



Colorado Wild Public Lands

PO Box 1772, Basalt, CO 81621

coloradowildpubliclands@gmail.com

coloradowildpubliclands.org

April 1, 2022

Sulphur Ranger District
Attn: Lands Staff, Alden Whittaker, acting
P.O. Box 10, Granby, CO 80446

Submitted online at: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=61576>

Dear Ms. Whittaker,

Re: Proposed Willow Creek Land Exchange Scoping Comments

The following are the comments of Colorado Wild Public Lands (CWPL), Rocky Smith, Forest Management Analyst, Bayard Ewing, Colorado Native Plant Society, Barbara Vasquez, Environmental Representative, North Platte Basin Roundtable, B. Travis Wright, and Sarah Bransom, Middle Park Great Old Broads for Wilderness, on the proposed Willow Creek Land Exchange, in Grand County, as described in the Scoping and Notice of Proposed Action (NOPA) documents.

Colorado Wild Public Lands is a 501(c) 3 organization. Our mission is to protect the quality, size and integrity of Colorado's public lands, and our focus is advocating for the public in proposed land exchanges in our state. We, and our colleagues who are submitting this letter, are concerned about the proposed land exchange between the Forest Service and TMII Development, LLC.

Per the scoping documents for the Willow Creek Land Exchange, the Non-Federal Party is proposing to convey one parcel of land containing approximately 50.23 acres to the United States in exchange for one parcel of National Forest System land containing approximately 6.87 acres. The Federal parcel is located within the Town of Winter Park, and is immediately north and east of the Mary Jane base area at Winter Park Resort. Approximately 700 feet of the Mary Jane Road (NFSR 166.1) is included in the southern half of the parcel to be conveyed.

The non-Federal parcel is located within Grand County, Colorado at the confluence of Pass

Creek and Willow Creek, approximately three miles south of the Grand County/Jackson County line.

Our concerns are presented below.

I. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESS

According to the NOPA, this current scoping period is the only opportunity for public comment prior to the Forest Service issuing a proposed decision on the proposed land exchange. This statement indicates that the Agency has already anticipated a decision. Typically, the scoping period is the time when the public has the opportunity to share their concerns about a proposal with the Agency. Based on public input and concerns, the Agency further addresses the issues and develops the environmental documents for an environmental assessment or an environmental impact statement. Based on the outcomes of those documents, including consideration of other alternatives, the Agency then makes a decision. The Agency letter by Monte Williams, dated February 22, 2022 states:

The Arapaho and Roosevelt National Forests and Pawnee National Grassland is preparing an environmental assessment for the Willow Creek Land Exchange on the Sulphur Ranger District.

We request that the public be provided another comment period at the time of the release of the Environmental Assessment. Based on the information available on the project website at <https://www.fs.usda.gov/project/?project=61576> as of the time of the scoping announcement on February 18, 2022, the Agency has not provided sufficient information for the Public (or the Agency) to properly understand and evaluate the existing and proposed conditions and the potential impacts of the proposal. No resource inventories were provided online. The Troublesome fire has altered conditions on the Non-Federal parcel and new information based on the impacts of the fire (including possible impacts to historic site/s) should be included in the NEPA analysis.

The NEPA analysis should include alternatives to “the Proposed Action” and “No Action”. It should demonstrate that the Forest Service has attempted to acquire the Willow Creek parcel through means other than a land exchange or via a different land exchange. The analysis should describe existing conditions accurately and provide detailed, quantitative evidence that the exchange enhances the public interest, and the analysis should also demonstrate efforts to balance opportunities for all user groups without sacrificing one group’s needs over another’s.

The NEPA document for the project must consider development of the Forest Service's parcel to be exchanged, and also consider development of the adjacent land to be accessed via the Forest Service parcel, a connected action that would not occur without the land exchange, and analyze the impacts therefrom. Since the land is steeply sloping,

considerable earth work would probably be needed to build the proposed access road, and to construct buildings, place utility lines, and so forth, thus resulting in significant impacts.

The land exchange and the applicant's buildout proposal are connected actions and must be scoped and analyzed as a "whole" proposal, not piecemeal. Development of the Federal parcel, once transferred to private, is not remote in time or location. Indeed, such development is clearly contemplated, as the Forest Service desires to convey a parcel that:

Facilitates development on private land at the base of the ski area to enhance the resort's desirability as a destination resort

--conveyance of the Federal parcel would facilitate final approval of subdivision by the Town of Winter Park for the construction of condominiums and town homes on private land at the base of the ski area. (NOPA at 4)

There are two letters written by the Town of Winter Park to the Forest Service in support of the land exchange. They are dated February 6, 2018 and July 31, 2020. This is well before the public scoping period began. We would like to learn more about the circumstances leading to the letters.

II. THE PROPOSAL IS NOT IN THE PUBLIC INTEREST

The described "Purpose and Need" for the land exchange does not provide sufficient reason for the land exchange to occur, and it does not demonstrate that the exchange would be in the public interest. Firstly,

The Forest Service proposes to convey lands that:

- Would allow for the Forest Service to acquire lands identified above that provide important contributions toward National Forest System resource management goals and objectives as stated in the Forest Plan. (NOPA at 4)

This indicates that the Agency's greatest desire in the land exchange is to acquire the Willow Creek parcel.

The property proposed to be conveyed out of public ownership, is part of a larger Forest Service parcel of land. Usually parcels that are exchanged to non-Federal parties are already at least somewhat isolated from surrounding public land and surrounded or partially surrounded by the non-Federal party's land, resulting in a more logical land ownership pattern. In this situation, the exchange parcel would require severing land from a larger public parcel:

A boundary line survey to establish a boundary and create a legal description for the Federal land is required. The survey of the Federal land will require Special Instructions from the BLM. (NOPA at 1)

The Agency Planner disclosed that the proponent bought the non-Federal parcel with the intent of using it to exchange for the Federal land that the proponent desired. There are other methods that might assist the Agency to acquire the land, e.g., through purchase, using the Land and Water Conservation Fund (LWCF) or through the permanently reauthorized Federal Lands Transaction Facilitation Act (FLTFA).

The second reason cited in favor of the proposed exchange is that this exchange:

Facilitates development on private land at the base of the ski area to enhance the resort's desirability as a destination resort

- conveyance of the Federal parcel would facilitate final approval of subdivision by the Town of Winter Park for the construction of condominiums and town homes on private land at the base of the ski area (NOPA at 4)

The above statement is in conflict with the Forest Service's mission, that is:

To sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations.

For more than 100 years, the Forest Service has brought people and communities together to answer the call of **conservation**. (Emphasis added)

USDA, 2019, This is Who We Are

Facilitating private development is not part of the mission statement or objectives of the Forest Service. In fact, per the above, the mission is conservation. Development of the land may benefit the proponent financially; however, such development does not serve the interest of the general public as, other than real estate purchasers or guests, the public will not have any access to the development.

III. LOSS OF RESOURCES ON THE FEDERAL PARCEL

The project will have a negative impact for the public due to loss of natural and other resources on the Federal parcel.

A. Loss of Mature Forest, Impacts to Water Resources and Wildlife

The parcel is predominantly a mature Engelmann spruce/subalpine fir forest. Mary Jane Creek crosses the far southwestern portion of the parcel then continues northerly on private land. The Federal parcel is undeveloped. (NOPA at 2)

Mary Jane Creek is a tributary of the Fraser River. The Fraser River and its tributaries are currently deemed nonfunctional by the Forest Service. The 1997 Revision of the Land and Resource Management Plan (updated June 2019), Chapter 2, page 320 states in its Goals and Desired Conditions for the Winter Park Geographic Area, in which the federal parcel resides:

Pursue opportunities to improve conditions in the Fraser River watershed, which was rated Class III (non-functional) in the watershed-condition assessment. Protect and enhance habitat for Colorado River cutthroat trout in Little Vasquez Creek.

Trout Unlimited and others have worked hard to increase the health of the Fraser River which has been named to America's most endangered river list. Additional development near and above the Fraser River and Mary Jane Creek, especially with the large amount of earth movement likely needed for development of the Federal and adjacent parcel, will only further decrease the state of health of the rivers and streams, including negative impacts of fertilizers, herbicides and pesticides that will eventually work their way to the riparian area and the river, to the further detriment of the aquatic life and water quality.

According to Colorado Parks and Wildlife (CPW), habitat loss is one of the leading issues impacting the survival of fish and wildlife for the future. Just about any human intrusion into open lands is detrimental to wildlife. The Scoping document does not include information on wildlife use of the Federal land; however, it is well established that a mature Spruce-Fir Forest provides habitat for a wide variety of wildlife. Increased development and human use would only further degrade and diminish the area for wildlife.

As more and more humans, their dogs, and their activities encroach into the areas in the vicinity of Winter Park, protection of existing natural areas becomes even more important for wildlife habitat and sustainability of the forest ecosystem. Trading away lands in the Winter Park Geographical Area will contribute to the continued and cumulative loss of effective habitat. According to the Arapaho Roosevelt Forest Plan, the guideline is to maintain effective habitat per Geographical Area to at least 50%. (Plan at 31.) The Winter Park Geographical Area was rated at 54% effectiveness in the 1997 Forest Plan, at 323. It may well have deteriorated due to further development since then, and this proposed exchange would make it even worse.

On a broader scale, with the impacts of climate change, it is ever more important to preserve mature forests. One of the effects of climate change is increased wildfire activity, as has been experienced in the larger Winter Park area. Expanding residential development into the wildland interface zone would further contribute to potentially

devastating effects of wildfire, as areas with human use have considerably more fire starts than do areas without this influence.

B. Scenic Quality Impacts

There would be scenic quality impacts as a result of the exchange. The exchanged parcel will likely be at minimum partially cleared of trees and developed with roads, parking and some structures. Currently the development at Mary Jane is bounded by natural-appearing Forest land. Removing land from a continuously forested landscape under Federal Agency ownership, to facilitate development to occur beyond the current boundary, would result in adverse impacts to scenic quality. The Agency should provide an analysis of the potential scenic quality impacts, especially as the proponent has previously prepared plans and imagery of the proposed multi-story project.

C. Loss of Forest Service Road and Public Access

The parcel has year-round legal vehicular access via National Forest System Road (NFSR) 166.1, also known as the Mary Jane Road, off U.S. Highway 40. The Mary Jane Road, maintenance level 4, is under Forest Service jurisdiction. Approximately 700 feet of the Mary Jane Road passes through the southern half of the parcel. (NOPA at 2)

Ownership of that segment of Forest Service owned road (and possibly more) is proposed to be exchanged to the Non-Federal party. Thus, in order to continue Forest Service use of the road, and public access along it, the Forest Service proposes the following additional actions:

Reserve a right-of-way to the United States for a 66-foot-wide easement on NFSR 166.1, known as the Mary Jane Road, for public access. The easement would be 33 feet each side of center line of the road... (NOPA at 5)

A road over which there is currently public access, including access to parking for skiing or otherwise accessing public lands, will be conveyed to private ownership. At this time, there is no guarantee that the proposed access easement will be obtained and/or that it will be available in perpetuity without any conditions or restrictions. Therefore, the public and the Agency risk losing their ability to use the road to the extent that they can currently. The Agency should clarify which parts of the road would be conveyed out of Federal ownership, what would be the advantages (if any) to the public, and provide a draft of the access easement agreement with the Non-Federal party.

In addition:

There are activities and facilities under special use authorization on the Federal parcel. (NOPA at 2)

The Agency has not described what those are and should disclose the organizations and the uses, and the terms of such usage, as well as possible impacts to these uses if the exchange is implemented.

D. Jackalope Trail

The Jackalope trail is proposed to be relocated (NOPA at 4). The Agency should show why the trail would need to be relocated and where the new location might be. This is another connected action, i.e., it would likely occur as a result of the land exchange. Therefore, the NEPA document for the exchange must analyze and disclose the impacts of relocating the trail.

E. Agreements with other Parties and Development Impacts

Winter Park Resort (WPRA) wrote a letter to TMII Development, dated June 15, 2015 (date corrected to 2015), (attached), providing a statement of terms under which the resort, and several other organizations, including the Winter Park Recreational Association (WPRA) would agree not to oppose the land exchange. The letter stated that:

The above restrictions shall be set forth in a restrictive covenant to be recorded concurrent with Developer's acquisition of the Exchange Parcel... (at 3)

The letter also states that the Final Agreement to be executed between the Developer, the Club and the Resort shall include other appropriate provisions including the following:

- a. Title to any part of the existing Mary Jane Road, Resort parking areas, snow storage areas adjacent to the road, and wooded areas east and south of the Mary Jane Road (generally, land shown on Attachment A as the "Preliminary Area to Deed to Winter Park Resort") acquired by the Developer from the Forest Service shall be conveyed by the Developer to WPRA as part of the closing of the Land Exchange... (at 3)

From the above, it appears that WPRA could be a beneficiary of the land exchange. And would the Forest Service then acquire an easement over WPRA's road and land, instead of the proponent's? We request that the Agency provide clarification as to the role of WPRA in the exchange.

The letter includes a statement indicating that there may be up to 75 condominium units, with 1.25 parking spaces per unit plus 25 guest parking spaces. TMII Development's PowerPoint, attached, includes a conceptual building section showing six floors, each possibly up to 12 feet high. (The proposed height should be checked for conformance with the Town's height requirements.)

First, we believe that promoting this type of private development is not consistent with the mission, goals or operations of the Forest Service, as discussed above.

Second, the above references indicate a significant amount of development with related impacts of construction, earthmoving, numbers of people, traffic volumes, and associated impacts to natural resources. The NEPA analysis needs to include a description of the proposed development and an analysis of the related impacts.

F. Cumulative Impacts

As part of the NEPA documentation, the cumulative impacts of this proposal with other potential development and activities in the areas surrounding the proposed exchange parcels should be analyzed and made available to the public.

In sum, for all the above-described reasons, the conveyance of the 6.87-acre parcel from Forest Service ownership is not in the public interest.

IV. RESOURCES ON THE NON-FEDERAL PARCEL

A. Resource Mapping and East Troublesome Fire

Per the description in the NOPA, the Non-Federal Parcel appears to have important natural values. Yet there is no mention of the East Troublesome Fire and any related impacts to the Non-Federal parcel, its resources and/or its surrounding areas. The impacts of the fire may have created negative effects to wetland resources, vegetation, wildlife habitat, historic resources, and/or scenic quality, on or near the parcel. If so, this would reduce the values of the parcel and the benefits to the public of acquiring it. This may also make remediation necessary, which would be an expense to the Forest Service and decrease the appraised value.

The Agency needs to provide inventory and mapping data for previous and current status of the natural resources of the Non-Federal parcel, and the areas impacted by the fire. Particularly, the agency needs to survey the streams running through the non-

federal parcel for the presence of Colorado River cutthroat trout and for watershed condition.¹ The land of the non-federal parcel needs to be surveyed for sensitive plant species. Also, wetlands and floodplains should be delineated, and they should be surveyed for the presence of fens, a particularly valuable type of wetland.

B. Public Access

One purported benefit of the proposed land exchange is that it:

...would secure legal public access on NFSR 123 (the Stillwater Pass Road).
(NOPA at 3)

Per local knowledge, the public has long accessed this road and still does, unless it has been cut-off recently. With continuous public access over 20 years, the public has acquired a prescriptive right of easement to use the road; therefore, gaining access would not be a special benefit of the exchange.

C. Wildlife Habitat

Another benefit described in the NOPA, is for wildlife habitat. However, the parcel to be acquired is immediately adjacent to State Highway 125 and FSR 123. These roads get a fair amount of traffic, with cars and jeeps in the summer and snowmobiles on FSR 123 in winter. The surrounding areas have roads and trails open to motor use.

Winter is an especially challenging time for wildlife. Deer and elk winter habitat is generally required to be protected from human impacts, including motorized use. The effectiveness of this habitat for wildlife, especially elk and wolverine, which are specifically mentioned as benefitting (NOPA at 3-4), is thus likely to be low on the acquired parcel. Elk are known to stay away from roads open to motor vehicles. Wolverine are even more shy, as they totally avoid humans if possible. Thus, the amount of wildlife benefit of acquiring the private parcel is questionable. We also question the statement following:

... acquisition of non-Federal parcel would further provide for and protect an elk production area and important elk migration routes. (NOPA at 4)

The Quiet Use Coalition of Salida, CO, reviewed the current CPW species habitat GIS data for elk online, March 2022 via <https://cpw.state.co.us/learn/Pages/KMZ-Maps.aspx>. The data indicates that the nearest elk production area is almost two miles

¹ See Hydro-Wetland-floodplains Report at 2.

away from the non-Federal land parcel, and there are no elk migration corridors or highway crossings identified near the non-Federal parcel. That data identifies elk migration patterns in the area, but these are over one mile away from the property.

We question the NOPA statement, as per the referenced data, there are no mapped elk production areas or clearly defined important elk migration routes that include the non-Federal parcel of land.

V. APPRAISALS AND VALUATION

CWPL submitted a FOIA request (March 2, 2022) to obtain the Appraisal Instructions, the Appraisals, and the Technical Appraisal Report, as well as other related information. To date, certain of that information has been made available to CWPL. However, on further inquiry, CWPL was informed via Agency email that no appraisals or appraisal instructions exist.

The NEPA analysis should include an appendix of any and all related appraisals so as to allow public scrutiny and comment; ideally, they should have been available as part of the public information posted on the website for the public to consider in scoping. If not yet complete, they should be made available to the public on issuing the next NEPA document and prior to issuing a Draft Decision.

In conducting appraisals for this exchange, the Forest Service should ensure the appraisals utilize multiple techniques to fully consider the value of the lands included in the exchange, including, but not limited to, the assemblage value of the Forest Service lands to the exchange proponents. They should quantifiably document values for the proposed changes in use, and costs and benefits to all parties in the exchange, be they public or private.

Appraisals should also reflect the full range of public property rights and values the proposed action conveys to the proponents. Appraisals should include an analysis of public values associated with the public properties in the exchange, including access and recreational opportunities, cultural and historical attributes, scenic quality, habitat and species diversity, and wildlife habitat connectivity.

Based on information available at scoping, even though most of the Forest Service parcel to be traded appears to be on fairly steep terrain, the NOPA contemplates that an access road and condominiums would be constructed here and on the adjacent land owned by the proponent, once the exchange is complete:

...conveyance of the Federal parcel would facilitate final approval of subdivision by the Town of Winter Park for the construction of condominiums and town homes on private land at the base of the ski area... This would enhance the resort's desirability as a destination resort... (NOPA at 4)

If so, the Forest Service parcel would likely have a high value. Acquisition of this parcel by the proponent would facilitate the development of the proponent's adjacent land, and there would also be some form of development on the acquired Forest Service parcel. This increased value due to development opportunities, would likely increase the disparity between the value of the Non-Federal and the Federal parcels in the exchange. The potential development of the non-Federal parcel is limited, as it is remote, and an estimated 34 acres of the 50.23-acre parcel are wetlands (NOPA at 3), which could not easily be developed for human uses. Thus, its value is likely much less than that of the federal parcel.

It is important that the public has an opportunity to review the appraisals during the project analysis phase, as the appraisals are critical to the equal value determination and thus to the configuration of the parcels to be exchanged.

VI. BAD PRECEDENT FOR FUTURE LAND EXCHANGES

A. Issues with this Exchange

If approved, this proposed exchange would expand the development boundaries in the Winter Park vicinity. Removing land from a continuously forested landscape under Federal Agency ownership, to facilitate real estate development to occur beyond the current development boundary, is not in the general public interest.

This proposed exchange suggests that a developer would be able to obtain more desirable access to their land by obtaining publicly owned land. And as a result of the different access, the developer would be able to further develop the land. If approved, this would set a dangerous precedent, suggesting that others can purchase inaccessible land and expect to be able to build it out by acquiring publicly owned land through a land exchange.

If this exchange is approved, it could open the door to further land exchanges and loss of Forest Service Lands in the area that provide wildlife habitat, contain sensitive ecosystems, provide recreational opportunities, and serve as important buffers around existing development.

B. Other ways for the Agency to obtain desirable properties

In addition, the practice of a land exchange proponent purchasing property known to be desired by a Federal Agency, in order to obtain publicly owned land for themselves, should be halted. There are other ways for the Agency to obtain desirable lands for

protection and recreation, (see section II above) and the Agency should not succumb to “bait” techniques that do not serve the public interest.

In conclusion, we do not believe the proposal is practical, and we do not feel that the public interest would be well served by making [this] exchange to a private developer for the purposes of creating high-end resort-residential development. The national forest parcel should be retained in National Forest (and public) ownership. If the NEPA process proceeds for the proposed land exchange, we request additional public comment opportunities.

Thank you for your consideration of these comments. We look forward to your responses, additional comment opportunities, and to following up with you further.

Yours sincerely,



Graham Ward, Staff
And the Board of Directors of Colorado Wild Public Lands
PO Box 1772
Basalt, CO 81621
coloradowildpubliclands@gmail.com

Rocky Smith, Forest Management Analyst

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[REDACTED]
[REDACTED]
[REDACTED]

Barbara Vasquez
Environmental Representative, North Platte Basin Roundtable

[REDACTED]
[REDACTED]

Bayard Ewing, Chair, Conservation Committee
Colorado Native Plant Society

[REDACTED]

[REDACTED]
[REDACTED]

B. Travis Wright

[REDACTED]
[REDACTED]
[REDACTED]

Sarah Bransom

Middle Park Great Old Broads for Wilderness

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ATTACHMENTS



WINTER PARK RESORT

MORE THAN YOU IMAGINE.

June 15, 2015

TMII Development, LLC
Attn: Kevin Magenis
PO Box 2281
Fraser, Colorado 80442

Re: Proposed Land Exchange

Dear Kevin:

It is our understanding that your company, TMII Development LLC ("Developer") intends to construct a multifamily development on a 5 acre development parcel east of the Mary Jane/Winter Park ski corridor and across from the Bridger's Cache subdivision (the "Project"). We also understand that the Project includes an ingress/egress roadway from the Mary Jane Road near the entrance of the Dotsero Junction Parking Lot near the Mary Jane Ski Area base building, to be constructed as part of the Project ("Access Road").

The following is a statement of the terms under which we believe the Colorado Arlberg Club (the "Club") and Intrawest/Winter Park Operations Corporation ("IWPOC") and Winter Park Recreational Association ("WPRA") would agree not to oppose the proposed land exchange between the Developer, and the United States Forest Service that is needed for completion of the Project. We understand that the land you are proposing to acquire from the Forest Service ("Exchange Parcel") is shown on the map attached hereto as Attachment A and incorporated herein by this reference.

As you know, IWPOC operates Winter Park Resort under the terms of a Lease and Operating Agreement between itself and WPRA, the legal title holder of Winter Park Resort. The terms set forth below are subject to approval by the Boards of both WPRA and the Club. The terms may also be subject to the approval of the City and County of Denver ("City") which is the beneficial owner of Winter Park Resort. If the terms set out in this letter are acceptable to the Developer, IWPOC will recommend that the WPRA Board and, if applicable, the City approve the terms. The terms set out herein will also be presented to the Club's Board for approval. We cannot, however, guaranty they will be accepted by either Board or the City. (As used herein below the term "Resort" refers collectively to WPRA and IWPOC.)

1. The existing restrictions contained in the Agreement for Partial Release and Termination of Ski Easement between the Club and LDM Development L.L.C. relating to development of Outlot F of Bridger's Cache will apply to the entire Project including Outlots F and E and the portion of the Exchange Parcel not conveyed to WPRA. These restrictions are:
 - a. the Project shall be restricted to condominium or townhome units, none of which contains more than 2,500 square feet of habitable interior living area;
 - b. no liquor license shall ever be issued with respect to any use on the Project;

- c. no commercial or retail use shall ever be permitted on the Project other than a commercial rental pool or similar nightly rental operation.

2. The entire Project will also be subject to the following obligations and restrictions:

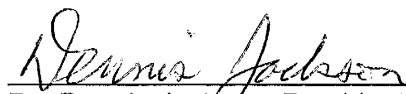
- a. the Club and the Resort shall be furnished with a legal description and ALTA survey of (1) the Exchange Parcel and (2) the portions of Outlot F, Outlot E and the Exchange Parcel on which the proposed development will be located showing the proposed locations for structure(s), the Access Road, parking, snow storage, infrastructure including utilities, etc. when the ALTA survey and maps are available;
- b. the Project shall consist of a maximum of 75 condominium units or townhomes in a single structure with at least 1.25 parking spaces per dwelling unit and no more than 25 guest parking spaces. We understand that the general location and layout of the Project is shown on the map attached hereto as Attachment B and incorporated herein by this reference. We also understand that the underground garage to be constructed as part of the Project extends beyond Outlot E and F under the proposed Access Road. We also understand that the portion of the Exchange Parcel not conveyed to WPRA and not being utilized for construction of the Project as shown on Attachment A will remain unimproved open space with improvements thereon limited to trails to be built or maintained on the open space;
- c. the highest point on the roof of the building, any equipment or structure on the roof, or any other structure in the Project shall be no more than 15 feet in elevation above the centerline of the Mary Jane Road at a point on the Mary Jane Road nearest to that highest point of the building as shown on the drawing attached hereto as Attachment C which is incorporated herein by this reference;
- d. a landscaped buffer with trees shall be maintained between the Mary Jane Road and the Access Road and the building(s) that are part of the Project;
- e. no improvements shall be made on the land acquired from the Forest Service and retained by the Developer other than the surface guest parking spaces, the underground parking garage that extends from Outlots E and F under the Access Road (drawing attached) and the new access road to the Project (including entry gate and cul-de-sac turnaround at north end) from the existing Mary Jane Road;
- f. no further development of any kind shall be made on Outlots E and F and the portion of the Exchange Parcel not conveyed to WPRA without the prior written consent of both the Club and the Resort, which consent may be withheld in the absolute discretion of the Club or the Resort;
- g. as part of the approval process with the Town of Winter Park, the Developer will be required to provide a snow removal and storage plan that must be approved by the Club and the Resort at their sole discretion. It must also be understood and agreed that the snow removal from the Mary Jane Road and associated snow storage in the vicinity of the Mary Jane Road performed by the Resort will continue to be done as it has been in the past and any mitigations needed as a result of this will be the responsibility of the Developer or subsequent property owners;

- h. the Club and the Resort shall have the right to review and approve any signage on or visible from the Mary Jane Road or any Club or WPRA owned property and the design and appearance of the entrance gate for the Project, which approval may be withheld in the absolute discretion of the Club or WPRA.
- 3. The above restrictions shall be set forth in a restrictive covenant to be recorded concurrent with Developer's acquisition of the Exchange Parcel, which covenant shall run with the Exchange Parcel, Outlot E and Outlot F for the benefit of the Club and the Resort, either of which may enforce the covenant separately. The covenant shall provide that it shall not be amended, modified or terminated without the prior written approval of both the Club and the Resort. The Developer shall draft a proposed restrictive covenant for review and approval by the Resort and the Club prior to execution of a final agreement memorializing the terms of this letter of understanding ("Final Agreement").
- 4. Prior to commencement of any application for a building permit with the Town of Winter Park for the Project, the Developer shall provide the Club and the Resort with all relevant plans and specifications with respect to the Project. The Club and the Resort shall have 30 days from their respective receipt of the plans and specifications in which to review them for compliance with the foregoing restrictions.
- 5. The Final Agreement to be executed between the Developer, the Club and the Resort shall include other appropriate provisions including the following:
 - a. title to any part of the existing Mary Jane Road, Resort parking areas, snow storage areas adjacent to the road, and wooded areas east and south of the Mary Jane Road (generally, land shown on Attachment A as the "Preliminary Area to Deed to Winter Park Resort") acquired by the Developer from the Forest Service shall be conveyed by the Developer to WPRA as part of the closing of the Land Exchange by way of a Special Warranty Deed acceptable in form to WPRA, and the Club shall be granted the perpetual right to use that existing Mary Jane Road for access to the Club at all times;
 - b. access to the Project shall be from the existing Mary Jane Road to the Mary Jane base area, shall not cross any property owned by the Club and at no time shall that road to the Mary Jane base area be blocked by construction or other activities in connection with the Project;
 - c. The Developer and the owners of units in the Project shall contribute on a basis acceptable to the Resort a portion of the expenses of maintaining the Mary Jane Road;
 - d. the triangular parcel of land owned by the Club which is adjacent to Outlot E shall, at the expense of the Developer, be surveyed and at the option of the Club after consultation with the Resort, before construction of the Project begins, shall be separated, signed and posted in a manner acceptable to the Club and the Resort to prevent trespassing on such parcel and the owners of the units in the Project shall remain responsible for the expenses of maintaining such separation, signage and postings. The separation of the triangular parcel may be by natural barriers such as trees and/or other vegetation or by constructed fencing as approved by the Club and the Resort in the exercise of their sole discretion;

- e. the Club shall be granted the right by the Developer and the Resort to access the area where existing utilities are located on Outlot E and the Resort and the Developer will not oppose Club efforts to increase the capacity of those utilities for future development by the Club of lands owned by it, however, to the extent such utilities are the property of utility service providers, such access may require the consent and approval of the service provider and any easement, license or right of access granted to the utilities will be subject to the rights of existing utility service providers. Any such access will be subject to the terms of an easement or license acceptable in form to the Developer and the Resort in the exercise of their reasonable discretion.
- f. The Developer and WPRA with respect to the portions of the Exchange Parcel conveyed to WPRA will provide easements for existing utilities on all land acquired from the Forest Service subject to the terms of an easement acceptable in form to the Developer and the Resort in the exercise of their reasonable discretion.
- g. within the undeveloped portion of Outlot E and/or the Exchange Parcel, the Developer will provide a travel area for the reroute of the existing Jackalope Mountain Bike Trail and work with the Resort to develop and maintain future mountain bike / hiking trails on the undeveloped portions of Outlot E and the Exchange Parcel.
- h. The Developer will pay for all reasonable legal fees for Resort and the Club related to any of the above matters.
- i. The Resort will execute a suitable amendment to the Winter Park Resort Special Use Permit or such other documentation as the Forest Service may require to exclude the Exchange Parcel from the permit boundary as part of the closing on the land exchange.
- j. The Resort and Club shall prepare and send to the Forest Service a letter stating they will not oppose the proposed land exchange as long as the terms of this Agreement are carried out by the Developer.

Following the execution of this letter of understanding by all the parties, the parties will prepare a formal definitive agreement containing the above terms and other appropriate provisions common to such agreements. Among other matters to be included in a definitive agreement would be an exhibit in the form of the restrictive covenant referred to in Paragraph 3 above and language regarding the timing of the execution and recording of the restrictive covenant. None of the parties shall be bound by the terms of this letter of understanding until the final definitive agreement is approved by their respective boards or members and is executed by all the parties hereto.

Colorado Arlberg Club


By: Dennis Jackson, President

Intrawest/Winter Park Operations Corporation

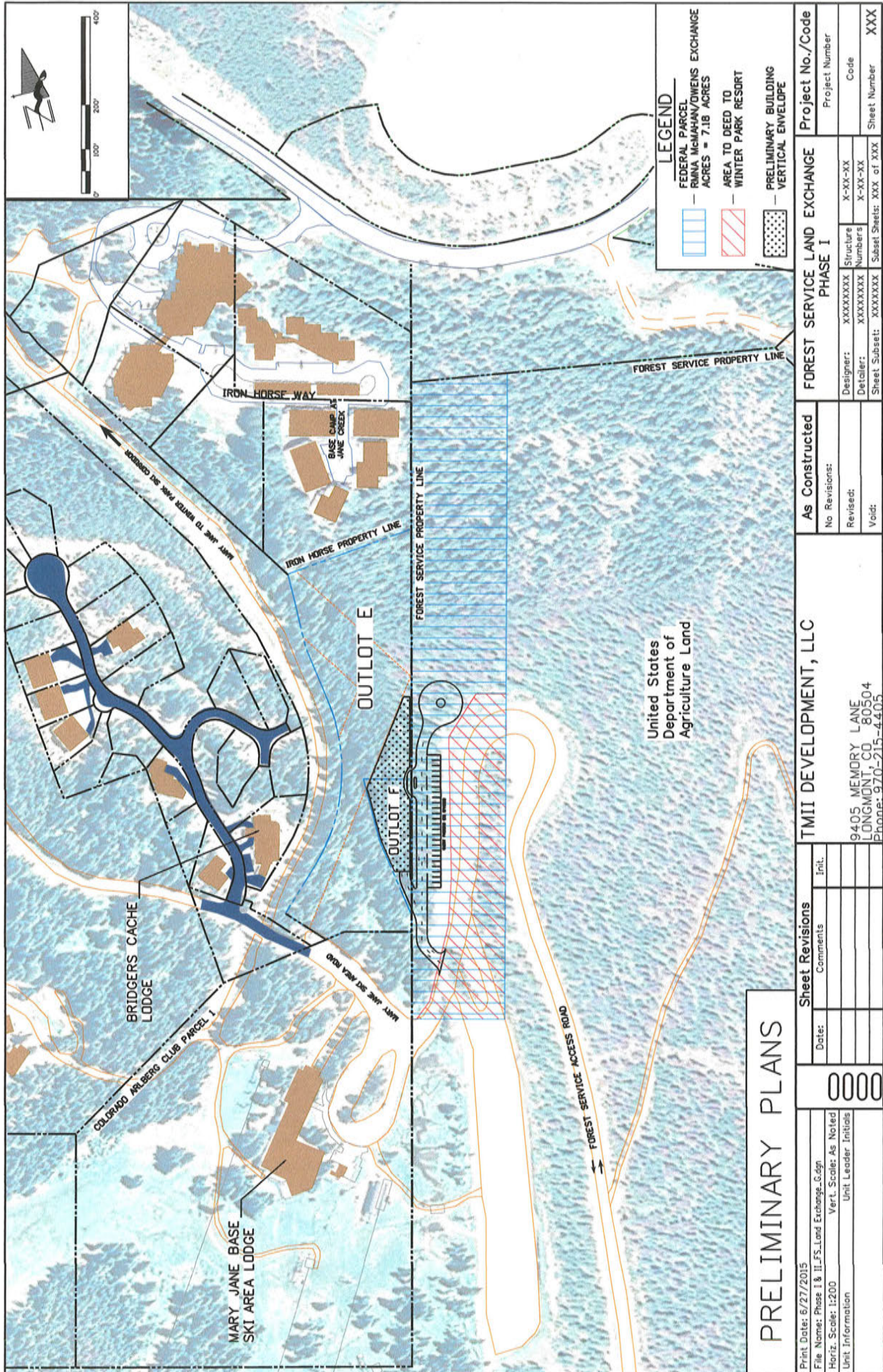

By: Gary DeFrange, President/COO

Accepted and Acknowledged by Developer

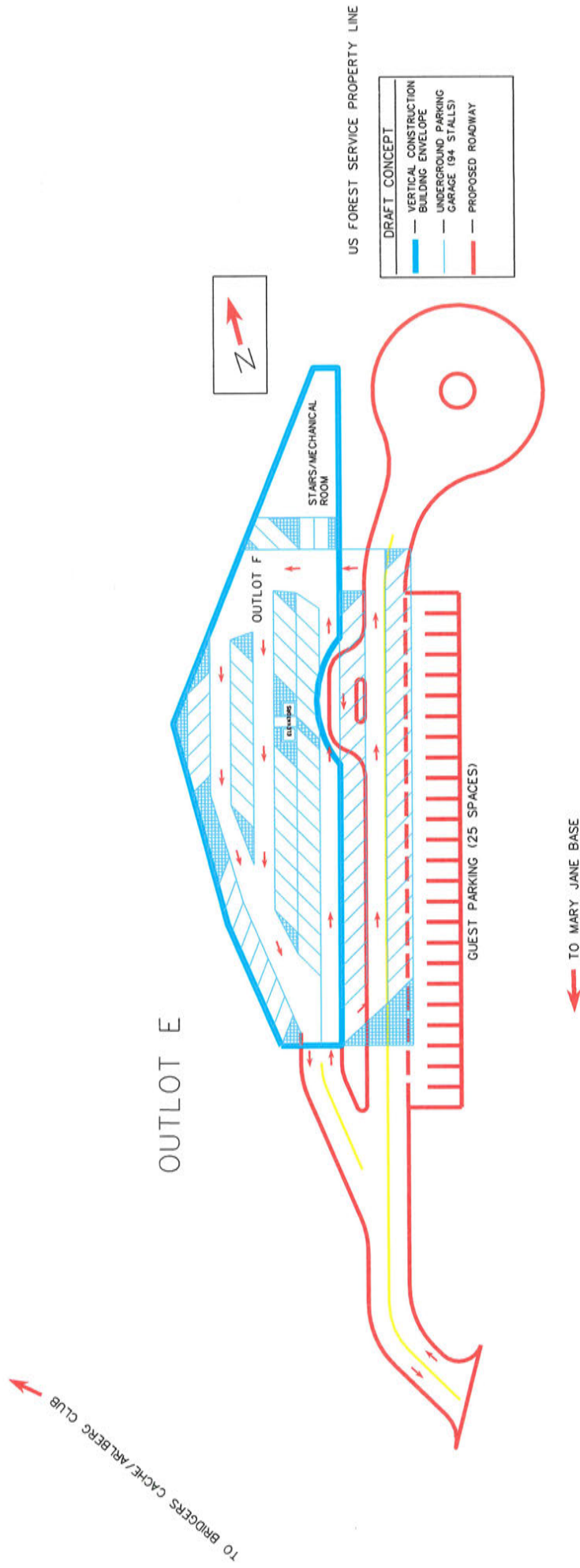
TMII Development, LLC


By: Kevin Magenis, Managing Member

Dated: 6/15/15



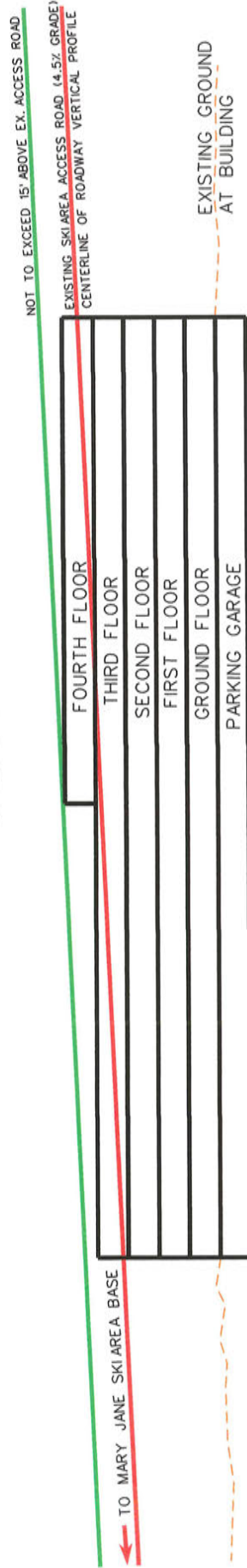
ATTACHMENT B



DRAFT PLANS 1/23/2015

ATTACHMENT C

CONCEPT - PROPOSED BUILDING (SIDE VIEW, LOOKING WEST)
12' FLOORS



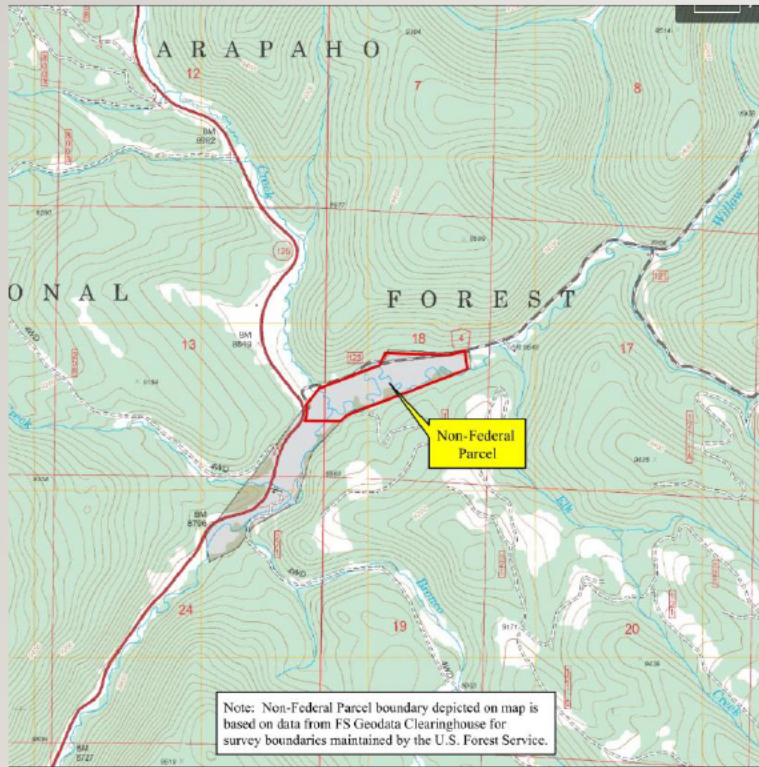
WILLOW CREEK LAND EXCHANGE

TMII DEVELOPMENT, LLC BRIDGER'S CACHE MULTI-FAMILY PROJECT – MJ CONDO'S

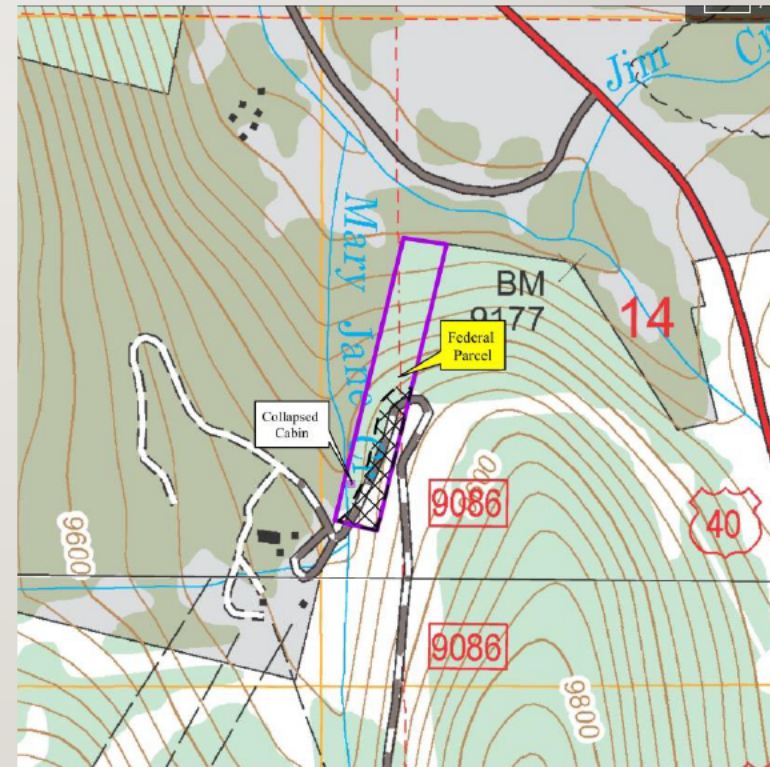
KEVIN MAGENIS 970-215-4405

WILLOW CREEK LAND EXCHANGE - PROPERTIES

NON-FEDERAL PARCEL



FEDERAL PARCEL



WILLOW CREEK LAND EXCHANGE - COMPARISON

NON-FEDERAL PARCEL

- 50.23 acres
- Rabbit Ears Range Grand County - 4.5 miles south of Willow Creek Pass on CR 4, east of HWY 125
- Vast wetlands complex, fed by flows from the Willow Creek watershed, 3 building envelopes
- Surrounded by Roosevelt National Forest
- Meets objectives of the Forest Plan
 - Consolidates NFS lands
 - Protects and enhances Forest resources including fisheries and wetland habitat..includes any endangered species
 - Provides recreational opportunities for the public

FEDERAL PARCEL

- 7.18 acres
- 700' of Mary Jane Road, Spruce Forest, steep slopes
- Facilitates ingress/egress & parking to BC Outlots E&F, using 1.35 acres, 3.73 acres will be open space.
- The MJ Road and part forest, parking area will be gifted to the WPRA, 2.1 acres
- Will be annexed into Bridger's Cache subdivision in the Town of Winter Park.
- Will enhance Winter park's desirability as a destination resort facilitating "hot beds", paved MJ Road and new base to base chair lift. Support from Town of WVP, WPRA and Arlberg Club.

NON-FEDERAL PARCEL

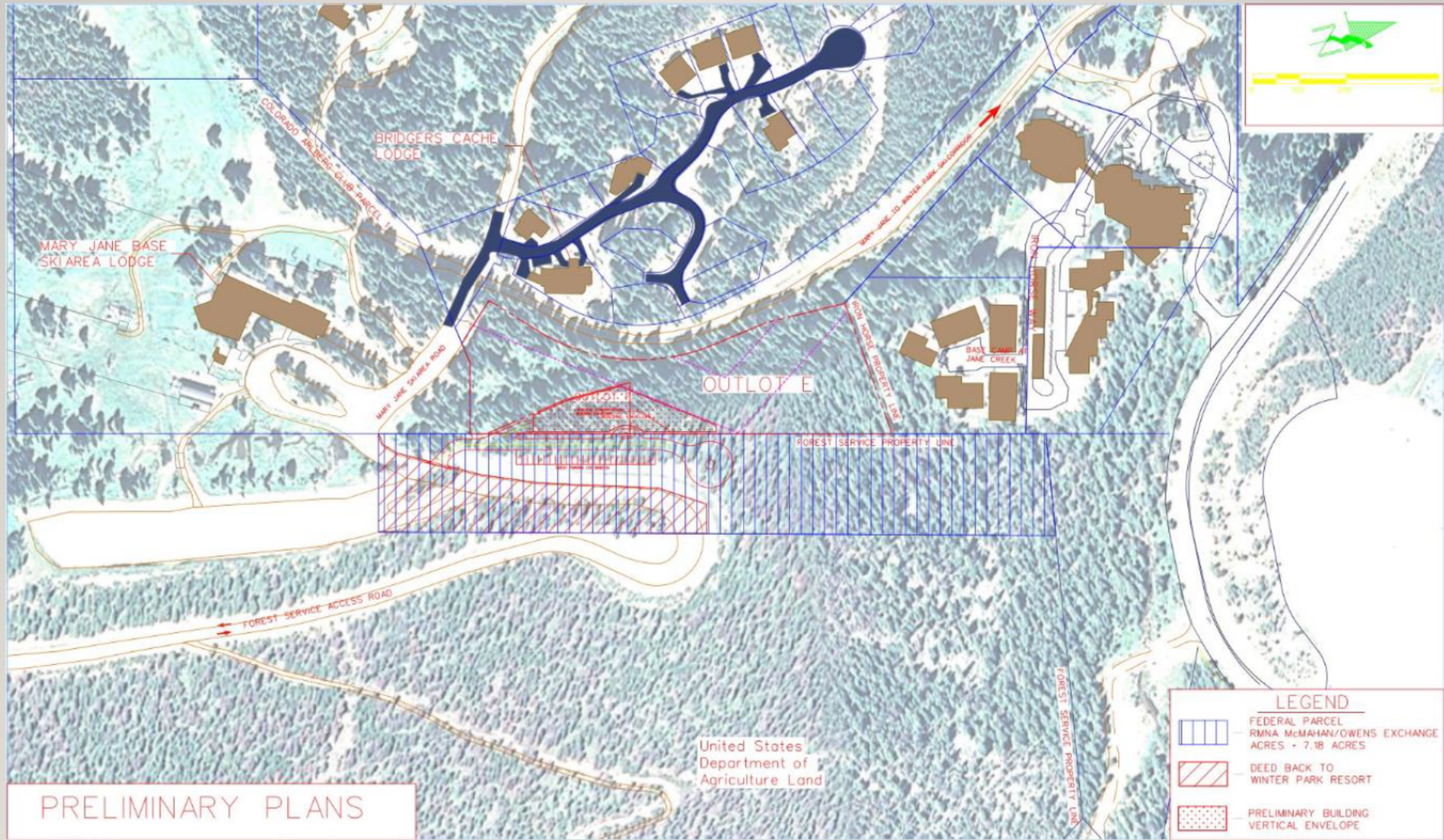




FEDERAL PARCEL



DETAIL FEDERAL PARCEL EXCHANGE



MARY JANE CONDOS



