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Forest
Service



Draft

Record of Decision

Village at Wolf Creek Access Project Final Environmental Impact Statement

USDA Forest Service
Rocky Mountain Region
Rio Grande National Forest
Divide Ranger District
Mineral County, Colorado

United States Department of Agriculture
United States Forest Service
Rio Grande National Forest
1803 West Highway 160
Monte Vista, Colorado 81144

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Table of Contents

<u>Number / Section</u>	<u>Page</u>
1.0 Introduction	1
2.0 Background and Location.....	1
3.0 Purpose and Need.....	2
4.0 Decision.....	2
4.1 The Decision.....	2
4.2 Selected Alternative.....	2
4.2.1 Non-Federal Lands to be Conveyed to the United States.....	3
4.2.2 Federal Land to be Conveyed to the Non-Federal Party	3
4.2.3 Best Management Practices.....	3
4.2.4 Encumbrances.....	4
4.2.5 Monitoring.....	4
4.2.6 Lynx Conservation Measures	5
4.2.7 Permits, Licenses, Entitlements and/or Consultation	6
5.0 Decision Rationale	6
6.0 Public Involvement.....	26
7.0 Alternatives Considered	29
7.1 Alternatives Considered but Eliminated from Detailed Study	29
7.2 Alternative 1 - No Action.....	30
7.3 Alternative 2 - Land Exchange (Proposed Action)	30
7.4 Alternative 3 – ANILCA Road Access	30
8.0 Environmentally Preferable Alternative	31
9.0 Findings Required by Other Laws, Regulations and Agency Policy	31
10.0 Pre-Decisional Administrative Objection Process	31
11.0 Contact Person.....	32
12.0 Signature and Date	32

List of Tables

<u>Number</u>	<u>Page</u>
Table 1.10-1 Inholdings (Non-Federal Lands) on the Divide Ranger District Granted Access across NFS Lands	13
Table 1.10-2 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.....	15
Table 1.10-3 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Utah.....	20

1.0 Introduction

This Record of Decision (ROD) documents my decision and rationale for the Village at Wolf Creek Access Project. A Final Environmental Impact Statement (FEIS) has been completed for this project. The FEIS documents the direct, indirect, and cumulative environmental effects of two Action Alternatives as well as the No Action alternative and documents the ability of the alternatives to meet the purpose and need for the project.

2.0 Background and Location

Acquisition of, and proposed access to, private lands in the project area has been accompanied by a complicated procedural and legal history over almost 30 years.

In 1986, a Decision Notice was signed for the Proposed Wolf Creek Land Exchange. The 1986 Decision Notice approved the conveyance of approximately 300 acres of National Forest System (NFS) lands managed by the Rio Grande National Forest (Rio Grande NF) adjacent to the Wolf Creek Ski Area (WCSA) in exchange for non-Federal lands located in Saguache County, Colorado. The 1986 Decision Notice created a private inholding surrounded by the Rio Grande NF. The inholding, which is entirely within the WCSA Special Use Permit (SUP) boundary, is owned by the Leavell-McCombs Joint Venture (LMJV). The National Forest System (NFS) lands surrounding the inholding are managed by the Rio Grande NF under Management Area Prescription 8.22 – Ski Based Resorts (FEIS Figure 1.9-1).

National Forest System Road (NFSR) 391, which connects with U.S. Highway 160 (Hwy 160) and passes through a WCSA parking lot, crosses the private inholding and provides vehicular access to Alberta Park Reservoir. NFSR 391 provides vehicular access to the private inholding during the summer months. During the winter months this road is under a public motorized closure order and serves as a ski trail for the WCSA.

In June 2001, the LMJV applied to the Rio Grande NF for rights-of-way (ROW) across NFS lands between Hwy 160 and the private inholding. The LMJV requested that the Forest Service provide permanent, year-round vehicular access to the property through extension of the Tranquility parking lot at WCSA. The proposal was to create the “Tranquility Road” by extending a road through, and beyond, the Tranquility parking lot by approximately 250 feet across NFS lands, thereby connecting to the private land inholding.

In compliance with its statutory obligations under Section 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA), the Rio Grande NF determined that an EIS was required to analyze the request for access to the private inholding. The EIS analyzed four alternatives in detail:

- Alternative 1: No Action
- Alternative 2: The Proposed Action (request for a single additional access to the property via an extension of Tranquility Road);
- Alternative 3: Snow Shed – East Village Access Alternative (a single access alternative using a new road, referred to as the “Snow Shed Road”); and
- Alternative 4: Dual Access Road (a dual access alternative requiring construction and use of both the Snow Shed Road and the extended Tranquility Road).

In March 2006, a ROD was signed by Rio Grande NF Supervisor Peter Clark. The decision was a combination of Alternative 3 and Alternative 4 which authorized the construction of the “Snow Shed Road” and the “Tranquility Road”. Four separate appeals of the ROD were received between

April and May 2006. In July 2006, Deputy Regional Forester Greg Griffith denied the appeals (thereby upholding the decision in the ROD).

In October 2006, a suit was filed against the Forest Service, alleging that, among other things, the FEIS and ROD were arbitrary and capricious under the Administrative Procedure Act (APA) and in violation of the National Environmental Policy Act of 1968, as amended (NEPA). In November 2006, a temporary restraining order was granted which prohibited the Forest Service from: 1) authorizing any ground disturbing construction activity; 2) submitting applications or entering into agreements with the Colorado Department of Transportation (CDOT); or 3) taking any other action implementing the FEIS and ROD. In October 2007, Judge John Kane granted the plaintiff's request for continued preliminary injunctive relief.

In February 2008, the U.S. Forest Service negotiated a settlement with the plaintiff in order to bring a more prompt closure to the litigation and allow for the initiation of a new analysis. The settlement recognized that the Forest Service did not concede the decision making process violated any laws.

In July 2010, the LMJV submitted a land exchange proposal to the Rio Grande NF. In addition to a land exchange, the LMJV requested an access road across NFS lands be analyzed (citing the Forest Service's obligations to provide adequate access to the private inholding under ANILCA). An Agreement to Initiate¹ was signed between Rio Grande NF and the LMJV in January 2011, and a Notice of Intent to Prepare an EIS was published in the Federal Register on April 19, 2011.

3.0 Purpose and Need

The Purpose and Need for Action is to allow the LMJV to access its property to secure reasonable use and enjoyment thereof as provided in ANILCA and Forest Service regulations, while minimizing environmental effects to natural resources within the project area. The legal entitlement is defined by ANILCA and Forest Service regulations as a right of access to non-Federal land within the boundaries of the NFS. The LMJV has proposed a land exchange to satisfy their access needs in addition to their application for road access. The Forest Service has evaluated the land exchange as a means of providing legal access.

4.0 Decision

4.1 The Decision

After a thorough review of the project Purpose and Need, the Alternatives, the extensive analysis in the Village at Wolf Creek Access Project FEIS, and public and agency comments, my decision is to select Alternative 2 – Land Exchange (hereinafter referred to as “the Selected Alternative”). My decision applies to NFS lands that are managed within the Rio Grande NF's 1996 (Revised) Land and Resource Plan (Forest Plan) Management Area Prescription 8.22 – Ski Based Resorts.

4.2 Selected Alternative

The Selected Alternative is a land exchange between the United States and the LMJV. With the Selected Alternative, the LMJV will convey approximately 177 acres of privately held land to the Rio Grande NF in exchange for approximately 205 acres of NFS land managed by the Rio Grande NF. The privately owned parcel to be conveyed to the United States encompasses the southern and

¹ This Agreement to Initiate authorized each party to enter on lands of the other for such purposes as preparing land value appraisals, land line surveys, wildlife and wetland inventories and other evaluations deemed necessary by the Forest Service to fully evaluate the effects and merits of the exchange proposal.

western portions of the private inholding, and the Federal exchange parcel is located to the north, east and south of the private land inholding. This exchange will create a private land parcel of approximately 325 acres that extends to Hwy 160, and will accommodate year-round vehicular access. This access will serve as the primary access which will be located on the newly created private lands. Under the Selected Alternative the existing Tranquility Road, which extends from Hwy 160 to a WCSA parking lot, will be extended east across NFS land to the private inholding. This road will provide restricted and seasonal access between Hwy 160 and the private land parcel, and will also provide a route for emergency access/egress.

4.2.1 Non-Federal Lands to be Conveyed to the United States

- Township 37 North, Range 2 East, N.M.P.M., Mineral County, Colorado
- Sections 4, 5, 8 & 9: A portion of Tract 37

The non-Federal exchange parcel (i.e., a portion of the private inholding) is located in Mineral County east of the Continental Divide, immediately east of the WCSA and south of Hwy 160. This parcel is approximately 18 miles southwest of South Fork and 24 miles northeast of Pagosa Springs (FEIS Figure 1.2.1). The elevation of the non-Federal parcel ranges from a low of 10,320 feet to a high of 10,840 feet. The non-Federal exchange parcel is the southwestern portion of the ± 288 -acre private land inholding and is surrounded by NFS lands on the south, west and a portion of the east side, and is located entirely within (i.e., surrounded by) the WCSA SUP boundary (FEIS Figure 2.2-2). In total, the non-Federal exchange parcel encompasses ± 177 acres of the ± 288 -acre private land inholding. WCSA owns two parcels totaling ± 9.84 acres (the ± 9.01 acre Waterfall parcel and the ± 0.83 acre Tranquility parcel), which are bounded by the non-Federal parcel (FEIS Figure 2.2-3). Wolf Creek Ski Corporation has agreed to make these two small parcels available to LMJV for inclusion in the land exchange, and the acreage of these parcels is included in the acreage of the exchange parcel. The total appraised value of the non-Federal parcel is \$1,505,000. All mineral rights will be conveyed with no reservations.

4.2.2 Federal Land to be Conveyed to the Non-Federal Party

- Township 37 North, Range 2 East, N.M.P.M., Mineral County, Colorado
- Sections 3, 4, and 9: A portion thereof

The ± 205 -acre irregularly-shaped Federal exchange parcel is located north, east and south of that portion (120 acres) of the private land inholding which is not included in the exchange, and the northwestern portion is contiguous to Hwy 160 (FEIS Figure 2.2-2). The elevation of the Federal parcel ranges from a low of 10,240 feet to a high of 10,482 feet. The total appraised value of the Federal parcel is \$1,435,000. A cash equalization payment of \$70,000 will be made to the non-Federal party. All mineral rights will be conveyed with no reservations.

4.2.3 Best Management Practices

Best Management Practices (BMPs) have been developed for actions that will occur on NFS lands and adjacent areas resulting from the selected Alternative. These BMPs apply to construction and operation of a ski area access road which extends 1,593 linear feet from the private land parcel across NFS lands to connect with Tranquility Road. These BMPs also apply to the Reservations/Easements for the Village Ditch Infiltration Gallery located on South Pass Creek and a raw water pipeline corridor extending from the infiltration gallery to FSR 391 and then east to the private land. The purpose of the BMPs is to minimize potential impacts to Forest Service resources during construction, operation and maintenance of the ski area access road and the Village Ditch Infiltration Gallery and its raw water pipeline.

Stormwater runoff controls from construction sites are mandated by the Federal Water Pollution Control Act (Clean Water Act). In Colorado, the U.S. Environmental Protection Agency (EPA) has delegated authority to the Colorado Department of Public Health and Environment (CDPHE).

Construction sites which disturb greater than one acre are required to acquire a stormwater discharge permit. This decision requires the LMJV to obtain all required permits.

A critical requirement of the Construction Stormwater Discharge permit is the Stormwater Management Plan (SWMP). At a minimum, a SWMP should communicate and satisfy the following:

- Identify all potential sources of pollution which may affect the quality of stormwater discharges associated with construction activity;
- Describe BMPs to be used to reduce the pollutants in stormwater discharges associated with construction activity including the installation, implementation and maintenance requirements; and
- Utilize good engineering practices and be updated as needed throughout construction and stabilization of the site.

The implementation of these best management practices will reduce the potential impacts associated with the selected alternative.

4.2.4 Encumbrances

Encumbrances on the exchange parcels are as follows:

- In reference to a Scenic Easement on the non-Federal parcel, between the LMJV and United States of America recorded June 11, 1987 in Book 112-L at Page 18, and Amended Scenic Easement recorded December 18, 1998 in Book 101 at Page 544 and re-recorded February 1, 1999, in Book 101 at Page 641. (Parcels 1 and 2). This easement will be amended prior to the conveyance to delete the Non-Federal Parcel from the area subject to the terms and conditions of the Scenic Easement. The United States will not acquire the non-Federal parcel subject to this easement.
- The non-Federal parcel will be acquired by the United States subject to a “Right of Way Easement between Wolf Creek Ski Corporation and San Luis Valley Rural Electric Cooperative recorded April 1, 1999 in Book 101 at Page 763. (Parcel 2).”
- The non-Federal parcel will be conveyed to the United States of America reserving to the LMJV the following pertaining to the exercise of water right: a non-exclusive perpetual easement (the “Village at Wolf Creek Village Ditch Water Infiltration Gallery and Raw Water Line Reservation/Easement and Access Road Easement) within the area shown on Figure A-2 of Volume 2 of the FEIS, totaling 1.42 acres, more or less, hereto for the installation, operation, maintenance and replacement of water infiltration gallery facilities and raw water lines, together with necessary access to such facilities, as approved by Water Court Decree 87CW7.
- The Federal parcel will be conveyed to the LMJV with the following reservation: Reserving to the United States a right-of-way thereon for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 845).

4.2.5 Monitoring

The Forest Service has no authority to regulate the degree or density of development on private land; therefore, the required monitoring associated with my decision will be restricted to monitoring the best management practices and encumbrances described above. The Forest Service will be responsible for monitoring to ensure that each of the required actions stated in this decision occur.

4.2.6 Lynx Conservation Measures

Due to the anticipated indirect effects resulting from development on the private land, the United States Fish and Wildlife Service (USFWS) and the LMJV developed conservation measures to minimize adverse effects to lynx. These conservation measures were developed during the section 7 consultation process on effects of the subject project to species and habitats listed under the Endangered Species Act (ESA) as specified in the USFWS, November 15, 2013 Biological Opinion. The proposed conservation measures will be committed to by LMJV, or its successors and assigns ("the Applicant"), in writing, and will be binding on the future developers/owners of the Village should the LMJV sell, in whole or in part, the development. The complete text of the conservation measures can be found in the Biological Opinion. A brief synopsis of the conservation measures follows:

The LMJV will provide funding to implement conservation measures to reduce impacts of any proposed development to the Canada lynx. Funds provided by the LMJV will be administered by a Technical Panel consisting of representatives with expertise in lynx biology, traffic, and other relevant disciplines from CDOT, the USFWS (as a technical advisor), Colorado Parks & Wildlife, the Forest Service, and two representatives of the LMJV's choosing representing relevant traffic and biology expertise.

Initial funds will be used to pay for a corridor assessment and a trapping/collaring program to determine lynx movement across Hwy 160 between South Fork and Pagosa Springs, Colorado. These studies will result in a prioritization of crossing points by lynx on Hwy 160. Next, the Technical Panel members, along with the LMJV and the USFWS, will identify options for a program to further protect lynx from traffic and to facilitate lynx movement across Hwy 160.

The LMJV must undertake, independent of the above conservation measures, additional actions intended to reduce potential impacts to Canada lynx. They include:

- Worker Orientation. The LMJV will conduct worker orientation concerning Canada lynx conservation.
- Worker Shuttle. The LMJV will bus workers to and from the project site to minimize potential construction-traffic-related impacts to lynx during the infrastructure development period.
- On-Site Employee Housing. In Phase 1 and subsequent phases of any future Village development, the LMJV will provide some employee housing at the Village to minimize those employees' traffic impacts and will offer bus service to its other employees to reduce the amount of traffic they would otherwise add to Hwy 160.
- On-Site Convenience to Reduce Highway Traffic. As to its future owners and guests, the LMJV anticipates that they will have fewer trips along Hwy 160 during their stay than other similar developments in that the LMJV plans to provide the necessary essentials (i.e., grocery store, restaurants, etc.) at the Village to minimize their need to travel outside the Village for such items.
- Property Owners and Guests Lynx Awareness Program. The LMJV will provide an orientation program to its owners and guests that will advise them of the lynx movements in the area and the importance of motorists being aware of potential lynx crossings on Hwy 160 within the Landscape Linkage.

The implementation of these conservation measures will minimize adverse effects associated with the selected alternative to Canada lynx.

4.2.7 Permits, Licenses, Entitlements and/or Consultation

This decision applies only to NFS lands analyzed within the FEIS. However, because of the unique public/private land interface involved in this project, other Federal, State, and local entities have jurisdiction. The Forest Service assumes no responsibility for enforcing laws, regulations or policies under the jurisdiction of other governmental agencies. The following permits, licenses, entitlements and/or consultations may be necessary:

- CDOT Highway Access Permit
- U.S. Army Corps of Engineers – permit for impacts to Waters of the U.S., including wetlands
- Colorado Department of Public Health and Environment (CDPHE) Grading Permit and Stormwater Discharge Permit
- Mineral County Planned Unit Development (PUD)
- Mineral County Building Construction Permits

5.0 Decision Rationale

The rationale for my decision is based on a thorough review of seven factors that I identified as being key to my decision. These seven factors were evaluated to demonstrate how the selected alternative meets the Purpose and Need for Action. Each of the following seven factors, including why they are key to my decision, are explored in detail, below.

- 1) Forest Plan Direction
- 2) History of the Non-Federal Parcel
- 3) Reasonable Use and Enjoyment, Adequate Access & Similarly Situated Properties
- 4) Connected Actions
- 5) Range of Alternatives
- 6) Environmental effects associated with each of the alternatives analyzed in the FEIS
- 7) Public Interest Determination

1) Forest Plan Direction

A decision associated with a project as complex as this one requires close review of the desired long-term management of all Federal lands adjacent to and affected by any potential development on the private lands. The 1996 Revised Rio Grande National Forest Land and Resource Plan (Forest Plan) provides guidance for all resource management activities on the Rio Grande NF, including Forest-wide Standards and Guidelines relating to land adjustments. As one of the seven key factors, it is critical to ensure that any alternative considered for providing access to the private property is consistent with Forest-wide Standards and Guidelines. If any component of an alternative is not consistent with Forest-wide Standards and Guidelines, it requires either the alternative be dropped/amended or a Forest Plan amendment be completed.

The Federal exchange parcel is within Management Area Prescription 8.22 - Ski-based Resorts: Existing/Potential (Forest Plan, IV-35 to 36), which emphasizes management for their existing or potential use as ski-based resort sites. This management area encompasses the WCSA SUP boundary (FEIS Figure 1.9-1). The Forest Plan contains no specific direction regarding land acquisitions and disposals within the management area. However, Forest Plan direction specific to land ownership and land adjustments are found in Chapter III Forestwide Standards and Guidelines, Section 6 Landownership and Special Uses and Appendix E of the Forest Plan.

In accordance with Section 6, Guideline 2, land adjustments should be considered when there are opportunities to acquire non-Federal lands by purchase or exchange, when the lands are valuable for NFS purposes and/or have characteristics that would enhance NFS purposes. Guideline 3 states that opportunities to convey lands should be considered when involving important or unique resources and lands that would contribute to community growth, development and economic prosperity.

The land exchange presents the Forest Service with the opportunity to acquire important and unique resources. Specifically, both the Federal and non-Federal parcels contain riparian wetlands, some of which are classified as fens, and perennial and intermittent streams. In addition, the non-Federal parcel has eight springs. It should be noted that the Federal parcel has a one-acre pond. With the land exchange, the Forest Service will acquire approximately 52 acres of riparian wetlands which include roughly 24 acres of fens (the highest quality of wetlands), eight springs, 11,565 linear feet of perennial streams, and 7,338 linear feet of intermittent streams, while giving up ownership of roughly 12 acres of riparian wetlands which include one acre of fens, a one-acre pond, 2,924 linear feet of perennial streams, and 1,246 linear feet of intermittent streams. In total, the Rio Grande NF will have a net gain of roughly 40 acres of riparian wetlands, including 23 acres of fens, eight springs, 8,641 linear feet of perennial streams, and 6,092 linear feet of intermittent streams and would have a net loss of a one acre pond.

The land exchange presents the Forest Service with the opportunity to convey lands that would contribute to community growth, development and economic prosperity. Specifically, the Moderate and Maximum Density Development Concepts would enhance tourism, increase employment opportunities for current residents and attract new workers, result in an increase in individual income in the three county analysis areas, and generate public revenues for Mineral County and its school district.

Appendix E of the Forest Plan describes the Rio Grande NF land adjustment strategy and identifies the type of lands the Forest Service would like to acquire. They include:

Lands with water frontage, wetlands, and associated riparian ecosystems.

The non-Federal exchange parcel contains approximately 52 acres of riparian wetlands which include roughly 24 acres of fens (the highest quality of wetlands), eight springs, 11,565 linear feet of perennial streams, and 7,338 linear feet of intermittent streams. As a result of the lands exchanged in this process, the Rio Grande NF will gain roughly 40 acres of riparian wetlands, of which 23 acres are classified as fens, eight springs, 8,641 linear feet of perennial streams, 6,092 linear feet of intermittent streams. However, the Rio Grande NF will lose a one-acre pond.

Lands having endangered or threatened species habitat.

The non-Federal parcel has approximately 41 acres of primary Canada lynx habitat and the Federal exchange parcel has 188 acres of such habitat. The Federal parcel has ±0.16 acre of potential but unoccupied southwestern willow flycatcher habitat. Thus, the exchange would result in a net loss of approximately 147 acres of primary Canada lynx habitat and 0.16 acre of potential but unoccupied southwestern willow flycatcher habitat. The November 15, 2013 Biological Opinion provides for Conservation Measures to minimize the impacts associated with the loss of approximately 147 acres of Canada Lynx habitat.

Lands primarily of value for outdoor recreation purposes and lands needed for aesthetic protection.

The ±177 acre non-Federal exchange parcel abuts the WCSA to the west and south. The lower half of two chairlifts and numerous ski trails are located on the parcel. Federal ownership of this parcel would result in it becoming a part of Management Area 8.22 Ski-based Resorts and inclusion in the ski area SUP boundary. This would consolidate existing ski area operations, eliminate the need for

easements, increase the acreage of Federal land available for skiing, and generally benefit NFS developed recreation opportunities.

The existing ±288-acre private land inholding is subject to a Forest Service Scenic Easement which regulates the height of buildings and other structures.² The Scenic Easement would apply only to the ±120 acres of private land not included in the land exchange and would not apply to the ±205-acre Federal exchange parcel being acquired by the LMJV. The Scenic Easement prohibits 19 different land uses; prohibits mobile homes, mining and states conditions for advertising signs; specifies that architectural style of all structures be compatible with the location, that building materials be harmoniously colored, and that building heights be no greater than 48 feet. Mineral County Zoning Regulations would limit buildings and structures on the ±205-acre Federal exchange parcel to be acquired by the LMJV to a height of 50 feet, unless authorized by the County. Although the land exchange reduces the number of acres under the Forest Service Scenic Easement, the land exchange is consistent with Forest Plan Standards and Guidelines because it results in the acquisition of lands that are important for recreational resources as described above.

Lands that maintain and stabilize the economies of local governments.

The fiscal impact analysis documents that the Moderate and Maximum Density Development Concepts would generate annual revenues (property and sales tax) for Mineral County and its school district. In addition, there would be an increase in employment opportunity and individual income in the three county analysis area.

Key tracts that will promote effective resource management.

The non-Federal parcel has roughly 52 acres of riparian wetlands, including 24 acres of fens, eight springs, 11,565 linear feet of perennial streams, 7,338 linear feet of intermittent streams. The acquisition and subsequent protection of these wetlands under Federal jurisdiction will promote effective resource management and protection.

The primary negative impact associated with the land exchange occurs as a result of the loss of lynx habitat; however, the lynx conservation measures identified above in section 4.2.6 are adequate to address not only the loss of 147 acres of primary lynx habitat but also address indirect impacts associated with the development of the private lands. The proactive conservation measures will result in expanded opportunities, which will not occur otherwise, to monitor and manage lynx. As a result, and after a review of the Forest Plan including the descriptions of the Rio Grande NF land adjustment strategy as well as Forest Plan Standards and Guidelines, it is my determination that the Selected Alternative is consistent with or allows for mitigation to be consistent with all Forest Plan requirements.

2) History of the Non-Federal Parcel

The following chronological list of decisions, approvals, and actions by the Forest Service and other entities provides valuable context and perspective regarding the non-Federal parcel. This context and perspective becomes one aspect for determining the reasonable use and enjoyment of the private parcel. The reasonable use and enjoyment of the private parcel links directly back to the Purpose and Need for Action which is to allow the non-Federal party access to its property as provided in ANILCA and Forest Service regulations.

² The Scenic Easement is included, in its entirety, in Appendix F of the FEIS.

1986

- A Decision Notice was signed in March 1986 approving a land exchange between Leavell Properties, Inc. (Leavell Properties, Inc., precursor to Leavell-McCombs Joint Venture) and the Rio Grande National Forest.

1987

- In recognition that the Purpose and Need for Action of the March 1986 decision was to allow for the development of the lands by the proponent for uses compatible to the existing Wolf Creek Ski Area, Leavell Properties, Inc. and the Wolf Creek Ski Corporation (WCSC) jointly acquire water rights. The water rights acquisition was completed in April and was for a total of 2,444 units.
- In May the Forest Service issued a land patent with scenic easement to Leavell Properties, Inc. to ensure compatibility with WCSA by Forest Service approval of Leavell Properties, Inc. building architecture, design, and land plan.
- The land exchange conveyed approximately 300 acres of NFS land managed by the Rio Grande National Forest adjacent to the Wolf Creek Ski Area in exchange for non-Federal land located in Saguache County. This land exchange was completed to allow for the development of the lands by the proponent for uses compatible to the existing Wolf Creek Ski Area. As part of the NEPA, Leavell Properties, Inc. committed to develop a ski area related resort in conjunction with the ski area permittee.
- The land exchange had the Federal exchange parcel overlaying the public highway, Hwy 160. However the final configuration was adjusted based on: 1) a need to reduce the size of the Federal parcel due to appraised values, and 2) a need to Tract the land because of an erroneous survey. This resulted in the final Federal exchange parcel being unintentionally left without the legal access all parties had initially intended.
- In December the Sutherland Land Plan was submitted to Mineral County and the Rio Grande NF, proposing a 2,100 + unit development.
- WCSC submitted the Sutherland Land Plan with 2,100 + units to Rio Grande NF to be made part of the WCSA Master Development Plan. The Forest Service approved this with new lifts and skier density for approximately 12,000 skiers per day. This plan demonstrated the continued intent of Leavell Properties, Inc. to meet the Purpose and Need and commitment associated with the 1987 land exchange by developing the site.

1999

- The Rio Grande NF conducted an Environmental Assessment and preliminarily approved new lifts and access to WCSC and the LMJV as part of the WCSC Master Development Plan, based on the Sutherland Land Plan. After challenges from an environmental group, the Rio Grande NF and WCSC settled on approving only new lifts and requiring additional NEPA analysis for access.

2000

- In December the Rio Grande NF granted a scenic easement to the LMJV for building architecture and design. Mineral County approved the land plan for a full year-round base area resort development.

2001

- In June, the LMJV applied to the Rio Grande NF for rights-of-way (ROW) across NFS lands between Hwy 160 and the private inholding. The proposal was to extend Tranquility Road approximately 250 feet east across NFS lands to connect with the private inholding.

2004

- In October, the Rio Grande NF completed the Draft Environmental Impact Statement (DEIS) for the Application for Transportation & Utility Systems & Facilities for the Village at Wolf Creek.
- The Mineral County Board of Commissioners approved (via Resolution #04-21) a Planned Unit Development (PUD) for the Village at Wolf Creek on the LMJV's private inholding. This final subdivision approval was challenged in state court.

2005

- In October, the state district court for Mineral County vacated Mineral County's 2004 PUD approval upon finding that the limited access NFSR 391 provided to the planned development on private lands was not adequate under state law.
- Pursuant to Section 7 of the Endangered Species Act, the US Fish and Wildlife Service analyzed and issued a final Biological Opinion based on a full year-round base area development.

2006

- In March, the Rio Grande NF completed the FEIS for the Application for Transportation & Utility Systems & Facilities for the Village at Wolf Creek.
- Rio Grande NF Supervisor Peter Clark signed a ROD giving the LMJV dual access for a full base area resort development after analysis of a 2,800+ unit development. After challenges from Colorado Wild, the Forest Service settled and rescinded the ROD in order to bring a prompt closure to litigation and allow for the initiation of a new analysis.

2008

- In September, the Rio Grande NF initiated a new Environmental Impact Statement after receiving a new application for permanent road access from the LMJV. During public scoping sessions early in the project analysis in November, the project was placed on indefinite hold pending new information and potentially a new application.

2010

- In July, the LMJV submitted a land exchange proposal to the Rio Grande NF. In addition to the land exchange, the LMJV requested access across NFS lands (citing the Forest Service's obligations to provide adequate access to the private inholding under ANILCA).

2011

- In January, the Rio Grande NF completed a Feasibility Analysis and initiated an Environmental Impact Statement to analyze the environmental impacts of providing access to the LMJV parcel.
- In January, an Agreement to Initiate (ATI) was signed between Rio Grande NF Supervisor Dan Dallas and the LMJV.

2013

- The Rio Grande NF accepted WCSA's Master Development Plan for improvement and expansion of Wolf Creek Ski Area along with preliminary acceptance from the San Juan National Forest which would significantly increase skiable terrain at Wolf Creek. Note: In its planning for the Master Development Plan, WCSA did not account for a future village (of any size/configuration) on private lands near the base area.

- The US Fish and Wildlife Service analyzed the Biological Assessment (BA) and issued a final Biological Opinion (BO) based on a year-round base area development. As demonstrated in the BO, the US Fish and Wildlife Service concluded:

After reviewing the current status of Canada Lynx, the baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's Biological Opinion that the proposed action is not likely to jeopardize the continued existence of lynx within the contiguous United States distinct population segment. No critical habitat has been designated for this species in Colorado, therefore none will be affected.

In our effects analysis, we determined that adverse effects and take would result from implementation of the proposed action. We have described the sources or mechanisms of these effects within the action area. However, implementation of the conservation measures in the long term reduces the adverse effects to lynx. Therefore, we conclude that implementation of the conservation measures over the life of the project will serve to reduce the anticipated take caused by traffic generated by the Village.

After review of the entire history of this project, including the decision notice for the original land exchange, I find that it is reasonable to conclude that the intent of the Forest Service in creating the private inholding adjacent to the Wolf Creek Ski Area was to create a village. My analysis of factor 3 below shows that the original Forest Service intent is important for establishing the reasonable use and enjoyment of the private parcel.

3) Reasonable Use and Enjoyment, Adequate Access & Similarly Situated Properties

The regulations interpreting and implementing Section 3210 of ANILCA are set out in the Code of Federal Regulations at 36 CFR §251.110 – 114, Subpart D – Access to Non-Federal Lands. The concepts of “Reasonable use and enjoyment,” “adequate access,” and “similarly situated properties” are central to ANILCA and, therefore, to this decision.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) reads as follows:

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof; provided, that such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System 16 U.S.C. § 1323(a).

In reviewing the public comments regarding ANILCA, I've noticed a fundamental misperception regarding this statute. Congress enacted ANILCA for a variety of reasons including to ensure access to private land within the boundaries of the National Forest System. Congress did not suggest that it was providing for Federal regulation of private property within the boundaries of the National Forest System. Private land use regulation remains the province of local government. However, Mineral County may not approve a subdivision plat under state law that does not provide for access to a public road. In 2005, a state district court found that existing, seasonal access on NFSR 391 was inadequate for a year around development of even the first phase of the then-proposed development (which was limited to development on 70 of 285 acres). Order p. 26. Thus, the judge vacated the County approval. The Forest Service must, therefore, consider the reasonable use of the inholding without benefit of a final determination by the County.

It seems plausible that Mineral County may ultimately determine that there are a range of “reasonable” uses of the property and the County may approve the development in phases. ANILCA does not require the Forest Service to decide which use, within a range of reasonable uses, will be “allowed.” The Forest Service’s task is more limited. The Forest Service must simply ensure that it provides access over National Forest System lands that will allow use of the private property within the reasonable range. If I determine that the reasonable use of the property is commercial and residential use to serve a ski area, my analysis is not done. I must then determine the minimum access necessary to that use. If year around automobile access is needed for commercial and residential use of a ±288 acre property at a ski area, it is not relevant under ANILCA whether that access will be used for a small development or a very large development. If year around automobile access is needed for operation of even a small development, I must grant that level of access. It is then Mineral County’s responsibility to determine the development that will be allowed using that access.

Three terms were fundamental to my evaluation of the access ANILCA requires me to grant to the LMJV inholding: 1) “adequate access”; 2) “reasonable use and enjoyment”; and 3) “similarly situated” lands. Forest Service regulation defines “adequate access” as:

[A] route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land and that minimizes damage or disturbance to National Forest System lands and resources.

36 C.F.R. § 251.111.

The regulation goes on to provide that:

In issuing a special use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.

36 C.F.R. § 251.114(a).

The regulation also puts the burden on the applicant to show that historic access or rights of access do not provide adequate access. 36 C.F.R. § 251.112(b). These regulations require me to focus on contemporaneous uses made of similarly situated properties and other relevant criteria.

In order to determine what constitutes reasonable use and enjoyment of the lands in question for the Village at Wolf Creek Access Project, the Rio Grande NF conducted a search for similarly situated non-Federal lands on the Divide Ranger District where access was sought to inholdings across NFS lands. The regulation focuses on contemporaneous uses. Thus, properties that are not being used are not relevant to the “reasonable use” determination. This is a reasonable screen to focus on a subset of the hundreds of private parcels located within the Forest boundary. The Forest then eliminated properties located on public roads because the level of access provided on public roads is the level determined by road authorities to be necessary for public travel generally and is not based on uses of a particular property. For example, a small mining claim and a large property at a ski area may both be located on a public road that is plowed by a county in winter in order to provide access between two towns. The county’s decision to plow the road is not based on the level of access needed for reasonable use of the mining claim or the property at the ski area. The Forest’s review focused on landlocked properties completely surrounded by NFS land which need access. These properties are commonly referred to as inholdings.

National Forests in the West typically include within their boundaries hundreds, if not thousands, of inholdings. Many of these lands were originally mining properties or homesteads. Typically, the homesteads were located where access was practical for year around use and these properties were

relatively large – at least 160 acres. Many of these former homesteads came to be served by public roads over the years. In contrast, mining properties were located wherever minerals were found without regard for practical or year around access. Mining claims were also typically relatively small. For example, a lode claim was approximately ten acres.

The defining characteristics of LMJV’s inholding are its size, proximity to a snowplowed public road, and its proximity to an existing winter recreational development/attraction. Recognizing that the WCSA was the only existing winter recreational development on the Divide Ranger District, the RGNF began the search utilizing the two remaining important characteristics of the LMJV inholding to determine if any of the properties located on the Divide Ranger District were similarly situated. Although these two characteristics present important factors for determining similarly situated lands, further analysis was used to ensure a thorough evaluation. The two evaluation characteristics are as follows:

- Size of parcel
- Lands located within one mile of a snowplowed public road

The results of the search are shown in Table 1.10-1, Inholdings (non-Federal lands) on the Divide Ranger District granted access across NFS lands.

Table 1.10-1 Inholdings (Non-Federal Lands) on the Divide Ranger District Granted Access across NFS Lands							
Permit Name	Location	Access Road		Parcel Size (Acres)	Proximity to a Snowplowed Public Road (less than 5,280 feet)	Year Round Snowplowed Access	Property Use
		Length (Feet)	Width (Feet)				
Crooked Creek HOA	FSR 520.2i, from junction with FSR 520 to private land	400	20	240	Y	N	Residential - 38 lots
Cathy Getz	T41N, R5W, Sec. 36	480	12	22.8	Y	N	Agricultural
Bill Getz / Sandra Wagner	T41N, R5W, Sec. 36	185	12	25.67	Y	N	Agricultural
Roena Rowe	T39N, R3E, Sec. 16	90	20	19.04	Y	Y	Mixed Use - Farm, Ranch, Grazing, Commercial
Chase Wilson	T39N, R3E, Sec. 16	660	33	70.93	Y	N	Forest - Agricultural
Jack Cochran	T41N, R5W, Sec. 36	2,640	24	20	N	N	Residential
Glenn Tarbox	T40N, R1W, Sec. 17	1,320	40	40	Y	N	Vacant Land
Herb Storey	T40N, R1W, Sec. 18	1,000	40	700.76	Y	N	Agricultural
Nelson Mountain Properties	T42N, R1W, Sec. 12	550	30	15.61	Y	N	Vacant Land
Robert Homsher	T41N, R4W, Sec. 31	800	30	4.19	N	N	Residential

Table 1.10-1 Inholdings (Non-Federal Lands) on the Divide Ranger District Granted Access across NFS Lands							
Permit Name	Location	Access Road		Parcel Size (Acres)	Proximity to a Snowplowed Public Road (less than 5,280 feet)	Year Round Snowplowed Access	Property Use
		Length (Feet)	Width (Feet)				
Francis & Linda Deture	T39N, R2W, Sec. 16	20,412	30	160	N	N	Agricultural
William & Patsy Wray	T42N, R1W, Sec. 26	550	30	9.87	Y	N	Residential
Ron Rounds	T42N, R1W, Sec. 26	250	30	5	Y	Y	Residential - Vacant Land
Willie & Roberta Kostka	T37N, R4E, Sec. 3	1,100	30	40	N	N	Single Family Residence
Philip & Marbeth Bach	T42N, R1W, Sec. 24	150	30	40	Y	Y	Agricultural
Ptarmigan Meadows HOA	T41N, R3W, Sec. 13	225	66	116	Y	Y	Residential - 94 lots
Vernon Mann, Reciprocal	T42N, R3E, Sec. 34	7,920	30	160	N	N	Single Family Residence
Willaim Brannon, Reciprocal	T42N, R1W, Sec. 26	500	30	20.18	Y	N	Vacant Land
Mammoth Mountain	T42N, R1E, Sec. 30&31	10,000	60	49.69	N	Y	Single Family Residential

While Table 1.10-1 shows that access has been requested and granted to a number of different private properties of varying sizes with a variety of uses, the Forest could not discern a clear pattern in the uses or sizes of the parcels with regard to reasonable use or mode of access. The largest parcel (Storey) located along the northwest side of the Rio Grande River was within one mile of State Highway 149 (which is snowplowed) but the property remains a seasonal agricultural operation even though it is relatively close to Creede (the county seat). The significantly smaller Ptarmigan property was further from Creede on State Highway 149 but adjacent to the highway and it had been subdivided and had requested and been granted snowplowed access. Mid-way between these two properties both in size and location, the Crooked Creek property had been subdivided but had not requested snowplowed access apparently because the sub-division has not yet sold sufficient home sites. Of the five properties that had requested and been granted snowplowed access, three (Rowe, Rounds & Bach) were smaller properties close to a snowplowed public road. However, one ~50 acre parcel (Mammoth Mountain) was a single family property and had requested and been granted snowplowed access across nearly two miles of NFS land. An overall generalization might be that properties farther from a snowplowed road were less likely to seek snowplowed access regardless of size. However, none of the 19 properties evaluated had requested and been denied snowplowed access. This overall process resulted in the determination that none of the 19 properties were similarly situated and the Forest did not find that these properties compelled it to grant, or deny, snowplowed access to the LMJV parcel. Moreover, none of the 19 properties

evaluated on the Divide Ranger District were in close proximity to a winter recreational development such as a ski area.

The Forest then expanded its search statewide within Colorado but focused on inholdings associated with ski areas to determine whether commercial or residential uses were being conducted with or without snowplowed access. By expanding the search area, the Rio Grande NF was able to evaluate more potential similarly situated properties located in proximity to ski areas. Most large properties associated with ski areas already had adequate access on snowplowed public roads. Those properties were not considered to be “similarly situated” because they are on public roads and did not need further access. The Forest did identify 34 private inholdings associated with ski areas in Colorado. Five of these properties had been authorized over-the-snow operations and six were conducting commercial or residential operations. Two of the properties were operating with snowplowed access authorized through the ski area permit at Winter Park. However, the remaining properties had made no formal proposals for winter access and all 34 properties were substantially smaller than the LMJV property. No property associated with a ski area had requested and been denied winter access. The results of the search for properties that were considered to be potentially “similarly situated” are shown in Table 1.10-2, Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.

Table 1.10-2 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.								
Ski Area	Forest	Parcel within Ski Area Boundary	Ownership	Parcel Size (ac.)	Legal Description	Development	No. of Units	Winter Access
Arapahoe Basin	White River	Yes	Dundee Resort Development LLC	5.0	NORTHERN SPY MILLSITE MS# 1535B	None (per Summit County)	0	No Formal Proposals
Arapahoe Basin	White River	Yes	Dundee Resort Development LLC	27.0	OLD MC MS# 18813 WAUKEGAN MS# 18813 BENTON MS# 18813 BERNICE MS# 18813 LENAWEE MS# 18813 WAUKEGAN EXT MS# 18813	None (per Summit County)	0	No Formal Proposals
Arapahoe Basin	White River	Yes	Dundee Resort Development LLC	4.995	NORTH POLE MS# 16715	None (per Summit County)	0	No Formal Proposals
Arapahoe Basin	White River	Yes	Summit County Government	7.679	SILVER ORE MS# 2223, SHINNING LIGHT MS# 2224	None (per Summit County)	0	No Formal Proposals
Arapahoe Basin	White River	Yes	Dundee Resort Development LLC	5.16	NORTHERN SPY MS# 1535	None (per Summit County)	0	No Formal Proposals

Table 1.10-2 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.

Ski Area	Forest	Parcel within Ski Area Boundary	Ownership	Parcel Size (ac.)	Legal Description	Development	No. of Units	Winter Access
Arapahoe Basin	White River	Adjacent	Alf Tieze Enterprises	9.52	HANCOCK MS# 1533, LITTLE LEE MS# 1534	None (per Summit County)	0	No Formal Proposals
Beaver Creek	White River	Yes	Vail Corporation	69.28	T5S R82W Sec. 25, 26, 35, 36 – HES 274	Restaurant-Ski Area Dining	1	Over Snow (Resort Operation)
Breckenridge	White River	Yes	Breck Hut LLC	10.33	TAILOR LODGE MS# 19959	Private Residence may be proposed	1	Formal Proposal Under Review
Copper Mountain	White River	Yes	Powdr-Copper Participation LLC	40.0	T7S R78W Sec. 6 SWNE	None (per Summit County)	0	Over Snow
Copper Mountain	White River	Yes, Plus Adjacent	Climax Molybdenum Company	Grouped with other lands Total Acreage 9303.1	Within ski area boundary: TR 7-78 Sec 5, 6, 7, 8 Adjacent to ski area boundary: PARCELS IN 7-78, Sec 7, 8; 7-79 Sec 13	None	0	No formal proposals
Copper Mountain	White River	Yes	John Moore and other undivided interest owners	4.832	GRAFF MS# 1182	None (per Summit County)	0	No formal proposals
Copper Mountain	White River	Yes	Mary Beitzinger and other undivided interest owners	5.16	STORM KING MS# 2519	None (per Summit County)	0	No formal proposals
Copper Mountain	White River	Yes	Edna Borchers	41.09	LILLIE G MS# 20380 LILLIE G #2 MS# 20380	None (per Summit County)	0	No formal proposals
Keystone	White River	Adjacent	Keystone Exchange LLC	10.00	WALLA WALLA MILL SITE MS# 15346B, SPOKANE MILL SITE MS# 15359B	None	0	No Formal Proposals

Table 1.10-2 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.

Ski Area	Forest	Parcel within Ski Area Boundary	Ownership	Parcel Size (ac.)	Legal Description	Development	No. of Units	Winter Access
Keystone	White River	Adjacent	Keystone Exchange LLC	50.469	BERTIE MILL SITE MS# 1755B GOLD DOLLAR MS# 7091 IDA BELLE LODE MS# 1754A IDA BELLE MILL SITE MS# 1754B BERTIE LODE MS# 1755 DOUBLE STANDARD MS# 7091 HARD MONEY MS# 7091 TYEE LODE MS# 15359A SPOKANE MS# 15346A WALLA WALLA MS# 15346A VISALIA MS# 15346A	None	0	No Formal Proposals
Keystone	White River	Yes	Wayne Tenney	5.16	COPENHAGEN MS# 6705	None	0	No Formal Proposals
Keystone	White River	Adjacent	Richard M. Wright, Jr.	20.06	GRAND VIEW MS# 18822A LUCKY DAY 1 & 2 MS# 18822A BIRTHDAY MS# 18822A	None	0	No Formal Proposals
Keystone	White River	Yes	Hunkidori Land Company LLC	9.614	CLIFF & ELK MS# 18003	None	0	No Formal Proposals
Keystone	White River	Yes	Hunkidori Land Company LLC	5.16	HUNKIDORI MS# 2144	None	0	No Formal Proposals
Keystone	White River	Yes	Hunkidori Land Company LLC	5.16	DON PEDRO MS# 1623	None	0	No Formal Proposals
Keystone	White River	Yes	Robert Small	5.16	ERICKSON MS# 1178	None	0	No Formal Proposals

Table 1.10-2 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.

Ski Area	Forest	Parcel within Ski Area Boundary	Ownership	Parcel Size (ac.)	Legal Description	Development	No. of Units	Winter Access
Keystone	White River	Adjacent	Elliot B. Robertson	20.60	FRONTIER MS# 5703 FRONTIER 1 MS# 5703 FRONTIER 2 MS# 5703 WHITE SWAN MS# 5703 BLACK SWAN MS# 5703 SANTA CLAUS MS# 5703	None	0	No Formal Proposals
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes	TSG Ski and Golf, LLC	19.28	MARYLAND LODE 4882A MAY GIRL LODE 4883A LOCATED IN SEC 13 T42 R9	Tempter House Overnight Facility (2,052 sq. ft., 3 bedrooms; 2 baths)	1	Over Snow (Resort Operations)
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes	TSG Ski and Golf LLC	68	ASPEN, FAIRVIEW NO 2, 3, 4, 5, AND SCANDIA LODES MS NO. 17044	Alpino Vino Restaurant (1,343 sq. ft., 2 bedrooms, 1.5 baths)	1	Over Snow (Resort Operations)
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes (4 parcels)	TSG Ski and Golf LLC	149.75	Various mining claims	None	0	No Formal Proposals
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes	San Miguel Valley Corporation	73.04	Various mining claims	None	0	No Formal Proposals
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes	Schuler	60	Various mining claims	None	0	No Formal Proposals
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes (2 parcels)	Alta Lakes LLC	22.95	Various mining claims	None	0	No Formal Proposals
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes (2 parcels)	Vlasic	66.3	Various mining claims	None	0	No Formal Proposals

Table 1.10-2 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Colorado.								
Ski Area	Forest	Parcel within Ski Area Boundary	Ownership	Parcel Size (ac.)	Legal Description	Development	No. of Units	Winter Access
Telluride	Grand Mesa Uncompahgre and Gunnison	Yes	West	18	Various mining claims	None	0	No Formal Proposals
Telluride / Upper Bear Creek	Grand Mesa Uncompahgre and Gunnison	Adjacent	Gold Hill Development Company LP	34.51	GERTRUDE LODGE 13375, MODENA LODGE 13375, LITTLE BESSIE LODGE 5521, UND ONE HALF INTEREST IN EUCLID AVENUE LODGE 779	None	0	No Formal Proposals
Vail	White River	Yes	Vail Corporation	80	T5S R80W Sec. 19 SWNE, SENW	Game Creek Club (private ski lodge 16,175 sq. ft., no bedrooms; ski lodge 2,532 sq. ft., 4 bedrooms)	2 (Rest. & chalet)	Over Snow
Winter Park	Arapaho Roosevelt	Yes	Colorado Arlberg Club	124.60	Arlberg Subdivision (portion of MS 16378 in T2S R75W Sec. 15)	Private Club, six buildings with a total of 35 bedrooms and 22,538 sq. ft. of living space	6	Plowed road to Mary Jane base area (within ski area permit area); plowed road on private land
Winter Park	Arapaho Roosevelt	Yes	Various	11.89	Bridgers Cache Subdivision (portion of MS 16378 in T2S R75W Sec. 15)	20 lot residential subdivision with common areas, club house	20	Plowed road to Mary Jane base area (within ski area permit area); plowed road on private land

While expanding its search statewide within Colorado, the Forest worked with Winter Sports managers in the Regional Office to identify additional potential similarly situated lands. Winter Sports managers in the Regional Office identified one additional potential property at a Utah ski area that had sought winter access and this property was added to the evaluation. The Alta property in Utah was granted restricted, over-the-snow access to reduce impacts to the permitted ski area's operations and the public skiing resource (Table 1.10-3). While the Alta property was not in close proximity to the LMJV property, it was evaluated because it reinforces the Colorado data which

show that some commercial or residential use can be made of inholdings at ski areas with over-the-snow access.

Table 1.10-3 Inholdings (Non-Federal Lands) in Close Proximity to an Existing Ski Area in Utah								
Ski Area	Forest	Private Inholding	Ownership	Parcel Size (ac.)	Legal Description	Development	No. of Units	Winter Access
Alta	Uinta-Wasatch Cache	Yes	Non-Ski Area	5 parcels ranging in size from 10-40 ac.)	Albion Basin, Little Cottonwood Canyon, Utah	Private Residences	36 (15 homes Grizzly Gulch, 4 Albion Basin, 8 Albion Alps, 9 Secret Lake)	Over Snow with Restrictions per USFS Albion Basin Winter Travel Management Plan

The Forest reviewed the environmental documents associated with the Alta ski area and found that the Alta ski area was substantially different than the LMJV property because the Alta properties were clustered in two different and distinct areas, the private parcels were located far from a snowplowed public road, and developing access to the private properties interfered with the operations of the ski area.

The search for inholdings (non-Federal lands) in close proximity to an existing ski area in Colorado or Utah found 35 properties (Tables 1.10-2 & 1.10-3). These 35 properties were analyzed for similarity to the LMJV property. The Forest found a mix of property sizes, uses, locations and ownerships. The Forest considered ownership by the ski area to be significant because a ski area can manage access to its own property in ways that do not interfere with the skiing resource on NFS lands and do so using ski area infrastructure and equipment. The Forest’s analysis showed that adequate access for contemporaneous use of properties associated with ski areas included both snowplowed and over-the-snow modes. Four properties even supported commercial uses such as restaurants or lodging with over-the-snow access. Two properties at Winter Park with commercial or residential uses enjoyed snowplowed access. The evaluation determined that all 35 properties are smaller than the LMJV property (less than half the size of the LMJV inholding), and most are substantially smaller. Of the 35 properties, only eight are accessed year-round across NFS lands. Of the eight that have year-round access, only two of the eight properties are being accessed by the same snow-plowed road.

The two properties located at Winter Park in Colorado that are accessed by the same snow-plowed road include: 1) Arlberg Subdivision (~125 acres), and 2) the Bridger’s Cache Subdivision (~12 acres). The Arlberg Subdivision is comprised of the Mary Jane ski resort base area, and a private club that includes lodging in 35 rooms. The Bridger’s Cache Subdivision is comprised of a 20 lot residential subdivision with common areas and a club house.

While the two properties at Winter Park are the most similar to the LMJV inholding, there are fundamental differences between the two Winter Park properties and the LMJV inholding that eliminate it from being considered “similarly situated”:

1. The Mary Jane Ski Resort base area is on private land rather than on NFS land.
2. The Forest Service road (the Mary Jane Road) that accesses the ski resort base area and the two Winter Park properties (Arlberg and Bridger’s Cache subdivisions) is necessary for the operation of the base area. The Mary Jane Road was designed specifically to be the access

road to the Mary Jane Ski Resort base area, and therefore its use does not interfere with ski area operations.

3. The Forest Service road (the Mary Jane Road) is operated by the ski area under the ski area permit; therefore there is no need for the Arlberg and Bridger's Cache subdivisions to request an access authorization from the Forest Service. Thus, the Mary Jane Road does not establish the access sufficient to the reasonable use of the Arlberg and Bridger's Cache subdivisions.
4. The Arlberg and Bridger's Cache subdivisions were subdivided from the Mary Jane Placer property (FEIS Figure 1.10-1, Land Ownership and Roads – Mary Jane Ski Resort Base Area). Prior to subdividing, the Mary Jane Placer property had public road access. However, after subdividing, the Arlberg and Bridger's Cache subdivisions no longer had public road access. The Arlberg and Bridger's Cache subdivisions public road access is cutoff by the Mary Jane Winter Park Ski Corridor. Since the Arlberg and Bridger's Cache subdivisions were subdivided from the Mary Jane Placer property, the Arlberg and Bridger's Cache subdivisions likely have a legal right of access to the public road; across the ski corridor.

Based on the foregoing discussion, none of the 35 properties located in close proximity to a ski area were considered “similarly situated” for determining the reasonable use and enjoyment of the LMJV inholding.

After this extensive analysis, I did not find a property “similarly situated” to the LMJV inholding in size and location other than those already on a public road. Thus, I considered “other relevant criteria” as required by the regulation. The history of the LMJV parcel shows how unique the property is. The original purpose of the Forest Service in authorizing the land exchange that created this parcel was to facilitate commercial and residential development associated with the Wolf Creek Ski Area. While access was not expressly granted at the time of the exchange, ANILCA was in effect and it would be disingenuous to suggest that anyone assumed that the intended development could be operated without automobile access on a snowplowed road. The 1986 Environmental Assessment assumed development of a winter resort with 208 residential units, two restaurants, two day lodges and six retail shops.

I find that the reasonable use and enjoyment of the ±288 acre LMJV parcel (located near the ski area base which is on a snowplowed highway) is the use intended by the Forest Service when the parcel was created – use as a winter resort including commercial and residential properties.

I find that year around snowplowed access is the access adequate to the reasonable use and enjoyment of the LMJV property. I further find that the existing seasonal access on NFSR 391 is not adequate access because it would not allow operation of a winter resort similar to that assumed in the 1986 Environmental Analysis. I further find that snowplowed access on NFSR 391 is not adequate because it would not minimize disturbance to the skiing resource. I further find that over-the-snow access is not adequate because I found no property similar in size and location currently operating a resort associated with a ski area by over-the-snow means.

I conclude that selection of either action alternative would meet the obligation under ANILCA to provide access adequate to secure the reasonable use and enjoyment to the LMJV inholding.

4) Connected Actions

As defined by 40 CFR §1508.25, “connected actions” are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

- Automatically trigger other actions which may require environmental impact statements.
- Cannot or will not proceed unless other actions are taken previously or simultaneously.

- Are interdependent parts of a larger action and depend on the larger action for their justification.

Future residential development on private land that is accessible year round would not be possible without Forest Service approval for either a land exchange (Alternative 2), or a road access corridor across NFS lands (Alternative 3). Therefore, future development on the private lands owned by the LMJV was considered a “connected action” in the FEIS and was analyzed as an indirect effect of approval of either Alternative 2 or 3. The environmental analysis enabled the Forest Service to compare the true range of effects of Alternatives 2 and 3- both of which were determined to meet the Purpose and Need for action at the outset of the project.

Although the FEIS analyzed future development on the private lands, it should be noted that the Rio Grande NF has no jurisdiction on private lands. Additionally, it is important to reinforce that future residential development is not a component of either of the Action Alternatives analyzed in the FEIS.

The FEIS acknowledges that the Wolf Creek Ski Area 2013 Master Development Plan (MDP) is a reasonably-foreseeable future action (i.e., a cumulative effect), not a connected action. WCSA’s 2013 MDP does not account for a future Village (of any size/configuration) on private lands near the base area. Acceptance/approval of the MDP is being pursued with both the Rio Grande and San Juan National Forests irrespective of the type and level of development that may occur on the LMJV’s private lands at the base area.

Based on the review of surrounding lands and activities associated with those lands, it was determined that there are no additional connected actions.

5) Range of Alternatives

Under the Council on Environmental Quality (CEQ) regulations, the Forest Service is required to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.³ Furthermore, the Forest Service Handbook (FSH) provides direction on developing alternatives:⁴

- No specific number of alternatives is required or prescribed.
- Develop other reasonable alternatives fully and impartially.
- Ensure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment.
- Reasonable alternatives to the proposed action should fulfill the purpose and need and address unresolved conflicts related to the proposed action.

As established in case law interpreting the NEPA, the phrase "all reasonable alternatives" has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed, but does require a range of reasonable alternatives be analyzed whether or not they are within Agency jurisdiction to implement.⁵

Comments received during the public scoping process provided the basis for determining the range of alternatives. Seven total alternatives were considered, however four alternatives were eliminated from detailed study. As identified in Chapter 2 of the FEIS, alternatives considered but eliminated from detailed analysis include:

- Exchange Non-Federal Inholding for a Federal Parcel Elsewhere

³ 40 CFR 1501.2(c)

⁴ FSH 1909.15, Chapter 10 – Environmental Analysis

⁵ 40 CFR 1502.14(c)

- Forest Service Purchase of the Private Land Inholding
- Access Non-Federal Parcel from Tranquility Road
- Access the Non-Federal Parcel Via an Upgraded NFSR 391

The FEIS explains why none of these potential alternatives were carried forward for detailed analysis.

Three alternatives were analyzed in detail in the FEIS. These alternatives included:

- No Action (representing a continuation of existing Federal and non-Federal land ownership patterns and management practices)
- Land Exchange of Federal and Non-Federal Lands Within the Same Area
- ANILCA Road Access

To further define the range of alternatives that were analyzed and to adequately disclose the range of indirect effects associated with private land development that could occur as a result of Forest Service approval for either a land exchange or a road access corridor, the FEIS analyzed a range of development concepts – including Low, Moderate and Maximum Density – for each Action Alternative. It is acknowledged that whatever development concept plan which may ultimately be approved by Mineral County in the future would likely vary from what is analyzed in the FEIS. However, each of these development concepts provides a reasonable basis from which to analyze and disclose the indirect effects of development that could potentially occur as a result of Forest Service approval to access the private inholding.

Based on FSH and CEQ direction on development of alternatives, I have determined that the range of alternatives, including alternatives considered but eliminated from detailed analysis, is sufficient for making an informed decision and satisfies the requirements of NEPA.

6) Environmental Effects of the Alternatives

The environmental effects associated with any of the alternatives are a key component of my decision. The FEIS includes analysis of the potential impacts to the physical, biological and human environment. This includes direct, indirect and cumulative effects analyses associated with Alternatives 1, 2 and 3, based on multiple development concepts for the Village at Wolf Creek. My staff and I have conducted a thorough review of the environmental analyses associated with each of the alternatives analyzed in the FEIS, and I carefully considered these effects when making my decision. I carefully weighed all environmental effects with the Forest Service's legal obligations under ANILCA.

Chapter 4 of the FEIS includes detailed analysis of potential direct, indirect and cumulative effects associated with each alternative. A summary of these effects is provided in Chapter 2 of the FEIS (Tables 2.6-1 and 2.6-2, and Tables 2.6-3.1 through 2.6-3.14).

My thoughts as presented below focus on the management abilities and opportunities of the Rio Grande NF as a result of a land ownership adjustment. Although I considered all resource areas as part of my decision, I place a greater value on the following resource areas because of their importance when looking at the overall resource management picture.

Water Resources including Waters of the U.S.

The Federal exchange parcel has ±2,924 linear feet of perennial streams, ±1,246 linear feet of intermittent streams and a one acre pond. The non-Federal exchange parcel has ±11,565 linear feet of perennial streams and ±7,338 linear feet of intermittent streams. The net effect to the Rio Grande NF as a result of the Selected Alternative would be a gain of ±8,641 linear feet of perennial streams, gain of ±6,092 linear feet of intermittent streams, and the loss of a one acre pond habitat.

Wetlands.

The Federal exchange parcel has ±12 acres of wetlands, with one acre of fens, and 0 springs. The non-Federal exchange parcel has ±52 acres of wetlands, ±24 acres of fens, and 8 springs. The net effect to the Rio Grande NF as a result of the Selected Alternative would be a gain of ±40 acres of wetlands, gain of ±23 acres of fens, and a gain of 8 springs.

Wildlife.

The Federal exchange parcel has ±188 acres of mapped “primary lynx habitat” and ±0.16 acres of “potential but unoccupied breeding” Willow Flycatcher habitat. The non-Federal exchange parcel has ±41 acres of mapped “primary lynx habitat” and no acres of “potential but unoccupied breeding” Willow Flycatcher habitat. The net effect to the Rio Grande NF as a result of the Selected Alternative would be a loss of ±147 acres of mapped “primary lynx habitat” and a loss of ±0.16 acres of “potential but unoccupied breeding” Willow Flycatcher habitat. The November 15, 2013 Biological Opinion provides Conservation Measures to minimize the impacts associated with the loss of approximately 147 acres of Canada Lynx habitat.

Recreation.

The Federal exchange parcel has limited recreation use and no measureable effects would occur to the recreation resources if this parcel was exchanged. The non-Federal exchange parcel includes skiing terrain in the lower half of the existing Alberta Chairlift that is made possible because of a ski easement between LMJV and WCSA. The exchange would result in Forest Service acquisition of these private lands (incorporating them into the WCSA SUP), making the easement unnecessary. They would be incorporated into Management Area 8.22 of the Forest Plan. This would consolidate existing ski area operations as per the 1996 Forest Plan, and eliminate the need for the ski easement.

After review of all resource areas including these of greatest value, I have determined that Alternative 2 provides the greatest opportunity for the Rio Grande NF to improve our management abilities while meeting our legal obligations of ANILCA.

7) Public Interest Determination

The Purpose and Need for Action is to allow the LMJV to access its property to secure reasonable use and enjoyment thereof as provided in ANILCA and Forest Service regulations. While the Selected Alternative was determined to fulfill the Forest Service’s legal obligations under ANILCA, an authorized officer may complete an exchange only after a determination is made that the public interest will be well served (36 CFR 254.3 (b)(2)). Factors to consider when determining public interest include the opportunity:

- to achieve better management of Federal lands and resources
- to meet the needs of State and local residents and their economies
- to secure important objectives including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values
- to enhance recreation opportunities and public access
- to consolidate lands and/or interests in lands such as mineral and timber interests
- for more logical and efficient management and development
- for consolidation of split estates
- for expansion of communities
- for accommodation of existing or planned land use authorizations (§254.4(c)(4))
- for promotion of multiple-use values
- for implementation of applicable Forest Land and Resource Management Plans
- for fulfillment of public needs.

In addition, the following two requirements must be met:

- The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and
- The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

Upon receipt of an exchange proposal from the LMJV, the Rio Grande NF completed a feasibility analysis in January 2011 pursuant to Forest Service Handbook (FSH) 5409.13. The feasibility analysis determined that, when weighed against the proponent's existing ANILCA access right and subsequent request for a road easement, this exchange appeared to be in the public interest. The proposal was determined to be technically feasible and the tangible physical resources to be acquired, when accompanied by the intangible benefits associated with the exchange, made the proposed land exchange worth pursuing.

The proposed land exchange was further evaluated in the FEIS to determine if the public's interest would be well served by the exchange. After careful review and consideration, I have determined that the exchange proposal was found to be in the public interest for all of the following reasons:

1. Much of the developable private lands would be moved farther away from the ski area, thus potentially reducing some of the expressed recreational conflicts which previously surfaced as part of the environmental analysis for the easement grant.
2. The exchange will place roughly 52 acres of riparian wetlands, of which 24 acres are classified as fens, eight springs, 11,565 linear feet of perennial streams, 7,338 linear feet of intermittent streams into public ownership, thereby resulting in additional Federal protection from future development.
3. There would be no loss of viability across the Forest for any Management Indicator or Forest Service Sensitive Species.
4. There are both positive and negative effects associated with the exchange; however, the negative effects appear to be minimal, limited in scope, and can be mitigated.
5. WCSA appears to support the proposed exchange, in contrast to the development plan previously approved by Mineral County.
6. The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent National Forest land. Adjacent lands are managed as 8.22 - Ski-based Resorts. The land exchange would allow LMJV to develop the lands with uses compatible to the existing Wolf Creek Ski Area.
7. The exchange would result in an increase in tourism which would foster economic opportunity, growth and prosperity, increase employment and individual income within the three county analysis area, and generate public revenue through property and sales taxes for Mineral County and its school district.
8. The exchange meets the equal value requirement of 36 CFR 254.3. The Federal land has an approved value of \$1,435,000 and the non-Federal land has an approved value of \$1,505,000. The value of the lands will be balanced by a cash equalization payment from the USA to the non-Federal party in the amount of \$70,000.

The resource values and the public objectives served by the non-Federal lands to be acquired exceed the resource values and the public objectives served by the Federal lands to be conveyed. This is achieved by placing a net gain of riparian and stream resources under federal management as well as by eliminating potential impacts to alpine terrain at WCSA by transferring terrain under the Alberta Chairlift from private ownership to the United States of America, to be administered by the Rio Grande NF.

6.0 Public Involvement

In accordance with regulatory direction, and in furtherance of cooperative management among Federal agencies charged with oversight of environmental and natural resources, Federal, state, local, and tribal entities with a likely interest and/or jurisdiction in this project were sent scoping notices and/or were consulted prior to and throughout the NEPA process.

A scoping package was mailed to 84 interested individuals, public agencies and other organizations on April 13, 2011. The scoping information included descriptions of both the proposed land exchange and the ANILCA Road Access alternative, the Purpose and Need for Action, and illustrative figures. In addition, the scoping package was posted on the Rio Grande NF website and an e-mail address was provided for submitting electronic comments. Public open houses were held on April 25, 2011 in Creede, on April 26, 2011 in Pagosa Springs, and on April 27, 2011 in Del Norte, Colorado.

Throughout the scoping period (which ended June 4, 2011) the Forest Service received 111 comment letters. These letters were thoroughly reviewed and substantive comments were categorized into major themes. These themes were reviewed by the Forest Service ID Team at a meeting on July 21, 2011.

On September 20, 2011 approximately 100 people attended a field trip hosted by the Rio Grande NF at the project area. This field trip provided the public with an opportunity to walk throughout the project area and to ask the Forest Service questions about the proposal, ANILCA and the Purpose and Need for Action, the alternatives, and the NEPA process. It also provided the Forest Service with important information about the public's interest in this proposal.

The DEIS for the Village at Wolf Creek Access Project was filed with the EPA and a Notice of Availability was published in the Federal Register Volume 77, No. 160 on Friday, August 17, 2012, and circulated to all agencies requesting a copy. In addition, a letter announcing the availability of the DEIS was sent to the Forest Service DEIS mailing list which included Federal, State and local agencies, tribal organizations, as well as organizations and individuals who submitted comments during the scoping period.

The public comment period extended for 45 days, August 17 to October 1, 2012. On October 4, 2012, a 15-day comment period extension was submitted to the Federal Register (published on October 12, 2012, Vol. 77, No. 198), which extended the comment period until October 16, 2012.

A total of 893 comments were received from interested parties during the comment period. All letters were reviewed and substantive comments were extracted and entered into a database. Comments were categorized and coded generally per sections of the DEIS and linked to the commenters. Substantive comments are addressed in the Response to Comments, Appendix I in Volume 2 of the FEIS.

Public comments were divided into eighteen categories. Fourteen of the categories were given more weight and were used to develop issues and indicators for the analysis associated with each alternative. These fourteen categories included:

- Surface Water, Water Quality, and Floodplains
- Groundwater
- Geology, Minerals, and Soils
- Water Rights and Use
- Climate and Air Quality
- Vegetation Resources
- Wetlands and Waters of the U.S.
- Fish and Macroinvertebrates
- Wildlife
- Visual Resources
- Recreation
- Transportation and Access
- Social and Economic Resources
- Cultural Resources

Four of the categories were determined to be minor and were not included in the analysis process. These four categories included:

- Health and Human Safety at a High Altitude Resort
- Wildfire Hazard and Mitigation for Development
- Validity of the 1987 Land Exchange
- Financial Viability of the Development at Wolf Creek

When making my decision, I considered and weighed the public's comments, both those in favor and those in opposition. There were many comments that supported the land exchange and many comments that opposed the land exchange as evidenced in a sample of the comment letters received below.

... there are considerable benefits from this exchange to physical, human and biological environments from the infusion of private capital into our communities. Those benefits will be far reaching on both sides of the divide. To me and many people I know, the Exchange is vast improvement over earlier development proposals - not only for the ski area, but also for the preservation of precious natural resources in the study area.

With the developer and the ski resort operator working together to support the project, the potential to have an excellent combination at Wolf Creek is exceptional. It is my hope that the study will look at all the issues including: 1. the positive impact this development will have on the utilization of the public lands leased to the ski area. 2. The positive impact this project can have on the surrounding communities along with a complete cost and benefit analysis. ... I strongly support the current proposed land exchange as a very wise use of our resources and a solution to several development/public land problems including site access.

I am a part time resident of South Fork and want to see the area prosper. I am convinced the project has the potential to help our commerce and economy. With the recent recession, we cannot afford not to have the interjection of this project's jobs. Please allow the project to move forward with little delay. It is my understanding that some outside environmental groups are trying to stop the Project. They do not represent the vast majority of citizens in this state that acknowledge the land owner's private property rights to gain access and develop their property. I'm glad to see that your Scoping Notice clearly laid out that your Need for Action is because of their owner's right to access. I encourage you to make it a

part of your EIS. The Exchange appears to be the result of cooperation between the owner and the surrounding communities. I hope you can appreciate the urgency with which so many of us wish for your process to be concluded. If you don't grant the exchange, the owner has plat approvals in place to build on his property. I think that result ignores the opportunity to minimize environmental impacts and certainly disregards the operations and experience of the ski area.

It goes without saying that either development that will come as a result of your granting access to the private lands will aid our ailing economy. While maybe that is not the main concern of the Forest Service, it should be at least always on your mind. As you explain, owners of private inholdings have a right to access and utilize their property.

The Village is the type of project that our area and economy could really use. Not only will the project create jobs, but also small businesses stand to flourish with the influx of tourists and related revenues. The project will require workers who will have to lodge, eat, and stay in Pagosa Springs and South Fork, among others. This allows our local infrastructure already in place to grow and expand while also allowing for an environment in need of more goods and services. Our community and more specifically small businesses are largely in favor of the proposed project... I think moving the development area near the highway accomplished two important things. First, it eliminates the "inholding" from the Forest Service's management plan; and second, it moves the development away from sensitive wetlands.

Commenters who were in opposition were mainly in opposition to the planned development.

I believe that the public interest is best served by denial of any development at Wolf Creek Pass. If no development is permitted, the whole issue of the land exchange and the originally proposed development is eliminated.

Dense development of the subject Wolf Creek property is simply one stop too far along the development highway. The area is too beautiful, too important, and in the midst of too much development having already happened. To permit further dense site development is to ignore the facts of where we are in America relative to populations, development, sprawl and actions which fail the greater good. I wish Mr. McCombs could have his development without these concerns but it simply is too late. The frontier is in fact gone and the world now requires a different management stewardship than in the past.

I am writing to express my opposition to the proposed land exchange for this development. The impacts from a development of this scale on Wolf Creek Pass will be detrimental to both the wildlife in the area, especially the endangered Canadian lynx, and the people living in Pagosa Springs who will somehow have to pay for the increased demands for public services resulting from the development while reaping very little economic benefits.

I am very concerned about the proposed development of the Village at Wolf Creek. I believe that in contrast to the sorry past history of this proposal, a full environmental analysis of the development must be done before anything else. This analysis should include, but not be limited to, wildlife habitat, migration corridors, water sufficiency, water quality, traffic, snow removal, and human health concerns for resort accommodations starting above 10,300 feet above sea level. In case the Forest Service is unaware of this, at present there are no destination resorts anywhere in the world that start so high. One might suppose that if a successful one could be built that high, there would already be at least one example somewhere in the great big world.

As a resident of Alamosa, and a frequent user of public lands, I find the proposals for a land exchange far from being in the public interest. I realize that a landowner should not be

denied some "reasonable use" for their land, but the proposals for 8,000 people at the head of my water supply seems far from meeting any definition of reasonable use and negatively impacts the public interest. As a taxpayer it offends me to see the improvements made to US 160 to improve the safety of the road, lost to the development proposed. My economic and lifestyle interests will both be negatively impacted by the proposed development and the proposed land exchange. Since the proposal degrades the adjoining public lands, and as a part owner along with all other citizens, I strongly object to the land exchange. The proposed developer needs to only be allowed to make a land exchange which meets the needs of the public. As a public agency, you need to uphold the interests of the United States.

We ski at Wolf Creek. Many people that we talk to, locals and visitors have expressed their desire to keep the friendly, low-key, small area "feel" of the ski area as it is. If the village is built with the idea of attracting larger crowds of people to the mountain, the experience would change. Wolf Creek is what it is. It's a great area with lots of powder and no crowds. It draws people that want the small mountain experience or the quiet back country experience. It's not a large enough mountain to attract the same skiers as Vail or Beaver Creek. Even if more skiable terrain is acquired and lifts are built, the vertical feet of ski runs cannot be increased. It just doesn't seem that the mountain could support the size and type of village and resort that the developers are wanting to promote. If the village is not sustainable, an irreversible scar is left on the land and the community.

After review of all the comments, including the comments that were used to determine the scope and scale of the analysis, I have concluded that the FEIS adequately takes into consideration the public opinion regarding the proposed land exchange. In addition, I find my decision considers the public opinion and is founded in reasonable assumptions and analysis as related to all the public comments received.

7.0 Alternatives Considered

As per CEQ Regulations 40 CFR 1502.14, alternatives to the No Action were developed and analyzed to address environmental issues. They include four Alternatives considered but eliminated from detailed study, Alternative 2 – Land Exchange, and Alternative 3 – ANILCA Road Access.

7.1 Alternatives Considered but Eliminated from Detailed Study

Exchange Non-Federal Inholding for a Federal Parcel Elsewhere.

This alternative assumes that the Forest Service and the LMJV would agree to exchange the private inholding for a Federal parcel of equal value on the Rio Grande NF or elsewhere on federally owned property. This alternative was eliminated from analysis because the LMJV expressed no interest in such an exchange.

Forest Service Purchase of the Private Land Inholding.

This alternative assumes the United States (Forest Service) would purchase the non-Federal inholding from the LMJV. Historically, the Forest Service has acquired critical non-Federal parcels through a congressional appropriation from the Land and water Conservation Fund (LWCF). This alternative would directly conflict with the original intent of the 1986 land exchange decision. This alternative would require the LMJV be willing to sell the private land inholding and that funds be available from the LWCF for the purchase. This alternative was rejected because it does not meet the Purpose and Need, LMJV is not willing to sell and there would not likely be funding available for the purchase of the inholding.

Access the Non-Federal Parcel Via an Upgraded NFSR 391.

This alternative provides for upgrades that would allow winter use of NFSR 391. However, this access is encumbered by seasonal use, as well as design and recreational land use issues. This alternative was eliminated from detailed study because it conflicts with established Forest Service winter recreational uses, would materially interfere and be inconsistent with the ongoing operations of Wolf Creek Ski Area (WCSA), and would impact traffic at WCSA's intersection with Highway 160.

Access Non Federal Parcel from Tranquility Road.

This alternative assumes that the private land inholding would be accessed by extending Tranquility Road, the access road to WCSA's parking lots, east to the inholding to provide primary vehicular access. This alternative would create ski area access and parking lot traffic issues, and depending on the level of development that may ultimately be approved by Mineral County, could result in the CDOT requirement for a grade-separated interchange with Hwy 160 due to issues of safety and congestion. Therefore, this alternative was eliminated from detailed study because of the potential impacts to WCSA operations and due to potential traffic impacts at WCSA's access road intersection with Hwy 160. It should be noted that the Tranquility Road extension is included in the Action Alternative as a means of providing ski area access from the LMJV parcel and to serve as an emergency access/ egress road.

7.2 Alternative 1 - No Action

Per the requirement of 40 CFR part 1502.14, a No Action Alternative has been included in the analysis to provide a baseline for comparing the effects of the Action Alternatives. By definition, the No Action Alternative represents a continuation of existing Federal and non-Federal land ownership patterns and existing management practices on these lands. Under the No Action Alternative, as illustrated by Figure 2.2-1, the LMJV has vehicular access to the private parcel via NFSR 391 during those periods when this road is snow-free, generally mid-June through September. Under this alternative there would be no additional road access provided to the ±288-acre private land inholding.

7.3 Alternative 2 - Land Exchange (Proposed Action)

Alternative 2, the Proposed Action, as illustrated by Figure 2.2-2 within the FEIS, is a land exchange between the United States and the LMJV. This alternative proposes that the LMJV would convey approximately 177 acres of non-Federal lands to the Rio Grande NF in exchange for approximately 205 acres of NFS lands managed by the Rio Grande NF. The ±177-acre non-Federal exchange parcel to be conveyed to the United States encompasses the southern and western portions of the private land inholding, and the ±205-acre Federal exchange parcel is located to the north, east and south of the private land inholding. This exchange would create a private land parcel of ±325 acres extending to Hwy 160, and would accommodate year-round vehicular access. Under Alternative 2, the existing Tranquility Road which extends from Hwy 160 to a WCSA parking lot, would be extended east ±1,593 linear feet across NFS lands within the WCSA SUP boundary to provide access between the private land parcel and WCSA. This road would provide limited, restricted and seasonal access between Hwy 160 and the private land parcel, and would also provide a route for emergency access/egress.

7.4 Alternative 3 – ANILCA Road Access

Alternative 3 was designed to fulfill the Forest Service's obligations under ANILCA, which is to provide adequate access to non-Federally owned land to secure to the owner the reasonable use and enjoyment thereof. Under Alternative 3, the configuration of NFS and private lands in the project area would remain unchanged. This alternative includes an access road across NFS lands between

Hwy 160 on the north and the private land inholding on the south (FEIS Figure 2.2-4). The road would be ±1,612 feet in length and be within a 100-foot corridor with a total area of ±3.70 acres.

As with Alternative 2, the existing Tranquility Road would be extended east ±529 linear feet across NFS lands to provide access between the inholding and WCSA, and would provide limited, restricted and seasonal access between Hwy 160 and the private land inholding. Tranquility Road would also provide a route for emergency access/ egress.

8.0 Environmentally Preferable Alternative

In accordance with CEQ Regulations, I am required to identify the alternative or alternatives that could be considered environmentally preferable [40CFR 1505.2(b)]. The Forest Service Handbook 1909.15 Section 05 describes *environmentally preferable* as: “The alternative that will best promote the National Environmental Policy Act as expressed in NEPA’s Section 101 (42 USC 4321). Ordinarily, the environmentally preferable alternative is that which causes the least harm to the biological and physical environment; it is the alternative which best protects and preserves historic, cultural and natural resources” (36 CFR 220.3).

Based on the review of the alternatives, Alternative 1, the No Action, is the environmentally preferable alternative.

9.0 Findings Required by Other Laws, Regulations and Agency Policy

I have reviewed the FEIS and concluded that implementation of the Alternative 2 is consistent with all relevant laws, regulations and requirements. This includes, but is not limited to, the following:

- Alaska National Interest Land Conservation Act of 1980
- Endangered Species Act of 1973, as amended, including consultation resulting in the Biological Opinion as signed on November 15, 2013
- National Environmental Policy Act of 1968, as amended
- National Forest Management Act of 1976
- National Historic Preservation Act of 1966, as amended

10.0 Pre-Decisional Administrative Objection Process

This project is subject to the objection process pursuant to 36 CFR 218, subparts A and B.

Objections will only be accepted from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with §218.5(a). Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated comment opportunities.

Objections, including attachments must be filed via mail, email (doc, docx, .pdf, .txt), hand-delivery, express delivery, FAX: 303-275-5143 or messenger service (Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding holidays) to: Reviewing Officer, Dan Jiron, Regional Forester, USDA Forest Service, Region 2, Attn: Dan Jiron, 740 Simms Street, Golden, CO 80401-4720 or email: r02admin_review@fs.fed.us.

Objections must be filed timely (§218.9). The reviewing officer must set aside and not review any objection not filed in a timely manner (§218.10(a)(1)).

Objections must be submitted within 45 calendar days following the publication of this notice in the *Valley Courier*. This publication date is the exclusive means for calculating the time to file an objection. When the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day.

An objection must contain the minimum content requirements specified in §218.8(d); incorporation of documents by reference is permitted only as provided in §218.8(b). All objections are available for public inspection during and after the objection process.

Either the Reviewing Officer or the objector may request a meeting on the objections and potential resolution to the objections (§218.11(a)).

11.0 Contact Person

For additional information concerning the Record of Decision, the FEIS, or the Forest Service objection process, please contact:

Dan Dallas, Forest Supervisor
Rio Grande National Forest
1803 West Highway 160
Monte Vista, CO 81144
Telephone: (719) 852-5941
Email: ddallas@fs.fed.us

The Record of Decision, and supporting documents, are available for inspection during regular business hours at the San Luis Valley Public Lands Center at the above address.

12.0 Signature and Date

I have been delegated the authority and am the Responsible Official for the decision outlined in the Record of Decision. Note that in many cases this Record of Decision summarizes information described more completely in the FEIS. For detailed information, please refer to the FEIS and project file.

Dan Dallas
Forest Supervisor
Rio Grande National Forest

Date