



File Code: 1570
15-02-00-0046-218B
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Dear Mr. Sandler:

On January 5, 2015, you filed an objection on behalf of Rocky Mountain Wild, San Luis Valley Ecosystems Council, San Juan Citizens Alliance, Defenders of Wildlife, EcoFlight, Rocky Mountain Recreation Initiative, Wilderness Workshop and Great Old Broads for Wilderness. Your objection challenges the Village at Wolf Creek Access Project located on the Rio Grande National Forest (NF). The legal notice for this project was published in the Valley Courier on November 21, 2014, which initiated the 45-day objection filing period. Your objection was timely and your objection to the Final Environmental Impact Statement (FEIS), Draft Record of Decision (DROD) and project record was reviewed in accordance with 36 CFR 218. This letter is my written response to your objection as required by 36 CFR 218.11(b)(1).

OVERVIEW OF PROJECT

Purpose and Need: The Purpose and Need for Action is to allow the Leavell-McCombs Joint Venture (LMJV) to access its property to secure reasonable use and enjoyment thereof as provided by the Alaska National Interest Lands Conservation Act (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 National Forest System (NFS).

Alternatives: Three alternatives were analyzed in detail in the FEIS, including:

- **Alternative 1: No action.** Under this alternative there would be no additional road access provided to the ±288-acre private land inholding.
- **Alternative 2: Proposed Action (Selected Alternative):** The project, as proposed in the DROD, would authorize a land exchange between the United States and the LMJV to accommodate year round access to the private inholding. The LMJV would 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.
- **Alternative 3: ANILCA Road Access:** Alternative 3 was designed to fulfill the Forest Service's obligations under ANILCA by providing an access road across NFS land between Hwy



160 on the north and the private land inholding on the south. The Tranquility Road would be extended east ±529 linear feet across NFS land to provide limited, seasonal access to the inholding.

RESPONSE TO ISSUES & SUGGESTED REMEDIES

Issue 1a: Objectors allege that the Purpose and Need and designation of the National Environmental Protection Act (NEPA) “Federal Action” (i.e., a land exchange and ANILCA access) are Invalid because:

- The 1987 land exchange included an easement that provided federal control over the Village development and this control was contemplated from the inception of the project.
- The purpose and need is defined unreasonably narrow as demonstrated in case law. This results in an analysis that violates NEPA because the FEIS avoids a hard look at the direct impacts of the development.
- The proposal was unlawfully segmented because it does not include full development of the Village. The current proposal to build “the Village at Wolf Creek” on this federally encumbered private inholding is the project that defines the purpose and need, and therefore defines the scope of the NEPA analysis and comparison of alternatives.
- The narrow scope of the FEIS is based on the factually erroneous assertion that the “Rio Grande NF has no jurisdiction on private lands.” The Forest Service has authority to encumber any expanded access granted under ANILCA or land exchange, has ample control jurisdiction over the development.
- The 2014 FEIS purpose and need is so narrow that it forecloses consideration of reasonable alternatives. It is based on the false premise that there is an automatic duty to provide additional access upon request beyond what was granted in 1987.
- LMJV inadvertently confirms, building the Village at Wolf Creek is the real project proposal, with the exchange proposal being segmented component of the “Federal Agency Action.” (Exhibit 10). While LMJV’s website advertises its intent to start construction without delay, a conceptual development is used for the NEPA analysis.

Issue 1a Response: The purpose and need and proposed action comply with the requirements of NEPA and associated regulation and policy. The objector’s claims are not supported by the record or other evidence. The Purpose and Need is not unreasonably narrow. Consistent with Council on Environmental Quality (CEQ) regulations at 40 CFR 1502.13 and FSH 1909.15, Chapter 10, the Purpose and Need for Action was identified early in the NEPA process and released for public scoping and comment. The need for action discusses the relationship between the desired condition (reasonable access to private property, in this case) and the existing condition (limited access to private property) in order to answer the question, “Why consider taking any action?” (FSH 1909.15, Chapter 10). As stated in the DROD, p. 2, the Forest Service’s Purpose and Need of the project 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 intent of the applicant is to develop the Village at Wolf Creek. However, the future development of the Village at Wolf Creek is not a part of the Purpose and Need or the federal proposed action, because it is not a federal action; it is a private action. 40 CFR 1508.23 defines a proposal subject to NEPA as when an agency has a goal and is actively preparing to make a decision to accomplish that goal. The Village at Wolf Creek is not an agency goal nor will the agency actively prepare a decision to accomplish the proposed development. Further, as indicated in Section 2.4 of the FEIS (p. 2-6), the Forest Service does not have the authority to approve or deny a specific level of development on private lands.

The decision the agency has is to determine how to provide the landowner with their statutory right of access, and what, if any, conditions would apply to that access. For Alternative 2, this direction can be found in 36 CFR 254.54.3(h). The regulation states that in any land exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

As discussed in the FEIS, Section 1.10, (and 36 CFR 251.110-114, Subpart D, Access to Non-Federal Lands) ANILCA defines the Forest Service's legal obligations to provide the land owner with adequate access to its inholding to secure reasonable use and enjoyment thereof. As discussed in the DROD p. 11, in 2005, a state district court found that existing, seasonal access on Forest Service Road (FSR) 391 was inadequate for a year-round development of even the first phase of the then-proposed development. The applicant states that historic access or rights of access are not adequate. 36 CFR 251.112(b). That decision was upheld in *Wolf Creek Ski Corp. v. Bd. of County Comm'rs of Mineral County*, 170 P.3d 821 (Colo.App. 2007). In consideration of the applicant's request and the particular circumstances of the situation, including the purpose of the original land exchange, the Forest Service must ensure that it provides adequate access over NFS land that will allow the use of the private land property within the reasonable range, pursuant to ANILCA.

This 1987 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 (WCSA) and included a scenic easement. The intent of the scenic easement was to ensure that development on the private lands is compatible with the Wolf Creek Ski Area, and to administer those lands to protect scenic and recreational values of adjoining National Forest System land. The scenic easement allows for building, structure, and sign development, subject to building material and height standards (FEIS Vol. 2, App. F).

The level of control provided by the 1987 scenic easement, for the Alternative 2 land exchange, is not appropriate or necessary to ensure compatible land uses and protection of scenic and recreational values, or other public interest factors, consistent with 36 CFR 254.3(b)(2). The Public Interest Determination is provided in the FEIS, p.3-109 and DROD, p. 24. Under



Alternative 2 (selected alternative), the Scenic Easement would only apply to the roughly 120 acres originally conveyed to the LMJV during the 1987 land exchange. The scenic easement is not necessary because all private land development and design (including building height) would be subject to Mineral County zoning and land use regulations (Appendix F). Furthermore, as discussed in the DROD Rationale (Section 7.0, p. 25), much of the developable lands in Alternative 2 would be farther away from the ski area, thereby reducing potential recreational conflicts. Wolf Creek Ski Area is supportive of the current proposed land exchange. Finally, the intended use of the conveyed lands under the Selected Alternative would not substantially conflict with established management objectives on adjacent National Forest System land, which are managed as 8.22- Ski-based Resorts. The Forest Plan states that visitors can expect to see facilities associated with the ski area, and four-season recreation resource uses are encouraged (1996 Forest Plan p. IV-39).

Objectors contend the agency failed to take a hard look at the direct impacts of the development. However, development of the private lands by the applicant is considered a “connected action”, and is analyzed as an indirect effect of approving either action alternative (FEIS p. 1-29). As defined in 40 CFR 1508.8, environmental effects include: 1) direct effects, which are caused by the action and occur at the same time and place; and (2) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Chapter 4 of the DEIS and FEIS includes detailed analysis of the direct, indirect and cumulative environmental effects of Alternatives 1, 2 and 3, including conceptual Low, Moderate and Maximum development scenarios for the Village at Wolf Creek under Alternatives 2 and 3 (action alternatives). Maximum development represents the “full development” scenario, and was thoroughly analyzed in the FEIS for each action alternative. Most of the analysis deals with “indirect effects”, including development of the Village at Wolf Creek. Thus, the argument that those effects were not considered, or were scrutinized less because they were considered indirect effects, is not supported by the record.

Objectors contend the narrow purpose and need foreclosed consideration of reasonable alternatives. In the FEIS, the Forest Service considers seven alternatives. The No Action Alternative, Alternative 2 (Land Exchange- Proposed Action), and Alternative 3 (ANILCA Road Access) were considered and analyzed in detail (FEIS, Sec. 2.2). The remaining four alternatives were considered but eliminated from detailed analysis as described in the FEIS, Sec. 2.3. An acquisition alternative, as indicated in the subject objection, was in fact included in the range of alternatives considered under NEPA for this project. However, in Section 2.3.2 of the DEIS and FEIS, this alternative was eliminated from detailed analysis in the FEIS 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.” (p. 2-5) Likewise, the No Action Alternative would not meet the Purpose and Need of the project, 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. Alternative 2 was selected (rather than Alternative 3) since, based on the FEIS analysis, it was found to provide the greatest opportunity for the Rio Grande NF to improve management abilities while meeting legal agency obligations of ANILCA; and, it was found to be in the public interest. (DROD p. 24).



Objectors point to a LMJV website document (Ex 10) as evidence that the agency should have included the development as part of the proposed action. Exhibit 10 is not a Forest Service document, the agency had no part in the preparation of it, nor is it relevant to defining what the federal action is. A proponent can express their viewpoint of the agency analysis. However, the agency must come to its own conclusion regardless of a proponent's viewpoint. The agency utilizes the CEQ regulations (40 CFR 1500-1508), Forest Service NEPA regulations (36 CFR 220), and Forest Service NEPA Policy (FSH 1909.15) to help define agency actions subject to NEPA.

Issue 1b: Consideration of easements

Objectors allege that because new easements (including those necessary for the Village Ditch Infiltration Gallery, a raw water pipeline and a ski area access road) and use of federal lands were excluded from the purpose and need, the resulting narrowed scope of analysis treats the federal easements necessary for construction and operation of the LMJV project as a foregone conclusion. Specifically:

1. The direct impact of these actions escaped detailed review across a range of potential alternatives and mitigation measures that could lessen or eliminate the impacts of the proposed development. Even if the easements were not part of the federal action, the easements necessary to carry out and/or limit for development have been recognized by the other federal agencies as federal actions requiring the NEPA "hard look" and disclosure of direct impacts, alternatives, and mitigation measures.
2. The proponent would convey lands within the Colorado Department of Transportation (CDOT) easement to CDOT as part of the permitting process with Mineral County, which CDOT criticized as segmentation of the NEPA process.
3. A benzene plume underlies the federal exchange parcel. The potentially responsible party for the benzene plume was not disclosed in the FEIS.
4. The instructions contained in appraisal review confirms that the Forest Service intentionally and knowingly created a package deal of easements necessary for construction and operation of the LMJV project as a foregone conclusion, outside the NEPA analysis.

Issue 1b Response: Section 2.4 of both the DEIS and FEIS introduces the proposed ski area access road, Village Ditch Infiltration Gallery and associated raw water pipeline as components of the Low, Moderate and Maximum Density Development concepts for Alternative 2.

Following the land exchange, the Village Ditch Infiltration Gallery (on South Pass Creek), which is located on what is presently private property, would thereafter be located on NFS land. An easement for a proposed ski area access road is proposed to provide limited, restricted, and seasonal vehicular access between any future development and Hwy 160. This road would also function as an emergency access/egress (required by Mineral County) for any potential future development. The proponent's proposal included a reservation for these easements. The appraisal took the reservation into consideration. The easements are included in the Proposed Action, but are not a component of Alternative 3.



The objector's points are addressed, specifically, below.

1: The direct impact of these actions escaped detailed review across a range of potential alternatives and mitigation measures that could lessen or eliminate the impacts of the proposed development. Even if the easements were not part of the federal action, the easements necessary to carry out and/or limit for development have been recognized by the other federal agencies as federal actions requiring the NEPA “hard look” and disclosure of direct impacts, alternatives, and mitigation measures.

As discussed in response to Issue 1a, the Forest Service considered the potential development as a connected action, and analyzed the impacts of three development scenarios as indirect impacts. The impacts of the proposed **ski area access road** and **Village Ditch Infiltration Gallery/raw water pipeline** are addressed as such throughout Chapter 4 – Environmental Consequences – of the FEIS. Impacts were of the Village Ditch Infiltration Gallery, raw water pipeline and access road were specifically addressed in the following sections: 4.1-Surface Water; 4.2-Groundwater; 4.3-Geology, Minerals and Soils; 4.6-Vegetation; 4.7-Wetlands; and 4.8-Macroinvertebrates & Fish. Regardless of whether these effects are categorized as direct or indirect, a hard look was taken, the impacts were disclosed, and they will be considered in the final decision.

2: The proponent would convey lands within the CDOT easement to CDOT as part of the permitting process with Mineral County, which CDOT criticized as segmentation of the NEPA process.

This issue pertains to the potential of a future, grade-separated interchange that would likely be necessary if traffic related to residential build-out were to exceed certain thresholds. Segmentation of the NEPA process was addressed in the Response to Comments (#01-2, p. 69). If a grade-separated interchange were to be necessary to accommodate residential development, it is likely that it would be in the distant future. Whether or not a grade-separated interchange is economically or technically feasible, or necessary, is beyond the scope of this analysis. This is not segmentation of the NEPA process/analysis.

3: A benzene plume underlies the federal exchange parcel. The potentially responsible party for the benzene plume was not disclosed in the FEIS.

The Storage Tank Report and Release Tracking Form: CDOT Wolf Creek Pass Site Characterization Report (contained in the project file) identifies the owner/operator of the facility for which the benzene plume is associated as Colorado Department of Transportation, Hazardous Waste Unit.

4: The instructions contained in appraisal review confirms that the Forest Service intentionally and knowingly created a package deal of easements necessary for construction and operation of the LMJV project as a foregone conclusion, outside the NEPA analysis.

Nothing on page 12 of the appraisal review report's instructions indicates a foregone conclusion. Rather, that document is replete with references to a “proposed” land exchange. There is reference on page 12 under item number 2 to existing special use authorizations associated with the Federal parcel and instruction to analyze as if replaced with easements. It is common to



protect special use permittees affected by land exchanges by requiring non-Federal parties to grant replacement easements of like terms. Specifically, the instruction appears as the second bulleted item under the heading Hypothetical Conditions No. 2 on page 6 of the technical appraisal review report and reads:

- *Currently, special use authorizations for electric and communication cables, located within a conduit along U.S. Highway 160, encumber the Federal property. Special use authorizations are licenses and, as such, are not transferable. As a condition of the proposed transaction, permits that authorize these uses will be replaced by easements executed by the non-Federal party in favor of the permit holders immediately after recording the deed transferring the subject property. Therefore, the Federal land has been analyzed as if easements were in place, rather than permits.*

Issue 1c: Objector alleges that the Forest Service’s decision to arbitrarily define everything except the roads as indirect impacts results in impacts receiving less NEPA and Endangered Species Act (ESA) scrutiny.

Issue 1c Response: As discussed in the response to Issue 1a, the development was considered a connected action because it is a private action; and as such, impacts from the proposed development were analyzed as indirect effects in the FEIS. The Forest Service’s April 2013 Biological Assessment for the project evaluated the direct, indirect, and cumulative effects of the proposed action on species listed under the ESA. The U.S. Fish and Wildlife Service’s November 15, 2013, Biological Opinion found that the proposed action is not likely to jeopardize the continued existence of Canada lynx within the contiguous U. S. distinct population segment. Thus, the argument that those effects were not considered, or were scrutinized less because they were considered indirect effects, either under NEPA, or ESA, is not supported by the record. In addition, whether an impact is considered direct or indirect does not change the type or magnitude of that impact.

Note that CEQ regulations (40 CFR §1508.8) do not require direct or indirect effects to be analyzed separately in a NEPA document, and most EA- and EIS-level analyses do not differentiate between direct and indirect effects. However, the decision to differentiate between direct and indirect impacts was made early-on in this NEPA process for two primary reasons: 1) to be perfectly clear about the potential impacts of a Forest Service decision to authorize access to the private inholding; and 2) to address both real and perceived deficiencies in the 2006 FEIS, which was challenged in court, resulting in a stipulated settlement agreement that required preparation of a new EIS. The 2006 FEIS analyzed development of the Village at Wolf Creek as a “reasonably foreseeable future action” that would happen regardless of the Forest Service’s authorization for improved access. In the 2006 FEIS, even the No Action Alternative assumed that the Village could be constructed. That assumption is not included in the No Action Alternative of the 2014 FEIS. Therefore, the current FEIS assumes that development of the Village could not, and would not occur absent the Rio Grande NF’s approval for improved access via a land exchange or ANILCA easement. This assumption that future development of the Village will occur is dependent on Forest Service authorization for a land exchange or easement meets the definition of a “connected action”, per 40 CFR §1508.25.

Issue 2: The objector alleges the USFS violates the Administrative Procedure Act (APA) and Federal Records Act by failing to maintain and disclose a complete and accurate



record to the public. Under APA, the complete administrative record must include all documents and materials “directly or indirectly considered by the relevant agency decision makers.

Issue 2 Response: The complete Administrative Record was maintained and made available in its entirety on the public website via the Forest Service’s Planning, Appeals and Litigation System (PALS) on November 28, 2014. The total number of documents uploaded was 399. In addition, the complete Administrative Record was sent via DVD to Rocky Mountain Wild (RMW) objectors, Rocky Smith and Chris Canally on December 8, 2014.

A FOIA request by RMW was received February 27, 2014. The Forest Service sent informal acknowledgement of the FOIA request by email on February 28, 2014. A final response to the FOIA request was provided on April 29, 2014 and included more than 1,000 pages of redacted material. The requestor then followed with a lawsuit.

Another FOIA request was received at the Rocky Mountain Regional Office of the Forest Service on November 20, 2014, from Matt Sandler. A response to the request is currently in progress, with a partial response provided to the requestor, including a link to RGNF website which provides access to the complete administrative record; furthermore, a DVD with the complete administrative record was mailed to the requestor. The NEPA contractor maintained a master record for the administrative record as evidenced by the DVD, in which the index was provided as an Excel file. No law, regulation, or policy requires that the index for the administrative record be provided in the FEIS. The allegedly incomplete record (or assertion of privilege) did not defeat the twin aims of NEPA and the objectors were able to fully participate in the decision making process. The extensive administrative record provided to the public shows that the Forest Service took a hard look at the environmental impacts of the proposed action.

Issue 3a: Objectors allege the range of alternatives considered is inappropriately narrow. The objector alleges the USFS violates APA and NEPA by narrowly defining the purpose and need, which precluded consideration of a range of reasonable alternatives, including an acquisition alternative.

Issue 3a Response: The FEIS, purpose and need, and range of alternatives fully comply with the requirements of NEPA, APA, and other regulatory and agency policy. The claims/arguments made by the objector above are not supported by the record or other evidence.

In the Feasibility Analysis, both Dan Dallas and Randall Karstaedt determined that: “It is my belief that the merits of completing an exchange must be evaluated in contrast to the grant of an easement for access to the property. The owner has a right of access under ANILCA and that LMJV has every intention of securing access to the property either through land exchange or direct easement grant.” As discussed in our Response to Comments (Comment #02-18), recognition of Applicant objectives is consistent with Council on Environmental Quality policy guidance (40 CFR 1500), which states that in these circumstances there is: “... no need to disregard the Applicant's purposes and needs and the common sense realities of a given situation . . .” The purpose and need also recognizes the statutory objectives clearly expressed by



Congress in ANILCA by acknowledging the legal right of “access to non-Federal land within the boundaries of the NFS to secure to the owner the reasonable use and enjoyment thereof.”

In the FEIS, the Forest Service considers seven alternatives. The No Action Alternative, Alternative 2 (Land Exchange- Proposed Action), and Alternative 3 (ANILCA Road Access) were considered and analyzed in detail (FEIS, Sec. 2.2). The remaining four alternatives were considered but eliminated from detailed analysis as described in the FEIS, Sec. 2.3. An acquisition alternative, as indicated in the subject objection, was in fact included in the range of alternatives considered under NEPA for this project. However, in Section 2.3.2 of the DEIS and FEIS, this alternative was eliminated from detailed analysis in the FEIS 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.” (p. 2-5). This issue was also addressed in the Forest Service’s Response to Comments (Comment #05-3). Alternative 2 was selected (rather than Alternative 3) since, based on the FEIS analysis, it was found to be in the public interest, and provide the greatest opportunity for the Rio Grande NF to improve management abilities while meeting legal agency obligations of ANILCA (DROD p. 24). The Forest reasonably evaluated three possible private land development concepts for each of the Action Alternatives. The FEIS and its consideration of alternatives constitute NEPA’s required hard look and disclosure of the environmental impacts of the project.

Issue 3b: Objectors allege the range of alternatives considered is inappropriately narrow. The objector alleges the USFS violates the APA, NEPA, and ANILCA by 1) failing to take a hard look at an action alternative that considers development of the private parcel with five home sites (one per 35-acre tract), which is consistent with the appraised highest and best use and would retain the scenic easement, and 2) by failing to consider an alternative that considers only the access needed for reasonable use and enjoyment.

Issue 3b Response: The FEIS, purpose and need, and range of alternatives comply with the requirements of NEPA, APA, ANILCA, and other regulatory and agency policy. The claims/arguments made by the objector above are not supported by the record or other evidence.

The basis for the Low Density Development Concept was one house per 35 acres (see FEIS, pp. 2-6), and this was analyzed in detail throughout Chapter 4 of the FEIS for both of the Action Alternatives. For the Alternative 2 (Land Exchange) Low Density Development Concept 9 lots (35 acres each) would be developed consistent with Colorado’s Use by Right statute. Alternative 3, under the low density concept, meets the objectors’ request because it retains the scenic easement and discloses the impact of only eight lots.

ANILCA’s “reasonable use and enjoyment” standard is evaluated in Section 1.10 of the FEIS and in the DROD (Section 5.0). Therein, the Forest Supervisor evaluated the project in the context of the regulations interpreting and implementing Section 3210 of ANILCA, and determined that existing, seasonal access was inadequate under ANILCA. Nevertheless, it was fully evaluated under the No Action Alternative.



Issue 3c: The objector alleges the USFS violates NEPA and ANILCA by failing to incorporate mitigation measures or ANILCA terms and conditions into the action alternatives that would be enforceable and/or encumbrance the new LMJV parcel, and instead defers later action and analysis to other agencies.

- a) Existing and potential federal encumbrances on the private parcel were excluded by the narrowed purpose and need, resulting in the failure to disclose alternative project designs and mitigation measures.
- b) Lynx “Best Management Practices” practices and conservation measures are mentioned, but nowhere are these expressed as terms and conditions that would encumber the use of the ANILCA access for construction and operation Village itself.
- c) The FEIS does not adequately disclose or analyze mitigation / BMPs for water quality, storm water, groundwater recharge and wetlands, and instead defers to later analysis by other agencies.

Issue 3c Response: NEPA does not require the agency to impose a full mitigation plan. Robertson v. Methow Valley Citizens Council, 490 U.S. 322, at 352-3 (1989). The ANILCA regulations impose no duty to regulate private property by imposing mitigation as a condition of access. 36 CFR 251.111 (definition of adequate access), 36 CFR 251.114(a) and (f)(2). All references to minimizing effects are strictly limited to effects on federal or NFS land and resources.

Lynx conservation measures were developed during the informal ESA Section 7 consultation process with the U.S. Fish and Wildlife Service, as indicated in the November 15, 2013 Biological Opinion. These Lynx Conservation Measures are briefly summarized in Section 2.7.2 of the FEIS, and an expanded explanation of them is provided in Appendix B (Volume 2 of the FEIS). Appendix B includes detailed explanations of the eight conservation measures, as well as discussions about enforcement and efficacy of the overall lynx conservation strategy. Encumbering the federal exchange parcel for lynx protection is neither desirable nor needed because it would reduce the value of the federal estate and the conservation measures are already non-discretionary for LMJV (Biological Opinion, page 34). Enforcement of the conservation measures would be the responsibility of U.S. Fish and Wildlife Service.

Consistent with 40 CFR §1502.14(f), Section 2.7 of the Final EIS includes Best Management Practices (BMPs) for actions that could occur on NFS land resulting from Forest Service approval of the Land Exchange. BMPs apply to construction and operation of a ski area access road and easements for the Village Ditch Infiltration Gallery/raw water pipeline corridor. For National Forests within the Rocky Mountain Region, implementation of BMPs means implementation of the measures identified in FSH 2509.25, Water Conservation Practices Handbook. The effects of construction and operation of the ski area access road and the infiltration gallery/raw water pipeline corridor (implemented with the BMPs) are disclosed throughout Chapter 4 of the FEIS. The review and discussion of effectiveness of the water conservation practices are disclosed in FSH 2509.25.

In terms of activities occurring on private lands, the impacts of the alternatives have been disclosed in context of the three density development concepts. Specific mitigation measures for



actions occurring on private lands are premature, because a site-specific proposal has yet to be developed. Water quality and storm water mitigation will be determined through the National Pollutant Discharge Elimination System (NPDES) permitting process (FEIS, Section 4.1). As stated in the Response to Comments (FEIS Vol. 2, page 125), wetland mitigations for private land development would be determined during the 404 wetland permitting process.

Encumbering the federal exchange parcel for water quality/wetlands protection is neither desirable nor needed because it would reduce the value of the federal estate and is not necessary to comply with law regarding water quality and wetlands. Compliance with water quality standards and protection of wetlands laws would be satisfied through the NPDES and 404 wetlands permitting processes. Past practices indicate these processes are effective in protection of water quality and wetlands. For example, in a similar situation, groundwater flow disruption from facilities at Breckenridge Ski Resort was mitigated through foundation drains, building sump pumps and detention ponds which were developed to address the 404 wetland permit conditions. These measures, although complex, were effective and could not be developed at the conceptual stage of the development (Post-Construction Wetland Vegetation & Hydrology Monitoring Report, 2013 Growing Season, Breckenridge Ski Resorts Peaks 7 & 8 Base Area Wetlands).

Issue 4: The objector alleges the USFS violates NEPA by failing to consider a true no action alternative that would include no development on the private lands.

Issue 4 Response: Section 2.2.1 of the FEIS clearly identifies the required No Action Alternative as Alternative 1:

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 Proponent has vehicular access to the private parcel via FSR 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.

In the Decision Rationale of the DROD (p. 21), Supervisor Dallas found that the reasonable use and enjoyment of the inholding is the use intended by the Forest Service when the parcel was created – use as a winter resort including commercial and residential properties. Specifically:

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



Thus, the claim that the Forest Service failed to analyze a true No Action Alternative is false and unsupported. The No Action Alternative is included throughout the resource analyses in Chapter 4 Environmental Consequences. In the response to Comment #05-1 (p. 90) the concept that “the No Action is inappropriately dismissed” is addressed.

Issue 5a: The objector alleges the USFS violates NEPA by excluding cooperating agencies from the NEPA process.

Issue 5a Response: The NEPA process for this project including cooperating agency requirements complies with the requirements of the law and applicable regulation and policy, as well as CEQ guidance. The claims/arguments made by the objector above are not supported by the record or other evidence.

CEQ guidance provides factors to consider when deciding to invite, decline, or end cooperating agency status, and that “once cooperating agency status has been extended and accepted, circumstances may arise when it is appropriate for either the lead or cooperating agency to consider ending cooperating agency status.” (CEQ Memorandum, 1/30/2002, Attachment 1). On May 4, 2011, the Forest Service invited numerous local, state and Federal agencies to participate in a Cooperating Agency meeting in South Fork, Colorado to solicit their input to the NEPA process. The U.S. Fish & Wildlife Service and the U.S. Army Corps of Engineers (COE) later accepted the Forest Service’s invitation to be cooperating agencies for the project EIS. Per CEQ guidance above, and a consideration of timelines, scheduling needs, and critical project milestones, the Forest Service as the lead agency (40 CFR Part 1501.5) decided not to have Cooperating Agencies (40 CFR Part 1501.6). In Wyoming v. U.S. Dep’t of Agric., 661 F.3d 1209 (10th Cir. 2011), (the Forest Service decision to grant or deny a request for cooperating-agency status under NEPA, was committed to Forest Service’s discretion, and thus decision to deny the request was not judicially reviewable under APA).

Nevertheless, the Forest Service coordinated closely and consulted with local, state, and Federal agencies throughout the NEPA process, and considered and addressed all agency concerns and comments, including those of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. The FEIS documents agency involvement in the NEPA process (Section 1.5, p. 1-6), agency consultation and coordination (Chapter 6), and other coordination with agencies that have jurisdiction over specific resources (e.g., Army Corps of Engineers) (see Section 6.0, 01 Surface Water, Response 3. p. 70; and Section 6.0, 01 Surface Water, Response 5. pp. 71-72).

Issue 5b: The objector alleges the USFS violates NEPA because contractor bias and too much proponent influence compromised the objectivity and integrity of the NEPA process.

Issue 5b Response: The Responsible Official followed administrative procedures pursuant to NEPA Third Party contracting and conditions of the MOU.

Based on a review of the Exhibits noted below, no NEPA decision points were discussed with the proponent or the proponent’s representative. All indications show that the MOU (Administrative Record 2.4 - 20110507 Signed USFS-LMJV MOU.pdf) was followed.

Exhibits found at: <http://friendsofwolfcreek.org/wolf-creek-access-project-administrative-objection-exhibits>



- Exhibit 16: Employment Agreement Offer from Adam Poe to David Johnson (WER).
- Exhibit 21: Email from Tom Malecek to David Johnson regarding cooperating agencies
- Exhibit 25: FOIA response with redacted information
- Exhibit 30: Email from David Johnson to Tom Malecek with details of contacts with proponent
- Exhibit 31: Email from Tom Malecek to David Johnson regarding Feasibility Analysis as it related to Purpose & Need
- Exhibit 32: Email from David Johnson to Adam Mendonca regarding response to comments
- Exhibit 33: Email from Tom Malecek to Cambria Armstrong and David Johnson regarding comment period
- Exhibit 34: Email from Tom Malecek to David Johnson and Randy Ghormley – forwarded information from Adam Poe

Issue 6: The objector alleges that enhanced road access is not required under ANILCA because an appraisal and consideration of similarly situated properties indicate that the highest and best use is five single family lots, and reasonable use and enjoyment for full-scale commercial and residential development is unfounded.

Issue 6 Response: The 1986 Environmental Assessment assumed development of a winter resort with 208 residential units, two restaurants, two day lodges and six retail shops. These assumptions made during the previous analysis and decision informed the definition of adequate access for the LMJV inholding.

The FEIS evaluates the full range of environmental effects while meeting legal requirements of ANILCA. The alternative chosen meets the requirements of providing access for the reasonable use and enjoyment of the property, and represents the least impactful option to national forest management when compared to the other alternatives.

ANILCA is intended to ensure access to non-federally owned land within the boundaries of the National Forest System land, to secure to the owner the reasonable use and enjoyment thereof, provided such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System land. Adequate access to an inholding is defined by CFR 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 land and resources.” 36 CFR 351.111. Reasonable use and enjoyment of the lands is based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria. 36 CFR 351.111. After an extensive analysis, no property was found to be “similarly situated” to the LMJV inholding and therefore “other relevant criteria” were considered as required by the regulation. 36 CFR 351.114. Specifically, the original purpose of the Forest Service in authorizing the 1987 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 that time, ANILCA was in effect and the development scenario disclosed in the 1987 exchange defined the reasonable use and enjoyment of the parcel.

ANILCA, Similarly Situated Lands, Adequate Access & Reasonable Use and Enjoyment are discussed in the following documents: FEIS Vol 1. Page 1-17 thru 1-28, Section 1.10 in its entirety; FEIS Vol. 2, Appendix I, Section 6.0, 02 Purpose and Need, pp. 72-78; DROD Section 3, Pages 11-22; and the 1986 Amended Decision Notice, Administrative Record 1.4, which referenced the 1986 Environmental Assessment and assumed development of a winter resort.

The FEIS section 1.10 provides a detailed analysis of ANILCA and Forest Service regulation including the three fundamental concepts 1) similarly situated lands; 2) adequate access; and 3) reasonable use and enjoyment.

Adequate Access

“Adequate access” to an inholding is defined by 36 CFR 251.111 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.” Furthermore, 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.

Similarly Situated

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. 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 land. Recognizing that the Wolf Creek Ski Area (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 data 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. 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. The Forest did identify 34 private inholdings associated with ski areas in Colorado.

While expanding its search statewide within Colorado, the Forest worked with Winter Sports managers in the Rocky Mountain 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. 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.

Reasonable Use and Enjoyment

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. The 1986 Environmental Assessment assumed development of a winter resort with 208 residential units, two restaurants, two day lodges and six retail shops. These assumptions made during the previous analysis and decision informed the definition of adequate access for the LMJV inholding.

The Supplemental Report to Appraisal of Real Property, Exhibit 7, with a report date of September 12, 2014 utilizes a Sales Comparison Approach wherein parcels that sold were compared to the 177-acre non-Federal parcel included in the exchange proposal. Differences between the 177-acre subject property and properties that previously sold were considered. The contract appraiser determined that relevant elements of comparison were: property rights conveyed, financing terms, conditions of sale, market conditions (time), location, ski area influence, access, adjacent land uses, utility availability, natural features, topography, views/exposure, property size, and zoning/land use. By considering these differences in the appraisal, defensible conclusions were reached. However, sale transactions used in the Sales Comparison Approach are not synonymous with similarly situated lands.

Part of the issue raised mixes appraisal and land valuation terms with terms relating to ANILCA. It is important to separate appraisal terms from ANILCA terms. Common terms used to determine market value during the appraisal process include “highest and best use,” “seasonal and over snow access.” These terms are specific to the appraisal process and not associated with ANILCA determinations for “reasonable use and enjoyment”, “similarly situation properties”, or “adequate access”. Additionally, the appraisal is not used to justify the land exchange. The appraisal is needed to meet the “Federal Land Policy and Management Act of 1976 [requirement] that the value of the non-Federal and Federal lands be equal, or if they are not equal, the values shall be equalized by the payment of money not to exceed 25 per centum of the value of the Federal land.” Federal Land Policy and Management Act of 1976, 43 USC 1701 et seq. (FLPMA)



Issue 7a: The objector alleges the USFS violates 36 CFR 254.3(b) because they have not provided adequate evidence to support their conclusion that the land exchange is in the public interest. The proposed land exchange is not in the public interest. The DROD concludes the land exchange is in the public interest pp. 24 - 25, however, this DROD determination fails to provide any page cites or otherwise identify supporting analysis from the FEIS. The key factor in any land exchange is equalization of values. 36 CFR. 254.3. However, the appraisal was excluded from NEPA analysis altogether. FEIS 1-30 and App at 81.

Issue 7a Response: The DROD makes adequate findings for a public interest determination. The responses are detailed in 7a-1 through 7a-8 below.

The Forest Service Handbook, 5409.13.32.4 requires the Forest Service to complete a feasibility analysis prior to signing an Agreement to Initiate a Land exchange. As part of the Feasibility Analysis the Forest Service is directed to summarize the public interest factors associated with the exchange. The Forest Service discusses that the exchange *appears* to be in the public interest in the Feasibility Analysis for this project. Exchanges are then further evaluated under NEPA and the decision must include a public interest determination that meets 36 CFR 254.2. The Forest Service discusses the public interest determination as required at 36 CFR 254.3(b)(1) in the DROD, pp. 24-25. Each of the following resource values and public considerations are also discussed throughout the FEIS, Response to Comments and specialist reports. Each value/consideration and their specific references are detailed as follows:

7a-1: Development would be moved further from Ski Area, thus potentially reducing some of the expressed recreational conflicts.

Issue 7a-1 Response: The FEIS addresses the consolidation of the ski area under Table 2.6.2 on p. 2-16. The DROD at page 7 evaluates the exchange meeting Forest Plan Guidelines as it relates to lands primarily for value for recreation purposes. The lower half of the two chairlifts and numerous ski trails are located on the non-Federal parcel. The Forest responded to multiple comments regarding public interest included in the Feasibility Analysis and DROD discussing the movement of the development further from the ski area to reduce recreation conflicts in Appendix I, Section 6.0, 03 Responses, pp. 81-83.

7a-2: Net gain of wetlands to be acquired and protected by Rio Grande NF.

Issue 7a-2 Response: The Rio Grande National Forest Land and Resource Management Plan Land Adjustments Forest Standards and Guidelines direct that the Forest consider acquiring lands with important or unique resources such as wetlands. 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. The Federal parcel also has a one-acre pond. Through the 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. The Rio Grande NF will have a net gain of roughly 40 acres of



riparian wetlands, including the 23 acres of fens, eight springs, 8,641 linear feet of perennial streams, and 6,092 linear feet of intermittent streams, and a net loss of a one acre pond.

The acquired wetlands, streams and springs, as a part of the Rio Grande NF, would be managed and protected in accordance with the Forest Plan's forest-wide objectives, standards and guidelines. The U.S. Environmental Protection Agency (EPA) September 28, 2012 comment letter (CL1) on the DEIS states, "The EPA supports the net benefit to wetlands resulting from the land exchange since critical wetland complexes currently under private ownership will become Federal land and, therefore, afforded protection under Executive Order 11990, Protection of Wetlands."

7a-3: There would be no loss of viability across the Forest for Forest Service (Rocky Mountain Region) Sensitive Species and Management Indicator Species (MIS).

Issue 7a-3 Response: Determinations for Rocky Mountain Region Sensitive Species range from "No impact" to "May impact individuals but not likely to result in a loss of viability on the planning area, nor cause a trend to Federal listing or a loss of species viability rangewide." Indirect and cumulative effects to all MIS except the Rocky Mountain elk would be insignificant and discountable on the species forest-wide population, trend, or habitat distribution. Indirect and cumulative effects for Rocky Mountain elk would be appreciable but would be unlikely to measurably affect the population, trend or habitat distribution across the Rio Grande NF.

7a-4: There are both positive and negative effects associated with land exchange; however negative effects have been fully disclosed.

7a-4 Response: Table 2.6-2 summarizes the direct effects of the land exchange, which include a net loss of 28 acres of NFS land; a net increase in perennial and intermittent streams, wetlands, fens, and springs; net gains and loss of habitat types; net loss of primary lynx habitat; net gain in southwestern willow flycatcher habitat; net gain in Rocky Mountain Region Sensitive Species and MIS high altitude riparian habitat, but a net loss of spruce-fir forest habitat; and the ability to consolidate existing ski area operations as per the 1996 Forest Plan and eliminate the need for ski easements.

Table 2.6-3 provides a summary of indirect effects of the Maximum Density Development Concept for Alternative 2, the Land Exchange. Indirect effects include potential impacts to the natural environment. However, mitigations required by local, state and Federal agencies would regulate impacts to these privately owned resources, reduce the extent of the impacts, and require mitigations for impacts. Various sections of the FEIS identify potential mitigations for impacts to groundwater, soils and wetlands. Habitat for Canada lynx would be affected and the determination for lynx is "may affect, likely to adversely affect." The Biological Opinion issued an incidental take statement authorizing take specifically for the expected mortality of lynx being hit on the highway. The BO provides Conservation Measures are part of the proposed action to mitigate the indirect effects of the project on lynx. There will be a net habitat loss of lynx habitat in the exchange. The southwestern willow flycatcher BO determination is "may affect, not likely to adversely affect."

Please refer to Issue 17 for a discussion of the scenic easement.



Determinations for Rocky Mountain Region Sensitive Species range from “No impact” to “May impact individuals but not likely to result in a loss of viability on the planning area, nor cause a trend to Federal listing or a loss of species viability range wide.” Indirect and cumulative effects to all MIS except the Rocky Mountain elk would be insignificant and discountable on the species forest-wide population, trend, or habitat distribution. Indirect and cumulative effects for Rocky Mountain elk would be appreciable but would be unlikely to measurably affect the population, trend or habitat distribution across the Rio Grande NF.

7a-5: Wolf Creek Ski Area appears to support the proposed land exchange, in contrast to the development plan approved by Mineral County.

Issue 7a-5 Response: A letter submitted by WCSA President/CEO Davey Pitcher on October 10, 2012, states that Wolf Creek Ski Area supports Alternative 2 (Land Exchange Alternative) for the following reasons:

- The realigned property boundaries will protect the ski heritage of Wolf Creek Ski Area;
- Wolf Creek stated that moving the current boundary away from the Alberta Park wetlands complex will be beneficial to water users of the San Luis Valley and the ecosystem as a whole; and,
- If the USFS proceeds with the land exchange alternative, the private land will become contiguous with the State Highway System (U.S. Highway 160), which would relieve the Forest Service from administering road development.

7a-6: The Intended uses of conveyed Federal lands will not substantially conflict with Management Objectives on adjacent NFS land managed as 8.22 Ski-Based Resorts.

Issue 7a-6 Response: 36 CFR 254.3(f) states that lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

The lower half of two chairlifts and numerous ski trails are located on the non-Federal exchange parcel to be acquired by the Rio Grande NF. Consistent with 36 CFR 254.3(f), the conveyed non-Federal land would result in the parcel becoming part of Management Area 8.22 Ski-Based Resorts and inclusion in the ski area boundary. As discussed section in Section 1.9 of the FEIS, the exchange would consolidate existing ski area operations, eliminate the need for easements, increase the acreage of Federal land available for skiing, reduce potential conflicts, and generally benefit NFS developed recreation opportunities. The FEIS at section 3.10 and 3.11, p.3-109 discusses Management Area 8.22. The DROD Decision Rationale Item 1 discusses Forest Plan Direction on pp. 7-8, regarding the benefits of Federal ownership of the non-Federal exchange parcel.



The Federal lands proposed for conveyance would be used to develop a residential village adjacent to the WCSA. Associated facilities such as trails, lifts, and lodges are included. This is an area of concentrated use. Visitors can expect to see facilities associated with the ski area.

7a-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.

Issue 7a-7 Response: The FEIS provided a summary and discussion of development concepts in Table 2.6-3.13, pp. 2-40 to 2-46. Under Section 4.13.3.2.3 the Maximum Density Development Concept, pp.4-213-4-225 there is discussion of the fiscal impacts on employment, individual prosperity and public revenues. These are as summarized below.

Tourism: The completed project is expected to attract over 830,000 person/nights on an annual basis, an average of 2,273 visitors on every night during a year. At completion (Year 2044) Village visitors would generate over \$151 million in annual expenditures, inside and outside the Village. This level of expenditures would be expected to continue in future years.

Employment Status: During the 30-year phase-in period, the project is projected to generate a cumulative total of over 8,700 construction FTEs, an average of 290 FTEs per year. Upon completion in year 2044, ongoing Village operations would generate a total of 2,100 annual FTEs; these jobs would continue into the future for as long as the Village maintains operations.

Individual Prosperity: Construction of this development concept is expected to cumulatively generate a total of \$448.5 million in labor income, including \$251.7 million in direct income and \$196.9 in indirect/induced labor income. Project operations at the point of completion (2044) would generate \$50.2 million annually in labor income, including \$29.6 million in direct income and \$20.5 in indirect/induced labor income. Total personal income in the Analysis Area in 2009 was \$797.9 million; during the peak year (2043) this development concept would increase this value by 5.7%.

Public Revenues and Fiscal Impact: Using current tax rates, and annual property tax collections at the time of completion in 2044, it is expected they would total \$5.29 million in Creede Consolidated District taxes and \$6.17 million in Mineral County taxes. These values would be expected to continue into the future. Cumulative sales tax revenues generated by construction would be \$12,894,369. Upon completion, ongoing operation and unit visitor expenditures would generate approximately \$3,774,000 in sales taxes on an annual basis. At project completion, projected visitor expenditures in the Village alone would generate an estimated \$2,062,000 in sales tax for Mineral County. Approximately \$1,712,000 in sales taxes – annually – would be generated outside the resort, likely in Archuleta and Rio Grande Counties.

7a-8: The land exchange meets equal value requirements of 36 CFR 254.3.

Issue 7a-8 Response: 36 CFR 254.3 (C) Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. An exchange of lands or interests shall be based on market



value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

Exhibit 7 is a copy of the Supplemental Report to the Appraisal of non-Federal land with a report date of September 12, 2014. The instructions contained in the RFQ state, in part: The contract appraiser shall make a detailed field inspection of the subject property and conduct as many investigations and studies as are necessary to derive sound conclusions. The development of appraisals for the Federal and non-Federal parcels proposed for exchange and the review of those appraisals followed a structured process; one that complied with applicable law, policy, and standards. Specifically, the appraisals were prepared in compliance with 1) 36 CFR 254, Subpart A, 2) the current edition of the Uniform Standards of Professional Appraisal Practice, 3) the current edition of the Uniform Appraisal Standards for Federal Land Acquisitions, and 4) USDA Forest Service Statement of Work written specifically for the assignment. Differences between the subject property and parcels that sold were identified by the contract appraiser to be: property rights conveyed, financing terms, conditions of sale, market conditions (time), location, ski area influence, access, adjacent land uses, utility availability, natural features, topography, views/exposure, property size, and zoning/land use. By considering these differences within the Sales Comparison Approach, defensible conclusions were reached. Sale transactions used in the Sales Comparison Approach are not synonymous with similarly situated properties as defined in ANILCA. Document 11006-2013090901 provides direction for the Federal parcel appraisal.

While the two appraisals, one each for the Federal and non-Federal parcels, both with effective dates of value (Reference Document number 11008-20140915) of September 1, 2014, were completed to ensure compliance with 36 CFR 254, they were excluded from NEPA analysis; conclusions reached in the appraisal process were considered in the decision. Appraisals and the review reports that approved them for agency use are used by the deciding officer when making decision as a requirement of 36 CFR 254.3(c), but are developed parallel and external to NEPA process. Comments received on appraisal during scoping were provided to contract appraiser and considered in the updated appraisal report as per the supplemental appraisal instructions. This was discussed in the response to comments in Appendix I of the FEIS, Section 6.0, p.80.

Issue 7b: Harm to lynx habitat and the functionality of a critical linkage for lynx and other wildlife.

Issue 7b Response: Land exchanges are by definition, tradeoff decisions. As part of any land exchange decision the authorized officer may complete an exchange only after completing a public interest determination. Under 36 CFR 254.3 there are factors that the authorized officer must consider to determine the public interest as listed on page 24 of the DROD. The authorized officer did consider these factors, and the findings and supporting rationale is documented and made a part of the administrative record. The DROD noted in the public interest determination that there are negative effects, but they have been fully disclosed. Effects associated with lynx habitat and climate change are disclosed throughout the FEIS and Appendices. The DROD also notes that as required in section (ii) of the public interest determination the intended use of the non-Federal lands, to be incorporated into the existing ski area will not conflict with the established management objectives on adjacent Federal lands. The authorized officer has made



a public interest determination fully supported by the project record and there is no violation of 36 CFR 254.3.

Exchanges are then further evaluated under NEPA, and the decision must include a public interest determination that meets 36 CFR 254.2. The Forest Service discusses the public interest determination as required at 36 CFR 254.3(b)(1) in the DROD pp. 24-25.

The decision is consistent with ESA, NFMA, and USFS policy. The Selected Alternative would have a variety of well documented negative effects (including those from traffic and habitat fragmentation) to individual lynx and their habitat, resulting in an effects determination of *May Affect, Likely to Adversely Affect*, and an authorization of incidental take; however, lynx population viability would be protected by implementation of conservation measures specified in a Lynx Conservation Strategy (e.g., BO Pp. 20-24) that was specifically developed and mandated for this project, which would minimize negative project effects. See also: Issue 12.

Issue 7c: Cause degradation of wetlands and of water quality.

Issue 7c Response: The USFS complies with 36 CFR 254.3 and sufficiently documents why the land exchange is in the public interest and protects wetlands and water quality, including those on private lands.

Wetlands: The objector raised the issue of wetland degradation and loss following the land exchange in DEIS comment letter CL833, dated October 11, 2012, pgs. 19-21. The objector argued that the land exchange is not in the public interest due to degradation of wetlands on pg. 12 of the same letter. Issues regarding development impacts affecting the value of the USFS-acquired wetlands are raised in DEIS comment letter CL833 on pg. 12-13; and in Colorado Wild's scoping comment letter SC-110, dated June 3, 2011, on pg. 5.

The land exchange would result in a net gain of 40.4 acres of wetlands including 22.7 acres of fens for the USFS. These calculations are based on U.S. Army Corps of Engineers-approved wetland delineations. The Forest Plan identifies "lands with water frontage, wetlands, and associated riparian ecosystems" as a unique resource that should be acquired (RGNF 1996 Revised Land & Resource Management Plan, Appendix E). As documented in the DROD, the Forest Service shows that the acquisition of the riparian wetlands, fens, springs, and perennial and intermittent streams on the non-Federal parcel is in the public interest because it would result in additional Federal protection from future development (DROD, pg. 25). The wetlands would continue to be protected by the Clean Water Act, and additional Federal protection would include Executive Order 11990, Protection of Wetlands, and the Forest Plan.

In accordance with Executive Order 11990, the COE has a policy of "no net loss" of wetlands, which requires that impacts to wetlands and waters of the US be avoided, minimized, and/or mitigated. The FEIS in Section 4.7.1 (pg. 4-87) refers to the COE policy of "no net loss" as background information regarding wetland mitigation. The FEIS acknowledges the potential for disruptions to groundwater hydrology that could occur to wetlands as a result of building construction (Sections 4.7.1.2.2, 4.7.1.3.1, 4.2.1.2.2 and 4.2.1.3.1).



As documented in the DROD, the Forest Service shows the land exchange and acquisition of the wetlands on the non-Federal parcel is in the public interest. It should be noted that EPA's DEIS comment letter CL1 also states "the EPA supports the net benefit to wetlands resulting from the proposed land exchange since critical wetland complexes currently under private ownership will become Federal land and, therefore afforded protections under Executive Order 11990, Protection of Wetlands." It is reasonable to conclude that all wetlands, both public and private (pursuant to CWA permitting process) would be afforded future protection.

Water Quality: Detailed discussions of potential indirect effects to surface water and wetlands are contained in FEIS Vol. 1, Sections 4.1 and 4.7, respectively. The Cumulative Effects and the Irreversible and Irrecoverable Commitment of Resources Sections of FEIS Vol. 1 regarding wetlands (Sections 4.7.3 and 4.7.4), and surface water (addresses water quality – Sections 4.1.5 and 4.1.6) address the cumulative effects. See also: Issues 1b, 11a, and 14.

Issue 7d: Create a new Wildland-Urban Interface (WUI) in a beetle-kill zone, thus increasing wildfire dangers.

Issue 7d Response: The FEIS addresses fire hazards in the WUI, and there is no violation of law, regulation, or policy.

The FEIS, Section 6.0 Vegetation Resources Responses pp.116-117 responds to the issue raised regarding increased levels of spruce beetle activity in the area and notes that there will be an increased risk of wildfire. The Forest notes in Appendix A-3, p8, details common to moderate and high density development section, that there is a need to develop a fire protection plan in conjunction with Mineral County. The FEIS does discuss increased levels of spruce beetle activity in sections 3.6.3 and 4.6 and acknowledges there will be an increase in wildfire hazard. The Mineral County Subdivision Regulations in Sections 2.2.2.5 and 4.23 require the mapping of wildfire prone areas and mitigations to reduce or eliminate wildfire hazards for a Planned Unit Development (PUD); and, as the private land is developed, they would be required to comply with these regulations.

Issue 7e: Create a new public burden of snow removal and storage, along with other new public infrastructure burdens.

Issue 7e Response: Snow management was analyzed in the FEIS, and there is no violation of any law, regulation, or policy.

Snow management for high level density development is discussed in General Details Common to Alternatives 2 and 3. There would be no storage plans for low or moderate development concepts, though it is addressed under the plan. The purpose of the FEIS is to evaluate access alternatives to the private land inholding. Appendix E also provides information related to snow storage, including schematics. Ultimately, Mineral County would be responsible for approval of a snow management plan in the PUD process. The burden (cost) for snow removal and storage would be to the Village Homeowner's Association and not the public at large.



Issue 7f: cause economic harm to surrounding communities, most notably Pagosa Springs and South Fork

Issue 7f Response: Land exchanges are by definition, tradeoff decisions. As part of any land exchange decision, the authorized officer may complete an exchange only after completing a public interest determination. Under 36 CFR 254.3, there are factors that the authorized officer must consider to determine the public interest as listed on page 24 of the DROD. The authorized officer did consider these factors, and the findings and supporting rationale are documented and made a part of the administrative record. The DROD noted in the public interest determination that there are negative effects, but that they have been fully disclosed. With regards to issues raised by the objector, there are effects associated with lynx habitat, creation of wildland-urban interface, snow storage, impacts on nearby communities and wetlands. All of these issues are discussed throughout the FEIS and Appendices. The DROD also notes that as required in section (ii) of the public interest determination the intended use of the non-Federal lands, to be incorporated into the existing ski area, will not conflict with the established management objectives on adjacent Federal lands. The authorized officer has made a public interest determination fully supported by the project record and there is no violation of 36 CFR 254.3.

The Forest discusses through Section 4.13 of the FEIS, and in their response, Section 6.0, pp.161-162; 165-168 that implementation is not expected to harm the economies of local communities. Based on the observation of the impacts of ski resorts on nearby communities both in Colorado and throughout the United States, ski resorts generate substantial spending within the resort – and outside the resort. WCSA’s impact on nearby business communities is already reflected in the substantial base of businesses oriented toward skiers/visitors in communities in Archuleta and Rio Grande Counties. These business communities would be enhanced and expanded as WCSA visitation increases under Alternative 2.

It is acknowledged that only Mineral County would directly benefit from the property taxes that future residential/resort development would generate; however, property taxes are only one aspect of the full range of economic impacts that the project would generate. Using the Alternative 2 Maximum Density Development Concept as an example, the following points illustrate the impact of this alternative outside of the resort.

- Skier & Visitor spending ‘drives’ resort economies and has a significant impact on businesses in adjacent communities, and it is estimated that 49.5 percent of winter (skier) visitor expenditures and 47.2 percent of summer visitor expenditures would occur outside the resort (Table 4.13-1). Communities in Archuleta and Rio Grande County would benefit from these outside expenditures. As shown in Table 4.13-14, modeling indicates that at completion the Alternative 2 Maximum Density Development Concept would generate \$151.1 million in visitor expenditures on an annual basis; \$73.7 million of these expenditures would occur outside of the resort and can be expected to primarily occur in Archuleta and Rio Grande Counties.
- Modeling indicates that the construction of the Alternative 2 Maximum Density Development Concept would generate \$448.5 million in cumulative labor income (see the Individual Prosperity Heading of Section 4.13.3.2.3). Virtually all construction workers would live outside the resort; as such, all of this income would benefit communities outside the resort, including communities in Archuleta and Rio Grande counties.



- Modeling indicates that construction of the Alternative 2 Maximum Density Development Concept would generate \$12.9 million in sales taxes (see the Public Revenues and Fiscal Impact Heading of Section 4.13.3.2.3); all of the expenditures resulting in these sales taxes would occur outside of the resort, likely from suppliers in Archuleta and Rio Grande Counties.
- At completion, modeling for this analysis indicates that the Alternative 2 Maximum Density Development Concept would support 2,091 FTEs on an ongoing basis. These employment opportunities would benefit both current residents of the area, and workers who would move to the area. Moreover, modeling indicates that the completed Alternative 2 Maximum Density Development Concept would generate \$50.2 million in labor income on an annual basis (see the Individual Prosperity Heading of Section 4.13.3.2.3). The great majority of resort-based employees and employees generated on secondary bases would live outside the resort (in Archuleta and Rio Grande Counties); as such, communities outside the resort would benefit from this labor income and resultant consumer spending.
- At completion, modeling for this analysis indicates the Alternative 2 Maximum Density Development Concept would generate \$3,744,000 in sales taxes on an annual basis, both inside and outside the resort (see the Public Revenues and Fiscal Impact Heading of Section 4.13.3.2.3). The FEIS notes that approximately \$1,712,000 in sales taxes – annually – would be generated outside the resort, likely in Archuleta and Rio Grande Counties.

Issue 8: The objector alleges the USFS violates NEPA and 36 CFR 254.3(b) because they have overstated the potential benefits of the land exchange and not adequately considered negative effects.

Issue 8 Response: The Forest has fully evaluated the environmental consequences, discussed the impacts and completed the public interest determination as per the requirements of 36 CFR 254.3.

As documented in the DROD, the Forest Service has evaluated the range of potential alternatives and the environmental consequences presented in Volume I of the FEIS, and has found that the land exchange is in the public interest (DROD, 5.0 (7), pp. 24-26.

- Evaluating the potential effects of mosquito control following development of a village is speculative and beyond the scope of the FEIS. The Forest has previously addressed this comment in Appendix I, page 123. However, it should be noted that mosquitoes are not known to be a problem at the project site, and options are available for controlling mosquitoes with larvacide which would avoid the need for aerial spraying.
- Refer to Rocky Mountain Wild issue 11(c).
- The FEIS discusses acquisition of the wetlands and protection of the wetlands with regards to future development in Appendix I, page 124. It is possible that some level of development could occur on the private parcel in the absence of the land exchange or without an access authorization grant, and as a result there could be wetland impacts.



Evaluating the likelihood of development impacts to wetlands if the land exchange is not completed and the access authorization is not granted is speculative and beyond the scope of the FEIS. Accessing the non-Federal parcel via an upgraded FSR 391 was eliminated from detailed analysis because: it conflicts with established Forest Service winter recreational uses, it would materially interfere with ongoing operations of the WCSA, and it would impact traffic at WCSA's intersection with Hwy 160.

- The FEIS VOL 1. Section 1.7.4, p.1-14, discusses that the Forest Service Proposed Action is a land exchange which could result in a range of development concepts on the private land. There are many factors which could influence this development, most of which would fall within Mineral Counties purview. Appendix I, p.158 notes that the Forest Service did analyze and disclose the economic impacts of a range of potential development concepts on private lands, and disclosed the economic impacts on private lands as potential indirect effects.
- The FEIS, Vol. 2, Appendix A on pp. 4-5 discusses that SLVREC has stated that they can provide power for the development concepts, and that they have plans to upgrade the existing overhead electrical distribution line located north of the project site in the near future. The proposed upgrades are depicted in Table A-3. The proposed upgrades are unrelated to the land exchange and would occur before any development at the project site, and would require Forest Service analysis and approval. SLVREC members have not been asked to finance this planned upgrade.
- Development of a Homeowners Association and PUD is within the jurisdiction of Mineral County. Evaluating the effectiveness of a Homeowner Association for potential developments resulting from Forest Service approval of either of the Action Alternatives and subsequent approval of the Proponent's PUD Application to Mineral County would be speculative. The purpose of the FEIS is to evaluate access alternatives to a private land inholding and potential environmental impacts.

Issue 9: The objector alleges the USFS violates NEPA because they failed to adequately consider the direct, indirect, and cumulative effects of connected actions, including:

- Electric power supply needs / upgraded or expanded utility corridors
- Offsite air-quality impacts from expanded electricity generation
- Mosquito spraying
- Natural gas transport
- Communications Infrastructure

Issue 9 Response:

Per 40 CFR 1501.7(a)(2,3) and FSH 1909.15, Chapter 10, Section 12.41, the Forest Service determined the scope of the analysis and analyzed the significant environmental issues in detail



in the FEIS. The Scope of the Analysis was outlined in Section 1.11 and is described by resource in Chapter 3 of the FEIS. Chapter 4 of the DEIS and FEIS includes a detailed analysis of the direct, indirect and cumulative environmental effects of Alternatives 1, 2 and 3, including the Low, Moderate and Maximum development of the Village at Wolf Creek for Alternatives 2 and 3 (action alternatives). Most of the analysis deals with “indirect effects”, including development (as a connected action) of the Village at Wolf Creek. Maximum development represents the “full development” scenario, and was thoroughly analyzed in the FEIS for each action alternative. Appendix A of the FEIS, Vol.2, provides a conceptual description of utilities that may be needed for development by LMJV.

Issue 9a-i: The FEIS failed to assess and disclose how the power (electrical, propane, liquefied natural gas, natural gas) load and supply capacity, and associated future supporting infrastructure - for the potential levels of density development, would be met.

Issue 9a-i Response: With Regard to Electrical Power – The USFS consulted with the electrical power provider (SLVEC) for this area, which has knowledge and expertise to analyze the different potential development concepts. Their response that upgrading the existing electrical grid that supplies power to this area is in their future plans (was within the existing right-of-ways), and would accommodate the potential development, under Alternatives 2 or 3. The FEIS discloses this, and points the reader toward Appendix A, Table A-3, for further information. (FEIS Vol. 1, pp. 2-7 thru 2-10) Proposals to use designated utility corridors will be subject to site-specific environmental analysis. (1996 Rio Grande LRMP, pp. III-38) Any proposed upgrades to existing electrical transmission lines (overhead and buried) within existing right-of-ways that service this area and cross National Forest lands, would require Forest Service analysis and approval. (FEIS Vol.2, Chapter 11, Appendix A, Table A-3, pp.5)

The FEIS discloses that an on-site natural gas distribution facility would be needed under Alt. 2 & 3 Moderate and Maximum Density Development Concepts, and points the reader toward Appendix A, Table A-3, for further information. (FEIS Vol. 1, pp. 2-7 thru 2-10)

With regard to Propane, Liquefied Natural Gas (LNG), and Natural Gas Pipeline: The FEIS alludes to these as “Supplemental Power Options”, with an explanation as to how they would be transported to the site, “that may be evaluated” (in the future). (FEIS Vol. 2, Chapter 11, Appendix A, Table A-3, pp.5) There is no discussion with regard to daily /seasonal consumption levels, or needed on-hand storage capacity for any of the potential development concepts.

Issue 9a-ii: The USFS violated NEPA by not addressing the impacts of utility lines associated with the development of Village at Wolf Creek.

Issue 9a-ii Response: The utility lines are programmatically included in the density development concepts used to assess the impacts of the proposed development. As stated on page 2-8 of the FEIS, the power and communication infrastructure was assumed to be within the road corridor. The FEIS states “Internal Electrical Distribution Lines within Development – to be within the road corridor” (FEIS Vol. 2, Chapter 11, Appendix A, Table A-3, pp. 5). Alternatives which include access to private property thru USFS lands (granted under ANILCA), could accommodate both road and utility access in the same corridor. Since there is no site-



specific proposal, the impacts of these are generically incorporated into the effects analyses. Once a site-specific proposal is developed, it would be subject to site-specific environmental analyses if it were to cross NFS land. The development and effects of utility lines on private lands would be addressed through the County PUD process. (FEIS Vol. 2, Chapter 11, Appendix I, Response 3 & 4, pp. 85)

In locations where utilities would be hung from bridges, this is a common engineering method used to avoid impacts to wetlands and streams. (FEIS Vol. 2, Chapter 11, Appendix A, Table A-3, pp. 9). This is regulated by national codes (i.e. National Electrical Code). In addition, this would be part of the Mineral County PUD process. (FEIS Vol. 2, Chapter 11, Appendix I, Response 6, pp. 87, and Response 7, pp.88)

Issue 9b: The USFS violated NEPA by not addressing the impacts of communication facilities associated with the development of Village at Wolf Creek.

Issue 9b Response: The communication facilities are programmatically included in the density development concepts used to assess the impacts of the proposed development. As stated on page 2-8 of the FEIS, the power and communication infrastructure was assumed to be within the road corridor. The FEIS states “telephone, cable TV, and fiber optics - in the road system” for Alt. 2 & 3. (FEIS Vol. 2, Chapter 11, Appendix A, pp.1 & 3) The FEIS states for Alt. 2 & 3, “Communication Utility – Telephone, fiber optics, cable TV – in road corridor and hung from bridges”. (FEIS Vol. 2, Chapter 11, Appendix A, Table A-3, pp. 9) Since there is no site-specific proposal, the impacts of these are generically incorporated into the effects analyses. Once a site-specific proposal is developed, it would be subject to site-specific environmental analyses if it were to cross NFS land.

Issue 9c: The FEIS fails to assess the air quality impacts of air pollution emissions from new wood burning stoves and fireplaces that could result from the development. The proposal is located 1.5 miles from the Weminuche Wilderness Area, a federal Class 1 airshed.

Issue 9c Response: The FEIS recognized only limited wood fireplaces (FEIS Vol 2, Table A-3) in the density development concepts, as it has become standard practice to install natural gas or propane fireplaces in newly constructed housing. The FEIS presents a relatively detailed analysis of the air quality impacts from 1,981 gas fireplaces that could conceivably be installed as part of the maximum development case. The maximum development case was used as a default approach for all other development concepts, to be conservative.

The total emissions from all 1,981 units, assumed to be operating simultaneously, are as documented in Table 4.5-3 of the FEIS. This emissions analysis is a very conservative estimate of the emissions from all units. It is highly unlikely that all units would operate simultaneously; further, these emissions are very similar to those emitted from residential heating units found throughout the Rocky Mountain West; the impact would not be considered extraordinary in any residential community.

Perhaps most notable among these emissions is the very low particulate matter, estimated to be 0.05 tons per year. Particulates are the most common pollutant affecting visibility. The



particulate impact related to gas fireplace use at the proposed Village at Wolf Creek would be very low.

Issue 9d: The USFS violated NEPA by not addressing the impacts of on-site diesel emissions during construction, on air quality.

Issue 9d Response: The Forest conducted an adequate analysis of the potential effects on Air Quality, and disclosed the effects of diesel generator emissions during construction.

FEIS Section 4.5 has an exhaustive analysis of the Effects on Air Quality. (FEIS Vol. 1, pp. 4-56 thru 4-72)

FEIS, Chapter 4.5.1.2.2 Indirect Effects of Development Concepts:

- Low Density Development Concept - Air Quality – ‘Construction activity will be relatively short in duration and not very intensive’. (Alt. 2 - FEIS Vol.1, pp. 4-58) (Alt. 3 - FEIS Vol.1, pp. 4-65)
- Moderate Density Development Concept - Air Quality – Construction – ‘... combustion emissions would be generated by diesel-fired construction equipment ... all emissions would be of a temporary nature, and would be expected to be controlled by BMPs.’ (Alt. 2 - FEIS Vol.1, pp. 4-61) (Alt. 3 - FEIS Vol.1, pp. 4-67)
- Maximum Density Development Concept - Air Quality – Construction – ‘... combustion exhaust emissions from construction equipment and vehicles ... combustion emissions would be generated by diesel-fired construction equipment ... all emissions would be of a temporary nature, and would be expected to be controlled by BMPs.’ (Alt. 2 - FEIS Vol.1, pp. 4-63 and 4-64) (Alt. 3 - FEIS Vol.1, pp. 4-69)

FEIS Cumulative Effects on Air Quality – “Taken as a whole, all of these projects contribute incrementally to climate and air quality impacts. However, their total incremental contribution to cumulative climate and air quality impacts is not considered substantive, even in combination with the worst case alternative being evaluated in this action.’ The Air Quality analysis can be found in the FEIS Vol.1, pp. 4-72.

Issue 9e: The USFS declined to assess the indirect impacts of the project on climate change because “there are no methodologies available at this point to predict any impacts.” FEIS 4-58. To the contrary, there is a well-established methodology called the “social cost of carbon” which is widely used and available. The objector referenced *High Country Conservation Advocates, et al. v. United States Forest Service, et al.* asserting the BLM violated NEPA by failing to disclose the social, environmental, and economic impacts of greenhouse gas (GHG) emissions resulting from the lease modification. The objection continues with the USFS’s failure to acknowledge the social cost of carbon methodology, and its failure to employ the methodology in calculating the social and economic impacts in its cost-benefit analysis.

Issue 9e Response: The social cost of carbon protocol (SCC) was developed by an Interagency Working Group (IWG), including the Department of Agriculture, for use in cost-benefit analyses



of proposed regulations that could impact cumulative global emissions (Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866). SCC is used to estimate the monetized damages associated with an incremental increase in greenhouse gas emissions in a given year. SCC has been used in rulemaking for Corporate Average Fuel Economy (CAFE) standards, pollution standards for future power plants, emissions guidelines for new and existing stationary sources for commercial and industrial solid waste incineration units, and other rule-making activities (Fact Sheet: Social Cost of Carbon, November 2013). The Wolf Creek Land Exchange is not a regulatory action. The agency recognizes the SCC methodology, but also recognizes the limitations in applying it for this analysis. The purpose of the land exchange is to secure reasonable use and enjoyment as provided in ANILCA. This type of project is very different from a coal lease modification, federal rule-making for CAFE standards.

The objector references the FEIS: “there are no methodologies available at this point to predict any impacts,” citing the SCC as being a methodology overlooked by the agency. The FEIS actually states, “...there are no methodologies available at this point to predict any impacts on the project being analyzed here.” This is an important distinction, as the analysis (FEIS p. 4-58) was clearly limiting the consideration of climate change impacts on the project, not the impacts on global economic damages.

Unlike EO 12866 (which is not applicable here), NEPA does not require a quantitative cost-benefit analysis. (40 CFR 1502.23). The analysis appropriately weighs the merits and the drawbacks of the proposed action and alternatives, without reduction to a monetary or quantitative cost-benefit analysis. The Forest Service has not prepared cost-benefit analysis because there are qualitative considerations that are important to the decision. For example, impacts to other resources have not been quantified. Presenting the monetized SCC as stand-alone estimates – outside the frame of a cost-benefit analysis – detracts from the stated intent of IWGs SCC protocol.

The FEIS recognizes GHG emissions associated with this project and considers them in proportion to the importance of climate change considerations of this project. Alternatives 2 and 3 estimate annual GHGs at 16,900 metric tons, annually. This is equivalent to annual emissions of approximately 3,560 passenger vehicles (EPA at www.epa.gov/cleanenergy/energy-resources/calculator); about .0000004% of global and .00019% of state emissions (www.eia.gov/environment/emissions/state) annually.

Recently revised draft CEQ guidance recognizes the SCC methodology, but asks agencies to reasonably weigh the use of estimation tools to be commensurate with the project at hand (Council on Environmental Quality, Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts, December 2014, p. 15). The 16,900 metric ton estimate is below the 25,000 metric tons reference point for large projects (CEQ, p. 18). Projects that emit more GHGs may warrant more attention (using tools like SCC) of impacts to climate change. Furthermore, some recreational visits associated with the new development may be substitution visits, where skiers and vacationers might be forgoing trips elsewhere. The estimate provided only reflects emissions associated with the new development, but not emissions avoided from the substitution of not visiting other destinations. The agency considered these emissions in context and determined further quantitative analysis did not meaningfully inform the decision in this case



(US Forest Service, Climate Change Considerations in Project Level NEPA Analysis, January 2009).

The US Forest Service will also be acquiring a 177-acre parcel of private land as part of the proposed exchange. These lands contain carbon stocks in soil and biomass that will be protected and managed under the guidance of the federal laws and regulations, and in accordance to the Rio Grande Forest Plan. This parcel, and its carbon stocks, is not subject to the same laws and policies while under private ownership.

Issue 10: The objector alleges that the USFS violates 36 CFR 254.3(b)(2) and APA because the property appraisal is invalid; the Forest Service constrained the appraisals via instructions and assumptions that made the exchange a foregone conclusion. The Forest Service in its appraisal instructions essentially required the appraiser to use the Comparison Sales Approach rather than the Development Approach thereby limiting the value of the Federal parcel proposed for development. The appraisal was excluded from the environmental analysis scrutiny. The Forest Service insists there are no “similarly situated” properties anywhere with the entirety of the National Forest System, thus dismisses the analysis of dozen of similarly situated properties for which seasonal access is reasonable pursuant to ANILCA.

Issue 10 Response: The appraisal was prepared to meet law, regulation, policy, and standards by a licensed professional and went through a technical review process by the Regional Appraiser as per Forest Service policy.

The Forest Service discusses how appraisals are used as a requirement of FLPMA and that value for Federal and non-Federal parcels are determined by appraisal in the FEIS at pp. 1-15-1-16, Section 1.8. The Forest Service responded to comments regarding appraisal highest and best use, and how appraisals are conducted. The Forest Service Exhibit 6 in the Project Analysis is a copy of the Supplemental Report to the Appraisal of non-Federal land with a report date of September 1, 2014. The instructions issued state in part the contract appraiser shall “...make a detailed field inspection of the subject property and conduct as many investigations and studies as are necessary to derive sound conclusions.” The instructions note that the development approach should not be relied upon as the primary indicator of value when comparable sales are available with which to conclude the property’s market value; and, that if it is used, the contract appraiser shall adhere to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) direction pertaining to this highly sensitive and complex method of valuation. The instructions do not direct a specific type of appraisal approach. Further, UASFLA, Section B-8 titled Development Approach, which the contract appraiser was instructed to comply with, directs on page 45, first sentence of second paragraph: “When comparable sales are available with which to accurately estimate the property's market value, the development approach should not be relied upon as the primary indicator of value, as it is considerably more prone to error.” Additional information regarding the appraisal process, instructions, and review information are provided at Forest Service documents 7 and 8 under Project Analysis, and include the Technical Appraisal Review Report of the Kevin A. Chandler, MAI Appraisals of the Federal and non-Federal parcels in the Proposed Village at Wolf Creek Land Exchange dated September 12, 2014, the transmittal letter to the Rio Grande National Forest from the Rocky Mountain Regional



Appraiser dated September 15, 2014, and the letter to the Director of Recreation, Lands and Minerals dated November 19, 2014.

The development of appraisals for the Federal and non-Federal properties proposed for exchange, and the subsequent review of the appraisals by the Rocky Mountain Regional Appraiser followed the process which complied with applicable law, policy and appraisal standards.

Specifically, the appraisals were prepared in compliance with the current edition of the UASFLA and USPAP, and the USDA Forest Service Statement of Work written specially for this assignment. The purpose of the appraisals is to provide an opinion of market value defined at 36 CFR 254, subpart A, 254.2. "Market value is defined as the most probable price in cash, or terms equivalent to cash, which lands, or interests in lands should bring in a competitive and open market.."

Appraisals must be completed to determine if the values of the parcels proposed for exchange are equal in value, or may be made equal in value with a cash equalization payment less than 25% of the value of the Federal parcel, as per the requirement of FLPMA, not NEPA. Comments received on appraisal during scoping were provided to contract appraiser and considered in the updated appraisal report as per the supplemental appraisal instructions.

The objection raises appraisal and land valuation vocabulary with terms relating to ANILCA. It is important to separate these terms. Terms used to determine market value and the appraisal process are located in 36 CFR 254.9. Common terms used to determine market value during the appraisal process require definition of highest and best use, comparable property, and description of legal access. There terms are not associated with the ANILCA determinations for reasonable use and enjoyment, similarly situated properties, or adequate access.

When developing a Sales Comparison Approach properly, differences between the subject property and properties that have sold are considered. The contract appraiser determined that relevant elements of comparison were: property rights conveyed, financing terms, conditions of sale, market conditions (time), location, ski area influence, access, adjacent land uses, utility availability, natural features, topography, views/exposure, property size, and zoning/land use. By considering these differences in the two appraisals (one each for the Federal and non-Federal parcels and both with effective dates of value of September 1, 2014), validity of the two Sales Comparison Approaches was achieved.

Issue 11a: The objector alleges the USFS violates NEPA because no effort is made to quantify the effects on wetlands due to potential disruptions to groundwater.

Issue 11a Response: The US Forest Service complies with NEPA by providing a qualitative analysis of wetlands. The *Alterations to Wetland Hydrology* discussion in FEIS Vol. 1, Sections 4.7.1.2.2 and 4.7.1.3.1 provides a relative, *qualitative* comparison of potential impacts to wetlands from disruptions to groundwater flow and increased runoff resulting from impervious surfaces. As described in the FEIS, development concepts with more impervious surfaces have a greater potential to cause alterations to wetland hydrology. The potential disruptions to groundwater hydrology from buildings and belowground structures is related to their size,



location, and foundation depths relative to the groundwater elevation, direction of groundwater flow, and other factors; as well as details of building design and drainage that could mitigate for these impacts.

Following Forest Service approval of the land exchange, the proponent would submit a PUD application to Mineral County. Determining any potential groundwater hydrology impacts from a future development, which is neither designed nor permitted, would be speculative. Moreover, *quantifying* the impacts to wetlands requires a level of investigation that is reasonable to conclude that would be completed at the development phase. Detailed hydrologic investigations and completed development plans, including the design of building foundation drainage systems, complete storm water management plans, and snow storage plans would be necessary to quantify (calculate) the potential impacts.

Although the final size, location, and design of buildings are not yet known, FEIS *qualitatively* evaluates the potential for disruptions to groundwater hydrology of wetlands based on the general locations and sizes provided in the conceptual development plans. The impacts from hotel and residential housing foundations, underground parking, and the roadway underpass below the ski lift are specifically discussed under the alterations to wetland hydrology section for the low, moderate, and maximum density development concepts. Further discussion of potential impacts to groundwater hydrology of wetlands is provided in Chapter 4.2. As discussed in the FEIS (Section 4.7.2.2), highly effective design features can be incorporated into the development plans to reduce the impacts to wetlands and their hydrology.

Other objectors make general comments regarding impacts to wetlands, watersheds, and water quality. The Cumulative Effects and the Irreversible and Irretrievable Commitment of Resources Sections of FEIS Vol. 1 regarding wetlands (Sections 4.7.3 and 4.7.4), and surface water (addresses water quality – Sections 4.1.5 and 4.1.6) address the cumulative effects. Detailed discussions of potential indirect effects to surface water and wetlands are contained in FEIS Vol. 1, Sections 4.1 and 4.7, respectively. The impact analysis regarding indirect effects to groundwater resources, contained in Section 4.2, is also relevant to the discussion of wetlands.

As discussed in FEIS Vol. 1 Section 4.1.5.1, Cumulative effects to water quality, degradation of water quality chemistry due to the discharge of Waste Water Treatment Plant (WWTP) effluent to North Pass Creek by the WCSA, and non-point source pollution due to runoff from Hwy 160 are expected to continue in the development stage. Additional future non-point source impacts to water quality in both North and South Pass Creeks may result from potential harvesting on the private and NFS land due to the spruce beetle infestation.

The only significant cumulative impact to water quality under the Forest Service jurisdiction could be due to the potential expansion of the WCSA. The WCSA 2013 Conceptual Revised Master Development Plan (MDP), which outlines future ski area expansion, has been accepted by the Rio Grande NF; however, it is still pending a decision by the San Juan NF. Expansion of the ski area could result in more skier visits during the ski season, which could result in increased WWTP discharge to North Pass Creek.

The only significant cumulative impact to water quality not under Forest Service jurisdiction could be due to ongoing operations of the CDOT maintenance facility on Hwy 160. As described



in Section 3.1, the maintenance facility and Hwy 160 are a source for non-point source pollution. Ongoing non-point source pollution discharging to North Pass Creek from the maintenance facility as well as Hwy 160 could combine with potential temporary and ongoing non-point source pollution from the planned Village to therefore create a cumulative effect. With implementation of planned mitigation measures for the Village, non-point source pollution is expected to be minor, resulting in negligible cumulative effects.

In regards to wetlands, cumulative effects are discussed in FEIS Vol. 1, Section 4.7.3. Projects with potential cumulative effects to wetlands in the Analysis Area include the construction and operation of the Wolf Creek Ski Area (WCSA); construction, operation and maintenance of US Highway 160; and the construction, operation and maintenance of the CDOT maintenance facility.

FEIS Vol. 1, Section 4.7.4 discusses irreversible and irretrievable commitment of resources for wetlands. Any impacts to fens are irreversible and irretrievable, in accordance with Forest Service policy. As stated in the Region 2 supplement to FSM 2600 Management of Fish and Wildlife Habitat (Chapter 2630), “because the rate of accumulation of peat in fens is so slow and the species associated with fens are so unique, these ecosystems are difficult to reclaim and are essentially irreplaceable.” The COE would require mitigation for impacts to jurisdictional wetlands during the Section 404 permitting process; these wetland impacts would not be irreversible or irretrievable commitments of resources. Impacts to the hydrology of wetlands are not irreversible and can be mitigated.

Issue 11b: The objector alleges the USFS is violating the policy included in FSM 2600 Management of Fish & Wildlife Habitat (Chapter 2630) regarding the protection of fens.

Issue 11b Response: The US Forest Service complies with NEPA by providing a qualitative analysis of fens. A qualitative analysis was conducted for the FEIS on pages 19-21. The land exchange presents the Forest Service with the opportunity to acquire important and unique resources, including a net gain of ±40 acres of wetlands, and a net gain of ±23 acres of fens. These fen wetlands would be placed into public ownership and would continue to be protected by the Clean Water Act and would have the additional protection of the Forest Plan and Executive Order 11990 - Protection of Wetlands. It should be noted that EPA’s DEIS comment letter CL1 states “the EPA supports the net benefit to wetlands resulting from the proposed land exchange since critical wetland complexes currently under private ownership will become Federal land and, therefore afforded protections under Executive Order 11990, Protection of Wetlands.” The Land Exchange complies with the intent of FSM 2600.

The Forest Service does not regulate development on private land. However, wetlands on the acquired Federal exchange parcel would still be protected by the Clean Water Act as administered by the U.S. Army Corps of Engineers. Development on private land upslope of wetland on Federal land can potentially impact the groundwater hydrology of wetlands, as discussed in Sections 4.2 and 4.7 of the FEIS. However, there are highly effective design procedures that can mitigate impacts to the groundwater flows and protect the hydrology of the downslope fens. It is reasonable to conclude the U.S. Army Corps of Engineers would require mitigation for impacts to wetlands that have the potential to impact downslope wetlands on the Federal property.



Issue 11c: The objector alleges that the land exchange is not in the public interest because the acquired wetlands would be degraded by the adjacent development, and the wetlands transferred to the private party would not necessarily be protected by the U.S. Army Corps of Engineers permitting process.

Issue 11c Response: The US Forest Service complies with 36 CFR 254.3 and sufficiently documents why the land exchange is in the public interest and protects wetlands. The land exchange would result in a net gain of 40.4 acres of wetlands including 22.7 acres of fens for the USFS. These calculations are based on U.S. Army Corps of Engineers-approved wetland delineations. The Forest Plan identifies “lands with water frontage, wetlands, and associated riparian ecosystems” as a unique resource that should be acquired (RGNF 1996 Revised Land & Resource Management Plan, Appendix E). As documented in the DROD, the Forest Service shows acquisition of the riparian wetlands, fens, springs, and perennial and intermittent streams on the non-Federal parcel is in the public interest because it would result in additional Federal protection from future development (DROD, pg. 25). The wetlands would continue to be protected by the Clean Water Act, and additional Federal protection would include Executive Order 11990, Protection of Wetlands, and the Forest Plan.

In accordance with Executive Order 11990, the COE has a policy of “no net loss” of wetlands, which requires that impacts to wetlands and waters of the US be avoided, minimized, and/or mitigated. The FEIS in Section 4.7.1 (pg. 4-87) refers to the COE policy of “no net loss” as background information regarding wetland mitigation. The FEIS acknowledges the potential for disruptions to groundwater hydrology that could occur to wetlands as a result of building construction (Sections 4.7.1.2.2, 4.7.1.3.1, 4.2.1.2.2 and 4.2.1.3.1).

As documented in the DROD, the Forest Service shows the land exchange and acquisition of the wetlands on the non-Federal parcel is in the public interest. It should be noted that EPA’s DEIS comment letter CL1 also states “the EPA supports the net benefit to wetlands resulting from the proposed land exchange since critical wetland complexes currently under private ownership will become Federal land and, therefore afforded protections under Executive Order 11990, Protection of Wetlands.” It is reasonable to conclude that all wetlands, both public and private (pursuant to CWA permitting process) would be afforded future protection.

Issue 11d: The objector alleges the FEIS fails to acknowledge the sensitivity of fen wetlands and the uncertainty of the current hydrologic regime.

Issue 11d Response: The US Forest Service complies with NEPA by providing a qualitative analysis of fens. A quantitative analysis would be conducted at the development stage on private lands, pursuant to the U.S. Army Corps of Engineers as a part of the evaluation of potential wetland impacts for a Section 404 wetland permit.

The objector raised the comment in DEIS, comment letter CL833, dated October 11, 2012, on pg. 20. The US Forest Service response to this comment on Volume II FEIS p 120 states: “*The FEIS notes that little information exists on the groundwater levels east of the Alberta Park Wetland Complex in Sections 4.2.1.2.2 and 4.2.1.3.1 and states that “the historic flow path of groundwater must be maintained to near its historic condition to mitigate effects to the wetlands.” Further, it states that “mitigation of the loss of groundwater recharge and the*



potential interruption of flows to wetlands may be necessary in some areas” including measures that “promote groundwater recharge and restore natural groundwater flow.” The sensitivity of wetlands to alterations in their hydrology is specifically discussed in Section 4.7.1, under the heading Alterations to Wetland Hydrology. This section outlines the types of effects that occur to wetlands due to changes in their hydrology.

The FEIS provides a detailed discussion of the importance of groundwater flow to fen wetlands within the analysis area in Sections 3.2 and 3.7.6. In evaluating the environmental consequences to groundwater resources, the FEIS acknowledges that “the historic flow path of groundwater must be maintained to near its historic condition to mitigate effects to the wetlands,” acknowledging the sensitivity of the hydrology of fens.

Additional quantitative studies would be conducted in the development stage required for state and county permits.

Issue 11e: The objector alleges USFS failed to adequately respond to EPA’s comment regarding the need for additional groundwater studies for the area east of the Central Alberta Park Wetland Complex in violation of C.F.R. 1503.4(a)(5) and 1502.22.

Issue 11e Response: The US Forest Service complies with 40 CFR 1503.4(a)(5) and 1502.22 by responding to EPA’s original comment in Response 1 of Volume II FEIS pp 102-103 stating: *“The groundwater investigations conducted to date and as described in Section 3.2 of the FEIS were focused on the Alberta Park Wetland Complex to evaluate potential impacts from development on the wetlands. Groundwater investigations were not conducted in the area east of the Alberta Park Wetland Complex due to the lack of significant wetlands in this area.*

The existing groundwater investigations conducted in 2005 and 2006 were focused on the Alberta Park Wetland Complex, and were designed to evaluate potential impacts to wetlands from development of the private parcel. Groundwater investigations at that time were not conducted for the area east of the Alberta Park Wetland Complex due to the low density of wetlands in this area, and because the studies pre-dated the land exchange proposal; thus it was not known whether groundwater investigations in the area would be warranted.

The Forest Service acknowledges that potential disruptions to groundwater hydrology of wetlands could occur. Further investigations are not essential to a reasoned choice among the alternatives.

In order to engineer and design a development on the private parcel, additional groundwater investigations would likely be required. In particular, this information would be used to design building foundations and drainage systems. However, this would be determined in the future based on engineering and design needs, and could be required by the COE as a part of the evaluation of potential wetland impacts for a Section 404 wetland permit.



Issue 11f: The objector alleges the USFS violates NEPA because there was a failure to involve the U.S. Army Corps of Engineers as a cooperating agency. In the future, a supplement to the FEIS may be required.

Issue 11f Response: The Forest Service FEIS and DROD comply with the requirements of NEPA, CEQ regulations, the Clean Water Act, and agency regulation. The claims/arguments made by the objector above are not supported by the record or other evidence.

CEQ guidance provides factors to consider when deciding to invite, decline, or end cooperating agency status, and that “once cooperating agency status has been extended and accepted, circumstances may arise when it is appropriate for either the lead or cooperating agency to consider ending cooperating agency status.” (CEQ Memorandum, 1/30/2002, Attachment 1).

On May 4, 2011, the Forest Service invited numerous local, state and Federal agencies to participate in a Cooperating Agency meeting in South Fork, Colorado to solicit their input to the NEPA process. The U.S. Fish & Wildlife Service and the U.S. Army Corps of Engineers later accepted the Forest Service’s invitation to be cooperating agencies for the project EIS. Per CEQ guidance above, a consideration of timelines, scheduling needs, and critical project milestones, the Forest Service as the lead agency (40 CFR Part 1501.5), decided not to have Cooperating Agencies (40 CFR Part 1501.6).

Nevertheless, the Forest Service coordinated closely and consulted with local, state, and Federal agencies throughout the NEPA process, and considered and addressed all agency concerns and comments, including those of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers. The FEIS documents agency involvement in the NEPA process (Section 1.5, p. 1-6), agency consultation and coordination (Chapter 6), and other coordination with agencies that have jurisdiction over specific resources including wetlands (e.g., Army Corps of Engineers) (see Section 6.0, 01 Surface Water, Response 3. p. 70; and Section 6.0, 01 Surface Water, Response 5. pp. 71-72).

As stated in the DROD, p. 2, the Forest Service’s Purpose and Need of the project 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 intent of the applicant is to eventually develop the Village of Wolf Creek on the land to be conveyed. As indicated in Section 2.4 of the FEIS (p. 2-6), the Forest Service does not have the authority to approve or deny a specific level of development on private lands. However, development of the private lands by the applicant is considered a “connected action” and is analyzed as an indirect effect of approving either action alternative (FEIS p. 1-29). The range of development scenarios is included in the FEIS to analyze the potential indirect effects of the action alternatives and connected actions.

Under Section 404 of the Clean Water Act, the Army Corps of Engineers (COE) is responsible for issuing 404 permits for discharge of dredge or fill materials into waters of the United States and impacts to jurisdictional wetlands. The project proponent (LMJV, in this case) is responsible for obtaining the necessary 404 permit. The Individual Permit process includes both a public comment period as well as an agency review. COE’s policy of no net loss of wetlands means



that mitigation would be required for impacts to wetlands. The COE also has the authority to place special conditions on the wetland permit to further protect wetlands and aquatic resources.

Procedurally, the land exchange and/or ANILCA access by the Forest Service would need to take place before the project proponent can submit a 404 permit application, if needed. If and when the private party applies for a Section 404 Wetland Permit, the COE will determine the permit type that would be required and the location, size, and type of wetland mitigation required based on the wetland impacts identified. Those impacts would depend on a completed development plan, including proposed grading, building design specifications, drainage plans, and so forth. If COE determines that the project requires a NEPA analysis, an EA or EIS would be prepared. The NEPA analysis for a Section 404 permit would not require that this current FEIS be supplemented. However, the information included in this FEIS can tier to the new NEPA document, or relevant information can be incorporated by reference.

The potential indirect effects of development including impacts on wetlands are analyzed in Chapter 4 of the FEIS (Chapter 4), and the COE regulatory program is discussed in section 4.7.2.1 of the FEIS. CEQ regulations do not require analysis of a worst case scenario.

Issue 11g: The objector alleges the USFS is violating Rio Grande forestwide standards and guidelines for riparian areas as well as the guidance provided by the Watershed Conservation Practices Handbook.

Issue 11g Response: The US Forest Service would not violate the Rio Grande National Forest Revised Land and Resource Management Plan through authorization of a land exchange. Also, impacts to soils, water quality, riparian habitat and vegetation are addressed in the FEIS. Existing NFS land and lands newly acquired by the US Forest Service in the land exchange would be managed under the Rio Grande National Forest Revised Land and Resource Management Plan.

The US Forest Service responded to the objector's comment related to this issue in Volume II FEIS in Response 16 p 123 stating: "*The Action Alternatives would not violate the Forestwide Standards and Guidelines for Riparian Areas or the guidance in the Watershed Conservation Practices Handbook. Specifically, if the Forest Service selects one of the Action Alternatives, they would authorize either a land exchange (Alternative 2), or the construction of an access road (Alternative 3), not a development. Under Alternative 3, the access road crossing Forest Service lands would be constructed in accordance with Forest Service standards. Based on the Concept Development Plans for the Moderate and Maximum Density Development Concepts, the access road across Forest Service lands under Alternative 3 would have one culvert and three bridges where the roadway would cross streams and/or wetlands, and retaining walls would be used to reduce the area of disturbance created by grading.*"

The proposed action, a land exchange, would not violate the Forestwide Standards and Guidelines for Riparian areas or the Watershed Conservation Practices Handbook. By selecting the proposed action, the Forest Service would be authorizing a land exchange, not a development. Existing Forest Service lands and those acquired as a result of the land exchange would continue to be protected by the Forest Plan, and Best Management Practices would be employed to protect wetlands and aquatic resources. Wetlands on the private parcel following the land exchange would be protected by the Clean Water Act, which is administered by the U.S.



Army Corps of Engineers, and impacts to wetlands would require mitigation as determined by the COE. In addition, Forest Plan Standards and Guidelines would not apply to the lands exchanged that become private in which the proposed development would occur.

Some objectors make general comments on the impacts to soils, water quality, riparian habitat and vegetation. The FEIS addresses these concerns as follows:

The FEIS estimates the direct and indirect effects of the development concepts of Alternative 2 on soil resources (Table 4.3-2), discusses how the indirect effect of construction and maintenance of buildings and roadways could induce soil erosion (Section 4.3.1.2.2), and presents mitigation measures for impacts to soils (Section 4.3.2).

The FEIS discusses the direct and indirect effects of non-point source and point source pollution of the development concepts of Alternative 2 including the impact of stream diversion with return flows and storm water runoff on water quality and stream health (Sections 4.1.21.1, 4.1.2.2 & 4.1.2.3).

The FEIS discusses and quantifies the direct and indirect effects of the development concepts of Alternative 2 to riparian/wetland vegetation and other vegetation types (Sections 4.6.1.2.1 & 4.6.1.2.2).

Table 2.6-2 of the FEIS summarizes the direct effects of Alternative 2 on soils, water and vegetation resources, and Table 2.6-3 summarizes the indirect effects of the development concepts of Alternative 2 on soils, water quality and riparian and other vegetation types.

Issue 11h: The objector alleges the FEIS violates NEPA because the FEIS fails to adequately discuss whether wetland mitigation could occur onsite.

Issue 11h Response: The FEIS 3.7 Wetlands and Waters of the U.S. discussed wetland resources. Comments on the specific issue are disclosed in FEIS Vol. 2, Appendix I--- Section 6.0, 12 Wetlands and Waters of the US, Response 20, p. 125--- which describes the process for determining the size, location, and type of wetland mitigation that could be required for the project; “The COE’ policy of no net loss requires that impacts to wetlands and waters of the U.S. be mitigated. If and when the private party applies for a Section 404 Wetland Permit, the wetland mitigation requirement would be determined by the U.S. Army Corps of Engineers. The COE would evaluate any potential wetland impacts and would consider the size, wetland type, and functions and values of the wetlands in their determination of mitigation requirements. However, these concept-level plans analyzed in the FEIS do not have the necessary detail to complete this type of analysis. Therefore, it is not possible to know the magnitude, type, or location of any wetland mitigation that may be required, if a permit is issued. However, given the range of potential wetland impacts that were estimated based on the conceptual development plans, it is reasonable to assume there would be adequate space for onsite wetland mitigation.”

The use or development of lands conveyed out of Federal ownership are subject to all laws, regulations, and zoning authorities of State and local governing bodies, and there may be changes in environmental and social conditions at the time of development on the private lands.



Issue 12a: The Proposed Decision Would Lead to Degradation of the Wolf Creek Pass Lynx Linkage

Issue 12 a Response: The decision is consistent with ESA, NFMA, and USFS policy. The Selected Alternative would have a variety of well documented negative effects (including those from traffic and habitat fragmentation) to individual lynx and their habitat, resulting in an effects determination of *May Affect, Likely to Adversely Affect*, and an authorization of incidental take. However, lynx population viability would be protected by implementation of conservation measures specified in a Lynx Conservation Strategy (e.g., BO Pp. 20-24) that was specifically developed and mandated for this project, which would minimize negative project effects. The United States Fish and Wildlife Service (USFWS) concluded (BO, Pp. 35-36) that "...the Applicant has incorporated all practical measures possible into the proposed action to minimize the impacts of take on lynx" and identified additional, mandatory, reporting and monitoring requirements. The USFWS concluded that "...the temporarily increased mortality rate, as a result of the Village development, of three lynx per six-year period (until conservation measures are implemented) will not appreciably reduce lynx population numbers in Colorado. Once conservation measures are implemented, mortalities of lynx due to traffic on Highway 160 are expected to return to baseline levels. Under the terms of section 7(b)(4) and section 7(o)(2), take that is incidental to, and not intended as part of, the agency action is not considered to be prohibited taking under ESA provided that such taking is in compliance with the terms and conditions of an incidental take statement (BO, P. 33). Therefore, if the anticipated level of take stemming from the proposed action is unlikely to appreciably diminish the lynx population in Colorado, the increased rate of take is unlikely to reduce appreciably the likelihood of both the survival and recovery of lynx in the distinct population segment" (i.e., the lynx population; BO, P. 33). Lastly, the USFWS determined that the "...level of anticipated take..." associated with the project "...is not likely to result in jeopardy to the species" (BO, P. 35).

Issue 12b: The Proposed Decision Would Lead to Degradation of the Wolf Creek Pass Lynx Linkage"

Issue 12b Response: The proposed project would not violate Objective ALL O1 or Standard ALL S1. The Biological Assessment accurately applies the terms "maintain" and "habitat connectivity" as they are defined in the glossary of the Southern Rockies Lynx Amendment (SRLA).

Issue 12c: The Proposed Decision would Cause Permanent Loss of Lynx Habitat. The objector alleges the loss of habitat via the land exchange would violate Objective LINK O1 and Guideline LINK G1 in the SRLA, because there would be a net loss in suitable lynx habitat on NFS land. The relevant SRLA language regarding linkage areas is as follows:

LINKAGE AREAS (LINK): The following objective, standard, and guidelines apply to all projects within linkage areas in occupied habitat, subject to valid existing rights.

Objective LINK O1 - In areas of intermingled land ownership, work with landowners to pursue conservation easements, habitat conservation plans, land exchanges, or other solutions to reduce the potential of adverse impacts on lynx and lynx habitat.



Standard LINK S1 - When highway or forest highway construction or reconstruction is proposed in linkage areas, identify potential highway crossings.

Guideline LINK G1 - National Forest System lands should be retained in public ownership.

Issue 12c Response: The objectives, standards, and guidelines of the SRLA are part of the Revised Land and Resource Management Plan for the Rio Grande National Forest (as amended, 1996, and by the SLRA in 2008; Forest Plan), and must be addressed to determine consistency with the Forest Plan. The determination of whether an individual project is consistent with the Forest Plan is based on whether the project follows standards. Forest Plan objectives and guidelines are not used in the consistency determination (Forest Plan, page P-4).

The FEIS and Biological Assessment analyze expected effects of the alternatives as they pertain to Standard Link S1, and conclude that it would be met (FEIS, page 4-120; BA, Page 102). Therefore the proposal is consistent with the Forest Plan.

Project deviations from guidelines are allowable. The definition of a guideline is “a particular management action that should be used to meet an objective found in a land management plan. The rationale for deviations may be documented, but amending the plan is not required.” (SRLA ROD, page 1-11). An objective is “a statement in a land management plan describing desired resource conditions and intended to promote achieving programmatic goals.” (SRLA ROD, page 1-13). Based on the project record, it is not clear what the specific rationale is for the deviation from Guideline LINK G1. The record is also unclear on how the project will affect meeting the long term Objective, LINK O1. However, the linkage provisions of the Plan are subject to valid existing rights, and the proponent has an ANILCA right of access to the property that is addressed in the EIS, ROD, and project record. Because the rationale for addressing Objective LINK O1 and Guideline LINK G1 are unclear, instructions to the Responsible Official will be provided at the end of this response letter.

Issue 12d-i: The objector alleges the USFS violates NEPA because 1) the Lynx Conservation Strategy was completed without public involvement, and 2) and the public did not have the opportunity to review and comment on the Biological Opinion prepared by US Fish and Wildlife Service.

Issue 12d-i Response: The Lynx Conservation Strategy described measures that would minimize Village-related effects on lynx once the land exchange occurs. These were developed and mutually agreed to by the Forest Service and Applicant during informal consultation, and were finalized on February 21, 2013. Public involvement in its development is not required. The Lynx Conservation Strategy was part of the BA and FEIS where public comment was possible as part of the NEPA process. The BO is always prepared at least after the decision maker has identified a Selected Alternative, and after public comments on the DEIS have been considered. The BO includes the Lynx Conservation Strategy, and is referenced in the FEIS. The BO has been in the Administrative Record for over a year; it has been posted on the USFS website, and the objection period is the first opportunity for the public to comment on the BO since the BO was available. Development of the Lynx Conservation Strategy did not violate NEPA.



Issue 12d-ii: The objector alleges the USFS violates ESA, NFMA, and 36 CFR 254.3(h) because they have not ensured enforceable mitigation measures to ensure that connectivity of lynx habitat is maintained and that lynx would still have an opportunity to recover to a full, viable population.

Issue 12d-ii Response: The mitigation actions proposed in the BA, BO, and FEIS will be enforceable by the USFWS. The Service will be responsible for seeing that every part of the project's Lynx Conservation Strategy is carried out to their satisfaction. Therefore, it is certain that the proposed conservation measures will be applied and enforced.

Issue 12d-iii: The objector alleges the USFS violates ESA and NFMA because the effectiveness of the linkage is already impaired due to traffic, and the increase in traffic from development and operation of the Village for the moderate and maximum development concepts would make it far worse.

Issue 12d-iii Response: Although the proposed action would result in habitat loss and degradation, the analyses and reports regarding project effects on Canada lynx adequately support the DROD, and no violations of law, regulation, or policy are evident.

The project analysis explains that the proposed mitigation measures are expected to be reasonably effective as indicated by reference to the scientific body of knowledge regarding road mitigation actions for wildlife in general (e.g., BA pages 23-24; BO pages 29-30). More specific estimates of mitigation effectiveness are not possible until data from the corridor assessment and lynx trapping/collaring program are gathered and examined. Although an exact prediction about the degree of conservation measure effectiveness is not possible prior to the final decision, the proposed measures have been shown to be variously effective in other scenarios, and we have nothing to indicate they will be wholly ineffective for this project. Therefore, habitat connectivity in the WCPLL and Trout-Handkerchief Lynx Analysis Unit would be maintained at least to the degree specified in the SRLA.

Issue 13: The objector alleges that the USFS violates NEPA by failing to adequately analyze wildlife species.

Issue 13 Response: The analyses and reports regarding project effects on wildlife, fish, and rare plants adequately support the DROD and no violations of NEPA are evident.

The objector alleges that USFS did not analyze the direct and indirect effects on wildlife in detail, because the NEPA analysis was limited in scope. The Forest Service did rigorously explore and objectively evaluate all reasonable alternatives in accordance with 40 CFR §1502.14. As documented in the FEIS, Wildlife BE/Specialist Report, and the Botanical BA/BE, the USFS did take a "hard look" at the direct, indirect, and cumulative impacts of the proposed project on wildlife, fish, and rare plants.

The objector alleges that by summarizing information from the biological evaluation reports in the FEIS, the USFS did not actually analyze the impacts of the proposed development on wildlife or rare plants. However, the BA and BE analyses were prepared in support of the FEIS and the FEIS adequately records the principal results of the environmental analysis, which follows 40 CFR §1502.21, Incorporation by Reference.



The objector alleges that wildlife scope of the analysis was limited "to the Federal exchange parcel, the non-Federal exchange parcel, that part of the private land parcel not exchanged, as well as the road access corridors." However, this quote is taken out of context and Section 3.9.1 of the FEIS (P. 3-65) clearly states that "The Analysis Areas used for wildlife species are variable. Specifically, Analysis Areas were considered at scales that are biologically appropriate for the individual species and species groups considered herein. Therefore, wildlife-related Analysis Areas are described on a species-by-species basis throughout this section" (FEIS 3.9.1 P. 3-65).

The objector alleges that the FEIS lacks NEPA-compliant analysis of impacts to seven wildlife species listed either as Rocky Mountain Regional Forest Sensitive Species (RFSS), or as Management Indicator Species (MIS). As stated in the comment response document (FEIS VOL. 2 p. 136), Sections 3.9.3, 4.9.1.2.2, and 4.9.1.2.3 of the DEIS and the FEIS identify potential direct, indirect, and cumulative impacts for each Alternative, and assess how these impacts could affect the above referenced species. The FEIS also documents the effects of stream diversions and depletions, non-point source pollution, point source pollution, increased fishing pressure, and degraded riparian habitat on Rio Grande cutthroat trout (BE pp. 65-74 and FEIS pp. 4-98 to 4-99 and pp. 4-128 to 4-129). Finally, the USFS acknowledges that there could be adverse impacts to several RFSS wetland plant species in areas affected by water depletions (FEIS pp. 4-80 to 4-86, Botanical BA/BE pp. 35-40, p. 40). No additional analysis is warranted or required.

During the DEIS comment period, Colorado Parks and Wildlife (CPW) stated that "CPW feels that this project will likely have significant cumulative impacts that will affect wildlife regardless of the alternative selected". However, CPW provides no further information to substantiate their opinion. Cumulative effects were appropriately analyzed in the FEIS for each wildlife species. Furthermore, no objections from the CPW were received on the FEIS.

Issue 14a-i: The objector alleges the USFS violates NEPA by failing to analyze and disclose how existing concentrations of all pollutants that currently exceed Instream Water Quality Standards (ISWQS) would be affected by the proposed Village development.

- a) The FEIS documents exceedances of lead, arsenic, cadmium, chlorine, and coliform in water quality data collected in the Analysis Area. As discussed in Sections 3.1.4.3 and 3.1.4.4, there are a number of factors in the watershed that could affect the background concentrations of these pollutants. The FEIS estimates downstream concentrations of chlorine and coliform due to WWTP effluent discharge for the development concepts in December, March, September and June. However, detailed investigations to identify the sources, and then model the potential future concentrations of arsenic, cadmium, and lead under Action Alternatives are not necessary to adequately disclose effects, and meet the twin goals of informing the decision maker and the public.
- b) It should also be noted that the Colorado Department of Public Health and Environment has identified the WWTP effluent pollutants of concern for this segment of North Pass Creek as a part of a prior Preliminary Effluent Limit (PEL) application to the Water Quality Control Division in 2006. These include BOD₅, TSS, oil and grease, pH, fecal coliform, E. coli, total residual chlorine, and ammonia. (Compounds of nitrogen, phosphorus, and sulfur are considered nutrients strongly tied to BOD₅ due to the fact that metabolism of these nutrients is typically



what drives biological oxygen demand). The FEIS predicts the BOD₅, and concentrations of chloride, Nitrate-nitrogen, sulfate, total coliform, E. coli, chlorine, and dissolved oxygen due to WWTP effluent discharge as an indirect effect of the development concepts. There are no instream standards for TSS or oil and grease; therefore, those parameters were not modeled. Predicting the concentrations of un-ionized ammonia is dependent on multiple variables and is unnecessary to understand water quality impacts. The pH level is expected to meet the ISWQS of 6.6-9.0.

- c) As outlined in Section 4.1 of the FEIS, two types of water quality impacts have been evaluated: point-source pollution - in this case the WWTP effluent discharge - and non-point source pollution, which includes pollutants in stormwater runoff that could be delivered to streams. The comment disregards the discussion of non-point source pollution in the environmental consequences for water quality. The potential impacts from non-point source pollutants are correlated to the area of ground disturbance during construction, which can be mitigated with appropriate BMPs; pollutants from roadway runoff are generally correlated to the traffic volume. The development plans are only conceptual, and many factors related to future permitting will affect the development and how it operates, as well as the required mitigation measures that will affect water quality. Therefore, it is not possible to accurately model potential concentrations of these non-point source pollutants. However, qualitative discussions are provided for comparison of the relative potential impacts of the alternatives and development concepts.
- d) Future development of a village would require a WWTP discharge permit by LMJV from the Colorado Department of Health and Environment (CDPHE) Water Quality Control Division (WQCD). As such, a more detailed analysis of existing water quality will be required. Due to the current stream designation, an anti-degradation review shall also be required. It should be noted that the goal of the WQCD is to enforce ISWQS. If background concentrations of regulated pollutants exceed current ISWQS, then it is unlikely the permit effluent limits would allow concentrations to exceed baseline values. When the stream becomes effluent dominated in the winter months, the effluent limitations essentially become the ISWQS.
- e) With regard to total coliform, the high background values are likely due to the existing WWTP effluent discharge being out of compliance. Tables 4.1-7, 4.1-8 predict coliform levels at the ISWQS. The action alternative proposed WWTP permit would be required to maintain ISWQS.

Issue 14a-i Response: The Forest Service is not violating NEPA by authorizing a land exchange. It is reasonable to conclude the State of Colorado would issue a WWTP permit where no violation of local ordinances would occur. Variances may be granted under the permit. If a pollutant continues to exceed limits, Colorado may list the stream under the 303(d) list of impaired waters.

Issue 14a-ii: The objector alleges the USFS violates NEPA by failing to provide a quantitative analysis of the effects of road salts on chlorine concentrations in North Pass Creek.

Issue 14a-ii Response: The US Forest Service complied with NEPA. Chlorine concentrations from road salts were adequately addressed in the FEIS. A quantitative analysis is not required under NEPA, and a qualitative analysis was conducted.



The FEIS includes a qualitative discussion of the potential impacts of non-point source pollution from roadway runoff on water quality of the Analysis Area, including salts from road deicing and sediments from sanding. As documented in Section 4.1.2.1, the degree of roadway runoff pollution is generally proportional to the volume of traffic.

The FEIS acknowledges that “during the winter months, the snow removal and storage process can concentrate road sand, deicers and roadway pollutants in the snow storage areas. Snowpack chemical pollutants are typically released as an ionic pulse in the early weeks of snowmelt” (Williams, et al., 2009; Wheaton and Rice, 2003). For the project area, the first snowmelt occurs in late April to early May, which is typically a period of low stream flow.” Section 4.3.2.2 acknowledges that “water quality features of the proposed detention ponds are not expected to significantly attenuate Cl concentrations and therefore it is likely that North Pass Creek will experience a spike in Cl during the early spring (late April to early May) for a period of a few weeks.” A qualitative discussion is included in the FEIS, and quantitative analysis of chlorine concentrations projected to occur under the development concepts is not necessary to understand the impacts.

Issue 14a-iii: The objector alleges the USFS would violate the Federal Water Pollution Control Act by approving the proposed action.

Issue 14a-iii Response: Section 313 of the Federal Water Pollution Control Act states that federal agencies “shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity.” Through approval of the selected alternative, the Forest Service is authorizing a land exchange, not a development. The land exchange would not violate water quality standards or the Federal Water Pollution Control Act.

As discussed in FEIS Section 2.4, which outlines the development concepts of the action alternatives, individual septic systems would be used only for the Low Density Development Concept, whereas the Moderate and Maximum Density Development Concepts would be constructed with a WWTP that would discharge to North Pass Creek.

Under the Low Density Development Concept of the proposed action, up to nine lots with individual water wells and septic systems could be constructed. Septic systems are regulated by Colorado and Mineral County to prevent pollution of water wells or water sources from septic systems. The septic systems would attenuate residential wastewater to acceptable levels without degradation of the overall aquifer. Septic systems would have a negligible impact on water quality and stream flow in North and South Pass Creeks (Table 2.6-3 of the I FEIS).

WWTP discharge under the Moderate and Maximum density development concepts would affect the surface water quality of North Pass Creek, but is not expected to affect groundwater quality. Surface water impacts from the WWTP discharge are discussed in FEIS Vol. 1, Section 4.1.

Water quality standards for Colorado are established and regulated by the Colorado Department of Public Health and Environment. As discussed in the FEIS, pollutant concentrations resulting from WWTP discharge are not predicted to exceed ISWQS for the action alternatives. Moreover,



the CDPHE is unlikely to permit additional loading if pollutants already exceed ISWQS. The CDPHE WWTP permitting process is intended to uphold state and federal laws.

Issue 14b: The objector states all wetlands and fens transferred in the exchange should be assumed lost and impacts to groundwater are unknown but should be disclosed.

Issue 14b Response: The US Forest Service complies with 40 CFR 1502.22, 1503.4(a)(5), 1508.25(c) and 1508.8(b). Given the general and uncertain nature of the proposed development, a quantitative analysis is not feasible. The qualitative analysis provides sufficient level of detail to make an informed decision for the land exchange. Additional analyses for the development would be required for permits and licenses issued by Mineral County, State of Colorado, and US Army Corp of Engineers.

The *Alterations to Wetland Hydrology* discussion in FEIS Vol. 1, Sections 4.7.1.2.2 and 4.7.1.3.1 provides a relative, *qualitative* comparison of potential impacts to wetlands from disruptions to groundwater flow and increased runoff resulting from impervious surfaces. As described in the FEIS, development concepts with more impervious surfaces have a greater potential to cause alterations to wetland hydrology. The potential disruptions to groundwater hydrology from buildings and belowground structures is related to their size, location, foundation depths relative to the groundwater elevation, direction of groundwater flow, and other factors; as well as details of building design and drainage that could mitigate for these impacts.

Following Forest Service approval of the land exchange, the proponent would submit a PUD application to Mineral County. Determining any potential groundwater hydrology impacts from a future development that is neither designed nor permitted would be speculative, and is not necessary in order to understand the impacts. Moreover, *quantifying* the impacts to wetlands requires a level of investigation that is reasonable to conclude would be completed at the development phase. Detailed hydrologic investigations and completed development plans, including the design of building foundation drainage systems, complete storm water management plans, and snow storage plans would be necessary to quantify (calculate) the potential impacts.

Although the final size, location, and design of buildings are not yet known, the FEIS *qualitatively* evaluates the potential for disruptions to groundwater hydrology of wetlands based on the general locations and sizes provided in the conceptual development plans. The impacts from hotel and residential housing foundations, underground parking, and the roadway underpass below the ski lift are specifically discussed under the alterations to wetland hydrology section for the low, moderate, and maximum density development concepts. Further discussion of potential impacts to groundwater hydrology of wetlands is provided in Chapter 4.2. As discussed in the FEIS (Section 4.7.2.2), highly effective design features can be incorporated into the development plans to reduce the impacts to wetlands and their hydrology.

Detailed discussions of potential indirect effects to wetlands are contained in FEIS Vol. 1 Section 4.7. The impact analysis regarding indirect effects to groundwater resources, contained in Section 4.2 is also relevant to the discussion of wetlands.

In regards to wetlands, cumulative effects are discussed in FEIS Vol. 1, Section 4.7.3. Projects with potential cumulative effects to wetlands in the Analysis Area include the construction and



operation of the Wolf Creek Ski Area (WCSA); construction, operation and maintenance of U.S. Highway 160; and the construction, operation and maintenance of the CDOT maintenance facility.

FEIS Vol. 1, Section 4.7.4 discusses irreversible and irretrievable commitment of resources for wetlands. Any impacts to fens are irreversible and irretrievable, in accordance with Forest Service policy. As stated in the Region 2 supplement to FSM 2600 Management of Fish and Wildlife Habitat (Chapter 2630), “because the rate of accumulation of peat in fens is so slow and the species associated with fens are so unique, these ecosystems are difficult to reclaim and are essentially irreplaceable.” The COE would require mitigation for impacts to jurisdictional wetlands during the Section 404 permitting process; these wetland impacts would not be irreversible or irretrievable commitments of resources. Impacts to the hydrology of wetlands are not irreversible and can be mitigated.

The existing groundwater investigations conducted in 2005 and 2006 were focused on the Alberta Park Wetland Complex and were designed to evaluate potential impacts to wetlands from development of the private parcel. Groundwater investigations at that time were not conducted for the area east of the Alberta Park Wetland Complex due to the low density of wetlands in this area, and because the studies pre-dated the land exchange proposal; thus it was not known whether groundwater investigations in the area would be warranted.

The Forest Service acknowledges that potential disruptions to groundwater hydrology of wetlands could occur. Further investigations are not essential to a reasoned choice among the alternatives. In order to engineer and design a development on the private parcel, additional groundwater investigations would likely be required. In particular, this information would be used to design building foundations and drainage systems. However, this would be determined in the future based on engineering and design needs, and could be required by the COE as a part of the evaluation of potential wetland impacts for a Section 404 wetland permit.

Issue 14c: The objector alleges the USFS violates NEPA because they failed to monitor and disclose baseline nutrient data for Alberta Reservoir as well as the area around the proposed Village at Wolf Creek.

Issue 14c Response: The US Forest Service does not violate 40 CFR 1503.4(a)(5) and 1502.22. Future in-depth analyses would be required to obtain additional required permits on private lands.

As discussed in FEIS VOL. 2, Response 06-10, monitoring the water quality impacts of any development resulting from Forest Service approval of the Proposed Action and subsequent Mineral County approval of a PUD is beyond the jurisdiction of the Forest Service. The PUD process with Mineral County will analyze and discuss the impact of the development on water quality based on detailed plans that will be developed in the future. The development plans will be affected by future economic conditions, as well as the requirement to obtain other permits, licenses, entitlements, and/or consultation, as documented in FEIS Vol. 1, Section 1.13.

Additional nutrient loading to Alberta Park Reservoir is not expected to occur due to the Proposed Action. The WWTP effluent discharge will be only to North Pass Creek, and there



would be no effluent discharge to South Pass Creek, which flows into Alberta Park Reservoir. For the Proposed Action, the majority of the developed drainage sub-basins will not outfall to South Pass Creek. For those sub-basins that will outfall to South Pass Creek, it is understood that detention will include a water quality feature (wet detention), which can effectively remove 40-80% of soluble nutrients (EPA 832-F-99-048, September 1999).

As discussed in FEIS Vol. 1, Section 3.1.4.3, the existing hypereutrophic condition at Alberta Park Reservoir is possibly related to meteoric precipitation of nutrients to a highly nutrient sensitive body of water; water quality sampling data collected by CDPHE at Alberta Park Reservoir in 2009 and 2010 (51021_20100921WQCD_AlbertaParkRes).

Issue 14d: The objector alleges the USFS violates NEPA by failing to adequately respond to EPA's comment on the DEIS to include a discussion regarding the Forest Service's approach to water quality monitoring of indirect impacts associated with the development of the Village at Wolf Creek.

Issue 14d Response: The US Forest Service complies with 40 CFR 1503.4(a)(5) and 1502.22 by acknowledging that future studies would occur by the Proponent with Mineral County and CDPHE (Volume II FEIS p. 97). Given the general and uncertain nature of the proposed development, a quantitative analysis is not feasible. Additional analyses for the development would be required for permits and licenses issued by Mineral County and the State of Colorado.

The FEIS does not directly respond to the issue raised in the current objection. The FEIS acknowledges the potential future development of the Village would be a connected action, and it is analyzed as an indirect effect. However, the development concepts are general plans presented for comparative purposes, and do not have the necessary detail to complete a quantitative analysis. The development of a future Village would be subject to a number of additional permits and approvals, as discussed in Section 1.13 of FEIS Volume 1; therefore, it is not possible at this stage of planning to complete a more detailed impact analysis for a phased development that could occur over a number of years, depending upon economic conditions.

Issue 14e: The objector alleges the USFS violates NEPA for failing to adequately respond to EPA's comment on the DEIS that the FEIS should provide floodplain mapping for North and South Pass Creeks.

Issue 14e Response: The US Forest Service complies with 40 CFR 1503.4(a)(5) and 1502.22 with their response 11 in Volume II FEIS p 97: "A floodplain mapping of North and South Pass Creeks is beyond the scope of this FEIS because the purpose of the FEIS is to evaluate access alternatives to the non-Federal inholding. It should be noted that the Forest Service does not regulate development on private land. Mineral County's September 24, 1991 Floodplain Ordinance provides development regulations for structures in the 100-year floodplain. Therefore, Mineral County will determine the need for any floodplain mapping during the PUD process for any potential development proposed by the Proponent following Forest Service approval of the Action Alternatives, if they determine such studies are warranted."

The objector's interpretation of EPA's claim is not entirely accurate. The EPA's comment letter states (CL1 p. 2), "We appreciate the US Forest Service efforts to disclose indirect impacts to



aquatic resources associated with the connected action of developing the Village at Wolf Creek. However, the DEIS notes in numerous instances that certain detailed information is not available at this time, including mapped floodplains for North Pass Creek and South Pass Creek...” and “To the extent possible, we recommend that the FEIS fill information gaps in order to provide disclosure of the full impacts to aquatic resources that could result from the development.”

EPA did not explicitly state that the project could adversely impact the floodplain, but merely requested that floodplain mapping be included to the extent possible. The FEIS Vol. 1 disclosed the baseline conditions of floodplains of these two creeks and also analyzed the effects of the Proposed Action on these floodplains. The US Forest Service followed CEQ regulations by stating that FEMA mapping for the area is not available.

Issue 14f: The objector alleges the USFS violates NEPA by failing to adequately respond to EPA’s comment to establish baseline water quality conditions for small streams that could be impacted by the Village at Wolf Creek.

Issue 14f Response: The US Forest Service complies with 40 CFR 1503.4(a)(5) and 1502.22 in response Volume II FEIS p 100; “*There is no stream flow data for the small streams that would potentially be impacted by development resulting from Forest Service approval of either of the Action Alternatives. Furthermore, there are no stream gauge records for small, nearby streams suitable for extrapolation. Therefore, the Snowmelt Runoff Model (SRM) was used to calculate the average monthly stream flow of North Pass Creek. The Forest Service believes that the SRM data accurately characterizes the hydrology of the project site. See Section 3.1.3.2 of the FEIS. Mineral County will determine the need for any baseline hydrology studies for any potential development proposed by the Proponent during the PUD permitting process.*”

EPA raised concerns regarding water quality monitoring in DEIS comment letter CL1 on page 3. However, the objector’s interpretation of EPA’s comments is not entirely accurate. The EPA commented “*we recommend the FEIS include a discussion regarding USFS’s approach to water quality monitoring of indirect impacts associated with the development of the Village at Wolf Creek and whether thresholds for triggering enhanced mitigation would be considered. In addition, to monitoring on North Pass Creek and South Pass Creek, nutrient monitoring (e.g., total phosphorus, total nitrogen, and sediment) in the area is warranted given the hypereutrophic state of Alberta Park Reservoir. Identification of any significant gaps in existing water quality data would be helpful in determining needs for future monitoring plans. The CDPHE’s Water Quality Monitoring Strategy and annual monitoring work plans are valuable references.*”

The existing water quality data in Appendix C adequately reflects the baseline water quality of small streams tributary to North and South Pass Creeks since the project occurs close to the headwaters of both of these creeks, and the tributary streams are not significantly long. It should be noted that the SRM did model rainfall runoff in addition to snowmelt runoff (see 3.1.3.2 Snowmelt Runoff Model) “The daily rainfall precipitation used for the model was an average over the 22 year record,” and as such, does adequately characterize streamflow during non-snowmelt conditions.



Issue 14g: The objector alleges the USFS violates NEPA and 36 CFR 254.3(h) by failing to include binding mitigation measures as well as place terms and conditions on the parcel that would be conveyed to private ownership.

Issue 14g Response: The FEIS, DROD and Preliminary Drainage Report detail the mitigation measures (e.g. BMPs and monitoring) which are likely to be required by federal and state regulatory agencies and local government entities for a development on private land. The USFS does not regulate development on private land, and hence relies on the jurisdiction of these other agencies and local government to adequately protect the environmental benefits and hence, the public interest of the proposed land trade required by 36 CFR 254.3(h). In addition, the lynx conservation measures specified in the BO will minimize adverse effects associated with the selected alternative on lynx. The USFWS has concurred with this finding. The objector alleges that the USFS violates NEPA at 40 CFR §1505.2(c) by failing to document why the USFS has declined to convey the federal parcel with certain restrictions to mitigate adverse effects. However, the DROD clearly states that the decision would require LMJV to obtain all required permits (and hence comply with the mitigation and monitoring requirements of those permits), and that the Forest Service has no authority to regulate the degree of density of the development on private land, and thus the FS will limit its mitigation and monitoring to lands within its purview, i.e. those lands remaining under federal ownership adjacent to the proposed project. Robertson v. Methow Valley Citizens Council, 490 U.S. 322, at 352-3 (1989) (NEPA does not require adoption of a mitigation plan).

Comments on the issue are disclosed in the response to comments in FEIS Vol. 2, Appendix I--- Section 6.0, 06 Surface Water, 10 Climate and Air Quality, and 12 Wetlands and Waters of the US, which describe BMPs and mitigation for the respective resources. The size and type of wetland mitigation that may be required would be determined by the COE as a part of the 404 wetland permitting process when LMJV applied for development of the parcel with Mineral County. The response to comments also explains that the Forest Service does not regulate development on private land, but is responsible for protecting resources on NFS land. It is the Proponent's responsibility to comply with all Federal, state and Mineral County regulations.

Issue 15 a: The objector alleges the USFS violates the APA because their conclusion that water rights would be sufficient to meet the needs of a maximum build out scenario is not supported by evidence.

Issue 15a Response: As shown in the record, the best available information indicates that the proponent's water rights are sufficient to meet the needs of development, including the maximum build out scenario. The claims/arguments made by the objector above are not supported by the record or other evidence.

As described in Section 3.4.1 of the FEIS, Vol.1, LMJV's existing water rights and plan for augmentation decreed in Case No.87CW7 are applicable to the Village at Wolf Creek Access Project. "While the Action Alternatives are not identical to development concepts contemplated in 1987, the overall uses and water resource operations proposed by the current Proponent fall within the limits of the original 1987 decree (p. 3-25)."



The FEIS describes the senior Colorado Water Conservation Water Board (CWCB) instream water rights on Pass Creek and the North Branch of Pass Creek in Section 3.4.3.2. Page 3-27. The analysis of the Proponent's water supply in Section 4.4.1, page 4-47 included the CWCB's instream flow water rights. The Proponent's augmentation plan decreed in Case No. 87CW7 contains a section specific to the exercise of the Proponent's appropriative rights of exchange as they relate to CWCB's instream flow rights. The Exchanges detailed in 87CW7 are subject to a stipulated agreement with the CWCB to account for and protect the CWCB's instream flow rights. The terms of this decree, including the CWCB stipulation, were incorporated into factors that were applied to the water supply model.

Specific to the CWCB instream flow right, the water supply model required the Proponent to release water from on-site storage in all months except during the high flow runoff season. The FEIS evaluated a scenario in which the CWCB instream flow rights on the South Fork of the Rio Grande River and on Pass Creek were fully augmented in every year between 1938 and 2009, during the critical summer and winter season, July through March. The water supply model also restricted the ability to divert into storage by only allowing this diversion during the high flow runoff season and only in an amount that protects the CWCB instream flow requirement on both Pass Creek and the South Fork of the Rio Grande River. As a result, the FEIS evaluated a scenario in which the Proponents diversions to storage could not cause the streamflow to drop below the CWCB's instream flow right.

LMJV's decreed plan for augmentation contemplated a development of more than 208 units. As shown in Table 3.4-1 of the FEIS, the development concept outlined in Case No. 87CW7 included: 71 residential homes, 72 residential duplexes, 1,483 condominium units, 220 employee housing units, 87 apartments, 34 cluster housing units, 440 hotel units, 37 dude ranch units, and 259,200 ft² of commercial space. This development concept is equal to 1,748 EQRs, equal to 272.7 acre feet per year and an annual consumptive use of 30.1 acre feet.

The Maximum Density Development Concept that is presented in Section 4.4.1.2.2 of the FEIS consists of 138 single family homes, 552 townhomes, 821 condominium units, 200 hotel units, and 221,000 ft² of commercial space (1,711 "units" + 221,000 ft² of commercial space). Using the water use assumptions outlined in Case No. 87CW7 (described above), this development concept would generate a water requirement equal to 1,471 EQRs or an annual diversion amount 153.4 acre feet, which is less than LMJV's decreed limitation (272.7 acre feet). Therefore, LMJV's decreed plan for augmentation is sufficient to allow for any of the development concepts of the Proposed Action to be developed without causing injury to other water right users in the Rio Grande basin.

Issue 15b: The objector alleges that the USFS violates NEPA because the FEIS did not disclose CWCB minimum stream flow water rights for Pass Creek and its tributaries, nor did they disclose effects to water quantity and ability to augment water supply.

Issue 15b Response: The FEIS does adequately disclose the CWCB instream flow rights and accounts for them in the modeling.

The FEIS describes the senior CWCB instream water rights on Pass Creek and the North Branch of Pass Creek in Section 3.4.3.2. Page 3-27. The analysis of the Proponent's water supply in



Section 4.4.1, page 4-47, included the CWCB's instream flow water rights. The Proponent's augmentation plan decreed in Case No. 87CW7 contains a section specific to the exercise of the Proponent's appropriative rights of exchange as they relate to CWCB's instream flow rights. Water rights in Case 87CW7 are subject to a stipulated agreement with the CWCB to account for and protect the CWCB's instream flow rights. The terms of this decree, including the CWCB stipulation were incorporated into factors that were applied to the water supply model.

Specific to the CWCB instream flow right, the water supply model described in the FEIS required the Proponent to release water from on-site storage in all months, except during the high flow runoff season. Further, the FEIS evaluated a scenario in which the CWCB instream flow rights on the South Fork of the Rio Grande River and on Pass Creek were fully augmented in every year between 1938 and 2009, during the critical summer and winter season, July through March. The water supply model also restricted the ability to divert into storage by only allowing this diversion during the high flow runoff season, and only in an amount that protects the CWCB instream flow requirement on both Pass Creek and the South Fork of the Rio Grande River. As a result, the FEIS evaluated a scenario in which the Proponents diversions to storage could not cause the streamflow to drop below the CWCB's instream flow right.

Water Rights Case No. 87CW7, referenced in the FEIS details at length how the Proponents augmentation plan will operate, and the stipulation to the CWCB instream flow right. Out of priority depletions on South Fork of Rio Grande River and Pass Creek, where the instream flow rights are located, are to be replaced with releases from on-site storage.

Issue 15c: The objector alleges the USFS violates NEPA because they have not adequately considered effects of development of the Village at Wolf Creek on water rights, and that additional modeling is needed to determine an accurate maximum Equivalent Residential Units (EQR), and that considers how climate change may reduce water supply for the entire Rio Grande Basin.

Issue 15c Response: The Rio Grande Decision Support System (RGDSS) models groundwater, and is not a tool used for calculating how much water would be used with the three development scenarios and calculating EQR. Adequate modeling was used, and climate change was addressed.

The FEIS evaluated the ability of the Proponent to legally and physically supply sufficient water necessary to meet water demands for each Alternative for three separate development scenarios. The physical supply component modelling in the FEIS was modelled based on streamflow data recorded on a gauge on the South Fork of the Rio Grande River from 1938 to 2009. The streamflow data was downloaded from the RGDSS. The seventy-two year continuous streamflow dataset contains dry year sequences in the mid-1950s, late 1970s, and early 2000. As detailed in the EIS at Page 4-47, Section 4.4.1 the Proponent's ability to divert the available streamflow was further restricted in the water supply model to account for physical limiting factors associated with low flow conditions. In addition, the water supply model required the Proponent to augment stream depletions every month, except during high flow season, with releases from on-site storage.



The FEIS also addresses the water supply model used to evaluate the projects' decreed augmentation plan in the response to comments on page 109. The water supply model allowed diversions into storage only during the high flow runoff season, but only if the stream flows remained above the CWCBC instream flow requirement. In addition, the diversions to storage were restricted by the annual decreed exchange limit.

The climate change issue was addressed on the response to comments on page 110, Volume 2, Appendices of the FEIS. While recognizing that climate change was not specifically addressed, the model used a conservative assumption in the analysis, including an estimate of the storage requirements needed to withstand a multi-year drought event.

Issue 15d: The Decree Plan is based on conditional type junior water rights, is an administrative nightmare to implement in an already over appropriated basin and the FEIS has not adequately provided an analysis of the Augmentation Plan.

Issue 15d Response: The State of Colorado is clearly responsible for administration of water rights. The District Court, Water Division 3 in Case 87CW7 found that the augmentation plan was adequate.

The USDA Forest Service and State of Colorado have signed a Memorandum of Understanding (MOU) whereby the Forest Service recognizes and respects the authority of the State to allocate water available for appropriation and agrees that it is the States responsibility to implement state water law and administer all state water rights.

The FEIS discusses how water rights are administered on page 3-24, and how a plan of augmentation works on page 3-28. Case No. 87CW7 is a court decree awarding water rights and approving an augmentation plan. The District Court in Colorado Water Division 3 has legally allocated water and determined that it can and will be put to beneficial use under the Proponent's plan. Under the State's water administration system, when a senior water right in the Rio Grande basin is not fully satisfied, the water user can contact the Division 3 Engineer and request that upstream junior water rights be curtailed until the senior right is fulfilled.

Issue 15e: The objector alleges that the USFS violates NEPA because the Water Rights and Use Section is unnecessarily complicated and fails to provide any substantive analysis.

Issue 15e Response: The appropriate methodology was applied and the analysis is adequate. The USDA Forest Service and State of Colorado have signed a Memorandum of Understanding (MOU) whereby the Forest Service recognizes and respects the authority of the State to allocate water available for appropriation, and agrees that it is the States responsibility to implement state water law and administer all state water rights. The FEIS discusses how water rights are administered on page 3-24, and how a plan of augmentation works on page 3-28. Case No. 87CW7 is a court decree awarding water rights and approving an augmentation plan. The District Court in Colorado Water Division 3 has legally allocated water, and determined that it can and will be put to beneficial use under the Proponent's plan. Under the State's water administration system, when a senior water right in the Rio Grande basin is not fully satisfied, the water user can contact the Division 3 Engineer and request that upstream junior water rights be curtailed until the senior right is fulfilled.



The appropriate models, methodology and/or science were applied and the analysis is adequate.

Issue 15f: The objector alleges that the USFS violates NEPA because the FEIS does not fully address how and where additional water supply would be stored on the project site.

Issue 15f Response: The US Forest Service complies with NEPA by adequately addressing water storage as described above.

The FEIS identifies the volume of water storage required for the Moderate and Maximum Density Development Concepts of the land exchange, estimates the storage volume of each tank, determines the number of tanks required, and illustrates the general location (Figure 2.4-2) of the tank farm. Figure 2.4-6 illustrates the general location of the tank farm for the Maximum Density Development Concept and states that additional storage areas will be required at future stages of planning.

The purpose of the FEIS is to evaluate access alternatives to the private land inholding. The volume of water to store, storage methods, and tank locations would be determined during the Mineral County PUD process and will be based on a detailed PUD plan.

Issue 15g: The objector alleges that the USFS violates NEPA because the FEIS fails to analyze the impacts of flooding on water quality, infrastructure, power generation, and other reasonably foreseeable impacts.

Issue 15g Response: The US Forest Service complies with NEPA by characterizing the floodplains of North and South Pass Creeks, and estimating the width of the floodplains in the Floodplain and Wetland Assessment. Floodplains have not been mapped for North and South Pass Creek on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, Mineral County, Colorado (Unincorporated Areas), Community Number 080284 A. The County would require the Proponent to apply for a floodplain development permit. Through this process, the specific issues related to flooding would be analyzed and addressed.

The purpose of the FEIS is to evaluate access alternatives to the non-Federal inholding. It should be noted that the Forest Service does not regulate development on private land. Mineral County's September 24, 1991 Floodplain Ordinance provides development regulations for structures in the 100-year floodplain. Therefore, Mineral County will determine the need for any floodplain mapping during the PUD process for any potential development proposed by the Proponent following Forest Service approval of the Action Alternatives, if they determine such studies are warranted.

The FEIS does characterize the floodplains of North and South Pass Creeks, and estimates the width of the floodplains. As illustrated by Figures 2.4-2 and 2.4-6, the Moderate and Maximum Density Development Concepts, all residential and commercial structures are located at sites and elevations significantly above the generally narrow floodplains of North and South Pass Creeks. Furthermore, no structures would be located along South Pass Creek, and the only structure along North Pass Creek would be the wastewater treatment facility.

It should be noted that in 2014, Mineral County adopted the Colorado Water Conservation Board's Model Ordinance for Floodplain Damage Prevention (Ordinance #14-01, Year 2014).



This 29-page ordinance requires that new construction projects and substantial improvement projects within the County obtain a floodplain development permit. The approval or denial of this permit is then based on the provisions outlined in the ordinance, as well as the following 10 relevant factors:

1. The danger of life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
6. The cost of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electric and water systems;
7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
8. The necessity to the facility of the waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
10. The relationship of the proposed use to the comprehensive plan for that area.

Issue 16: The USFS violated NEPA by not analyzing the feasibility, and potential impacts of a grade separated interchange at the village access road and Highway 160.

Issue 16 Response: The grade separation interchange may only be needed if the Maximum Density Concept is built, and only if the daily traffic loads support the need. This Concept is potentially 30 years out, only speculative at this point, and does not meet the definition of a “reasonably foreseeable future action”.

The April 2013 scoping notice identifies that “a grade separated interchange off Highway 160 capable of handling full build-out traffic estimates will be required to be built from the very beginning of development.” However, following the public and internal scoping process, the Proposed Action was further refined to include Low, Moderate and Maximum Density Development Concepts. The point of identifying and analyzing a range of development/density scenarios for the private land was to reinforce that the Forest Service has no say in what the private landowner does with this property, while providing a full and transparent account of potential indirect effects that could result from authorization of a land exchange (Alternative 2) or road easement (Alternative 3).



As stated repeatedly throughout the FEIS (FEIS Vol. 1, e.g. Section 2.4, p. 2-6), the Forest Service has no authority to regulate the degree or density of development on private land. This falls to the jurisdiction of Mineral County, and it is unknown what development configuration or density Mineral County may approve in the future.

The Social and Economic Resources Analysis (FEIS Vol.1, p. 4-196) indicates that implementation of the Maximum Density Development Concept would likely occur over a 30-year period. Any long-term projection for residential development of the private land carries a great deal of uncertainty, as potential economic cycles, regional demographics, societal shifts, and technology shifts result in many unknowns. Therefore, whether or not the densities assumed for the Maximum Density Development Concept would ever be achieved is purely speculative at this time.

As indicated in the FEIS, an at-grade intersection is anticipated to be sufficient for both the Low and Moderate Density Development Concepts. However, the FEIS acknowledges that CDOT may require a grade-separated intersection at some point in the future *if traffic related to private land development were to reach a certain threshold*. This concept is confirmed in the November 2011 memo from Felsburg Holt & Ullevig (FHU, 2012):

CDOT has indicated that they are open to the concept of an at-grade intersection as a preliminary access to the Village, and would allow such an access configuration up to the point where Village traffic creates poor operations at the intersection. FHU agreed to conduct an operational analysis of the intersection under increased traffic conditions to determine the peak traffic threshold where the intersection would no longer be able to safely and effectively move traffic, and would need to be replaced by a grade-separated interchange.

Therefore, the potential need for a grade-separated interchange effectively would become a limiting factor for private land development beyond the Moderate Density Development Concept. Should such a threshold be reached at some point in the future, LMJV would need to make a project proposal to CDOT, and if it were to be accepted, a site-specific NEPA analysis (per FHWA regulations) would need to be prepared to analyze the direct, indirect, and cumulative impacts of a grade-separated interchange.

Regardless, if a grade-separated interchange were to be necessary to accommodate residential development, it is likely that it would be in the distant future. Due to both the speculative nature of the need for a grade-separated interchange, and the temporal disconnect from the current proposal for access to private lands, it does not meet the definition of a “reasonably foreseeable future action” (36 CFR §220.3), warranting cumulative effects analysis in the FEIS.

Issue 17: The objector alleges the USFS violates NEPA by failing to assess the effects of removing the scenic easement, particularly with respect to the Continental Divide National Scenic Trail and by failing to ensure protection of scenery; the USFS is relinquishing a right that ensures protection of visual resources.

Issue 17 Response: The 1998 Amended Scenic Easement was a voluntary agreement between the LMJV, Wolf Creek Ski Corporation, and the United States of America (the Grantors). Per the Easement, the Grantors confirmed their desire to manage and develop the private land acquired



via a land exchange in accordance with the 1986 Decision Notice that approved it. It is designed to ensure that development of private lands is “compatible with and complimentary to” the Wolf Creek Ski Area. At the outset of the current NEPA process, the decision was made that the scenic easement would only apply to the lands (roughly 120 acres) originally conveyed to the LMJV as a result of the 1987 land exchange. The additional (roughly) 204.4 acres of NFS land that would be conveyed to the LMJV as a result of this land exchange would not be subject to the easement. Thus, the scenic easement is not proposed to be removed or relinquished as a component of the land exchange; rather, it does not apply to newly-acquired private lands.

Regardless of where the Scenic Easement applies and does not apply, Mineral County zoning and land use regulations will apply to the development of all private lands. Furthermore, any development will be subject to the Mineral County PUD review/approval process.

Per the DROD Rationale (Section 5.0, p. 25), it is a logical conclusion that development of private lands for a residential village (subject to both the 1998 Amended Scenic Easement and Mineral County zoning and land use regulations) would be compatible with the theme, setting, and desired conditions of MA 8.22 for ski based resorts. The Forest Plan states that visitors can expect to see facilities associated with the ski area and four-season recreation resource uses are encouraged. (1996 Forest Plan p. IV-39)

Section 3.10 of the FEIS (p. 3-111 and 3-112) indicates the Continental Divide National Scenic Trail overlooks the entire Analysis Area. Foreground, middle ground, and background views from the CDNST include WCSA, the private land parcel and NFS land to the east, rolling peaks and forested ridges, the Weminuche Wilderness Area, other portions of the Rio Grande and San Juan NFs, and the Hwy 160 corridor. There is currently no Continental Divide National Scenic Trail Unit Plan to provide direction for an effects analysis.

The surrounding lands are in Management Area 8.22 SKI-BASED RESORTS – “These areas are managed for their existing or potential use as ski-based resort sites.” (LRMP, pp. IV-39)

Under Alternative 2, ± 177.8 acres of private lands in this inholding would be exchanged with the Rio Grande NF for ± 204.4 acres of NFS land, resulting in a private parcel of ± 323.9 acres. The ± 119.5 acres of the existing private inholding that remain in private ownership would still be subject to the Scenic Easement requirements; however, the ± 204.4 acres of Federal land proposed to be exchanged with the Proponent would not be subject to the provisions of the Scenic Easement.

In the FEIS Sections 3.10.3.2 and 4.10.1.5.1, and in the Scenic Easement itself (Appendix F of FEIS Volume 2, pp. 35-42), the easement is not intended to conflict with or intrude upon land use controls of the State of Colorado, Mineral County, or other unit of local government. The Forest Service has determined that as a Federal Land Management Agency, it would be inappropriate for it to attempt to enforce additional regulations on private lands. Thus, any future development of private lands (including lands subject to the existing Scenic Easement), is additionally required to comply with the rules and laws of Mineral County under a PUD as the appropriate mechanism for land use control on private lands. (FEIS Vol. 2, Appendix, Response to Comments, pp. 140)



Issue 18: The objector alleges the USFS violates NEPA and ESA for failing to reinitiate consultation on the yellow-billed cuckoo.

Issue 18 Response: The yellow-billed cuckoo was analyzed in the Wildlife BE for the Village at Wolf Creek Access Project (Table 9-1, p. 134). At the time of report publication (September 2013), and until November 12, 2014, the species was listed as a Federal Candidate. The BE concluded that Action Alternatives 2 and 3 would have no impact to the cuckoo or its habitat, as appropriate habitat does not exist within the project area, and the project area is above the altitudinal range of the species (BE p. 134).

On November 3, 2014, the western distinct population segment of the yellow-billed cuckoo was designated as Federally Threatened by the USFWS (79 FR 59991). Although this new status was not formally analyzed in the project BA or BO (because the species was a Candidate species at the time those documents were finalized), the effects analysis completed in the BE, when the species was a Federal Candidate, is still relevant and applicable. There is no yellow-billed cuckoo habitat on the Rio Grande NF.

The objector also questions how much water flow can be removed from North and South Pass Creeks before it would affect downstream riparian habitats inhabited by the cuckoo. Although this information is not expressly discussed in the Wildlife BE, the FEIS does detail the water depletion and augmentation plans. More specifically, there would be water depletions associated with the Moderate and Maximum Density Development Concepts for the Proposed Action. LMJV would utilize their existing water rights and the water would be drawn from existing infiltration galleries in North and South Pass Creeks and stored on-site. However, to avoid out of priority depletion effects to downstream Rio Grande Basin water users, these withdrawals would be augmented. Augmentation water would come from two sources as specified in the proponent's decreed plan for augmentation in Case No. 87CW7: 1) the Rio Grande Reservoir, located 32 air miles northwest of the project site and 2) on-site water storage.

The augmentation water released from Rio Grande Reservoir would affect the Rio Grande River both upstream and downstream of its confluence with the South Fork of the Rio Grande in the Town of South Fork. The augmentation water released on-site would affect the approximate 21-mile-long reach of Pass Creek and the South Fork of the Rio Grande River, located between the Project Area and the town of South Fork, and then flow to the Rio Grande River. During wet and extremely wet time periods, augmentation may not be required. However, flows are expected to be high during these times.

Currently proposed critical habitat for the yellow-billed cuckoo begins on the Rio Grande River, approximately four and a half river miles east and downstream of the town of South Fork (Unit 59, CO-6 Upper Rio Grande 3; 79 FR 48547), below where the augmentation flows enter the Rio Grande River. Therefore, any water depletions associated with the Proposed Action would not extend to or affect any critical habitat of the yellow-billed cuckoo. This change of status and expanded analysis will be submitted in a Section 218 Report, and added to the administrative record. Thus, a reinitiated consultation for a species that would not be affected by the Proposed Action is not necessary to meet section 7 requirements.



Issue 19: The objector alleges the USFS violates NEPA because proponent bias and control of the third party contractor resulted in a flawed and biased NEPA process.

Issue 19 Response: The Responsible Official followed administrative procedures pursuant to NEPA third Party contracting and conditions of the MOU.

Based on a review of the Exhibits noted below, no NEPA decision points were discussed with the proponent or the proponent's representative. All indications show that the MOU (Administrative Record 2.4 - 20110507 Signed USFS-LMJV MOU.pdf) was followed.

Exhibits found at: <http://friendsofwolfcreek.org/wolf-creek-access-project-administrative-objection-exhibits>:

- Exhibit 16: Employment Agreement Offer from Adam Poe to David Johnson (WER).
- Exhibit 21: Email from Tom Malecek to David Johnson regarding cooperating agencies
- Exhibit 25: FOIA response with redacted information
- Exhibit 30: Email from David Johnson to Tom Malecek with details of contacts with proponent
- Exhibit 31: Email from Tom Malecek to David Johnson regarding Feasibility Analysis as it related to Purpose & Need
- Exhibit 32: Email from David Johnson to Adam Mendonca regarding response to comments
- Exhibit 33: Email from Tom Malecek to Cambria Armstrong and David Johnson regarding comment period
- Exhibit 34: Email from Tom Malecek to David Johnson and Randy Ghormley – forwarded information from Adam Poe

Issue 20: The objector alleges the USFS violates NEPA and APA for failing take a hard look at new information on yellow billed cuckoo, water supply, Canada lynx, boreal owl, Continental Divide National Scenic Trail Unit Plan, and other new and relevant information mentioned in other sections of this Objection in order to satisfy the “hard look” requirement and case law.

Issue 20 Response: The Forest Service FEIS and DROD comply with all applicable laws, regulation, and policy. The claims/ arguments made by the objector above are not supported by the record or other evidence.

Yellow-Billed Cuckoo

The yellow-billed cuckoo was analyzed in the Wildlife BE for the Village at Wolf Creek Access Project (Table 9-1, p. 134). At the time of report publication (September 2013), and until November 12, 2014, the species was listed as a Federal Candidate. The BE concluded that



Action Alternatives 2 and 3 would have no impact to the cuckoo or its habitat, since suitable habitat does not exist within the project area, and the project area is above the altitudinal range of the species (BE p. 134). This change in status of the species and expanded analysis will be submitted in a Section 218 Report and added to the project file. Under section 7 of the ESA, re-initiation of consultation is not required for this species, because the project will have no effect on yellow billed cuckoo or designated critical habitat for the species. The objector's concerns are addressed in detail in the *RMW Issue 18* response.

Water Supply

There is no new information on water supply to consider. The objector's concerns are addressed in the *RMW Issue 15* response. No additional analysis is warranted or required.

Boreal Owl

The new information the objector refers to is based on proprietary information for the Wolf Creek Ski Area, and would not have substantially changed the results of the analysis in the FEIS. See *RMW Issue 21* response for more details.

Continental Divide National Scenic Trail Unit Plan

Such a plan has not been developed; therefore, there is no new information to consider.

Issue 21: The objector alleges the USFS violates NEPA and APA for failing to consider best available science concerning a recent boreal owl survey.

Issue 21 Response: The data used to formulate the analysis is sufficient for making a well-informed, reasoned determination of effects on the boreal owl.

The email that the objector refers to, R. Thompson, Western Ecosystems, Inc. (WEI) notifying R. Ghormley, RGNF Forest Wildlife Biologist, of more recent boreal owl detection in the project area, was for another, albeit overlapping, project with Wolf Creek Ski Area. That is why that email does not appear, appropriately, within the Village at Wolf Creek administrative record. Because that data was not and is not public knowledge, because WEI did not have permission to use that data in the Village at Wolf Creek analysis, and because use of that data would not have qualitatively or quantitatively changed the results of the Village at Wolf Creek analysis, the 2010 boreal owl detection was not included in the BE, DEIS, or FEIS. Based on prior boreal owl detections in the project area, and the assumption that all suitable habitat present was occupied, the BE, DEIS, and FEIS concluded that all suitable boreal owl habitat on and within the area of influence of the subject parcels would be affected differentially under the various alternatives, and that the action alternatives would each result in MAII determinations, the most negative determination that could be reached for such a project.

Issue 22: The objector alleges the USFS violates NEPA because they did not adequately provide for public participation in the NEPA process.

Issue 22 Response: The record demonstrates that the Forest Service ensured adequate public involvement and participation in the NEPA process consistent with applicable law, regulation,



and policy. The claims/arguments made by the objector above are not supported by the record or other evidence.

The complete Administrative Record was maintained and made available in its entirety on the public website via the Forest Service's Planning, Appeals and Litigation System (PALS) on November 28, 2014. The total number of documents uploaded was 399. In addition, the complete Administrative Record was sent via DVD to Rocky Smith and Chris Canally on December 8, 2014, each which are party to the RMW objection letter.

A FOIA request from RMW was received by the Forest Service on February 27, 2014. The Forest Service sent informal acknowledgement of the FOIA request by email on February 28, 2014. A final response to the FOIA request was provided on April 29, 2014 and included more than 1,000 pages of redacted material. The requestor then followed with a lawsuit. Another FOIA request was received at the Rocky Mountain Regional Office of the Forest Service on November 20, 2014, from Matt Sandler. A response to the request is currently in progress, with a partial response provided to the requestor, including a link to RGNF website which provides access to the complete administrative record; furthermore, a DVD with the complete administrative record was mailed to the requestor. Note that information exchanges during the deliberative process including interactions with OGC qualify for redaction under the FIOA exemption clauses.

Public and Agency Involvement for the project is described in Section 1.5 of the FEIS. As required by 36 CFR 218, the Forest Service ensured public involvement in the NEPA process by initiating a scoping period beginning April 15, 2011; opening a comment period on the DEIS beginning August 17, 2012, which was later extended; and initiating an objection period on the FEIS and DROD beginning November 21, 2014. Comments on a proposed project or activity to be document in an EIS are accepted for a minimum of 45 days beginning on the first day after the date of publication in the Federal Register of the notice of availability of the DEIS. Computation of the comment time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m. in the time zone of the receiving office for comments filed by electronic means such as email or facsimile) (36 CFR 218.25).

Written objections including attachments must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the EIS in the newspaper of record, and it is the responsibility of objectors to ensure that their objection is received in a timely manner (36 CFR 218.26). These requirements for objection filing were included in the legal notice published in the newspaper of record (Valley Courier) and on the Forest Service project website on November 21, 2014; and in the Federal Register notice of availability of the FEIS and DROD published on November 28, 2014.

CONCLUSION

Based on the review of your objection, the EIS, and project record, I find no violation of law, regulation or policy. Your suggested remedies and recommendations are denied. However,



based on your objection, I am instructing, by copy of this letter, the Responsible Official (Rio Grande NF Forest Supervisor) to do the following if he chooses to continue with this proposal:

- Clarify in the Record of Decision the rationale for deviating from Lynx Guideline Link G1. Also clarify how Alternative 2 will affect meeting long term Lynx Objective, Link O1.
- Although the review determined the Southern Rockies Lynx Amendment is being met, ensure the Project Forest Plan Consistency Analysis includes the Southern Rockies Lynx Amendment for proper documentation.

As required by 36 CFR 218.12(a), the Rio Grande Forest Supervisor cannot sign a decision for this project until all instructions have been addressed. If you have any questions or concerns regarding this response, please contact Nancy Miller at 303-275-5373 or njmiller@fs.fed.us. This response is not subject to further administrative review by the Forest Service or the Department of Agriculture pursuant to 36 CFR 218.11(b)(2).

Sincerely,

/s/ Maribeth Gustafson

MARIBETH GUSTAFSON
Deputy Regional Forester
Reviewing Officer

cc: Dan Dallas, Adam Mendonca, Guy Blackwolf, Amy Waring

