

Exhibit 15

**Standard Form 299: Application for
Transportation and Utility Systems and
Facilities on Federal Lands, Submitted to the
WRNF May 8, 2014**

BERLAIMONT ESTATES, LLC

**Standard Form 299:
Application for Transportation and Utility Systems
and Facilities on Federal Lands**



**Submitted to the White River National Forest
May 8, 2014**

May 06, 2014

Scott Fitzwilliams, Forest Supervisor
White River National Forest
120 Midland Ave, Suite 140
Glenwood Springs, CO 81601

Re: Berlaimont Estates, LLC Application for a Permanent Easement

Dear Supervisor Fitzwilliams,

Berlaimont Estates, LLC (“Berlaimont”) hereby submits the attached Standard Form (“SF”) 299 requesting a permanent easement from the United States Forest Service (“Forest Service”) authorizing Berlaimont to construct, improve, and maintain—in a manner consistent with recent County land use approvals—an access road across (“Proposed Road Access”) National Forest System (“NFS”) lands for reliable, year-round, vehicular access to reach the developable areas (northern portion) of Berlaimont’s inholding located north of Edwards, Colorado, in Eagle County. Given the unique nature of this inholding, Berlaimont respectfully submits this application for a permanent easement and requests authorization for the Proposed Road Access from the Forest Service pursuant to the Alaska National Interest Lands Conservation Act (“ANILCA”). Because of our inholding’s distinctive legal and topographic configuration, as well as the history surrounding our efforts to access this property, we offer the following background information to supplement your review of the SF-299.¹

1. Project Background

Berlaimont purchased the 680-acre parcel (formerly known as the Edwards Overlook) in 2008 (the “Property”). On July 7, 2008, we submitted an SF-299 to the White River National Forest (“WRNF”) requesting authorization for vehicular access to our inholding across NFS lands. As described in the 2008 SF-299, we intended (and continue to intend) to utilize, and improve, existing segments of two Forest System roads (“FSRs”)—FSRs 774 and 780 (totaling 4.1 miles)—to gain year-round access to the northern, developable portions of our property. In 2008, our goal was, and remains, to develop the 680-acre parcel into 19 individual lots—each 35 acres or larger consistent with Colorado and Eagle County authority authorizing this type of development as a “use by right.” Consistent with our intended use, the

¹ Please note that we have retained Hogan Lovells—an international law firm with an office in Denver—to assist us with understanding the legal and procedural considerations of our proposal for accessing our private inholding across NFS lands as legally entitled. Hogan Lovells has a great deal of federal, state, and local government experience with natural resources, land use, and Western public lands law that we think will be beneficial as we work together through this process.

property was divided into 19 parcels in 2011. In a letter dated September 23, 2008, Eagle/Holy Cross District Ranger Brian Lloyd accepted our 2008 application.²

As required by the National Environmental Policy Act (“NEPA”), an analysis of our accepted proposal was initiated with the publication of a Notice of Intent to Prepare an Environmental Impact Statement (“EIS”) in the Federal Register on January 16, 2009. *See* 74 Fed. Reg. 2991 (Jan. 16, 2009). The scoping notice identified the Forest Service’s “Proposed Action,” which was to issue a permanent easement on FSRs 774 and 780, providing year-round, motorized access to the eastern leg of the inholding. In addition to improvement of FSRs 774 and 780, the Proposed Action map accompanying the scoping notice depicted a new road on private lands with multiple switchbacks up the steep, eastern leg of the inholding to gain access to the developable portions of the property. The Forest Service’s Proposed Action was not Berlaimont’s original or preferred proposal for accessing the Property. In addition to the Proposed Action, the scoping notice indicated that “reasonable alternatives to the Forest Service’s Proposed Action” would be considered in the EIS. One such alternative was identified as “the Proponent’s original proposal for accessing the inholding.” This was depicted on a map included with the scoping notice. The scoping notice correctly stated that:

[a]lthough this alternative increases the length of the easement across NFS lands as compared to the Proposed Action (i.e., direct impacts), it capitalizes on an existing network of Forest System Roads. By doing so, it decreases the indirect impacts of the Proposed Action, which would necessitate construction of a new, highly visible road up the entire eastern leg of the inholding. (emphasis added).

During the public scoping period, the Forest Service received 105 comment letters. As a result of public and internal issues that were raised, the Forest Service identified numerous alternatives to the Proposed Action that would likely have been analyzed in the Draft EIS; included among them was Berlaimont’s original proposal for access to the northern, developable portions of the Property.

A January 20, 2009, comment letter (“County Letter”) submitted by the Eagle County Planning Manager indicated that while the County does not have jurisdiction over subdivision of parcels which are 35 acres or larger, it *does* have jurisdiction over how such parcels are accessed. The County Letter noted that it is within Eagle County’s purview to ensure that the proposed access road, to serve a 19-lot subdivision, meets the applicable road standards (in this instance the standard is for a “Rural Minor Collector”). Because the road was not designed in conformance with Eagle County Land Use Regulations (roadway standards), the County noted that we must apply for a Variance from Improvement Standards (“VIS”) and seek approval from the Eagle County Board of County Commissioners to potentially allow an alternative to the otherwise applicable County road standards.

² In 2008, Ranger Lloyd noted that our proposal failed to meet all of the screening criteria found at 36 C.F.R. § 251.54(e) and FSH 2709.11, Chapter 10, 12.11. However, because of the Alaska National Interest Lands Conservation Act, the proposal was accepted in a modified form—only providing road access to the eastern leg of the inholding. Specifically, WRNF stated that the 2008 proposal (1) was not consistent with or could not be made consistent with standards and guidelines in the applicable Forest land and resource management plan, and (2) was not consistent with and compatible with the purpose for which the lands are managed, including a description of why use of NFS lands was necessary and why land under other ownership could not be used. This application explains in further detail why these prior concerns are no longer at issue and why the Forest Service should not delay acceptance and review of this application.

On May 10, 2009, representatives from the WRNF met with Eagle County and confirmed that absent a variance from Eagle County road improvement standards, development within our inholding would be limited to three dwelling units. Following that meeting, in a letter dated May 22, 2009, Acting Eagle/Holy Cross District Ranger David Loomis gave us the opportunity to modify our proposal to provide access to 3 units instead of 19. If we chose to pursue access for 19 units, Ranger Loomis requested documentation of coordination with Eagle County, which demonstrates “reasonable assurance that such development would be approved by the County.” Finally, in an email dated November 9, 2009, WRNF representative Scott Fitzwilliams suggested that it would be in the best interest of both Berlaimont and the Forest Service if Berlaimont first submit a VIS application before all possible alternatives to the Proposed Action were developed and analyzed via the NEPA process. In an email to Berlaimont dated November 9, 2009, WRNF stated: “If we can narrow the scope of alternatives **to what the County would actually approve**, it is much more efficient” (emphasis added). At that point, and at your direction, work on the EIS was postponed indefinitely while Berlaimont pursued a VIS for the road with Eagle County.

2. Eagle County VIS Application Process

On July 3, 2013, Berlaimont submitted its *Application for Variance from Improvement Standards for Berlaimont Estates to Eagle County* (the “2013 Application”). Importantly, Berlaimont performed extensive analysis in the planning and design of the proposed access road to ensure that the proposed access represents the safest and most environmentally friendly route. As stated in the 2013 Application: “Berlaimont Estates, LLC (the applicant) is seeking to provide road access to an platted nineteen (19) parcel subdivision within its 680 acres of land in Eagle County, Colorado. The 680 acres is an inholding within the WRNF. As a use by right pursuant to Colorado Revised Statutes and Eagle County zoning, the lots are exempt from subdivision regulations. In order to provide access to this property, however, the applicant has identified the need for several variances from the Eagle County Land Use Regulations with regard to access and roadway standards, including *the dual access standards, emergency vehicle turn around areas, and other road design standards.*”

Through submission of this application today, we are pleased to inform you that, although it has taken a considerable amount of time and effort on our part, Berlaimont has received the requested variances from Eagle County’s Land Use Regulations (“LUR”) improvement standards relating to the safety of roads from the Board of Commissioners on January 7, 2014. The Resolution of the Board of County Commissioners of the County of Eagle, State of Colorado (File Number VIS-4398) concluded with,

“...at the conclusion of the hearing on December 10, 2013, it was moved, seconded and unanimously voted by the Board to approve each of the three variances, concluding, after hearing and seeing the evidence presented in these proceedings concerning variances from the *[land use regulations]* improvement standards relating to the safety of roads, that the hardship to the Applicant from denial of the variances outweighs the adverse impact on the health, safety and welfare of persons affected and the adverse impact on the land affected.”

Prior to the VIS process, alternatives were considered and determined to be inferior to the proposed road design due to heavy environmental, visual impact, as well as significant inferiority in regards to travelers’ safety.

Below we provide some key highlights of the comprehensive 2013 Application package to help inform your decision-making with respect request for a permanent easement:

Final Plat:

In 2011, in accordance with state statute, the property was divided into 19 parcels each with a land area over 35 acres in area. This was done via the final plat for Berlaimont Estates recorded on April 20, 2011. (Recorded Platt attached as Exhibit [3] to this application.) Additionally, the “Resources” zone district, within which the Property lies, establishes a use by right for low density residential development of one unit per 35 acres, as proposed by Berlaimont.³

Water Rights:

In 2010, a water right decree was approved by Colorado Water Court Division 5, adjudicating water rights sufficient to serve the 19 parcels consistent with the Resource zoning on the property that was established in 1974. (Water Rights Decree attached as Exhibit [6] to this application.)

Wildfire Mitigation:

The Anchor Point Group, one of the leading firms in the industry and with extensive local experience, prepared a Wildland Fire Mitigation Plan. With the mitigation measures included in the Wildland Fire Mitigation Plan, was Anchor Point concluding that the proposed single access road provides for safe and adequate access to and from the 19 parcels. *This Wildland Fire Mitigation Plan has been reviewed and accepted by the Chief of the Eagle River Fire Protection District and the County's Wildfire Mitigation Manager.* (Wildfire Mitigation Plan attached as Exhibit [7] to this application.)

Open Space Easement:

In order to ensure conservation of the bulk of the 680 acres of private land, open space easements are proposed to be recorded prior to the construction of the proposed access road or any development on the property. These easements will ensure wildlife and other scenic values of the property are protected. The easement will be controlled by the homeowners association (“HOA”) and include oversight by Eagle County.

Reduced Density:

Though the property is zoned “Resource” and Berlaimont is only proposing uses that are allowed by that zoning (as opposed to many high-density subdivisions developed throughout Eagle County), the applicant is proposing to restrict the 19 parcels to only 9 Accessory Dwelling Units (ADUs) from the 19 otherwise allowed by zoning (in addition to the 19 primary residences). This will serve to further reduce residential density as well as traffic on the proposed roadway and will result in fewer structures and residents within the property.

³ See Eagle County Comprehensive Plan, Section 3-210.

Construction Standards:

As provided for in the Wildland Fire Mitigation Plan, Berlaimont agreed to extensive standards with regard to construction type and quality to ensure that the proposed structures can act as fire shelters and exceed code standards for typical residential structures. Additionally, all homes are required to have a fire suppression system and extensive defensible space.

CC&R and HOA Documents:

We proposed to have in place (prior to any development or roadway construction) documents which adopt numerous standards, including restrictions of numbers of horses, prohibition on keeping livestock, pet restrictions, fencing restrictions, and bear-proof container regulations. These documents will also address road upkeep and maintenance, snow plowing, and water and sewer maintenance requirements. In addition, safety regulations will be included in the Covenants, Codes and Restrictions ("CC&R") and HOA documents, covering emergency training, evacuation training, heliport access, and fire prevention training.

Traffic Analysis:

Kimley-Horne and Associates, Inc. was engaged to address some of the concerns regarding traffic on the proposed road as a result of the future 19 lots. The analysis indicates that Berlaimont Estates will be a relatively low traffic generator. (Traffic Analysis attached as Exhibit [5] to this application.)

Environmental Impact Report:

As requested by Eagle County, Berlaimont prepared with the assistance of numerous qualified and reputable sub-contractors an Environmental Impact Report ("EIR") according to Section 4-460 of the Eagle County Land Use Regulations. The EIR documents anticipated some impacts to the physical, biological, and human environments due to construction and use of the proposed roadway. (EIR attached as Exhibit [8] to this application.)

Economic Impact Assessment:

The EIR includes an Economic Impact Assessment for Berlaimont Estates reflecting current economic trends, which indicate that the project will have a positive cumulative input to the local and regional economy, with \$203.6 million from project construction and over 1,000 Full-Time Equivalent ("FTE") jobs over an anticipated 9-year construction phase. (Economic Impact Assessment attached as Exhibit [9] to this application.)

Community Outreach:

A community meeting was held on April 3, 2013, to present the proposal to the residents of the Moonridge neighborhood. An overview of the proposed plan was presented and input sought to ensure that the concerns of the neighborhood were understood and could be included in the planning of the road. This meeting was in addition to the two public hearings held on the roadway variances.

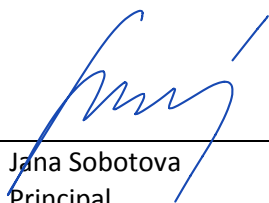
In short, Berlaimont's proposal seeks to limit impacts to NFS lands, while at the same time enabling the reasonable use and enjoyment of the Property.

3. Conclusion

We greatly appreciate our relationship with the WRNF, and we appreciate the sound advice that the Forest Service gave us in 2009 to submit a VIS application to Eagle County prior to completing a complex and detailed EIS. We share your sentiment that securing the necessary variances from Eagle County LUR improvements standards will make the upcoming NEPA analysis much more efficient. Furthermore, Eagle County's January 2014 Resolution on our requested VIS application regarding the road design should give the Forest Service assurance that this is a sound proposal, which the County has thoroughly vetted and addressed. We are confident that the 2014 Resolution provides a key component of the legal foundation that the Forest Service feels is necessary to accept our SF-299 and initiate a site-specific NEPA analysis.

We await your review and response to this application, and we are available and look forward to dialogue as to any questions that you may have as you review this information.

Sincerely,



Jana Sobotova
Principal
Berlaimont Estates, LLC

EXHIBITS

1. Resolution of the Board of County Commissioners, Eagle County (January 7, 2014)
2. Land Title and Property Deed
3. Recorded Plat
4. Road Plan Graphics
5. Kimley Horn & Associates Traffic Study
6. Water Rights Decree
7. Wildfire Mitigation Plan
8. Environmental Impact Report
9. Economic Impact Assessment
10. Property Graphics
11. Berlaimont Estates, LLC Operating Agreement

Standard Form 299

STANDARD FORM 299 (6/99)
Prescribed by DOI/USDA/DOT
P.L. 96-487 and Federal
Register Notice 5-22-95

**APPLICATION FOR TRANSPORTATION AND
UTILITY SYSTEMS AND FACILITIES
ON FEDERAL LANDS**

FORM APPROVED
OMB NO. 0596-0082

FOR AGENCY USE ONLY

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

Application Number

Date Filed

1. Name and address of applicant (*include zip code*)

Berlaimont Estates, LLC (A Colorado limited liability Company)
5150 Tamiami Trail N., Suite 503
Naples, FL 34103

Name, title, and address of authorized agent if different from item 1 (*include zip code*)

Ms. Jana Sobotova (Principal)
Mr. Vaclav Vochoska (Project Mgr.)
Berlaimont Estates, LLC
5150 Tamiami Trail N., Suite 503
Naples, FL 34103
(239) 649-1661

Applicant

Authorized Agent

4. As applicant are you? (*check one*)

- a. ☐ Individual
b. ☒ Corporation*
c. ☐ Partnership/Association*
d. ☐ State Government/State Agency
e. ☐ Local Government
f. ☐ Federal Agency

* If checked, complete supplemental page

5. Specify what application is for: (*check one*)

- a. ☒ New authorization
b. ☐ Renewing existing authorization No.
c. ☐ Amend existing authorization No.
d. ☐ Assign existing authorization No.
e. ☐ Existing use for which no authorization has been received *
f. ☐ Other*

* If checked, provide details under item 7

6. If an individual, or partnership are you a citizen(s) of the United States? ☐ Yes ☐ No **Not Applicable**

7. Project description (describe in detail): (a) Type of system or facility, (e.g., canal, pipeline, road); (b) related structures and facilities; (c) physical specifications (*Length, width, grading, etc.*); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (*Attach additional sheets, if additional space is needed.*)

Please refer to Attachment A for answers to questions 7a through 7h.

8. Attach a map covering area and show location of project proposal **Attached – Refer to Exhibit [10]**

9. State or Local government approval: ☒ Attached ☐ Applied for ☐ Not Required

10. Nonreturnable application fee: ☐ Attached ☒ Not required

11. Does project cross international boundary or affect international waterways? ☐ Yes ☒ No (*if "yes," indicate on map*)

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

Based on its proven track record both within and outside of the United States, Berlaimont has sufficient financial capabilities as well as development expertise for construction of the proposed road. Long-term maintenance of the road will be carried out by a formal homeowners association (HOA).

The financial strength of the applicant and well-established relationship with financial institutions will ensure adequate funding of the project. Should the Forest Service need specific financial statements from the applicant, Berlaimont is prepared to provide these to the Forest Service, at its request.

Furthermore, the applicant realizes the complexity of the development itself as well as the complexity of its initial stage permitting and planning process. Among the applicant's corporate policies is to strive to utilize local, state and regional expertise in the areas of legal compliance, supervision, planning, design and construction to ensure compliance/consistency with all relevant regulatory requirements and policies. Berlaimont's team has the technical expertise necessary to evaluate, construct, maintain, and operate the Proposed Road Access. This includes the ability to provide engineering designs and meet applicable codes and standards. The professional entities that have assisted Berlaimont to date include:

Planning

Dominic Mauriello – Planning and local project representation
Mauriello Planning Group, LLC
P.O. Box 4777E
Eagle, CO 81631

Road Construction & Design

Rob Lee and Kent Krieh – Road design, construction supervision, and engineering services
Alpine Engineering, INC.
34510 U.S. 6
Edwards, CO 81632

Fire Safety

Chris White, Rod Moraga – Wildfire Mitigation Plan and Community Wildfire Protection Plan
THE ANCHOR POINT GROUP
3775 Iris Ave, Ste 2A
Boulder, CO 80301

Traffic Consulting

Curtis Rowe – Traffic consulting/assessment and road safety analyses
KIMLEY HORN & ASSOCIATES
990 South Broadway, Suite 200
Denver, CO 80209

Eagle County Environmental Impact Report (EIR)

The EIR was assembled by:
SE GROUP
PO Box 2729
Frisco, CO 80443

With assistance from the following specialty sub-consultants:

Rick Thompson – Biologist
WESTERN ECOSYSTEMS, INC.
905 West Coach Road
Boulder, Colorado 80302

Jim McCalpin – Geologist
GeoHaz CONSULTING
600 E. Galena Ave
Box 837
Crestone, CO 81131

Doug Kennedy – Economic Analyst
DOUG KENNEDY ADVISORS
2330 Gove Hill Road
Thetford Center, Vermont 05075

Legal

Andy Spielman – Public Lands
HOGAN LOVELLS, LLP
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202

Tom Ragonetti – Land Use
Otten Johnson Robinson Neff + Ragonetti
950 17th St # 1600
Denver, CO

John W. Dunn – Land Use and Compliance
 Mountain Law Group, LLC
 Vail Professional Building
 953 South Frontage Road West, Suite 222
 Vail, Colorado 81657

Public Relations

Pat Peeples – Public Relations, External Relations, Community Outreach, Media Relations
 PEEPLES INK
 PO Box 3007
 Vail, Colorado 81658
 13a. Describe other reasonable alternative routes and modes considered.

Please refer to Attachment A for answers to question 13a.

b. Why were these alternatives not selected?

Please refer to Attachment A for answers to question 13b.

c. Give explanation as to why it is necessary to cross Federal Lands.

Please refer to Attachment A for answers to question 13c.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. *(Specify number, date, code, or name)*

Not Applicable.

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

Berlaimont plans to exercise its legal right to develop its private property into a low-density, year-round residential community consistent with Colorado's subdivision exemption statute allowing 35-acre parcels intended for residential and agricultural uses, as well as Eagle County's Land Use Regulations and zoning, which authorize this activity as a "use-by-right." As such, reliable, year-round, vehicular access across NFS lands is critical to reach the developable areas across the northern portion of the inholding. Eagle County has authorized the Proposed Road Access by approving requested variances related to several County Land Use Regulations for access and roadway standards.

The owners of the Property have considerable experience in real estate as well as the development industry. They have been property owners and part-time residents in Eagle County for more than a decade, and understand the complexity of residential development in Eagle County. They also understand Eagle County's real estate market. They are committed to creating a state-of-the-art development with a focus on sustainability and mitigation of environmental impacts.

a. Cost of proposal (construction, operation, and maintenance)

A preliminary budget proposal for construction/improvement of the 8.4-mile road is estimated between \$10 - 15 million. A final, detailed budget for road construction will be completed in coordination with engineering and contractors, at the Forest Service's direction after this application for a permanent easement has been accepted.

b. Estimated cost of next best alternative

The preliminary cost associated with the "next best alternative" (entailing access across NFS lands to the eastern leg of the inholding, then constructing a road up the eastern leg to access developable areas) is estimated in excess of \$18.5 million. Detailed cost assessments and breakdowns have not been determined as they are considered technically and environmentally inferior when compared to the Proposed Road Access, which primarily utilizes existing road platforms. Furthermore, the Eagle County Commissioners' Resolution allows the applicant to pursue the Proposed Road Access only. Prior to the VIS process, alternatives were considered and determined to be inferior to the proposed road design due to heavy environmental impacts, visual impact, as well as significant concern for vehicular and residential safety.

c. Expected public benefits

- Any other alternative would cause a dramatic disturbance of undisturbed habitat and would have dramatic environmental as well as visual impacts on the area. Public benefits include the improvement of existing FSR roadbeds, which provide public access to NFS lands for recreation and other purposes.
- The Proposed Road Access will limit visual impacts as compared to any other alternatives so as not to impose on scenic views and viewsheds. Any other alternative roadway would necessarily cut across steep slopes, and utilize an excessive number of switchbacks, large cuts and fills and high retaining walls, which would ultimately have a dramatic visual impact.
- The Proposed Road Access will limit environmental impacts, particularly as compared to the alternative to access through the eastern leg of the Property, which, again, would require an excessive number of switchbacks, large cuts, and fills.
- The Proposed Road Access offers improved wildfire mitigation within the inholding as well as in the surrounding area under WRNF management. The Wildfire Mitigation Plan/WMP (please see the attached Exhibit [7]), completed by the Anchor Point Group, provides a detailed and comprehensive assessment of wildfire risk, recommendations for mitigation measures, as well as detailed direction for construction guidelines and other wildfire related mitigation measures. A Community Wildfire Protection Plan (CWPP) will be adopted by the applicant to ensure the development continues to be one of the most pro-active fire-wise projects in Eagle County.
- The Proposed Road Access will provide access for ERFPD as well as other Emergency Response Personnel not only for the development itself, but also for the general public recreating in the area. Recreational motorized and non-motorized traffic in the area are common, and the current lack of adequate access creates a significant hazard to the health of the recreating public.
- The Proposed Road Access will allow access for ERFPD in a case of wildfire in the area. The current lack of access limits the ability to respond to wildfires. The Proposed Road Access will provide access for fire engines, there will be additional resources for water and staging areas that the First Responders can utilize in a case of an emergency.
- Paving and improvements to the FSRs will provide additional recreational opportunities for bikers and hikers by providing additional access to pedestrian and mountain bike trails in the area for the public benefit.
- The Economic Impact Assessment (please see attached Exhibit [9]) prepared in support of the Environmental Impact Report (EIR) at the request of Eagle County identifies notable cumulative economic benefits at a local and regional scale from construction as well as ongoing community occupancy and maintenance activities. Specifically, the Economic Impact Study, reflecting current economic trends, indicates that the project will have a positive cumulative input to the local and regional economy, with \$203.6 million from project construction and over 1,000 Full-Time Equivalent ("FTE") jobs over an anticipated 9 year construction phase.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

Construction of the proposed road is not anticipated to have an appreciable impact on the population in Edwards or Eagle County. The 2014 U.S. Census reported an average persons per household of 2.81. The 19 homes to be developed in this area would most probably result in a total population of 53 people. By design, future residential development within the inholding will be extremely low density (one home per 35 acres). The majority of these would be expected to be second homes (i.e., not primary residences). Impacts to residents of the Moonridge subdivision during the construction of the Berlaimont Road in the lower section are to be mitigated through dialogue with the community as well as through proposed construction of an earthen berm between Berry Creek Road and the Moonridge residences. The lower section of the road adjacent to the Moonridge subdivision is to be relocated further away from the residential units and paved, which will create a significant benefit to the residents (elimination of dust and noise emissions generated by the existing dirt road).

This proposal makes use of existing FSRs to the extent possible, and Berlaimont does not intend to restrict current public access to, or use of, these FSRs in any way (public use of the road that serves residential areas in the northern portion of the private inholding would, however, be restricted). In fact, in many ways this proposal would improve public access to public lands north of Edwards, including improvement of the safety and security of the general public.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

At the direction of Eagle County, an Environmental Impact Report (EIR) was prepared to accompany the 2013 VIS application. See EIR, attached hereto as Exhibit [8]. The EIR details the potential direct, indirect and cumulative impacts of the proposed road on the human, physical and biological environments – encompassing both private and National Forest System lands in the project area. Because all surveys, analysis and documentation were completed at the direction of Eagle County, and outside of the NEPA process, all determinations are considered preliminary at this time. It is anticipated that additional surveys, analysis and documentation may be necessary to satisfy the requirements of the White River National Forest and the National Environmental Policy Act.

In approving the Proposed Road Access, the Eagle County Commissioners “balance[d] the hardships to the applicant of not granting the Variance against the adverse impact on the health, safety, and welfare of persons affected, and the adverse impact of the lands affected.”¹ Berlaimont anticipates that the upcoming federal NEPA analysis will provide further detailed and site-specific information regarding the direct, indirect, and cumulative impacts of this proposal.

The direct impacts of the proposed road are primarily related to visual resources, wildlife/aquatic habitat, botany, and soils. The indirect impacts of the road are related to future residential home construction within the inholding, and subsequent use of the road. The likely environmental effects of the Proposed Road Access are discussed below, and in the response provided for #18.

- a) Aside from short-term construction and minimal residential traffic, as well as short-term construction-related dust/emissions, no air quality impacts are anticipated.
- b) One of the main considerations of alternate road access options was visual impacts. The visual impact of the Proposed Road Access will be minimal because it utilizes existing FSRs and thus minimizes new visual impacts, particularly from the I-70 corridor and across the Valley. Any other alternative roadway would necessarily cut across steep slopes, and utilize an excessive number of switchbacks, large cuts and fills and high retaining walls, which would ultimately have a dramatic visual impact.
- c) The applicant has secured adequate water rights and will utilize water resources in compliance with all regulatory and environmental standards. See attached water rights decree, attached hereto as Exhibit [6]. Aside from construction-related water use, no water quality impacts are anticipated.
- d) Control or structural change on any stream or other body of water is not proposed. Berlaimont anticipates water related items will be further addressed during the NEPA process.
- e) There will be some noise from machinery used in the construction of the Proposed Road Access. The types of equipment for this construction could consist of: pickup trucks, bucket trucks, backhoes, concrete mixers, and bulldozers, among other construction vehicles. Noise is expected to be short-term and related to construction of the road. Most construction activities are expected to occur during the daytime and Berlaimont will work with Forest Service to address any specific or special requirements regarding construction noise in the WRNF.
- f) The Proposed Road Access will have some impacts to the surface of the land, including vegetation and soil. The Proposed Road Access will require limited clearing and grading to improve, construct, and maintain the Proposed Road Access. Additional permitting is required by Eagle County and Berlaimont will fully comply with all requirements. Berlaimont will work with Forest Service to address any specific or special requirements to minimize or eliminate impacts to the surface of the land in the WRNF.

¹ See Resolution No. 2014-001, File No. VIS-4398.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

As discussed in the EIR (See EIR, attached hereto as Exhibit [8]):

a) Populations of fish, plantlife, wildlife, and marine life (including threatened and endangered species):

- **Sensitive Plant Species:** Thirty-three plant species identified as “sensitive” by the WRNF are known or suspected to occur on the Forest. Based on botanical surveys conducted within the project area, no habitat exists for thirty-one of the thirty-three WRNF sensitive plant species—the exception is habitat for Harrington penstemon and dropleaf buckwheat. Dropleaf buckwheat was not detected in field surveys, although habitat is present the project is anticipated to have “**No Effect**” on this plant species. Regarding Harrington penstemon, the proposed project “may adversely impact individuals, but is not likely to result in a loss of viability in the planning area, nor cause a trend toward federal listing.”
- **Sensitive Wildlife Species:** Thirty-three Forest Service Region 2 sensitive wildlife species are present or potentially present on the WRNF. Of those, sixteen have habitat present within the project area. Of the sixteen Region 2 sensitive wildlife species, eight would not be affected through the implementation of the project (“**No Effect**”). Effects to the remaining eight species (Colorado River cutthroat trout, boreal western toad, northern leopard frog, bald eagle, northern goshawk, Brewer’s sparrow, Townsend’s big-eared bat, and North American wolverine) are considered to be limited to individuals and not likely to result in a loss of species viability in the planning area.
- **T&E Plants and Wildlife:** Eight threatened and endangered (T&E) species are potentially present on the WRNF. Only one—Canada lynx—was found to have habitat in the project area. The project is “**not likely to adversely affect**” Canada lynx. It is anticipated that there would be “**No Effect**” to three of the eight federally listed T&E species (Penland alpine fen mustard, Uncompahgre fritillary butterfly, and greenback cutthroat trout). Ultimate build-out of the property could lead to a “**likely to adversely affect**” determination to the four big river fish (Humpback chub, Bonytail chub, Colorado pikeminnow, and Razorback sucker) because of water depletions associated with future residential development within the inholding.

Only one federally threatened plant species is present on the WRNF—Penland alpine fed mustard. The proposed project is anticipated to have “**No Effect**” on this species.

- **Other Wildlife Species:** Habitat for American elk and mule deer is present within the project area. Per the 2002 WRNF Forest Plan, National Forest System lands in the project area are located in Management Area (MA) 5.41, Deer and Elk Winter Range, and MA 8.32, Utility Corridors. The objective of MA 5.41 is to provide habitat and winter forage for deer and elk along with cover and solitude. Human activities are managed so that deer and elk can effectively use the area. Three important elk seasonal ranges/activity areas have been identified in the vicinity of the project area: winter range; winter concentration areas; and sever winter range. The applicant’s wildlife consultant has analyzed potential impacts regarding elk and mule deer. This report is contained in the Environmental Impact Report – Exhibit [8].

b) Marine mammals, including hunting, capturing, collecting, or killing these animals

- This proposal does not include hunting, capturing collecting or killing any animals—aquatic or terrestrial.

20. Name all the Department(s)/Agency(ies) where this application is being filed.

USDA Forest Service, White River National Forest

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant

Date

05/05/2014

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

GENERAL INFORMATION
ALASKA NATIONAL INTEREST LANDS

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest Lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation and utility systems and facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.
2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.
3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.
4. Systems for the transmission and distribution of electric energy.
5. Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communications.
6. Improved right-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.
7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

This application must be filed simultaneously with each Federal department or agency requiring authorization to establish and operate your proposal.

In Alaska, the following agencies will help the applicant file an application and identify the other agencies the applicant should contact and possibly file with:

Department of Agriculture
Regional Forester, Forest Service (USFS)
Federal Office Building,
P.O. Box 21628
Juneau, Alaska 99802-1628
Telephone: (907) 586-7847 (or a local Forest Service Office)

Department of the Interior
Bureau of Indian Affairs (BIA)
Juneau Area Office
Federal Building Annex
9109 Mendenhall Mall Road, Suite 5
Juneau, Alaska 99802
Telephone: (907) 586-7177

Department of the Interior
Bureau of Land Management
222 West 7th Avenue
P.O. Box 13
Anchorage, Alaska 99513-7599
Telephone: (907) 271-5477 (or a local BLM Office)

U.S. Fish & Wildlife Service (FWS) Office of the Regional Director 1011 East Tudor Road Anchorage, Alaska 99503 Telephone: (907) 786-3440	National Park Service (NPA) Alaska Regional Office, 2225 Gambell St., Rm. 107 Anchorage, Alaska 99502-2892 Telephone: (907) 786-3440
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Note - Filings with any Interior agency may be filed with any office noted above or with the Office of the Secretary of the Interior, Regional Environmental Office, P.O. Box 120, 1675 C Street, Anchorage, Alaska

Department of Transportation
Federal Aviation Administration
Alaska Region AAL-4, 222 West 7th Ave., Box 14
Anchorage, Alaska 99513-7587
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation and utility systems and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS

(Items not listed are self-explanatory)

- 7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.
- 8 Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.
- 9, 10, and 12 The responsible agency will provide additional instructions.
- 13 Providing information on alternate routes and modes in as much detail as possible, discussing why certain routes or modes were rejected and why it is necessary to cross Federal lands will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate routes and modes as related to current technology and economics.
- 14 The responsible agency will provide instructions.
- 15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.
- 16 through 19 Providing this information in as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. For example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands. The Federal agencies use this information to

9513.

evaluate the applicant's proposal. The public is obligated to submit this form if they wish to obtain permission to use Federal lands.

SUPPLEMENTAL

NOTE: The responsible agency(ies) will provide instructions	CHECK APPROPRIATE BLOCK	
	ATTACHED	FILED*
I - PRIVATE CORPORATIONS		
a. Articles of Incorporation	☐	☐
b. Corporation Bylaws	☐	☐
c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State	☐	☐
c. Copy of resolution authorizing filing	☐	☐
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	☐	☐
f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications.	☐	☐
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal.	☐	☐
II - PUBLIC CORPORATIONS		
a. Copy of law forming corporation	☐	☐
b. Proof of organization	☐	☐
c. Copy of Bylaws	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. If application is for an oil or gas pipeline, provide information required by item "I-f" and "I-g" above.	☐	☐
III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY		
a. Articles of association, if any Refer to Exhibit [11]	☒	☐
b. If one partner is authorized to sign, resolution authorizing action is Refer to Exhibit [11]	☒	☐
c. Name and address of each participant, partner, association, or other Refer to Exhibit [11]	☒	☐
d. If application is for an oil or gas pipeline, provide information required by item "I-f" and "I-g" above. N/A	☐	☐

* If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information (e.g., number, date, code, name). If not on file or current, attach the requested information.

NOTICE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate the requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations or the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Attachment A

BERLAIMONT ESTATES, LLC

STANDARD FORM 299 SPECIAL USE PERMIT APPLICATION

ATTACHMENT A: RESPONSES TO QUESTIONS 7 & 13

7. **Project description (describe in detail):** (a) Type of system or facility, (e.g., canal, pipeline, road); (b) related structures and facilities; (c) physical specifications (Length, width, grading, etc.); (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction (Attach additional sheets, if additional space is needed.)

7a. Type of system or facility

Berlaimont Estates, LLC ("Berlaimont") holds sale title See Exhibit [2] to a 680-acre inholding (the "Property") within the White River National Forest ("WRNF"). Through this application, Berlaimont applies for a permanent easement across National Forest System lands from the United States Department of Agriculture, United States Forest Service ("Forest Service") authorizing it to construct a road to accommodate permanent, year-round vehicular road access (the "Proposed Road Access") to the developable portions of the Property surrounded by National Forest System ("NFS") lands managed by the WRNF in a manner consistent with recent County land use approvals. In response to Item #8 of this SF 299 application, the project proposal is depicted on an attached graphic See Exhibit [10]. The Proposed Road Access, which would be composed of both existing and new road segments on NFS lands, has been designed in accordance with Eagle County Land Use Regulations ("ECLUR") for Road Standards, subject to the County's approval of some deviations to these regulations, and is classified as Rural Minor Collector Category V (100 to <250 ADT).

The Property has a distinctive horseshoe shape with an eastern and western leg. Refer to the graphic (Exhibit [10] that has been prepared in response to Item #8 of this SF 299 application. Very steep terrain exists in and around the subject Property. Significant gradients complicate the access (e.g., large areas of terrain slope in excess of 25% with some areas exceeding 50% grades). Some of the steepest terrain exists on the eastern leg of the Property, creating potentially significant safety concerns related to providing access across NFS lands only to the eastern leg of the inholding. The upper portion of the Property between the east and west legs presents the highest development potential because of the relatively gentle terrain. As stated, the WRNF surrounds the Property on all sides. The Forest Service requires permission to cross NFS lands, including for permanent motorized access to the Property. In 2008, Berlaimont applied to the Forest Service for access to the Property and the Forest Service directed Berlaimont to first seek approval for access from Eagle County. Complying with the Forest Service's request to obtain local authorization first, Berlaimont now seeks authorization for the Proposed Road Access from the Forest Service because we have since obtained the requisite variances from Eagle County relating to road design.

Given the unique nature of this inholding, Berlaimont submits this application for a permanent easement and requests authorization for the Proposed Road Access from the Forest Service under

the Alaska National Interest Lands Conservation Act (“ANILCA”).¹ ANILCA offers Berlaimont “a threshold ‘right of access to their lands,’” which is subject to reasonable regulation.² Reasonable regulation means an inholder seeking access under ANILCA must apply for a permanent easement—a requirement with which Berlaimont respectfully complies.³ Under ANILCA, the Forest Service must first determine whether the applicant’s proposed use is reasonable. If a use is determined to be reasonable, the Forest Service must then grant adequate access that facilitates the inholders’ reasonable use and enjoyment of the property. Berlaimont respectfully submits that its proposed use of the Property (low density residential area) constitutes a reasonable use and enjoyment of the Property and the Proposed Road Access route is the only route that facilitates such reasonable use and enjoyment under ANILCA. *Our reasonable use of the property was validated by the Eagle County Board of Commissioners on January 7, 2014 when they granted us the requested variances from Eagle County’s Land Use Regulations improvement standards relating to the safety of roads.* Berlaimont’s proposal seeks to limit impacts to NFS lands, while at the same time enabling the reasonable use and enjoyment of the Property.

7b. Related structures and facilities

Berlaimont submits this application for authorization for the Proposed Road Access because Berlaimont plans to develop its inholding into 19 residential dwelling units, each on a lot that is 35 acres in size pursuant to the approved plat for Berlaimont Estates. See Exhibit [3] (approved subdivision plat). The Property has been platted as 19 lots pursuant to and consistent with Colorado Revised Statute.⁴ Furthermore, ECLUR designates the Property as a “Recourses” zone district. The “Resources” zone district establishes a “use-by-right” for low density residential development of one unit per 35 acres, as proposed by Berlaimont.⁵ Any future residential construction and infrastructure will take place within the private inholding itself in accordance with Eagle County regulations.

Furthermore, in accordance with ECLUR and based on the Variance from Improvement Standards granted to the applicant on January 7, 2014, by Eagle County Resolution # 2014 – 001 (refer to Exhibit [1]), the road design includes standard road infrastructure, including, but not limited to all weather driving surface, emergency turnouts, hammerhead turnouts, retaining walls, traffic signs, guardrails, erosion and sediment control facilities and drainage facilities and similar improvements.⁶

¹ See 16 U.S.C. § 3210(a) (“the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof”).

² See *United States v. Jenks*, 22 F. 3d 1513, at 1516 (quoting *Adams v. U.S.*, 3 F.3d 1254, 1258-59 (9th Cir. 1993) (hereinafter, “*Adams P*”) (“It commands the Secretary of Agriculture to provide access to secure the owner’s *reasonable use and enjoyment*”)); see also *Montana Wilderness Ass’n, Nine Quarter Circle Ranch v. Forest Service*, 655 F.2d 951, 957 (9th Cir.1981), *cert. denied*, 455 U.S. 989 (1982) (clarifying that despite its name, the provisions of ANILCA apply nationwide).

³ 36 C.F.R. § 251.110(d).

⁴ See Colo. Rev. Stat. § 30-28-101(10)(b).

⁵ See Eagle County Comprehensive Plan, Section 3-210.

⁶ See Resolution No. 2014-001, File No. VIS-4398.

7c. Physical specifications (Length, width, grading, etc.)

The Proposed Road Access would allow access to the northern, developable portions of the inholding between its east and west “legs” by constructing an access road that generally follows a network of existing Forest System Roads (“FSRs”), totaling approximately 27,931 feet (5.3 miles). The access road is intended to provide reliable, year-round access for future homeowners. In order to minimize disturbance, it will generally follow Berry Creek Road and FSR 780. The graphic that has been included in response to Item #8 depicts the following segments of the proposed road across NFS and private lands (refer to Exhibit [10]):

- The Proposed Road Access alignment generally follows Berry Creek Road for approximately 1.04 miles.
- It then connects with FSR 780 for approximately 1.51 miles until it intersects the southern boundary of the eastern leg of the private inholding.
- FSR 780 currently traverses the inholding for approximately 1.05 miles, and then re-enters NFS lands.
- The Proposed Road Access alignment follows FSR 780 for approximately 0.53 miles.
- At that point, a new segment of road is proposed to diverge from FSR 780 in a northerly direction for approximately 0.74 miles until it intersects within an existing forest road in the Tames Creek drainage. The Proposed Road Access then continues for 0.42 miles to the south line of the approximate center of the inholding between the parcel’s east and west legs.

Hence, of the roughly 5.3 miles of road that are proposed across NFS and private lands to access the northern, developable portion of the inholding, approximately $\frac{3}{4}$ of a mile entails new road construction on NFS lands; the remainder makes use of existing road platforms. For more detailed technical specs and road design information, please see Exhibit [4], discussing technical road data.

7d. Term of Years Needed

Reliable, year-round access is required to the inholding and therefore a permanent easement is requested.

7e. Time of year of use or operation

The road is designed to provide safe, reliable, year-round access to the inholding for future residents, guests and visitors as well as service personnel for ordinary personal/residential access and maintenance as required for a subdivision of 19 homes. With the exception of construction traffic and ongoing maintenance related to future development, no industrial traffic is related to this proposal.

7f. Volume or amount of product to be transported

The Proposed Road Access is intended and designed only for residential traffic to 19 homes. Aside from construction vehicles related to development and improvement of the Proposed Road Access, infrastructure, and home construction, no products or materials would be transported on the road. At the request of Eagle County, Kimley Horn & Associates has prepared a preliminary traffic study based on future residential development of the inholding. The estimated ADT (average daily trips)

based on the Kimley Horn & Associates study is 164 daily trips. The estimate for additional recreational traffic on the roadway between May and December (when the road would be open for public motorized use) is 50 daily trips. Therefore, the total trip count including both recreational and residential traffic is estimated to be 214 daily trips. Please see the Kimley Horn & Associates traffic study, attached hereto as Exhibit [5] for further detail.

7g. Duration and timing of construction

Based on discussions with Alpine Engineering, who provided the engineering and design for the Proposed Road Access, two construction seasons would be necessary to build the road. The construction period in the area is highly dependent on weather and seasonality, but is anticipated to be from May until November (with a slight variance/adjustment based on weather conditions). Road construction will initiate as soon as the permitting process is complete.

7h. Temporary work areas needed for construction

Berlaimont anticipates temporary work areas would be needed for construction. The location of temporary work and construction staging areas will be determined in coordination with the Forest Service as well as based on contractors' input and further field surveys.

13a. Describe other reasonable alternative routes and modes considered

Numerous options for accessing the inholding across NFS and private lands were diligently considered and researched by the applicant since this property was purchased in 2008, and prior to the VIS application being submitted to Eagle County in 2013. These alternatives were again analyzed prior to submission of this application. However, the unique topographic and legal considerations that are associated with the inholding limit the possibilities for access. Because the WRNF entirely surrounds the inholding, no privately-held access routes are possible.

Alternative access routes that were explored include:

- Utilizing Cordillera Valley Club property (south of the inholding) and then constructing new roads across NFS lands to access the inholding;
- Accessing FSR 780 from the west, via Red Canyon, to access the inholding;
- Exchanging the private inholding for more readily accessible NFS land elsewhere on the National Forest System (focused locally on the WRNF); and
- Constructing a road up the eastern leg of the property to access developable areas.

13b. Why were these alternatives not selected?

Ultimately, what separates the Proposed Road Access from previously considered routes is its utilization of the existing FSR to the extent possible (to limit resource impacts) and development of an access route that facilitates Berlaimont's reasonable use and enjoyment of the Property in a manner that is safe and with the least environmental impacts. Notably, Eagle County approved the access that is proposed with this application (i.e., the Proposed Road Access) and only this proposal, finding that it affords Berlaimont reasonable access to its inholding, ensures safe access, and maintains the environmental integrity of the area. Specifically, in approving the Proposed Road

Access, the Eagle County Commissioners “balance[d] the hardships to the applicant of not granting the Variance against the adverse impact on the health, safety, and welfare of persons affected, and the adverse impact of the lands affected.”⁷

Utilizing Cordillera Valley Club Property

The primary reason Berlaimont did not pursue this alternative is because the Cordillera Valley Club was not interested in allowing construction or residential traffic through its property. Without landowner permission, this route is simply not feasible. Additionally, this route would have entailed constructing significant new roads on NFS lands. Berlaimont’s proposal seeks to limit impacts to NFS lands, while at the same time enabling the reasonable use and enjoyment of the Property. For these reasons, Berlaimont did not select a route utilizing the Cordillera Valley Club Property as the proposed route.

Access via Red Canyon

Berlaimont considered access through Red Canyon, to the west of the inholding. Berlaimont did not select this route because the grades were too steep to provide safe, year-round access to FSR 780 in this location, which would then provide access to the Property. For these reasons, Berlaimont did not select access via Red Canyon as the proposed route.

Access Via Private Property Obtained Through Land Exchange

As stated, the Property is entirely surrounded by NFS lands. To avoid crossing NFS lands, Berlaimont considered exchanging the private inholding for more readily accessible NFS land elsewhere on the National Forest System (focused locally on the WRNF). Unfortunately, neither the Forest Service nor Berlaimont identified parcels of land suitable/comparable for a land exchange. Thus, this option was not viable.

Access via the Eastern Leg of the Property

Contingent upon Forest Service approval to cross NFS lands, Berlaimont also considered the feasibility of constructing a road up the eastern leg of the Property to access the developable areas of the Property on the northern most portion of the Property. This option was not selected for several reasons. First, after comprehensive data gathering with Berlaimont’s engineering team, Berlaimont determined that this route entailed crossing severe cross slopes and difficult steep terrain, necessitating numerous switchbacks and a combination of large cuts/fills and retaining walls that would have been accompanied by safety, environmental, and logistical (i.e., construction, maintenance, and emergency access) impediments. Second, due to the severely steep terrain, this route would not provide access that could ensure the safety or security of road-users, including for emergency vehicles in the manner the Proposed Road Access allows for safe passage for emergency personnel. Third, following Forest Service direction, Berlaimont first sought authorization from Eagle County. Eagle County approved the Proposed Road Access, considering the health, safety, and welfare of persons affected, and the adverse impact of the lands affected. Finally, ANILCA requires that the Forest Service grant “adequate” access to a landowners’ inholding. Forest Service regulations define “adequate access,” as “a route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly

⁷ See Resolution No. 2014-001, File No. VIS-4398.

situated non-Federal land that minimizes damages or disturbances to [NFS] lands and resources.”⁸ Adequate access does not mean “any” access, rather it means access which facilitates the applicant’s use and enjoyment of the Property and ensures the safety and security of the public. Thus, Berlaimont respectfully submits that a Forest Service authorization only granting access to the eastern leg of the Property would not constitute access that provides “reasonable use and enjoyment” of the Property under ANILCA because Berlaimont would not be able to access the developable portions of the Property for its intended reasonable use, nor would such access be safe and secure for the public and emergency personnel. See Response to Question 13(c) below for further discussion of Berlaimont’s (as an inholder) rights under ANILCA.

The Proposed Road Access

Consistent with direction provided by the WRNF, Berlaimont filed a VIS application with Eagle County. The VIS application, and resulting Resolution from the Eagle County Commissioners (refer to Exhibit [1]), reinforces that the Proposed Road Access would provide safe and reasonable access to the property. Eagle County granted a variance from certain ECLUR standards to the applicant, considering the beneficial impact of the granted variance versus the adverse effect on the environment, safety and public health and well-being if the variance was not granted. Furthermore, Eagle River Fire Protection District (“ERFPD”) and other emergency personnel’s ability to adequately service the inholding and surrounding public land in the case of an emergency may be inadequate if emergency personnel used an alternative access that does not meet the standards enforced by Eagle County. In addition, ERFPD Chief, Karl Bauer, and Eagle County Wildfire Mitigation Specialist, Eric Lofgren, along with Anchor Point (Fire safety consultants) determined that the Proposed Road Access maximizes the mitigation of risks associated with fire safety, while other alternatives constitute significantly higher risks in this regard. Additionally, consideration of numerous options for accessing the inholding led to the conclusion that any alternative to the Proposed Road Access would be accompanied by much more significant resource impacts (e.g., visual, geological, biological, hydrologic) to the National Forest.

The need for emergency access, combined with the technical feasibility of constructing new road segments across severe side slopes and the extent of environmental and resource impacts, resulted in other access route options being dropped in favor of the current proposal, which, instead, relies on the use of existing FSRs to gain access to the southwestern corner of the inholding. The current proposal utilizes the existing roads/roadbeds to the extent possible, allowing the applicant to minimize impacts (through utilizing construction in already disturbed area with existing road).

In short, the Proposed Road Access strikes the requisite balance between limiting impact to NFS lands and enabling Berlaimont access that facilitates its reasonable use and enjoyment of the Property, under law. ANILCA’s implementing regulations require only that the location and method of access granted be “**as consistent as reasonably possible** with the management of any congressionally designated area[s].”⁹ Additionally, the Forest Service included a sentence to the final rules to require the Forest Service to amend Forest Plans and Resource Management Plans to

⁸ See 36 C.F.R. § 251.111; see also H. Rep. No. 96-97, at 240 (“The Committee recognizes that such rights may include the right to traverse the Federal land with aircraft, motor boats, or land vehicles, and to use such parts of the Federal lands as are necessary to construct safe routes for such vehicles.”) (emphasis added).

⁹ See 56 Fed. Reg. at 27,415 (emphasis added) (ensuring no “conflicts with the access assurances” granted under ANILCA); see also 36 C.F.R. § 251.114(f)(3).

accommodate the access grant, if an inconsistency exists.¹⁰ Thus, when balancing the reasonable use of the lands against environmental impacts, the Forest Service's analysis should weigh in favor of the inholder under ANILCA.¹¹

Berlaimont has performed extensive analysis in the planning and design of the Proposed Road Access to ensure that the proposed access represents the safest and most environmentally friendly route. Berlaimont respectfully submits that the Proposed Road Access is as consistent as reasonably possible, if not consistent with, the Forest Service's management of WRNF. Berlaimont plans to work with both the Forest Service and Eagle County to not only design the most environmentally conscious route, but to develop mitigation measures to ensure environmental sustainability, to maintain the pristine nature of the area, and to ensure consistency with standards and guidelines in the WRNF, to the extent reasonably possible.

13c. Give explanation as to why it is necessary to cross Federal Lands

It is necessary to cross Federal Lands because the Property is an inholding completely surrounded by NFS lands. ANILCA was enacted to honor and respect private property rights within National Forests and should inform Forest Service's analysis under NEPA of any alternatives analyzed. The relevant section of ANILCA reads as follows:

*Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, **the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof.** Provided, [t]hat such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.*¹²

Thus, ANILCA offers Berlaimont "a threshold 'right of access to their lands,'" which is subject to reasonable regulation.¹³ Reasonable regulation means an inholder seeking access under ANILCA must apply for an SUP—a requirement with which Berlaimont respectfully complies.¹⁴ Under

¹⁰ See 56 Fed. Reg. at 27,415; see also 36 C.F.R. § 251.114(f)(3); see also H. Rep. No. 96-97, at 240 (Congress expressly stated that it "intends that owners or occupiers of inholdings surrounded by these public lands . . . be accorded full rights of access to these inholdings **notwithstanding traditional land use management practices with regard to lands within these classifications**") (emphasis added).

¹¹ *Cabinet Resource Group v. United States Forest Service*, -- F. Supp. 2d --, 2004 WL 966086 (D. Mont. March 30, 2004) (in upholding the Forest Service's issuance of an access permit for access to the reasonable use and enjoyment of the property (mining and development), the reviewing court stated that while "it is probably poor policy to allow roads to be built into a semi-primitive area that is prime grizzly bear habitat, the Congress, through enactment of ANILCA, recognized that private inholders have a right to access their property. Moreover, they have a right to use their property in ways which may be incompatible with the surrounding area"); see also *Native Americans for Enola v. Forest Service*, 832 F. Supp. 297 (D. Or. 1993) (allowing a logging company to haul logs on certain Forest Service roads that the cultural groups contended were protected under the National Historic Preservation Act).

¹² See 16 U.S.C. § 3210(a) (1980).

¹³ See *United States v. Jenks*, 22 F. 3d 1513, at 1516 (quoting *Adams v. U.S.*, 3 F.3d 1254, 1258-59 (9th Cir. 1993) (hereinafter, "Adams I") ("It commands the Secretary of Agriculture to provide access to secure the owner's reasonable use and enjoyment"); see also *Montana Wilderness Ass'n, Nine Quarter Circle Ranch v. Forest Service*, 655 F.2d 951, 957 (9th Cir.1981), cert. denied, 455 U.S. 989 (1982) (clarifying that despite its name, the provisions of ANILCA apply nationwide).

¹⁴ 36 C.F.R. § 251.110(d).

ANILCA, the Forest Service must first determine whether the applicant's proposed use is reasonable. If a use is determined to be reasonable, the Forest Service must then grant adequate access that facilitates the inholders' reasonable use and enjoyment of the inholding.

Berlaimont's Proposed Use of the Property Constitutes a Reasonable Use

First, in authorizing access to an inholding, the Forest Service must consider the inholder's proposed use to determine the reasonableness of the use to inform the modes and location of access necessary to facilitate reasonable use and enjoyment of the property. Regulations direct the Forest Service to consider reasonable use "on a case-by-case basis."¹⁵ Specifically, ANILCA implementing regulations state that "[t]he 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."¹⁶ In its review of contemporaneous uses of similarly situated lands, the Forest Service reviews those uses of the same general character that have the same level of development, or less.

Berlaimont's proposed use represents a reasonable use of the Property (as a residential area) not only based on contemporaneous uses made of similarly situated non-federal lands in the area, but also because it is authorized by local and state law. As noted above, Berlaimont plans to utilize the 680-acre Property to develop a low-density residential area; nineteen (19) homes, one per thirty-five (35) acre parcel. Numerous comparable subdivisions exist near the Property. See Table 1: Identification of Contemporaneous Uses on Non-Federal Land (below). The Cordillera Valley Club subdivision, located 0.75 miles¹⁷ from the Property, spans nearly 400 acres, and includes 175 housing units. The Singletree subdivision, located just south and east of the Property (0.9 miles away), spans 760 acres and includes 1,000 housing units. Moonridge Subdivision (located approximately 1 mile from the Property) spans 26 acres and contains approximately 70 housing units. Finally, two other subdivisions located in the area (approximately 2–3 miles away) include Wildridge (685 acres, 850 units) and Mountain Star (1,120 acres, 93 units). Berlaimont's proposed low-density development is similar to and in fact far less invasive than contemporaneous uses made of similarly situated lands in the area.

Table 1: Identification of Contemporaneous Uses of Non-Federal Land

Subdivision	Approximate Acreage	Approx. # of Units
Cordillera Valley Club	400 acres	175 unit
Singletree	760 acres	1000 units
Moonridge	26 acres	70 units
Wildridge	685 acres	850 units
Mountain Star	1,120 acres	93 units
<i>Berlaimont Estates</i>	<i>680 acres</i>	<i>19 units</i>

¹⁵ See 56 Fed. Reg. at 27,411.

¹⁶ See 36 C.F.R. § 251.114(a); see, e.g., *See High Country Citizens' Alliance v. United States Forest Service*, 203 F. 3d 835, 2000 WL 147381, at *4 (10th Cir. 2000) (proposed use (a ranch) was a reasonable use of an inholding because, *inter alia*, the Cement Creek Ranch (the inholder's property) and several others in the area "were similarly situated properties."); see also *Nelson v. U.S.*, 64 F. Supp. 2d 1318, 1324 (N.D. Ga. 1999) ("building two or three cabins on the Property constitutes 'reasonable use and enjoyment' of the Property consistent with similarly situated non-Federal land."); *Adams I*, 3 F.3d at 1259 ("The extent of a way of necessity is that which is required for the complete and beneficial use of the land to which such way is impliedly attached.") (quoting 25 Am. Jur. 2d Easements and Licenses §§ 64, 77, 78 (1966)).

¹⁷ All distances are as the crow flies.

Furthermore, the Eagle County Comprehensive Plan designates the Property as a “Resources” zone district. This zone district establishes a “use-by-right” for low density residential development of one unit per thirty-five (35) acres.¹⁸ In addition, Colorado Revised Statutes exempts the creation of parcels 35 acres or larger from subdivision regulations.¹⁹ Through promulgation of this use-by-right, Eagle County and the State of Colorado have determined that this type of activity represents a reasonable use of the Property.

Thus, not only does Berlaimont propose a use consistent with (and significantly less dense than) contemporaneous uses made of similarly situated lands in the area, Berlaimont’s compliance with all standards of the local zoning code, as well as state regulation, demonstrate the reasonableness of its proposed use.

The Proposed Road Access is the Only Route that Provides Adequate Access to Facilitate Berlaimont’s Reasonable Use and Enjoyment of the Property

Second, the Forest Service must grant “adequate” access to facilitate Berlaimont’s reasonable use and enjoyment of the Property (i.e., low-density housing development). Forest Service regulations define “adequate access,” as “a route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land that minimizes damages or disturbances to [NFS] lands and resources.”²⁰ “Adequate” access to an inholding means more than any possible access.²¹

As discussed above, WRNF entirely surrounds the Property. Access through state or private parcels is unavailable. At the Forest Service’s request, Berlaimont first obtained approval from Eagle County, prior to seeking authorization for access from the Forest Service under an SUA. Eagle County authorized and supports only one access route. In the case of Berlaimont’s Property, no other adequate access exists where Eagle County approved only one route.²² Furthermore, access to the edge of the Property line at the eastern leg would not in fact allow Berlaimont the full use and

¹⁸ See Eagle County Comprehensive Plan, Section 3-210.

¹⁹ See Colo. Rev. Stat. § 30-28-101(10)(b).

²⁰ 36 C.F.R. § 251.11.

²¹ *Breaker v. U.S.*, 2013 WL 5467262, *14 (D. Minn. 2013) (“The Court finds that the Forest Service applied the incorrect standard in analyzing the Breakers’ request. The Forest Service determined that the Breakers had adequate access to their property because there are “two possible ways” to reach it from the Echo Trail without using a motor vehicle. But the fact that these means are “possible” does not necessarily mean that they are adequate.”); *Nelson v. United States*, 64 F. Supp. 2d 1318, 1325 (N.D. Ga. 1999) (Concurring with plaintiffs, the District Court disagreed with the Forest service that the Forest Service “has no legal authority to assist Plaintiffs with any problems they may encounter obtaining access over other private land,” such as “what drilling or blasting would be required to create access from Yewell Cove Road to the rest of the Property”); see also *Adams I*, 3 F.3d at 1259–60 (“Reasonable access for the general public to hunt, fish, or camp may be unreasonable when applied to the [landowners] who need year-round access sufficient to operate a ranch.”); see also *See H. Rep. No. 96-97*, at 240 (“The Committee recognizes that such rights may include the right to traverse the Federal land with aircraft, motor boats, or land vehicles, **and to use such parts of the Federal lands as are necessary to construct safe routes for such vehicles.**”) (emphasis added).

²² In the preamble to the ANILCA implementing regulations, the Forest Service “agree[d] that [ANILCA] prevents the use of the current regulations to totally deny access, but it does not prevent its use to deny an application for a route when adequate access is available, or can be made available, over another route or by alternative means.” See 56 Fed. Reg. at 27, 412. Here, Berlaimont respectfully submits that no alternative means exist – particularly where Eagle County has only authorized the Proposed Road Access.

enjoyment of its Property.²³ In fact, Berlaimont's preliminary engineering and technical evaluation indicates that access only to the bottom of the eastern leg would create significant safety and environmental concerns because it would require Berlaimont to drill, carve out, and construct a complex systems of switchbacks to develop a vehicular access route up the eastern leg (with treacherous terrain) to the rest of the Property—if such route even proves technically and economically feasible. While “possible” access exists across the eastern leg (i.e., “any access”), “adequate” access does not exist from the eastern leg to facilitate Berlaimont's reasonable use and enjoyment of the Property.

Thus, because Berlaimont's proposed use of the Property is reasonable, pursuant to ANILCA, Forest Service must grant Berlaimont *adequate* access to the Property to facilitate its reasonable use and enjoyment of the inholding. Berlaimont respectfully submits that the Proposed Road Access is the only *adequate* access route that limits impacts to NFS lands, while at the same time enabling Berlaimont's reasonable use and enjoyment of the Property.

EXHIBITS:

1. Resolution of the Board of County Commissioners, Eagle County (January 7, 2014)
2. Land Title and Property Deed
3. Recorded Plat
4. Road Plan Graphics
5. Kimley Horn & Associates Traffic Study
6. Water Rights Decree
7. Wildfire Mitigation Plan
8. Environmental Impact Report
9. Economic Impact Assessment
10. Property Graphics
11. Berlaimont Estates, LLC Operating Agreement

²³ *Breaker v. U.S.*, 2013 WL 5467262, *14 (D. Minn. 2013) (“Adequate” access to an inholding means more than “any” access, and “[t]he ‘adequate access’ standard is higher than one of ‘any access.’”)