



SENT VIA EMAIL

April 28, 2022

Leslie McFadden
Sulphur Ranger District
9 Ten Mile Drive
P.O. Box 10
Granby, CO 80446

Dear Mr./Ms. McFadden,

WildEarth Guardians (“Guardians”) is a non-profit, public interest, education, and conservation organization whose mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has more than 200,000 members and e-activists across the United States. This letter serves as Guardians’ comments on the analysis of the environmental impacts of the proposed Willow Creek Land Exchange described in the Forest Service’s Notice of Proposed Action (“NOPA”) for the proposed land trade.

This must not be the only opportunity to comment on this proposal.

The NOPA does not offer any analysis of the likely or potential environmental impacts of the proposed trade. By providing no opportunity to comment after the Forest Service publishes its environmental analysis of the Willow Creek proposal, the agency is curtailing the twin aims of the National Environmental Policy Act (“NEPA”): (1) for federal agencies to consider the environmental impacts of their proposed actions and (2) inform the public that the agencies considered environmental concerns in their decision-making process. The Forest Service’s decision to limit public comments to this single opportunity denies the agency the chance to incorporate the public’s critique and then improve the impacts analysis. It also denies the Forest Service deciding official the chance to consider public comments on the sufficiency and accuracy of the agency’s environmental review. It also erodes public trust in the Forest Service’s use of the NEPA process.

The Forest Service must analyze the full scope of impacts from the development of the federal parcel.

As mentioned above, a primary purpose of NEPA is to promote informed decision-making by federal agencies. To meet this purpose, NEPA requires that agencies assess the environmental effects of their proposed actions prior to making decisions. Under the recently revised CEQ rules on NEPA implementation, three types of effects, or impacts,

must be considered: direct, indirect, and cumulative impacts. Direct effects are those effects caused by the proposed action or an alternative and occur at the same time or place as the action/alternative. Indirect effects also result from the action or alternative but occur subsequently in time or nearby the location of the action or alternative. Cumulative impacts are the incremental effects of the action/alternative when considered with other past, current or reasonably foreseeable future actions on the same resource. The Willow Creek Land Exchange NOPA notes that future actions on the now-Federal parcel include

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 a 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, 4.

The NOPA offers no information regarding the intensity of development (number of units, size of the overall subdivision, etc.), making it difficult for the public to knowledgeably comment on the likely impacts or suggest alternatives for NEPA analysis.

Beyond the footprint of the proposed subdivision itself, the Forest Service must analyze the impacts that the subdivision will have on the surrounding area. Will the subdivision result in greater use of the ski area? If so, will there be impacts to traffic congestion? What are the likely impacts to air quality if there are more visitors to the Winter Park community in winter? Will there likewise be impacts to water quality or quantity? Will there be impacts to wildlife? Noise impacts? Socioeconomic impacts? All these questions must be considered, as development of the Federal parcel is a connected action to this proposal, since the subdivision development would not be possible without the agency's approval of the land exchange. *See* 40 C.F.R. § 1508.25(a)(ii) (defining connected actions as those that "[c]annot or will not proceed unless other actions are taken previously or simultaneously"). As such, NEPA requires that its impacts be analyzed along with, or as part of, the land exchange proposal.

Without an analysis of the future development of the federal parcels it is not possible for either the public or the deciding official to properly evaluate the effects of this proposed land trade. This speaks to the need to provide the public another opportunity to comment on this proposal before the Forest Service makes a decision.

To be clear, the Forest Service cannot duck its responsibility to analyze the impacts that would result from subdivision development by stating that the proponent has not provided or prepared a detailed development plan. If the proponent is not willing to provide a detailed plan, the Forest Service can determine the maximum intensity of development that is legally permissible and economically feasible. The Forest Service should then rely on that permissible/feasible level of development as the basis for analyzing the likely environmental impacts of developing the parcel.

Forest Service regulations require that the agency “reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of the federal lands to be exchanged, as appropriate.” 36 C.F.R. § 254.3(h). A detailed development plan—or, in the alternative, a maximum density development scenario—is necessary for the Forest Service to understand the scope and intensity of impacts, so that it can evaluate and set necessary conditions on the land trade to protect the public interest. Neglecting to analyze the likely impacts of development of the Federal parcel leaves the Forest Service with no rational basis for the required evaluation of whether it needed to reserve rights or retain interests in, or restrict the use of, the federal parcels offered for trade.

An analysis of the likely environmental impacts of developing the federal parcel is also necessary if the Forest Service is to comply with the Federal Land Policy and Management Act’s requirement that “the public will be well served by making that exchange.” 43 U.S.C. § 1716(a). A reasoned public interest determination requires an understanding of the likely impacts of developing the federal parcel.

Thank you for the opportunity to comment on the Willow Creek Land Exchange. Please notify me when further documents regarding this proposal are published.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher J. Krupp". The signature is fluid and cursive, with the first name "Christopher" and last name "Krupp" clearly distinguishable.

Chris Krupp, Public Lands Attorney
WildEarth Guardians