

*LAW OFFICES OF*

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November 29, 2018

Scott Fitzwilliams, Forest Supervisor  
c/o Sam Massman, Project Leader  
Dillion Ranger District  
P.O. Box 620  
Silverthorne, Colorado 80498

Re: Notice of Proposed Action, November 7, 2018 – Copper Mountain Resort

Gentlemen:

These comments relate to the subject Notice of Proposed Action (NOPA) concerning Copper Mountain Resort (CMR). I have owned a condo unit at Ten Mile Haus since 1973 and have been a member of the homeowners' association board since 1975. I have also served on the board of the Copper Mountain Metropolitan District for the previous 12 years. These comments are my own. I do not represent the Ten Mile Haus HOA or the Metro District.

Ten Mile Haus is located at 108 Guller Drive, in the Center Village area on the south edge of Copper. The Pedestrian Access Easement which runs westward from the base of the Pitchfork (beginners) lift to the American Eagle lift is on the southern 20 feet of our property (Lot 3, Block 1, Copper Mountain First Filing). The Pedestrian Access Easement is at the base of a steep forested parcel acquired by CMR in the 1992 "Homestake Exchange" with the Forest Service (Pub. Law 101-631). Wheeler/McKenzie Creek forms the northern boundary of our property.

**The Snowmaking Adaptive Management Plan**

Ten Mile Haus was constructed in 1972 at the very south edge of what at that time were wetlands including beaver ponds and peat bogs. During the initial 2 or 3 decades the building experienced significant foundation movement as ground water tables rose and fell in spring and fall, and as the bogs drained. That movement stabilized substantially in about 2000 or 2005 and in recent years has been noticeably reduced.

The CMR proposal is described generally in the paragraphs entitled "Adaptive Management Plan" beginning on page 3 of the NOPA. It would (i) increase snowmaking, acknowledging that "new snowmaking causes flows to exceed natural levels in Wheeler Gulch that could cause further negative impacts." (p.4). They would (ii) add an "in-stream diversion structure" near the confluence of McKenzie Gulch and Wheeler Gulch (p. 3) at elevation 10,085 feet (p.4), as well as (iii) water bars above the structure along the Collage ski trail (Figure 2). Further they propose a so called "restorative project" that involves (iv) removing "large woody debris" and (v) installing "arming efforts." along Wheeler Gulch (p.4).

Such dramatic changes may well create significant effects and changes in both ground and surface water downgradient. This area is uphill directly south of Ten Mile Haus at elevations between 10,000 and 11,000 feet. Ten Mile Haus is at 9750 feet. CMR should be required to provide additional data and studies, as well as some assurance, that the additional snow-making water, the water bars, the in-stream diversion structure and the channelization of Wheeler Gulch will not result in changes in the surface or ground water flows at Ten Mile Haus. In future decades such changes may cause foundation damage to the Ten Mile Haus buildings. Just as several decades elapsed from the time of construction until stabilization of the Ten Mile Haus foundation, such changes in water flows could create incremental adverse effects which would be long delayed and might not become apparent for several decades.

Further data and studies are needed regarding the potential effects – both short and long term - of the Adaptive Management Plan as currently proposed. Analysis and disclosure regarding the potential impacts downgradient is critically important. That is both required by NEPA, and is needed to prevent or at least reduce future liability on the part of either CMR, or the USFS, or both

Further, the channelization of Wheeler Gulch, called a "restorative project" (p.4), seems to run contrary to what most ecologists say is needed for watershed restoration, and what the USFS has said about such projects in many other areas of the country. The proposed project sounds like an effort to create a proverbial canal, rather than something that would actually return a watershed area to a functional condition.<sup>1</sup> If such an approach is to be considered further there needs to be a detailed discussion that addresses why and how armoring and less woody debris is allegedly preferred in this part of White River National Forest.

### **Snowmaking Mitigation Impacts Generally**

The proposal relies on "relinquishment" of 45.5 acres of approved, but not yet installed snowmaking to try to mitigate the impact of 86 acres of proposed new snowmaking. (NOPA p.3 #2) The discussion presents this as a "net-increase" of only 40.5 acres. (p.3). On paper that may be true, but not on the ground – where impacts are supposed to be actually measured.

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<sup>1</sup> This proposal sounds more like an old-style Army Corps of Engineers "solution" - of the type that destroyed the Los Angeles River and has led to massive loss of wetlands and functioning riparian zones throughout the nation.

The discussion is misleading for the ultimate decision maker, and for the public. While the theoretical increase is only 40.5 acres, the **actual on the ground effects** will be those of a full 86 acres. The final analysis should fully address the impacts of all the proposed snowmaking, not just the theoretical net increase.

### **The Mountain Biking Trails**

The Colorado Trail joins the above described Pedestrian Access Easement at the southeast corner of the Ten Mile Haus property. The several improvements to mountain bike trails shown on Figure 3 to the NOPA include an uphill "Traditional Singletrack" trail listed as Trail Number 45 in Table 1 (NOPA p. 7). Figure 3 of the NOPA is not sufficiently clear (in the electronic copy) and I am uncertain if this uphill bike trail is proposed to be placed - without permission - on the Pedestrian Access Easement.

Please clarify if this trail is proposed to be located on the Colorado Trail or on the ski trail known as "Frank's Fave".

In addition, there are some of the seemingly contradictory statements about mountain biking use. The proposal is to significantly **expand** the existing trails. Yet it acknowledges 6.3 miles of existing trails need further work, some of which "have become overgrown from lack of use." (p.5). If there is not even enough demand for all the existing trails, why are more trails – and more habitat disruption that goes with such use – being proposed? This too needs to be clarified.<sup>2</sup>

### **Water Rights**

The proposal is inadequate in its discussion of the water impacts. While there may – in theory – be paper rights to another 246 AF of water from Tenmile and/or West Tenmile Creeks, there is no analysis of whether that water actually exists in the streams **at the time the rights allow removal**. Nor is there any analysis of the potential effects or impacts of the removal of that much water on fish, wildlife, riparian areas, and the many human users of these two important local waterbodies. The proposal also needs to evaluate the cumulative impacts of this proposed 246 AF **additional** withdrawal - in combination with known prior legal and illegal withdrawals, as well as the possible transfer of an unknown quantity from the Tenmile valley to the West Tenmile valley. That is what NEPA requires, and that is that the agency should do to ensure that the ultimate decision maker on this project is making an informed choice among option.<sup>3</sup>

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<sup>2</sup> One would hope that CMR and the USFS are not expanding mountain biking, or any uses of the public lands, without there first being a strong urgent need for such an expansion demonstrated by credible science, rather than just a desire to grow. "Growth for the sake of growth is the ideology of a cancer cell." Edward Abbey, Desert Solitaire - 1968, p.114.,

<sup>3</sup> The fact that CMR may have enough shares in the Clinton Reservoir to obtain water (p.5, n.2) does not absolve the USFS from the obligation to evaluate what the effects on the fish, wildlife, forest ecology, and current human users - of moving that water from where it now is to where it will ultimately end up – will likely be. Perhaps there will be positive effects. But without a detailed analysis the decision maker and the agency won't know, and won't be able to fulfill their obligations under NEPA & NFMA.

### Summer Programming

CMR proposes to add summer programming, including over-night camping ("Glamping" ?) for 30 to 50 guests at the bottom of Rendezvous and Sierra lifts. The generalized description of the proposal (NOPA pp.8-9) fails to include any explanation as to how waste, both human and other, is to be removed from the area. Are portable toilets to be used or is a septic system to be constructed? If the latter, what is the likely or anticipated effect on the ground water? The principal source for domestic water in the village is ground water in the West Tenmile Creek aquifer. There is inadequate support suggesting that "...existing on-mountain infrastructure (previously approved restrooms completed in 2018)..." will suffice for 30 to 50 guests, and support personnel, and jeeps or pickups, and generators using petroleum products, 2 or 3 nights per week over a 90-day summer season.

What would be the noise impacts, and the light pollution impacts, of such facilities on nearby wilderness or backcountry experiences? What would be the impacts on wildlife, of increased use of this type, in what previously was a relatively limited-accessed mountain meadow, during the key summer breeding and foraging periods?

It might be that these impacts would be minimal, but that cannot be ascertained from the current document. A more complete explanation is needed as to the potential impacts on the human and natural environment, of the operation of the proposed summer "Glamping" program.

### Mountain Road

The proposed road work to improve access to the "Olie Lind parcel" **for a future guest facility** (p.9) needs to also be further discussed and its impacts disclosed and evaluated. There is no discussion in the current document of the many impacts that road construction of this sort, much less a potential "guest and food service facility" (*Id.*), would have on the watershed of Tenmile Creek or the other resources in the area. The ultimate decision maker should not be asked to approve a potentially significant road expansion leading to potentially increased environmental usage on private land without having the impacts of such a project disclosed and evaluated.

Yours truly

A handwritten signature in blue ink, appearing to read "Karl F. Anuta".

Karl F. Anuta