

Exhibit 3

**Berlaimont Estates, LLC
Comment Letter on Draft EIS, Mar. 12, 2018**

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Comments:

March 12, 2018

Scott Fitzwilliams, Forest Supervisor

White River National Forest

via email: sfitzwilliams@fs.fed.us

Re: Berlaimont Estates Access Road Improvement Project

Dear Supervisor Fitzwilliams:

Berlaimont Estates ("BE") thanks you for this opportunity to submit comments on the Draft Environmental Impact Statement ("DEIS") analyzing the impacts of the Berlaimont Estates' Access Road Improvement Project (the "Project"). As you have noted in the past, the Forest Service's authority is limited to approving the access road, rather than BE's proposal for an ultra-low-density neighborhood with 19 units on 680 acres (one residence per 35-acre lot); although the DEIS correctly analyzes the impacts of both. This letter will address the DEIS as well as the ANILCA determination attached to the DEIS as Appendix C.

BE commends the Forest Service for its thorough review of the Project, including the connected actions and cumulative impacts. It is clear from the scope and detail of the DEIS that the Forest Service has taken a great deal of time and put much thought and effort into analyzing and disclosing the potential impacts of the Project. In particular, the Forest Service has done a good job taking a hard look at the impacts of each alternative. BE supports the Forest Service conclusion that Alternative 3 is the preferred alternative.

ANILCA Determination

Under the Alaska National Interest Lands Conservation Act ("ANILCA"), the Secretary of Agriculture "shall provide such access to non-federally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof." 16 U.S.C. [sect] 3210(a). Adequate access means "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 that minimizes damage or disturbance to National Forest System Lands and resources." 36 C.F.R. [sect] 251.111. The Forest Service's application of these requirements in its ANILCA determination is thorough, well-reasoned, and complete.

The Forest Service appropriately exercised the agency's considerable discretion under ANILCA in its analysis. The determination that adequate access requires year-round, plowed access sufficient for highway-legal, wheeled vehicles is correct. It is also correct that a paved road is necessary to implement these adequate

access criteria under the circumstances, as only a paved and plowed road could provide year-round access for vehicles, safely and reliably in the winter in this area. BE commends the Forest Service for acknowledging that the proposed use is reasonable, particularly considering that this conclusion is readily supported by state and local law. BE's proposal to develop one residence per 35-acre lot is a use-by-right under the Eagle County zoning laws, its Comprehensive Plan, and exempt pursuant to State law from local subdivision requirements and regulations.

At the same time, the Forest Service appropriately balanced its exercise of independent discretion with the consideration of other relevant factors such as: contemporaneous uses of similarly situated parcels; local standards and approvals; characteristics of nearby properties; and the proposed neighborhood's location in the Eagle River Valley with close proximity to I-70.

Despite attempts by opponents of the Project to characterize the proposed neighborhood as unreasonable, BE's ultra-low density proposal, while similar in many regards to developments in the area, is significantly less dense. The Forest Service should not substitute the narrow opinions of paid special-interest advocates for its own deliberate, comprehensive and well-reasoned determination.

As the Forest Service refines its analysis in preparation of the Final Environmental Impact Statement, BE suggests the addition of language clarifying that ANILCA does not allow the Forest Service to actually select the "No Action Alternative" and that it is included as a requirement of the National Environmental Policy Act ("NEPA") and serves as a baseline for analyzing the impacts of the alternatives available under ANILCA.

Project Timeline

The DEIS states that Forest Service scoping for the Project began in September 2016. In fact, the Forest Service's hard look at the Project began almost 10 years ago. The initial application for access to BE's private inholding was submitted in July 2008 and scoped in January 2009. The Forest Service received robust public participation during this initial scoping process. After beginning its analysis, the Forest Service suggested that the review process could be more efficient if the agency knew what access Eagle County would approve. Following this suggestion, BE asked the Forest Service to suspend its analysis and applied to Eagle County for the necessary county approvals (including a variance to allow a single point of access, among other things). Following its application to the County in 2013, there were several public meetings and County hearings, culminating in the County's approval of the requested variance in January 2014. It was only then that the current Project was scoped by the Forest Service for a second time in September 2016, as referenced in the DEIS.

The importance of including this background is twofold. First, it demonstrates the extent of Forest Service engagement on the Project and the considerable time invested in understanding its potential impacts. Under no circumstances can the Forest Service be accused of acting hastily or without deliberation over this nearly ten-year period. Secondly, it demonstrates the extensive opportunity for public involvement and discourse regarding not only the Project, but BE's proposed neighborhood at the end of the requested access route. The Forest Service should be proud of the considerable time, effort, and public involvement that has been dedicated to this Project [mdash]a timeline and effort that far exceed a typical NEPA analysis.

The Forest Service is Correct in Identifying Alternative 3 as the Preferred Alternative

BE commends the Forest Service for taking a hard look at the impacts of each alternative and concluding that Alternative 3 is the preferred alternative. As disclosed in the DEIS and supported by the comments below, the Forest Service was correct in abandoning Alternative 2, the original Forest Service proposed action, in favor of Alternative 3. BE encourages the Forest Service to finalize Alternative 3 as the approved action in its Record of Decision.

Approval of Alternative 3 would be consistent with the ANILCA determination and applicable case law, which makes clear that ANILCA's "adequate access" requirement imposes a standard that is higher than simply providing "any access." Alternative 2 is similar to proposed access in a Georgia case (*Nelson v. United States*, 64 F. Supp. 2d 1318, 1324-25 (N.D. Ga. 1999)) where courts invalidated an access route that required blasting and drilling and to build a "zigzag" road. In contrast, the low impact route contemplated by Alternative 3 "minimizes damage or disturbance to National Forest System Lands and resources," as required by ANILCA regulations.

Wildlife

BE recognizes that the DEIS contains a significant amount of technical material. While the Forest Service does a good job of making this material accessible to the general public, BE has retained Jon Kehmeier of SWCA Consultants as a consulting wildlife biologist. Mr. Kehmeier's involvement in the Project assures that BE has a clear understanding of the impacts and can focus its efforts on mitigation and project design elements that will be most effective for minimizing or eliminating impacts. This section as well as the next section, addressing water quality, incorporate Mr. Kehmeier's comments on the DEIS.

Alternative 3 should be approved because it has fewer impacts on wildlife than the other action alternatives. The DEIS identifies that Alternative 4 was developed to minimize impacts to deer and elk herds. However, the DEIS analysis indicates that the impacts on deer and elk under Alternative 4 exceed the impacts of the other action alternatives. As this alternative fails in its basic purpose, the Forest Service was correct to prefer Alternative 3 over Alternative 4.

The Forest Service should look again at some of the impacts of Alternative 2 on deer and elk migration. For example, from a common-sense perspective, the dramatic ground disturbance, retaining walls and cut slopes of Alternative 2 seem to create a significant impediment to deer and elk migration, which the DEIS does not address. Similarly, the DEIS does not address the short-term construction impacts on wildlife of Alternative 2. The excessive blasting and earth disturbance required by Alternative 2 would have a much more significant impact on wildlife and water quality than the construction impacts associated with Alternative 3.

Alternative 3 would not change the expected human use on the landscape during winter months as it is merely an access route to the private lands. Additionally, many of the developments in the Eagle Valley consist of high-density urban developments with large numbers of roads, pets, and human activity. Wildlife impacts from these developments result from the significant human population, as well as the large acreages of habitat conversion from the construction of the urban-density developments, associated golf courses, and other supporting infrastructure. The Berlaimont Estates neighborhood would not be expected to have the same impacts since it consists of dispersed building sites with low density human use, minimal roads, and limited supporting infrastructure. The character of the habitat would remain largely the same as it currently is and impacts may be less than expected when compared to other developments in the Eagle Valley.

Despite BE's best efforts to design a Project and neighborhood that minimizes impacts on wildlife, we recognize that impacts cannot be completely avoided. That is why BE is supportive of on-site or off-site mitigation. While the DEIS identifies a number of Project Design Criteria and Best Management Practices that will mitigate impacts, BE also understands that resetting the successional processes associated with the mature vegetation communities in some areas may improve the quality of winter range for elk and mule deer. Controlled burns or mechanical treatment followed by strategic restoration/reclamation activities could improve habitat conditions. This could also present opportunities to use wildlife-friendly forage species in landscaping and reclamation efforts.

Further, BE is open to considering further mitigation efforts at its proposed development such as strict property owner covenants and education to, among other things: eliminate fences and other movement impediments within the property; concentrate development on the flat, hill-top portions of the property rather than on the south-facing slopes; minimize impacts from trash removal; limit non-native landscaping to enhance habitat; inform residents of living practices that enhance wildlife, such as slow driving speeds and pet handling. BE looks forward to continuing its dialogue with the Forest Service and Colorado Parks and Wildlife to identify specific mitigation requirements that will have a lasting and sustainable positive impact on local wildlife.

The unavoidable impacts of the Project on wildlife highlight the need to maintain current or reduced levels of recreation during winter months. BE recognizes the challenge of balancing the competing interests of wildlife with those of the local community in recreation. To help strike a balance that is protective of wildlife, BE suggests that USFS consider requiring signage and eliminating the requirement to plow parking lots, which may discourage winter use of the recreational trails and other dispersed recreational use that is most disruptive to wildlife.

Water Quality

The Forest Service should consider that Alternative 3 may be better than the "No Action Alternative" for stream health. On page 250 and 251 of the DEIS, the analysis of the no action is lacking for watershed condition. Under the no action alternative, it is reasonable to assume that continued degradation of the stream conditions and watershed health would occur based on the fair to poor ratings described in Table 3M-11 and the "at risk" and "diminished health" class rankings in Table 3M-10. These conditions are a reflection of the no action and current land management practices in the watershed. Under the no action these streams and watersheds would be expected to continue to function in a degraded state.

Alternatively, on page 252 the DEIS states, "Construction of new and improved road segments, including a 2,500-foot section of the proposed trail, within the WIZ under all the action alternatives has the potential to negatively impact stream health." However, the analyses presented in the following sentences of the paragraph indicates that if properly designed and constructed, the improved road surface and trail system could disconnect the road from the stream segment and effectively improve watershed and stream health. These statements made in the DEIS are inconsistent and should be corrected based on the results of the analyses. If the road and trail construction measures, removal of existing culverts, and rehabilitation of the stream channel are identified as impacts common to all action alternatives, it is reasonable to conclude that the action alternatives would improve watershed and stream health.

In comparing the action alternative, BE points out that the construction and maintenance of Alternative 2, given its much larger disturbance footprint as compared to Alternative 3 and could be expected to contribute more sedimentation and require much more extensive mitigation than would be necessary under Alternative 3.

Ground Disturbance

BE commends the Forest Service for analyzing the entirety of the impacts, including both the NFS land impacts of the Project, as well as the Project impacts on private lands. This allows a more comprehensive view of total impacts to the landscape. This comprehensive analysis clearly identifies Alternative 3 as the least impactful alternative.

BE emphasizes the comparisons drawn among the action alternatives in the DEIS. For example, DEIS Table 2-5 underscores Alternative 3's minimal OVERALL impacts compared to Alternatives 2 and 4.

- * Total disturbance of Alternative 3 is 5.5 acres less than Alternative 2 and 3.4 acres less than Alternative 4.
- * Cut impact of Alternative 3 is 90,182 cubic yards less than Alternative 2 and is only 4,040 cubic yards greater than Alternative 4.
- * Fill impact of Alternative 3 is 65,075 cubic yards less than Alternative 2 and is 64,034 cubic yards less than Alternative 4.
- * Alternative 3 is shortest total route- almost 1/2 mile less than Alternative 2 and .7 miles less than Alternative 4.

Visual Impacts

As the DEIS identifies, the visual impacts of Alternative 3 are far less than those of Alternative 2. This can be seen, perhaps most clearly, by a detailed look at the height and length of the retaining walls. The tallest retaining wall under Alternative 3 is 27.5 feet (average of 19 feet) compared to 40 feet under Alternative 2. In addition, Alternative 2 contains two 30 foot high retaining walls. The Longest retaining wall under Alternative 3 is 925 feet (average height of 12.1 feet). This compares favorably to Alternative 2, which has a similar length wall (max height 30 feet) but also contains a wall of 1,171 feet long (20 ft max height).

BE directs the Forest Service to DEIS Table 3E-4, which does not include the same level of detail for Alternative 2 retaining walls as for retaining walls common to all alternatives or those analyzed under Alternatives 3 or 4. Please provide this additional data (square footage and average height) for Alternative 2 to aid in comparison of impacts in the Final EIS.

BE also requests that the Forest Service review the visual simulations for Alternative 2, which seem to understate the impacts. Given the extensive length and height of retaining walls as well as the additional switchbacks required, BE believes that the Alternative 2 roadway will be visible throughout valley.

Safety

Finally, in support of the Forest Service identification of Alternative 3 as the preferred alternative, BE highlights its safety benefits. Alternative 3 is the only alternative that has been reviewed and approved as safe emergency vehicle access by Eagle County, whose review included the participation of local emergency service agencies. Further, BE has conducted in depth fire-safety analysis of the specific Alternative 3 route. This analysis was reviewed by Eagle County as part of the variance process and will form the basis of a detailed wildland fire response plan.

Minor Clarifications

Despite the high quality of the DEIS, BE has identified a few areas where additional clarification may be necessary:

* In several sections, the DEIS seems to indicate that the Forest Service has the right to impose standards or requirements or to otherwise exercise approval rights over portions of an access road that is on private land. BE does not believe this is accurate and requests that the DEIS clarify that Eagle County will be the governmental agency with approval rights regarding portions of any access road that cross private land. Notwithstanding this distinction, BE intends to work with the Forest Service to implement wildlife mitigation measures regardless of whether portions of an access road are over public or private land.

* DEIS Table 2.6 lists Project Design Criteria and Best Management Practices. The Forest Service should review these closely for duplication and applicability to the Project as many seem to be generic in nature and could create more confusion than clarity during implementation.

* DEIS Figure 14 is meant to depict "Retaining Walls Common to All Alternatives". However, near the top of Figure 14, there is a stray segment of road, that appears to be associated only with Alternative 2. In addition, the alignment portrayed in this Figure appears, near the top, to be specific to Alternatives 3 and 4. Please review this Figure closely to make sure it accurately portrays only segments that are truly common to all alternatives.

* In DEIS Figure 18, it is difficult to determine where the winter range is located. More clearly defined patterns or colors should be used to better define the boundaries of the winter range. Also, the winter over-snow motorized route should be changed from white to a different color, because it can currently be confused with the depiction of the retaining walls. The map could also be improved by more clearly defining the three action alternatives on the map with different symbols or colors. The symbols used in Figure 2 would more clearly define where one alternative begins and another ends.

* The DEIS Figure 18 data used to define potential wildlife crossings and existing wildlife movement tracks were not described in the DEIS and are not defined on the map. This source of information should be disclosed to enable a full review of the analyses presented in the DEIS. Other than describing wildlife permeability as a general area of concern, the DEIS does little to explain why or how permeability is important and how it would be impacted as a result of improving an existing road. The DEIS needs to better tie the data depicted on Figure 18 with analyses of impacts or Figure 18 should remove reference to the crossings and movement tracks.

* The DEIS contains conflicting statements regarding which administrative appeals process the Forest Service intends to use for the Project. Specifically, the DEIS Abstract indicates that the Forest Service will use both the Part 218 and Part 219 processes concurrently. However, Appendix B addressing the Forest Plan amendment states that the Part 218 objection procedure applies. The Forest Service should clarify this issue. If the Forest Service issues only Project-specific amendments to the Forest Plan when approving the Project, then Part 218 is the appropriate appeals process. 36 C.F.R. [sect] 219.59(b).

* * *

Thank you for considering these comments and for the considerable time and effort that has gone into the DEIS. BE encourages the Forest Service to move forward with approval of Alternative 3 for all of the reasons identified in the DEIS and the few additional points raised or highlighted above.

Sincerely,

Berlaimont Estates, LLC

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