

Wilderness Workshop ♦ Rocky Mountain Wild ♦ Center for Biological Diversity

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P.O. Box 190
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Via electronic web submission:

<https://cara.ecosystem-management.org/Public//CommentInput?Project=52650>

Re: Beaver Creek McCoy Park Terrain Development Notice of Proposed Action

Dear Scott and Max,

The following are comments of Wilderness Workshop, Rocky Mountain Wild, and the Center for Biological Diversity on the Notice of Proposed Action (NOPA) for the Beaver Creek McCoy Park Terrain Development project. Under the Proposed Action Beaver Creek plans to develop 250 additional acres for skiing, two chairlifts (capable of carrying 2,400 people per hour) with top and bottom terminals, trails for downhill and Nordic skiing, a warming hut, a skier bridge, several additional composting toilets, a ski patrol building, approximately 2 miles of new service roads, additional snowmaking capacity and infrastructure, and a skier service building with a 10,000 gallon underground water storage tank. The project would involve 26.5 acres of vegetation clearing and permanently alter the character of the area.¹ The existing Nordic skiing area, which many consider having some of the nicest trails in the country, would be pushed to the periphery of the newly developed alpine ski terrain. Skier visits would go from the current handful per day to thousands per day under the proposed action. The amount of development and increase in visitation would likely have significant impacts on the area's important habitat values.

Prior to approving any new terrain development in McCoy Park, the U.S. Forest Service (USFS) must consider the potential impacts development will have on important resources in the area, including wildlife, water quality and quantity, air quality, noise, and climate. The NOPA glazes over the potential harmful impact of new ski development to Canada lynx, snowshoe hare, cutthroat trout, amphibians, and raptors. The NOPA dismisses air quality, noise, and climate impacts altogether.² Additionally, the NOPA suggests that the USFS will refuse to conduct fieldwork or discuss in detail any value deemed to be a non-impacted resource.³ These comments

¹ *Notice of Proposed Action (NOPA) for Scoping and Comment Period*, Beaver Creek Resort McCoy Park Terrain Development at 3 (Apr. 26, 2018).

² *See NOPA* at 15-17.

³ *Id.* at 13.

are submitted to address the Forest Service's responsibility to protect important public land values within the Beaver Creek ski area and highlight important values that the USFS must consider prior to issuing any approval.

These comments highlight reasonable alternatives the USFS must consider, including removing the proposed snowmobile corridor. The comments also address the necessity of implementing active protection standards and guidelines for Canada lynx, snowshoe hare, cutthroat trout, protected raptor species, sensitive amphibians, and deer and elk. Additionally, the comments outline USFS requirements to analyze and disclose potential water impacts, the aggregate impact of new snowmaking pursuant to NEPA, air quality and climate impacts, the effects of noise pollution. Finally, the comments highlight the agency's obligation to ensure the project will not spread noxious weeds and raise several additional concerns.

1. The DEIS fails to consider all reasonable alternatives.

The USFS has an obligation to consider all reasonable alternatives.⁴ Here the agency failed to do so. Potential alternatives the USFS must consider include but are not limited to:

- An alternative that does not authorize new snowmaking. This alternative would not include snowmaking to avoid new stream depletions and other impacts (e.g., later runoff, higher-volume runoff, later green-up of grasses and vegetation and the associated impacts on wildlife)—the impacts of which, along with impacts of the proposed and foreseeable snowmaking proposals on nearby ski areas, have not been adequately considered (*see* Section 10 *infra*).
- An alternative eliminating the proposed road construction. The two roads Beaver Creek anticipates building for the lift terminal construction projects will have severe ecological impacts. Potential impacts include degrading linkage areas for lynx and other migrating wildlife, destroying forage, endangering the health of wetlands and watersheds, increased risk of erosion and slope failures, and creating a new conduit for recreational pressure in an area that currently sees very little activity (especially in spring, summer, and fall months).⁵ Since the Vail Resorts is not proposing any use of the area in snow-free seasons and since the USFS appears intent to keep the area closed during much of the snow-free season to protect wildlife, it is reasonable that any new development be undertaken during snowy seasons, over-snow and avoid any new road construction at all.
- An alternative eliminating all disturbance to wetlands (*see* Section 9 *infra*).
- An alternative eliminating the snowmobile access route—which has not been justified under the purpose and need and appears to be unnecessary (*see* Section 2 *infra*).
- An alternative reducing the size of the expansion. In the Purpose and Need section, the NOPA indicates that “[b]ased on market conditions, 45 percent of Beaver Creek Resort’s terrain capacity should serve beginner through low-intermediate ability level guests; however, only 40 percent of Beaver Creek Resort’s terrain capacity currently serves these

⁴ See 40 CFR 1502.14(a) (“agencies shall...[r]igorously explore and objectively evaluate all reasonable alternatives”).

⁵ Road Mgmt. Website, USFS (Jan. 9, 2002) www.fs.fed.us/eng/road_mgt/qanda.shtml.

ability levels.”⁶ The McCoy Park proposed project will increase beginner through low-intermediate terrain by more than 5 percent. Therefore, to avoid unnecessary environmental impacts that do nothing to promote the purpose and need, the USFS must consider a less impactful alternative that achieves the “needed” 5 percent increase in beginner through low-intermediate terrain.

- Examine an alternative that includes a mandatory closure for the area during important periods for wildlife. This mandatory closure would not be waivable, and any access in and out of the area on roads or trails would be blocked with infrastructure (*see* Section 8 *infra*).
- An alternative that conditions any approval for this project on the ski company’s fulfillment of any and all stormwater problems elsewhere within the ski area boundary.
- An alternative requiring the project proponent to undertake mandatory weed eradication measures and ensure that any new development is accompanied by a net decrease in the number of weeds within the ski area permit (*see* Section 13 *infra*).
- An alternative permitting the proposed expansion only with a firm agreement from Vail Resorts to protect an equivalent amount of similar wildlife habitat within the Company’s ski area permit from future disturbance and development.

2. The proposed snowmobile corridor is not necessary to support the purpose and need.

The NOPA indicates that the proposed action would involve approximately one acre of grading and vegetation removal for a new snowmobile access route.⁷ The proposed route would create a new linear disturbance through established forest. The NOPA indicates that the access route is necessary to separate guests from snowmobile traffic, but snowmobiles regularly travel alongside established ski runs on ski areas. The agency must clearly articulate how this additional disturbance is necessary and how it relates to the purpose and need for this project.

3. The Forest Service must actively protect lynx habitat and disclose potential impacts.

Because the Canada lynx is listed as threatened pursuant to the federal Endangered Species Act, and is an endangered species under Colorado State law, the USFS must adequately consider the effects of the project on lynx and its habitat by using the best available science. Compliance with the ESA may require updated consultation under Section 7 of the Act. Additional consultation on lynx critical habitat under Section 7 of the Act may also be required, depending on the outcome of the remand issued in *WildEarth Guardian v. U.S. Department of the Interior*.⁸

The agency must do more than simply rely on the Southern Rockies Lynx Amendment (SRLA) Biological Opinion (BO) for an analysis of the effects this project will have on Canada lynx and Canada lynx habitat. While it is true that the SRLA does contemplate effects of recreational development generally on lynx and lynx habitat, it cannot contemplate, disclose, or analyze the site-specific impacts that this project will have on lynx. Indeed, the SRLA BO recognizes that “[e]ffects would be based on site specific conditions and would require subsequent project level . . . consultation with the [U.S. Fish and Wildlife] Service.”⁹ Further, the USFS should post all

⁶ NOPA at 2.

⁷ *Id.* at 6.

consultation documents on the project website so that the public is fully informed as to what determinations are being made and the analysis relied upon to make those determinations.

The NOPA fails to discuss conservation standards and guidelines for the protection of federally listed Canada lynx.¹⁰ It is important that the USFS implement a strong lynx protection strategy with any approved McCoy Park development plan. The SRLA outlines objectives, standards and guidelines to satisfy the overall goal of conserving the Canada lynx.¹¹ Approximately 25 acres of lynx habitat would be subject to vegetation removal under the Proposed Action.¹² Ski area development can have negative effects on lynx denning, foraging, and diurnal security habitat, and long-term effects on movement within and between home ranges. Ski area expansions that involve substantial new snow compaction may also have significant impacts on lynx by eliminating the competitive advantages they have over other animals in unconsolidated snow.

The following objectives, standards, and guidelines must be considered in any analysis and complied with in any decision the agency issues on this proposed development:

- **ALL 01.** Maintain or restore lynx habitat connectivity in and between LAUs [lynx analysis units], and in linkage area;
- **ALL S1.** New or expanded permanent developments and vegetation management *projects* must maintain habitat connectivity in an LAU and/or linkage area;
- **ALL G1.** Methods to avoid or reduce effects on lynx should be used when constructing or reconstructing highways or forest highways across federal land. Methods could include fencing, underpasses or overpasses.¹³

The following objectives and guidelines apply to human use projects such as ski area expansions and recreation management. Again, the USFS must consider and apply the following objectives and guidelines during this proposed development. Based on our review of the NOPA, it is not clear how the proposed action could comply with any of these standards:

- **HU 01.** Maintain the lynx's natural competitive advantage over other predators in deep-snow by discouraging the expansion of snow compacting activities in lynx habitat;
- **HU 02.** Manage recreational activities to maintain lynx habitat and connectivity;
- **HU 03.** Concentrate activities in existing developed areas, rather than developing new areas in lynx habitat;

⁸ *WildEarth Guardian v. U.S. Department of the Interior*, 14-cv-00270-DLC (D. Mont. September 7, 2016) (requiring the USFWS to reconsider Canada lynx critical habitat in the Southern Rockies).

⁹ *SRLA BO* at 69 (July 25, 2008)

www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5357385.pdf.

¹⁰ *NOPA* at 13.

¹¹ *Southern Rockies Lynx Mgmt. Direction, Record of Decision, Attachment 1: The Selected Alternative* at Attachment 1-1 (Oct. 2008)

www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5357379.pdf.

¹² *NOPA*, Table 2 at 13.

¹³ *SLRA* at 2-4.

- **HU 04.** Provide for lynx habitat needs and connectivity when developing *new* or expanding *existing* developed recreation sites or ski areas;
- **HU G1.** When developing or expanding ski areas, provisions should be made for adequately sized inter-trail islands that include coarse woody debris, so winter snowshoe hare habitat is maintained;
- **HU G2.** When developing or expanding ski areas, lynx foraging habitat should be provided consistent with the ski area's operational needs, especially where lynx habitat occurs as narrow bands of coniferous forest across mountain slopes;
- **HU G3.** Recreational development and recreational operational uses should be planned to provide for lynx movement and to maintain effectiveness of lynx habitat.¹⁴

The NOPA makes it clear that the Proposed Action would require at least a couple miles of new road in McCoy Park.¹⁵ The following guidelines must be considered and incorporated into any decision to approve new road construction for this project:

- **HU G9** If project level analysis determines that new roads adversely affect lynx, then public motorized use should be restricted. Upon project completion, these roads should be reclaimed or decommissioned, if not needed for other management objectives;
- **HU G11** When developing or expanding ski areas and trails, consider locating access roads and lift termini to maintain and provide lynx security habitat.¹⁶

The USFS must adequately comply with the SRLA guidelines and standards in the McCoy Park development plan. Compliance with lynx standards must be incorporated in the plan prior to construction. Additionally, the agency should post all lynx analysis documents on the project website to ensure the public is informed as to what determinations are being made.

4. The Forest Service must ascertain and disclose the snowshoe hare population in the project area and analyze potential impacts.

The lynx is a highly specialized predator adapted to prey on snowshoe hares in coniferous forests that experience cold, snowy winters at elevations that overlap with the project area at issue in this case. The NOPA indicates that much of the project area is comprised of lodgepole pine, which is not favored by snowshoe hares or lynx.¹⁷ Nonetheless the USFS must ascertain and disclose the existence and extent of snowshoe hare populations in the project area. If snowshoe hares are present in the area, then the Forest Service must consider any potential impacts the Proposed Action may have on those animals. The Lynx Conservation Assessment Strategy confirmed that recreational uses like ski area development that may alter snowshoe hare populations may affect lynx.¹⁸ Other activities associated with the proposed action may also

¹⁴ *Id.* at 1-6–1-7.

¹⁵ *NOPA* at 6-7.

¹⁶ *SLRA* at 1-8.

¹⁷ *NOPA* at 3.

¹⁸ *Lynx Conservation Assessment and Strategy*, 2nd Ed. (Aug. 2000), at 2-2 – 2-15, available here: https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5193264.pdf.

affect snowshoe hare populations and, less directly, impact the lynx (*see* lynx conservation standard HU G1 *supra*).

5. The Forest Service must actively protect cutthroat trout habitat.

The proposed ski area development plan will impact the cutthroat trout population in McCoy Creek. The Colorado River cutthroat trout is a Forest Service sensitive species within the Southern Rocky Mountain Region.¹⁹ The NOPA pre-construction implementation plan requires the developers to conduct a stream health survey for the assessment of cutthroat trout.²⁰ The Biological Environment Table suggests that any harm to the cutthroat trout habitat from the proposed action is not expected to be significant, but that conclusion is inappropriate until the USFS has undertaken additional analysis based on a stream health survey and, as discussed below, consultation with USFWS.²¹

The Forest Service must adhere to the following management standards and guidelines for activities with the potential to impact the cutthroat trout habitat and tributaries.²² At a minimum, the plan must:

- Reduce sediment from existing roads and trails;
- Maintain pool depth;
- Maintain riparian vegetation;
 - McCoy Park development must adjust their vegetation reduction proposal to comply with the management standards.²³
- Retain large woody debris in streams;
- When implementing management activities in 6th field Hydrologic Unit Codes (sub-watersheds) containing cutthroat trout identified as recovery populations in the Colorado River Cutthroat Recovery Plan, maintain or reduce existing net density of roads (open or closed) to restore or prevent alteration of the hydrologic function of the sub-watershed. Temporary roads must be decommissioned upon project completion;
- Restrict construction of new roads within 350 feet of occupied cutthroat streams or within 150 feet from the edge of the current or historic floodplain, whichever is greater, to maintain hydraulic function and limit road-related stream sediment;
- Reroute roads adjacent to cutthroat trout streams and their tributaries, when possible, to reduce direct impacts to cutthroat habitat, or to improve hydrologic function;
- When decommissioning roads in sub-watersheds, restore hydrologic functions.²⁴

The NOPA states Beaver Creek Resort will conduct post-construction stream health surveys for

¹⁹ *Sensitive Species List*, USFS (last visited May 24, 2018)
www.fs.usda.gov/detail/r2/landmanagement/?cid=stelprdb5390116.

²⁰ *NOPA* at 12.

²¹ *Id.* at 13-14.

²² *Land & Resource Mgmt. Plan* at 2-25 (2002 Revision)
www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_000999.pdf.

²³ *Id.*

²⁴ *Id.*

three consecutive years.²⁵ The plan states “should surveys reveal stream health is not being maintained... a restoration plan will be developed by the Forest Service and Beaver Creek Resort.”²⁶ Rather than wait for unsatisfactory survey results, the development proposal should include an emergency restoration plan in the event of stream health deterioration. Without a backup plan, delayed restoration could cause a devastating and irreparable harm to the stream and watershed.

Additionally, consideration of the effects on cutthroat trout from the proposed development must take into account new scientific information, and ongoing scientific and regulatory review, regarding the genetic lineages of native cutthroat trout. Although it was previously assumed that populations in the Colorado River basin watershed should be classified as Colorado River Cutthroat Trout, and that the ESA-listed Greenback Cutthroat Trout survived only east of the continental divide in the Arkansas and South Platte basins, new genetic research published in 2012 has complicated these assumptions.²⁷ Indeed, the NOPA suggests that the population in McCoy Creek is a greenback population.²⁸

Researchers and Federal and State agencies are still in the process of reviewing this new genetic research and its implications for native cutthroat trout classification, management, and conservation.²⁹ At a minimum, however, this research raises substantial questions as to whether the various “lineages” of cutthroat trout on the western slope, including in the Colorado River basin watershed, should be classified as different subspecies, distinct population segments, or otherwise.³⁰

Resolution of genetic questions regarding the appropriate classification of west slope cutthroat trout is obviously outside the USFS’s area of expertise. Therefore, given the substantial new questions about the status of affected native trout populations, USFS should avoid authorizing any new development with the potential to affect native trout watersheds and populations. At a minimum, the agency must consult or confer with USFWS prior to authorizing any such activity,

²⁵ NOPA at 13.

²⁶ *Id.*

²⁷ See Metcalf et al., *Historical Stocking Data and 19th century DNA Reveal Human-Induced Changes to Native Diversity and Distribution of Cutthroat Trout*, *Molecular Ecology* (2012), doi: 10.1111/mec.12028, http://cmctu.org/wp-content/uploads/2015/11/mec12028_Metcalf_etal_2012.pdf.

²⁸ See e.g., NOPA, Table 2 at 13.

²⁹ See U.S. Fish and Wildlife Service, *Initiation of 5-Year Status Reviews of 21 Species in the Mountain-Prairie Region*, 81 Fed. Reg. 33,698 (May 27, 2016); U.S. Fish and Wildlife Service, *Final Summary Report: Greenback Cutthroat Trout Genetics and Meristics Studies Facilitated Expert Panel Workshop* (May 2014) <https://cpw.state.co.us/Documents/Research/Aquatic/CutthroatTrout/2014GreenbackCutthroatTroutWorkshopSummary.pdf>; U.S. Fish and Wildlife Service, *Recent Cutthroat Trout Studies in Colorado: Overview of the Endangered Species Act Evaluation Process of Recent Cutthroat Trout Research in Colorado* (2012), www.fws.gov/coloradoes/Greenback/Cutthroat_Trout_Overview_Fact_Sheet_FINAL.pdf.

³⁰ See *Greenback Cutthroat Trout Expert Panel Summary* at 13-14 *supra* N. 29.

against the possibility that the affected native trout populations (a) may constitute greenback cutthroat trout protected under the ESA, or (b) may constitute a subspecies or distinct population segment of Colorado River Cutthroat Trout that may qualify for listing under the ESA.

6. The Forest Service must assess which species of raptors will be impacted and comply with species protection standards.

The NOPA indicates that “listed raptors” are an issue with the project.³¹ To date, we have not been able to ascertain which listed raptors utilize the area for habitat. Any USFS analysis must disclose the specific species, analyze any potential impacts, and ensure that those birds are protected as required by the Forest Plan and any other applicable laws (e.g., the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., The Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712, etc.). If there are listed raptors that utilize the area or if the area overlaps any critical habitat, USFS must consult with USFWS on potential impacts to these resources.

7. The USFS must inventory the area for sensitive amphibians, consider potential impacts to any that exist, and ensure that existing populations are adequately protected in any decision.

According to the 2002 LRMP, Boreal toads and leopard frogs are species of viability concern.³² There are known breeding populations of boreal toads in watersheds adjacent to McCoy Park. To the best of our knowledge, McCoy Creek has never been inventoried for boreal toads or leopard frogs, but the area’s numerous wetlands provide potential habitat. Prior to approval of this project, the project area must be surveyed and inventoried for boreal toads and other sensitive amphibians.

Goal 1 in the 2002 LRMP is to “[p]romote ecosystem health and conservation using a collaborative approach to sustain the nation’s forest, grasslands, and watersheds.”³³ Objective 1c of the Plan directs the agency to “[h]elp ensure viability of species of concern for the White River National Forest through implementation of the Forest Plan...”³⁴ The LRMP includes two strategies for achieving this objective that are relevant to boreal toads and leopard frogs: “1c.14 Maintain corridors for interaction between adjacent populations of boreal toads and between adjacent populations of leopard frogs;” and “1c.15 Identify suitable habitat for reintroduction of boreal toads and leopard frogs and coordinate potential reintroductions with the State of Colorado.”³⁵ In this case the USFS must ensure that the proposed action will not disrupt a corridor for interaction between sensitive amphibians. If this is a suitable place for reintroduction, the USFS should think about asking Vail Resorts to partner in such an effort and make it part of the plan.

The LRMP also includes Forestwide standards and guidelines that require protection of Boreal toads and leopard frogs. Some of these standards are outlined here:

1. Allow no loss or reduction in habitat quality of occupied or known historic boreal toad or leopard frog habitat.
2. Maintain adequate vegetation cover around occupied boreal toad or leopard frog

³¹ NOPA, Table 2, at 13.

breeding ponds when implementing management activities to minimize avian predation on newly metamorphosed frogs and toads.

3. Use only chemical herbicides shown to have no effect on boreal toads or leopard frogs, or use other vegetation management techniques, within 300 feet of occupied or known historic boreal toad sites.
4. Do not use fish toxins with the potential to harm boreal toads or leopard frogs in occupied boreal toad and leopard frog habitats.³⁶

Relevant guidelines in the plan include:

1. To prevent direct mortality to boreal toads, restrict the following activities to periods when toads are inactive (generally late fall to early spring):
 - Management-ignited fire treatments within 3 miles of occupied boreal toad breeding sites.
 - Vegetation management using heavy, ground-based equipment within 1.5 miles of occupied boreal toad breeding sites.
2. Restrict construction of new roads and trails within 300 feet of occupied or known historic boreal toad and leopard frog breeding sites to prevent direct mortality and disturbance of adjacent vegetation during construction and trail use.
3. Where impacts to occupied or known historical boreal toad or leopard frog breeding sites associated with livestock grazing are identified, consider actions to reduce or remove impacts such as, but not limited to:
 - Fencing,
 - Modification of season of use, or
 - Provision of alternate water sources at a sufficient distance.
4. Where roads or trails are located within 300 feet of occupied or historical boreal toad or leopard frog breeding sites, consider reclaiming, redirecting, or redesigning trails and user traffic to minimize direct mortality and disturbance of adjacent vegetation.³⁷

The NOPA makes no reference to these standards and guidelines or to sensitive amphibians in the project area. NEPA requires that the agency take a hard look at potential impacts before approving any new development in the area, and NFMA requires the USFS to comply with the Forest Plan.

8. The USFS must analyze potential impacts to deer and elk in any analysis.

By all accounts, McCoy Park is some of the last best elk calving habitat and transition range left in the area. The combination of forage, shelter, water, and elevation make it a perfect spot for elk calving. The NOPA makes it clear that the elk population within GMU 45 has declined by over

³² See LRMP at 2-25 – 2-26.

³³ *Id.* at 1-3.

³⁴ *Id.* at 1-4.

³⁵ *Id.* at 1-5.

³⁶ *Id.* at 2-25 – 2-26.

³⁷ *Id.* at 2-26.

80% in the last 13 years.³⁸ Deer populations are also in steep decline. These declines are largely due to unceasing pressure from recreation and development.³⁹ This project will contribute to that pressure and those population declines by degrading important habitat with new development and adding substantial new use to an area that sees very little use currently. These potential impacts should be considered, disclosed, and—if development is approved—any approval should include measures to eliminate potential impacts.

The proposed action promises numerous potentially significant impacts to elk. For example, snowmaking and snow compaction associated with the project will alter the timing and duration of snowmelt. Delayed snowmelt will result in delayed green-up, and potentially create permanent changes to the area's vegetation. These changes will impact elk that use the area for calving in the spring and important transition range. These impacts must be acknowledged and analyzed in the context of all of the other development that has and continues to destroy and change important elk habitat.

In addition, the USFS must consider the potential impacts that new roads and infrastructure in the area will have on elk at critical times of the year. For example, will the new roads provide a conduit for mountain bikers and other recreationists to begin utilizing this area during elk calving season?

9. The USFS must analyze and disclose potential water impacts.

Watershed health is an important goal of the LRMP. Goal 1 in the plan strives for “Ecosystem Health” and the first objective for achieving that goal, Objective 1a, requires the USFS to “Improve and protect watershed conditions to provide the water quality and quantity and soil productivity necessary to support ecological functions and intended beneficial uses.”⁴⁰

The Forest Plan also includes forest-wide standards, which are mandatory, and guidelines for the protection of water and riparian resources, including:

Standard 1. In each stream currently supporting a self-sustaining fish population, ensure that projects maintain sufficient habitat, including flow, for all life history stages of native and desired non-native aquatic species.

Standard 4. Naturally occurring debris shall not be removed from stream channels unless it is a threat to life, property, important resource values, or is otherwise covered by legal agreement. Removal in designated wilderness must consider wilderness values.

Guideline 1. When projects are implemented that can affect large woody debris, retain natural and beneficial volumes of this material for fish habitat, for stream energy dissipation, and as sources of organic matter for the stream ecosystem.

³⁸ *NOPA*, Table 2 at 13.

³⁹ See e.g., Scott Miller, Vail Valley wildlife facing population declines due to development, traffic, Vail Daily (Jan. 22, 2018), <https://www.vaildaily.com/news/vail-valley-wildlife-facing-population-declines-due-to-development-traffic/>; Scott Miller, Minturn elk herd is declining, Vail Daily (Feb. 19, 2017), <https://www.vaildaily.com/news/minturn-elk-herd-is-declining/>.

⁴⁰ *LRMP* at 1-3.

Guideline 2. Keep vehicles and equipment out of streams, lakes, and wetlands except to cross at designated points, build crossings, do restoration work, or where protected by one foot of snowpack or frozen soil.

Guideline 3. Maintain existing federal water rights. Take appropriate action to use and protect water rights, including but not limited to changing uses to meet federal needs for water. If the water rights are not needed to meet national forest purposes, sell, lease, or exchange these federal water rights.⁴¹

In its analysis of the proposed action, the USFS must disclose whether and how these goals, objectives, standards, and guidelines will be achieved. And the USFS must not approve any expansion project that cannot comply.

The NOPA mentions potential watershed impacts from vegetation removal, road construction, ground disturbance, snow compaction, and snowmaking. These activities may have significant impacts on the McCoy Creek watershed, as well as the Eagle River and Colorado River watersheds. For example, Snowmaking, requires a lot of water. “The amount of water necessary to cover 1 acre to a depth of 1 foot; equals... 325,851 gallons.”⁴² Much of the water used for snowmaking is withdrawn from local streams and does not make it back into those streams and rivers. Instead it simply evaporates. According to analysis undertaken by the USFS for another Vail Resorts ski expansion project: “Approximately 25 percent of the water used for snowmaking does not return to Gore Creek due to water depletions from evaporation, sublimation, and evapotranspiration. Based on average annual water usage (534.5 acre-feet), the current average annual water depletions to Gore Creek and the Colorado River are 133.6 acre-feet.”⁴³ Snowmaking associated with the McCoy Park expansion will likely result in similar water depletions. There may be additional water depletions associated with other activities in the proposed action. USFS should consider, “to what extent have instream flows been assured to provide adequate water for... riverine flora and fauna in streams and rivers with high resource values?”⁴⁴

As mentioned above, changes in the timing of runoff, peak flow, and water yield are a likely result of this proposed action. New snowmaking and additional snow compaction will delay and increase runoff. That will also impact vegetation, soil productivity, aquatic and riparian health, wildlife, and other resource values. Over time these changes are likely to completely alter the character of the area. NEPA requires that the USFS disclose and consider any potential water impacts its analysis.

10. The Forest Service must evaluate the aggregate impact of new snowmaking pursuant to NEPA in a programmatic analysis.

⁴¹ *Id.* at 2-6.

⁴² DEIS, *Vail Mountain Resort Golden Peak Improvement Project* at 133 (Mar. 2018).

⁴³ *Id.* at 102.

⁴⁴ This is a “Monitoring Question” that the USFS is supposed to consider as part of its monitoring strategy. *See LRMP* at 4-13. We understand that the USFS may not be monitoring McCoy Creek, but the question represents an important consideration that should be addressed in the current NEPA process.

Programmatic NEPA analysis is appropriate to prepare when reviewing a repetitive agency activity that requires a broad picture analysis of consequences.⁴⁵ The programmatic analysis provides a starting point for analyzing direct, indirect, and cumulative impacts. This avoids repetitive broad level analyses in subsequent tiered NEPA reviews and provides a more comprehensive picture of the consequences of multiple proposed actions.

The McCoy Park snowmaking proposal is geographically connected to concurrent snowmaking operations and expansions, and it promises to have similar direct, indirect, and cumulative impacts to other snowmaking proposals in the area. Therefore, a programmatic analysis of the environmental effects of snowmaking in the WRNF and/or the Colorado River Basin is appropriate. Failure to undertake such an analysis will require substantial and repetitive analysis of each project, and may result in improper segmentation under NEPA.

Almost every major ski area in the White River National Forest, the Colorado River Basin, and within USFS's Region 2 have plans to increase snowmaking.⁴⁶ Ski resorts are proposing to expand snowmaking for common reasons and to fulfill common needs (e.g., to enhance the reliability of snow coverage). These proposals share geography and result in shared impacts (e.g., water depletions, alterations in flow regimes, and impacts to threatened and endangered species). As discussed below, some of these impacts, taken together, may be significant. But, to date, the USFS has failed to examine snowmaking proposals and the impacts of increased snowmaking altogether. A programmatic analysis would combine all existing and proposed snowmaking in a logical geography (e.g., within the WRNF, the Colorado River Basin, or Region 2) and look at the direct, indirect, and cumulative effects on the environment.

A recent example highlights the existing gap in analysis and the need for an updated programmatic analysis. The USFS has just released a Draft EIS analyzing potential impacts of expanded snowmaking at Golden Peak on Vail Mountain. The analysis confirms that water depletions associated with expanded snowmaking will likely adversely affect Colorado River fish and the fishes' critical habitat.⁴⁷ But, based on a dated and narrow Biological Opinion (BO) from the USFWS, the USFS has concluded that the project will not jeopardize the continued existence of the fish or destroy critical habitat.⁴⁸ This "no jeopardy" conclusion does not appear to reflect the broader picture or important new information for several reasons.

First, as stated, the BO relied upon is old—dating back to 2009. The BO predates and fails to address new climate-related studies that are relevant to snowmaking, water depletions, and Colorado River fish. For example, recent studies that weren't considered in the BO show evidence that temperatures are on the rise, timing of snowmelt and peak runoff have changed,

⁴⁵ Council on Environmental Quality, *Memorandum for Heads of Federal Departments and Agencies on Effective Use of Programmatic NEPA Reviews* at 10 (Dec. 18, 2014) available at https://obamawhitehouse.archives.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_final_dec2014_searchable.pdf.

⁴⁶ See e.g., N. 51 *infra*.

⁴⁷ See e.g., Vail Mountain Resort Golden Peak Improvements Project, DEIS Table 2-3 at 26, 92.

⁴⁸ *Id.* at 92.

and soil moisture drought is more frequent.⁴⁹ Studies also predict a decrease in annual streamflow in rivers due to the loss of moisture from warmer snowpack, soils, and vegetation. Recent science also confirms that more frequent dust-on-snow events in coming years will result in earlier peak snowmelt, runoff and return to base flows will occur earlier, and late summer streamflows (base flows) will be lower.⁵⁰ All of this information is relevant to effects of additional snowmaking (e.g., stream withdrawals that impact health and viability of Federally listed fish species). Nonetheless, USFS's decisions related to new snowmaking proposals (like the EIS for the Golden Peak Expansion) fail to consider any of this new information.

Second, the BO that USFS is relying upon considers water withdrawals occurring on one specific ski mountain. The BO fails to consider impacts of snowmaking related withdrawals throughout the basin more broadly. This ignores the cumulative impacts that snowmaking is having on the environment. An updated programmatic BO may tell a different story, especially given the increasing number of new snowmaking proposals.⁵¹ But we simply won't know what the true potential impacts are until the USFS undertakes an updated programmatic analysis of snowmaking more broadly, or until the USFWS prepares an updated BO that address all of the stream depletions together.

Importantly, while there is clearly a need to consider the impacts of stream depletions from all of these snowmaking proposals on Colorado River Fish cumulatively, the impacts to federally listed fish are not the only impacts that the USFS has failed to consider by analyzing these snowmaking proposals individually. The agency has also failed to consider impacts like delayed melt-off and delayed green-up that result when snowmaking operations are approved. These consequences have meaningful impacts on native plants and wildlife that must be considered on a scale that is broader than just within the project area. Absent a new programmatic analysis, the USFS has failed to take a hard look at the potential impacts of new snowmaking proposals on the environment.

11. The USFS must analyze air quality and climate impacts in more detail.

The NOPA suggests that air quality analysis is likely to be dismissed from detailed analysis.⁵² This is problematic because it fails to acknowledge impacts associated with two new ski lifts that will be running all winter season. It also fails to acknowledge that, while most of Beaver Creek's

⁴⁹ Jeff Lukas et al., *Climate Change in Colorado, a Synthesis to Support Water Resources Management and Adaptation* at 2 (2nd ed., Aug. 2014).

⁵⁰ See *Id.* Jerry M. Melillo, *Climate Change Impacts in the United States: The Third National Climate Assessment* at 148 (US Global Change Research Program, May 2014).

⁵¹ See e.g., Aspen Mountain Pandora Development and Summit Snowmaking Projects (see project website here: <https://www.fs.usda.gov/project/?project=53847>); Beaver Creek Resort – McCoy Park Terrain Development (see project website here: <https://www.fs.usda.gov/project/?project=52650>); Keystone Resort – 2018 Improvements Project (see project website here: <https://www.fs.usda.gov/project/?project=53800>); and the Steamboat Ski Area FY18 Projects (see project website here: <https://www.fs.usda.gov/project/?project=52845>).

⁵² NOPA at 16.

guests come from far away, this project will result in a 1-2 percent increase in visitation. That is not a trivial number. And the fact that visitors are coming from far away, on plans from distant locations, only means that the impacts of their visit on our shared climate are greater.

12. The USFS must take a hard look at potential noise impacts.

On page 16 of the NOPA, the USFS dismisses potential noise impacts associated with the proposed action by saying: “conditions would be similar to surrounding areas within the Beaver Creek Resort SUP area.” The agency has an obligation to provide a more meaningful discussion of the potential impacts of this new development. McCoy Park is currently quiet, and implementation of the proposed action will result in a substantial increase in noise from ski lifts, snowmobiles, snowcats, skiers, and the operation of other infrastructure. Any environmental analysis should disclose current noise levels in the area and compare those with what could be expected after development. In addition to providing those metrics, the agency should discuss and analyze impacts that increased noise would have on wildlife and other important public land values.

13. The USFS must ensure that this project does not contribute to the spread of noxious weeds on public lands.

Invasive species have been identified by the Chief of the Forest Service as one of the four substantial threats to NFS lands. The Forest Service National Strategy is based on four components: 1) prevention, 2) early detection and rapid response, 3) control and management, and 4) rehabilitation and restoration. On February 3, 1999, Executive Order 13112, Safeguarding the National Forest from the Impacts of Invasive Species was signed.⁵³ The Order requires agencies to utilize programs and authorities to take steps to prevent the introduction and spread of invasive species, and to support efforts to eradicate and control invasive species that are established.⁵⁴ Other authorities related to noxious weed management include the Federal Noxious Weeds Act (7 U.S.C. § 2801), Forest Service Manual (FSM) Section 2080, Forest Service Handbook (FSH) 2209.23, Section 330, the Forest Plan as amended, and the Colorado Weed Management Act. The Colorado Noxious Weed Act directs the Department of Agriculture to develop and implement management plans for all List A and List B noxious weed species. The weed management plans are regularly reviewed, updated and detailed in the Rules Pertaining to the Administration and Enforcement of the Colorado Noxious Weed Act, also known as the Noxious Weed Rule (8 CCR 1206-2).⁵⁵

SE Group’s project website indicates that: “The existing populations of noxious and invasive weeds found along existing access roads could potentially spread into the relatively uninfested areas of McCoy Park area. However, with proper implementation of Project Implementation

⁵³ See e.g., USDA, National Invasive Species Information Center “Federal Laws and Regulations” webpage, <https://www.invasivespeciesinfo.gov/laws/execorder.shtml#eo13751>.

⁵⁴ See Exec. Order 13751, 81 FR 88609 (Dec. 5, 2016) (summarizing E.O. 13112).

⁵⁵ See e.g., USDA, White River National Forest, Vail Mountain Resort Golden Peak Improvements Project, Draft Environmental Impact Statement (March 2018), at 77, https://www.fs.usda.gov/nfs/11558/www/nepa/102713_FSPLT3_4280305.pdf.

Requirements and BMPs, this threat would be lessened.”⁵⁶ The USFS must do more than simply recite the same long list of Project Implementation Requirements and BMPs that have long accompanied ski area expansion proposals. Ski areas are among the weediest areas on the National Forest due to the consistent failure of BMPs and Implementation requirements to eliminate/address the problem. The USFS has an affirmative obligation to prevent the spread of invasive weeds.

Any USFS analysis must discuss in detail how effective each already-utilized BMP has proven to be, and how effective new BMPs are likely to be. The agency cannot continue to permit activities that exacerbate weed infestations in violation of its own Forest Plan and relevant Orders, laws, and regulations requiring it to combat this substantial threat.

14. Additional comments.

How will Vail Resorts keep people from using the area in the summer time? Won't the new roads enable access for hikers and bikers that do not currently exist? Is the agency going to require infrastructure to ensure the area is not used in the off-season? If so, that infrastructure should be disclosed and analyzed as part of the plan.

NOPA's preconstruction project implementation requirements should be completed and available for public review with any environmental analysis prior to any objection period.⁵⁷

The project area is small enough that USFS staff and/or professional biologists ought to be able to inventory the entire area for sensitive plants long before construction has begun. The project implementation requirements, however, suggest that this won't be done until “During Construction.”⁵⁸ The USFS should inventory the entire area prior to making a decision on the proposed project and make the inventory results available to the public in a specialist's report as soon as possible.

USFS should quantify the increase in recreational visits between the no action alternative (current condition) and the proposed action.

Thank you for considering these comments. Please keep us updated as this proposed project proceeds.

Lauren Sakin & Peter Hart
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⁵⁶ SE Group Project Website for “McCoy Park Terrain Development” project, <https://segroup.maps.arcgis.com/apps/Cascade/index.html?appid=1f49005a4a4e4e499496f07789ae6fd8>.

⁵⁷ See *NOPA* at Table 1.

⁵⁸ See *NOPA* at Table 1.

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