the existing warehouse for vehicle storage; and 3) the proposed three new structures to be used for additional storage space. All uses would occur within the fenced 5-acre area.

Ms. Ebbert stated that since the packet was distributed, a referral was received from YVRA stating that they would like the applicant to communicate with the FAA to ensure that the proposed use is in compliance with the height, light and electronic signal regulations that apply to the area surrounding the airport.

Commissioner Merrill asked why the indoor storage was an issue with the zipline operation but not with this one. Ms. Winser explained that the equipment to be stored on the zipline property was for a commercial operation that occurred off-site, in the National Forest, and was not related to the zipline itself.

Chairman Warnke asked why the Building Department has suggested that the construction of a new single family residence would be preferable to re-purposing the facilities within the warehouse as a residence. Ms. Hermacinski stated that no one from the Building Department had visited the site. She said that the infrastructure and facilities within the warehouse structure are significant and offered that Chief Building Official Carr may change his mind once an inspection has been conducted. Regarding the location of a separate single family residence, Ms. Hermacinski said that the location had not yet been determined.

Commissioner Brookshire asked about the road leaving the site to the south. Ms. Hermacinski said that the legal status of this road, which leads to another County Road, is unknown. The petitioner intends to abandon this road.

Commissioner Brookshire asked about the Minor Development Subdivision Exemption (MDSE) that created the 10-acre parcel. Ms. Ebbert said that the file regarding the MDSE was unclear. She acknowledged that the Board of County Commissioners had approved the MDSE after the conveyance of the parcel. Regarding the well on the property, Ms. Ebbert said that it has a commercial

permit. The Division of Water Resources was sent a referral letter regarding the petition, and did not submit any comments.

Commissioner Brookshire asked about the proposal to add additional storage structures. Ms. Hermacinski stated that the size and configuration of the proposed structures was based on an analysis of the site, taking into consideration the possible single family residence, the parking requirements and the dimensional requirement of moving around the site with large RVs, boats, etc. She added that the goal was to have all indoor storage. She noted that the previous use included a significant amount of outdoor storage. She added that the former use generated a lot more traffic than would the proposed use. Commissioner Brookshire expressed concern with the amount of new development being added to the site. Regarding the current non-conformity, Ms. Ebbert explained that the existing structure is considered an accessory structure without a residence.

Commissioner Mitzelfeld asked what “no maintenance on site” really means. Ms. Hermacinski stated that the petitioner had considered having RV maintenance available on-site, but had rejected this concept. Ms. Ebbert noted that if any vehicle maintenance were proposed, the application would be subject to a higher level of review due to the presence of hazardous materials and additional traffic.

Regarding the number of employees, Ms. Ebbert clarified that the standards for Home Industry set a maximum of eight employees. The petitioner is proposing only one employee: the on-site manager. Ms. Hermacinski added that the manager’s family would also be living on-site.

Commissioner Mitzelfeld asked what would prohibit the occupants of the property from using the south access road. Ms. Ebbert said that the permit would specify that only the access to the north was approved, as that is what is contained in the project plan. She noted that the site is currently non-conforming and has been since the expiration of the 2007 permit. If the SUP is granted, the site would be brought back into conformance.

Commissioner Mitzelfeld asked about parking. Ms. Ebbert stated that the Home Industry regulations require one parking space for every 500 sq. ft. of indoor space. She said that staff feels that this amount of parking is excessive for the proposed use and that the parking needed would be more in line with that required of mini-storage facilities. She added that in either case, there is more than enough parking on the site to meet the requirement. Ms. Hermacinski stated that there is adequate parking in front of each stall for customers to park there while accessing their vehicles.

Commissioner Merrill asked about landscaping. Ms. Hermacinski stated that none is proposed. She stated that the site is not visible from any residence. She added that landscaping would require irrigation.

Commissioner Benjamin asked why the proposal was not submitted as a PUD. Ms. Ebbert stated that the applicant's intent was to retain the A/F zoning. She said that a zone change to Industrial would open up the site to a variety of uses-by-right in the future. Ms. Hermacinski added that the petitioner is aware that the Board of County Commissioners does not favor PUDs.

Commissioner Jaeger asked if adding a wash bay or an RV sewage disposal site could be approved administratively in the future. Ms. Ebbert said that either of these uses would require an amendment to the SUP.

### **Public Comment**

Mr. Rex Brice stated his support for the petition. He said that there is a need for such facilities in the County, and there are currently no good options for people who need indoor storage for RVs and other vehicles.

Seeing no further comment, Chairman Warnke closed public comment.

In response to a question from Chairman Warnke, Ms. Ebbert confirmed that the request to contact the FAA would fall under proposed Condition of Approval (COA) #6.

Following discussion, Planning Commission decided that landscaping should not be required.

Commissioner Brookshire stated that while he supports the re-use of the existing structure, he would much prefer if no additional buildings were proposed. He offered that the new buildings represent new commercial development in the County and are therefore not supported by the Master Plan, citing Section 3.3 specifically.

Commissioner Benjamin noted that the new structures would be pole barns that are in keeping with the character of agricultural buildings common to the A/F zone district. He added that he did not think it should be considered new development because the entire project is to occur within the boundary of the old use, which was more intense, generated more traffic and included a great deal of outdoor storage.

### **MOTION**

Commissioner Norris moved to approve the SUP for the Home Industry vehicle storage operation with the finding of fact that the proposal with the following conditions meets the guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, 6 and 8.17 of the Routt County Zoning Regulations.

This approval is subject to the following conditions:

#### **General Conditions:**

1. The Special Use Permit is contingent upon compliance with the applicable conditions of the Routt County Zoning Regulations including but not limited to Sections 5, 6, and 8.17.
2. The Special Use Permit is limited to the uses and facilities presented in the approved project plan. Any additional uses or facilities must be applied for in a new or amended application.
3. Any complaints or concerns that may arise from this operation may be cause for review of the Special Use Permit, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
4. In the event that Routt County commences an action to enforce or interpret this Special Use Permit, the substantially prevailing party shall be entitled to recover its costs is such action including, without limitation, attorney fees.
5. No junk, trash, or inoperative vehicles shall be stored on the property.
6. This approval is contingent upon the acquisition of and compliance with any required federal, state and local permits; the operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to the commencement of operations.
7. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
8. All exterior lighting shall be downcast and opaquely shielded.
9. Prior to the issuance of the permit, the permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Permittee shall notify the Routt County Planning Department of any claims made against the policy. Routt County shall be named as an additional insured on the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
10. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
11. Permits/Approvals shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval.
12. Transfer of this Special Use Permit may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, transferee shall submit written consent for the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject

property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.

13. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.

**Specific Conditions:**

14. The Special Use Permit (SUP) is valid for the life of the use provided it is acted upon within one year of approval. The SUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1) year. The approved project plan shall include:
- Home Industry for a Camper, RV, trailer, and vehicle storage facility
  - Hours of operation are 24 hours a day / 7 days a week
  - One dwelling unit to be occupied by the onsite manager
  - Storage structures are limited to four (4) and are limited to the following sizes:
    1. Existing structure not to exceed 12,000 sq. ft. in area
    2. One new pole barn not to exceed 10,000 sq. ft. in area
    3. One new pole barn not to exceed 6,000 sq. ft. in area
    4. One new pole barn not to exceed 5,000 sq. ft. in area
15. Revegetation of disturbed areas shall occur within one growing season with a seed mix that avoids the use of aggressive grasses. See the Colorado State University Extension Office for appropriate grass seed mixes.
16. Prior to operation, permittee shall submit to Routt County proof of a Sales Tax Account /License.
17. The owner or manager shall be a full-time resident of, and operate the home industry.
18. All activity related to the home industry must be conducted within or adjacent to the Dwelling Unit or within an accessory structure.
19. A maximum of 8 on-site employees, including those residing in the Dwelling Unit, are permitted to work in connection with the home industry.
20. No uses approved in this SUP shall commence until a Certificate of Occupancy is granted for the dwelling and the dwelling is inhabited by the on-site manager.
21. This permit is for storage only: No maintenance, repairs, or client camping are allowed onsite.

22. The access road to the south shall be physically blocked and shall not be utilized for personal or commercial use.

Commissioner Flint seconded the motion.

**Discussion and Friendly Amendments**

Commissioner Brookshire suggested adding a COA stating that the access road heading south from the site should be physically blocked and not used for either business or personal activity. This amendment was accepted, as indicated above.

**The motion carried 8 - 1, with the Chair voting yes.**

Commissioner Brookshire stated that he voted to deny the petition because he feels that the proposal is new commercial development in the A/F zone district and is not supported by the Master Plan. He cited Master Plan Sections 3.1, 3.2.a, 3.3, 4, and 4.2.a.

**ACTIVITY: PL-19-109 (tabled on October 17, 2019)**

**PETITIONER: The Nature Conservancy**

**PETITION: Review and amendment of Permit # PP1996-016 under section 4.19, Recreational Facility, Outdoor Rural. Uses and permit boundary have changed to a degree that merits a review and amendment of the permit.**

**LOCATION: The Carpenter Ranch Preserve is located approximately 5 miles east of Hayden, Colorado on U.S. 40.**

Commissioner Merrill recused himself from this item.

Ms. Winser noted that several items had been received after the packet was assembled, including several letters of support. After the addendum was distributed two additional letters of support, one from Joe Haines of Yampatika and another from Ken Brenner, had been received.

Ms. Winser reviewed the history of The Nature Conservancy (TNC) property at the Carpenter Ranch, which was granted a life-of-use Conditional Use Permit (CUP) in 1996. She noted that no complaints regarding the operation were received until one year ago. Based on a complaint by the neighboring property owner, questions came up regarding changes to the operation since the 1996 permit was issued, as well as regarding a ruling on the co-tenancy of certain lands. As a result, the CUP was reviewed and the petitioner submitted an application for an amendment to the CUP. The amendment petition was tabled by Planning Commission on October 17, 2019 to allow TNC and its neighbor, the Wolf Mountain Ranch (WMR), to work out a fencing dispute and to address concerns regarding trespass and liability, with the assistance of County staff. Since that time, TNC has submitted an amended proposal. Ms. Winser stated

that the three issues of concern are: the gaps in the fencing, the lack of “no trespassing” signs and the amended permit boundary.

Ms. Winser reviewed the amended project narrative, which excludes the co-tenancy areas from the permit boundary, along with the areas west of the access road and north of the Yampa River. The area known as “Lewis and Clark” has also been excluded from the proposed permit boundary. The CUP will include all of the uses that occur within the permit boundary. The applicant has also stated that all public drop-in uses will be discontinued; no unscheduled visits to the ranch will be allowed. Ms. Winser added that additional fencing north of the ranch compound may also be completed, although this area is outside of the proposed permit boundary, and therefore not part of the application.

Ms. Winser presented an aerial view of the of the ranch compound area and reviewed the buildings and their uses. She indicated the location of the trail leaving the compound area and stated that the intention is to reduce the use of trails by the public. She reviewed the issues for discussion, as summarized in the revised memorandum dated February 12, 2020. These issues include the visitors to the ranch, the activities and uses allowed under the CUP, the permit boundary and the fencing. Ms. Winser reviewed the proposed uses listed in the table on page 6 of 107 of the staff report. She also reviewed the two maps of proposed fencing submitted by the applicant and by WMR. She noted that fencing is addressed in suggested COA #17, but that Planning Commission could supply the additional specific language. She reviewed the action options available to Planning Commission and stated that the suggested COAs should be discussed and revised, if necessary.

Ms. Nancy Fishbein, the Director of Land Protection for the Colorado Chapter of TNC, stated that at the October 17, 2019 hearing Planning Commission had directed the two parties to come together to address the potential off-site impacts of the CUP, particularly the possibility of trespass onto WMR and the liability associated with the co-tenancy lands. She said that TNC is proposing to complete a fence as depicted on the site plan submitted and to post “no trespassing” or similar signs along the border with WMR. Ms. Fishbein stated that TNC is eliminating all drop-in visits by the public. All visits will be by appointment only. She added that TNC has proposed limits on the number of visitors allowed and on the number of events, and would agree to maintain a log of visitors. All guests that go beyond the Education Center will be required to sign liability waivers, which will be retained for one year and provided to the County upon request. She stated that she feels these measures have addressed the concerns regarding liability and trespass. Ms. Fishbein stated that TNC and WMR are working on an agreement regarding fencing outside the CUP boundary to address the movement of cattle.

Regarding suggested COA #14 that limits the access to TNC lands outside the permit boundary to the agricultural operation, Ms. Fishbein stated that the ranch manager and other TNC employees would need to have access to these areas

for regular land inspection, management and maintenance. Regarding the requested expanded hours of operation, Ms. Fishbein stated that TNC would like the flexibility for weekend use and for early morning birding expeditions, but if additional parameters on the use of the Education Center would be helpful, TNC would be glad to provide them.

Commissioner Jaeger asked about the use of the Historic Barn. Ms. Fishbein said that visitors to the ranch are allowed to go in to look at the barn, but it is not occupied and meetings are not conducted inside. She said that the barn is used as a barn.

In response to a question from Chairman Warnke, Ms. Fishbein clarified that the dotted red line on the site plan submitted by TNC (page 19 of 107 of the staff report) represents existing fencing. The solid line shows proposed new fencing. She confirmed that the entire boundary between Elk Island and Lewis and Clark Island would be fenced.

In response to a question from Commissioner Brookshire regarding the “wildlife preserve” listed on the use table, Ms. Fishbein noted that the primary mission of the TNC is conservation, so the property is protected not only for its agricultural value but for its natural value. She noted there is a great deal of wildlife, quality habitat and a globally rare riparian forest on the ranch, but said that no particular area is designated as a preserve. Ms. Fishbein explained that the proposed CUP boundary in the current proposal has been pulled back from the river to prevent visitors from entering the MWR property. TNC is ensuring that visitors, guests and user groups will not go beyond the fence. TNC staff will go beyond this boundary, however, for property inspection and maintenance.

Regarding the use table, Ms. Winsler said that the table was developed following the discussion in October as a way of cataloging all of the uses of the TNC property. She noted that at the October hearing, TNC had argued that uses-by-right should not be listed in the CUP. It is the County’s position that all uses that occur within the permit boundary must be listed in the CUP. Ms. Winsler summarized that the TNC is requesting the following changes to the uses in the table: Education Center hours of operation from 6 a.m. to 8 p.m.; the ranch manager is a full-time resident of the ranch, not a guest; and that Special Events be allowed to begin at 6 a.m.

In response to a question from Chairman Warnke, Ms. Fishbein said that the TNC would agree to keep a visitors’ log, but this had not been included in the suggested COAs.

Mr. John Vanderbloemen, an attorney representing the petitioner, reviewed the complaint that WMR had filed and the issues of concern. He reviewed the original 1996 permit and project plan and stated that the intensity of use on the TNC property has expanded. He said that TNC had not complied with the terms of the permit from the beginning. He explained the co-tenancy of the streambed and

described WMR's concerns regarding trespass and liability. He presented several photos taken of the trail and signs, noting the trail is located outside of the required fencing cited in COA #6 and that the no-trespassing signs can't be read by people on the trail. Specifically, the signs were on the fence facing the meadow, not the trail. He presented several pictures of the co-tenancy land, noting areas easily accessible for TNC guests to cross the Yampa River during low water onto WMR, establishing concerns regarding trespassing and liability.

Mr. Vanderbloemen reviewed the different amendments to the permit boundary that had been proposed, and asked if the interns, researchers and others would be allowed to conduct activities outside of that boundary if those areas are excluded from the CUP. He also asked for clarity regarding who would be allowed to fish in the river. He stressed the need for clarity regarding the uses. He also stressed that a fence along the north/northeast border was needed, whether this area was in the permit boundary or not. He described the evolution of the river that created Elk Island and Lewis and Clark Island, and stated that a fence along the border between them was needed, as it is quite easy to access Elk Island (WMR) from Lewis and Clark Island (TNC). Mr. Vanderbloemen stated that all guests on the TNC property should be guided and expressed concern with the use of the Education Center and related outdoor uses. He stressed the need for tracking and accountability regarding visitors to the TNC ranch. He discussed a variety of alleged past permit violations. Mr. Vanderbloemen requested that a fence plan and proper "no trespassing" signs be included in the COAs. He noted that the right to farm and ranch is an element of the Routt County Master Plan. He stated that TNC does not have a good track record at keeping its commitments.

Mr. Brent Romick, the ranch manager of WMR, stated that WMR wants a perimeter fence to be constructed and for "no trespassing" signs to be posted to keep users of the TNC property away from the WMR agricultural operation. He stressed that no CUP uses can be allowed on co-tenancy land. He discussed wildfire concerns and stated that WMR wants cattle to graze on Elk Island. Mr. Romick also cited the right to farm and ranch, and described the TNC operation as "Disneyland." He reviewed a map of the property from 1959 and discussed Mr. Ferris Carpenter's intentions, as well as the migration of the river that created the co-tenancy lands. He stated that he was okay with the proposed fence between Elk Island and Lewis and Clark Island, but expressed concern regarding the fence on the southeast portion of the TNC permit boundary. He noted that the TNC proposal does not include a cross fence between the CUP boundary fence and the river, as shown on the fencing plan submitted by WMR. Mr. Romick also discussed the need for cross-indemnification and liability waivers. He said that TNC could not be trusted.

Commissioner Flint asked who would pay for and construct the proposed additional fencing. Mr. Romick said that WMR is asking TNC to build the fence. Maintenance would be shared.

Ms. Fishbein objected the WMR characterization of TNC as a slimy and disreputable organization. She said that TNC is agreeing to comply with many of WMR's requests, and understands the trespass concerns, but added that regarding the fencing WMR is refusing to compromise. She stated that the cross fence proposed by WMR is not about trespass, but rather about cattle management. She explained that this cross fence is important to TNC because it would block the movement of the WMR cattle to the south and facilitate livestock grazing in the riparian area between the CUP boundary and the river on co-tenancy land and on TNC's solely-owned property. She explained that it is unfeasible to build a fence that would prevent the cattle from grazing in the riparian area on the TNC side of the river because it would have to be in the active river channel. Ms. Fishbein stated that TNC is committed to protecting the sensitive riparian area, which does not do well under grazing. She said that TNC is willing to build 90% of the fence, but does not want this cross fence. She said that the only way to keep cattle out of the riparian area is to place the fence on the WMR side of the river (which is unacceptable to WMR) or to not build the cross fence across the river. She said that TNC would like to find a third alternative that would work for both parties.

Commissioner Flint asked Ms. Fishbein about the TNC record of compliance. Ms. Fishbein stated that there is not significantly more use on the property than there has been in the past. She stated that before the 1996 permit was issued, staff recognized that the bunk house would not be torn down. She added that the Lewis and Clark area was not included within the original CUP boundary, so it was not fenced. Ms. Fishbein admitted that the trail was built on the wrong side of the fence and that signs were not posted correctly or in a timely manner.

Mr. Romick stated that trespass had been documented. He also stated that TNC is not allowed to conserve the riparian wetland on their property; they must graze it.

In response to a question from Commissioner Marshall, Ms. Fishbein explained how the cross fence would enable WMR cattle to graze in the riparian habitat. She stated that TNC fences its own cattle out of that area. She noted that WMR and TNC have different land management goals for their respective properties.

Commissioner Benjamin asked if fencing outside the CUP boundary would be within the purview of the County. Ms. Winser stated that it could be, if Planning Commission feels it is significant to mitigate concerns regarding off-site impacts of the CUP. There was a discussion of the original CUP boundary. Ms. Winser noted that the documentation regarding the 1996 permit is vague regarding exactly what was approved. She noted that the fencing along the north boundary and between Lewis and Clark and Elk Islands is not an issue. Both parties agree to that fencing. The point of contention is the cross fencing on the southeast portion of the CUP boundary.

Commissioner Benjamin asked if there are any interpretive trails outside of the CUP boundary. Ms. Fishbein stated that there are now, but that they would be moved. All trails will be within the CUP boundary.

Regarding the signage, Mr. Vanderbloemen stated that simple “no trespassing” signs are preferable to signs that ask people not to cross the river, and that the signs should be placed every 150 ft. along the fence.

In response to a question from Commissioner Benjamin, Ms. Fishbein stated that TNC interns are temporary employees of TNC, and often assist with the agricultural operation and on general property management of the ranch.

Mr. Vanderbloemen offered that the County could deny the CUP amendment request and require TNC to build the fence according to the 1996 permit. Ms. Fishbein said that TNC is willing to build the fence on the north part of the boundary, but would prefer to enter into a private fencing agreement if WMR is willing to eliminate the cross fence on the east side of the CUP boundary. She added that the northern area should be included in the CUP boundary if the County permit requires TNC to build a fence between Elk and Lewis and Clark Islands, which TNC will agree to do.

Following further discussion, Mr. Romick agreed that a permanent cross fence would not be necessary if a temporary fence would be acceptable. It was noted that without the cross fence the cows can wander to the highway and to the railroad tracks where they are unsafe. Ms. Fishbein said that more work on a fencing agreement needs to be done. She stated that if a temporary fence is up when the cows are in the area, whether the fence is temporary or permanent does not matter. She stated that TNC does not like the fence through the riparian area, but that it agreed to it due to the concerns regarding trespass. She noted the location of the pasture fence that keeps the TNC cattle out of the riparian area.

Chairman Warnke summarized the fencing issue. He suggested that the two parties need to figure out the details of an agreement. Mr. Brookshire clarified that the issue of concern in 1996 was the fence approximate to and immediately north of the ranch compound, not the area between Elk Island and Lewis and Clark.

Noting the high level of contention, Commissioner Flint suggested that two parties need to look for a mutually agreeable solution with the assistance of a skilled mediator.

There was a discussion of who would be allowed to fish under the proposed CUP amendment and whether events would be allowed year-round. Ms. Fishbein stated that while most of the outdoor activities on the TNC property occur between May and November, there are occasionally winter outdoor events. These are included in the total number of events proposed.

**Public Comment**

Mr. Ben Beall stated that he had submitted a letter regarding the petition. He noted that the first complaint regarding the TNC operation occurred in 2019. He offered that TNC and WMR have two different ways of looking at the world. TNC wants to preserve the river corridor; the cattlemen will not fence out the river. Mr. Beall asked why research should be restricted, since this is primary to the mission of TNC. He noted that many organizations utilize TNC for meetings and lodging, and added that he would hate to see the education and community-related mission of TNC to be curtailed. He asked that the County allow TNC to perform its mission.

Ms. Nicole Seltzer, the coordinator of the Integrated Water Manager Plan for the Yampa/White River Basin Roundtable, stated that her regional organization meets at the centrally located TNC ranch on a regular basis. She stated that TNC is a very important asset to the non-profit community in the Yampa Valley and northwest Colorado. She urged Planning Commission not to place restrictions on TNC that will make it hard for them to fulfill their mission. She also stated that the hyperbole of the language and the misrepresentation of TNC was a disservice to the organization, its mission and what takes place on at the Carpenter Ranch.

Mr. Reed Zars, the grandson of Ferry Carpenter and a lawyer, said that he had known the Carpenter Ranch his whole life and worked on it for many years. He stated that TNC has been willing to grant many concessions. He noted that a co-tenant, or those with permission from a co-tenant, cannot trespass on co-owned land. He offered that the language of trespass has been exaggerated. Mr. Zars stated that if TNC is required to build a fence across its own property it could be considered a takings. He added that prohibiting guests from accessing the river was a deprivation of what Ferry Carpenter had always allowed. Mr. Zars stated that he was very disturbed by the incivility of the proceedings. Mr. Zars acknowledged that joint tenancy is a difficult situation. He offered that perhaps the fairest option might be to build a fence on both sides of the river.

Mr. Vanderbloemen stated that the County cannot issue a permit for land that is not under fee ownership.

Ms. Betsy Blakeslee, former Education and Outreach Director at the Carpenter Ranch, stated that in her 23 years there, TNC had always documented the number of people that visited the ranch. She noted the importance of the ranch as a birding area and stated that the regeneration of the riparian forest that provides such good habitat depends on keeping the cows out of it. She reviewed the ecology of cottonwood forests and of the Yampa River, and agreed that the situation involving two completely different land management styles is difficult.

Seeing no further comment, Chairman Warnke closed public comment.

Ms. Winser stated that with the fencing agreed upon so far, many of the concerns regarding liability and trespass may be alleviated, such that some of the other suggested restrictions may not be necessary. She noted that the table of uses was developed in response to the October 17<sup>th</sup> hearing, with an interest in cataloging all of the uses that occur within the permit boundary.

Planning Commission went through the table of uses provided under COA #14, as well as the other COAs. The following issues were discussed:

- Special Events: There was a discussion of how to define a single special event. It was decided that a single special event is not allowed to exceed three days.
- Education Center: Ms. Fishbein noted that in an earlier summary of the uses, TNC had separated out school groups and other uses of the Education Center. She proposed that these sub-categories be restored.
- Visitor log: Ms. Winser stated that this idea had been proffered as an alternative to fencing as a way to mitigate trespass. In response to a question from Commissioner Benjamin, Ms. Winser stated that she did not think such logs had ever been required of other Recreational Facilities. It was decided that no visitor log should be required.
- Employees & Interns: Ms. Winser noted that TNC has said that employees and interns of TNC often perform general property maintenance and work on the agricultural operation. This was included in COA #14 prior to the table.
- Fencing location: Following discussion, it was determined that the exact location of the fence would need to be figured out on the ground, following which a GPS survey of its location could be submitted to the County. Ms. Winser offered that a map of the permit boundary, the fencing (including the Lewis and Clark area) and the location of the trails should be submitted prior to issuance of the permit. Ms. Fishbein asked that the deadline for fence installation be extended to September 1, 2020. Ms. Ross stated that she would work with CPW on the type of fence to be installed.
- Private non-commercial fishing: Following some back and forth, it was decided that this item should be removed from the CUP use table and addressed through a separate COA.
- Public Access: Commissioner Brookshire recommended adding a condition prohibiting unscheduled visits by the public, and adding the requirement for liability waivers.
- No Trespassing signs: Planning Commission decided to retain the 150 ft. spacing.

## **MOTION**

Commissioner Marshall moved to approve the amendment to the CUP for the Carpenter Ranch with the following findings of fact:

1. The proposal, with the following conditions, meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, and 6 and of the Routt County Zoning Regulations.

2. Overnight accommodations would require review as a Special Use Permit under current regulations, but because the existing permit included allowances for overnight guests under a CUP, the amendment should follow the same review process as the original CUP.

This approval is subject to the following conditions:

**General Conditions:**

1. The CUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 5, and 6.
2. Any complaints or concerns that may arise from this operation may be cause for review of the CUP, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
3. In the event that Routt County commences an action to enforce or interpret this CUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
4. No junk, trash, or inoperative vehicles shall be stored on the property.
5. This permit is contingent upon the acquisition of and compliance with any required federal, state and local permits. The operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to commencement of operations.
6. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
7. All exterior lighting shall be downcast and opaquely shielded.
8. All trash shall be stored either inside a structure or inside Interagency Grizzly Bear Committee (IGBC) certified receptacles.
9. Prior to the issuance of the permit, the permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Permittee shall notify the Routt County Planning Department of any claims made against the policy. Routt County shall be named as an additional insured on the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
10. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
11. The permit shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval.

12. Transfer of this CUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, transferee shall submit written consent for the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.
13. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.

**Specific Conditions:**

14. The CUP for a Recreational Facility, Outdoor Rural with Overnight Accommodations is limited to the uses and facilities presented in the approved project plan. The approved project plan uses listed in the table below may occur only within the CUP boundary. The uses of Carpenter Ranch lands that lie outside the CUP boundary will be limited to the agricultural operation and property maintenance. General property maintenance and work related to the agricultural operation may be performed by employees and interns, as stated in TNC's 1/17/20 narrative. Any additional uses or facilities must be applied for in a new or amended application. The approved project plan consists of the uses listed in the following table:

<p><b>Education center</b> - interpretive exhibits, museum, meeting space for community and school groups/programs. Hours: Monday-Sunday 6am-8pm, year-round.</p> <p><b>School Programs</b> - administered through third parties, such as Yampatika and Rocky Mountain Youth Corps. Yampatika currently leads 3-4 trips of 20-30 students/trip. Rocky Mountain Youth Corps provides the ranch with much needed volunteer work every Thursday morning for 2 months during summer. The groups range in size from 5-10 youths and work is primarily done with full supervision and in proximity to the ranch facilities.</p> <p><b>Partner/Community</b> use of meeting space in the Education Center (located in the Historic Main Ranch House/Education Center) and adjacent outdoor space. Meetings occur 2-5 times/month on average with attendees ranging from 5-20 individuals. While more meetings occur during the summer months, meetings take place throughout the year. Meetings held at the ranch mostly relate to conservation and the Conservancy's mission and include groups such as the Integrated Water Management Plan team, Maybell Ditch Project, Leafy Spurge Group and the Sustainable Grazing forum.</p> <p><b>Scientific and Agricultural Research</b> . TNC anticipates approximately 10 group visits/year. The number of invitees average 5 individuals/group. Invitees are university professors, undergraduate and graduate students and research scientists. Activities may occur year-round but are most common in the summer</p>
<p><b>Historic Barn</b> - for users/groups directly connected to the work/mission of the organization and guests and family of the Ranch Manager on a year-round basis. Visits by community or school groups are coordinated by the Ranch Manager on a year round basis.</p>
<p><b>TNC Donor Visits</b> - visits shall be scheduled; no more than 10 visits/year with no more than 10 individuals at a time.</p>
<p><b>Wildlife Preserve</b> - for users/groups directly connected to the work/mission of the organization and guests and family of the Ranch Manager on a year-round basis.</p>
<p><b>Interpretive Trails</b> for users/groups directly connected to the work/mission of the organization and guests and family of the Ranch Manager on a year-round basis.</p>
<p><b>Housing</b> - All overnight use is directly connected to the work/mission of the organization on a year-round basis. Guests include TNC staff members, volunteers, donors, researchers, and interns within the following 4 buildings: Main House, Bunk House, Intern House and Manager House. Rooms are not for rent.</p>
<p><b>Special Events</b> - No more than 5 special events/year. Any one event cannot exceed 3 days and must be directly related to the work/mission of the organization. No more than 125 people per event. Events are held year-round, can begin at 6am and shall not go past 8pm.</p>

15. Prior to issuance, the site plan shall be amended to clearly define the CUP permit boundary, fence location, trails and uses.

16. The CUP is valid for the life of the use provided it is acted upon within one year of approval. The CUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1) year.
17. Permittee shall construct and maintain a fence along the northern CUP boundary as illustrated on the map provided on page 19 of 107 of the staff packet dated February 12, 2020. The fence shall be completed no later than September 1, 2020. TNC shall submit proof of timely completion of the fence to County staff.
18. "No Trespassing" signs shall be placed and maintained on the fence at 150 foot intervals.
19. A measure to ensure safe crossing of the railroad shall be installed on the ranch access road. At a minimum, a stop sign in the middle of the road before the crossing, a flashing caution light, or another safety measure meeting the intention of the condition shall be proposed by the permittee, and approved by Planning Staff. The approved mitigation measure will be installed prior to the commencement of the activities.
20. TNC shall require all visitors to, and occupants of, the Carpenter Ranch, excluding visitors to the education center and barn, to execute liability waivers that release both TNC and WMR from any claim for injury or damage occurring on Carpenter Ranch or on co-tenancy lands. TNC shall retain the original waivers for one year. Waivers shall be available for inspection by the County upon request.
21. Users directly connected to the work/mission of the organization and guests and family of the Ranch Manager who have been granted permission to hunt or fish must sign liability waivers. One liability waiver per person per year is required.

Commissioner Flint seconded the motion.

**The motion carried 8 - 0, with the Chair voting yes.**

#### **ADMINISTRATOR 'S REPORT**

Ms. Winser stated that the joint meeting with the Board of County Commissioners planned for March 5<sup>th</sup> must be rescheduled. She suggested an off-Thursday or another night of the week might be needed to accommodate this meeting.

**The meeting was adjourned at 11:45 p.m.**