



May 17, 2023

James Duran  
Forest Supervisor  
Carson National Forest  
208 Cruz Alta Road  
Taos, NM 87571

Re: Taos Ski Valley Improvements #61390

Submitted online at <https://cara.fs2c.usda.gov/Public//CommentInput?Project=61390>

Dear Supervisor Duran,

Thank you for the opportunity to provide comments on the draft Environmental Assessment (EA) for the Taos Ski Valley Gondola and Other Improvements project, #61390. Winter Wildlands Alliance is a national non-profit working to inspire and empower people to protect America's wild snowscapes. Our alliance includes 29 grassroots groups in 13 states and has a collective membership exceeding 130,000. Many of our members ski at Taos Ski Valley, Inc. (TSVI) and backcountry ski and snowshoe in the adjacent Wheeler Peak and Columbine-Hondo Wilderness areas. Our concerns with the proposed project relate to direct and indirect effects that the project may have on adjacent public lands, including public access to the Wilderness areas, as well as effects to the Rio Hondo Watershed. We are also deeply disappointed in the paucity of the analysis in this EA, especially as this project clearly warrants an Environmental Impact Statement (EIS).

#### National Policies

##### *National Environmental Policy Act*

The fact that this project was analyzed with an EA and that the EA analyzes only a single alternative – the Proposed Action – are two very big red flags that merit significant discussion. With only one alternative, the EA doesn't analyze the impacts of the proposed projects because it doesn't compare the Proposed Action to anything else. Totalling a mere 59 pages, the EA is more focused on describing TSVI's desired projects than on seriously considering the impacts of those projects on myriad natural resources or how TSVI's goals might be achieved through other means. Considering the Carson received scoping comments from over 300 people and organizations in 2022, it's rather surprising that the Forest Service did not require SE Group to develop and fully analyze a no action alternative, much less any alternatives that considered suggestions raised by the public during the scoping comment period. With only one option on the table, it's difficult to understand how this NEPA process is anything other than a pre-ordained conclusion unduly favoring TSVI's interests over the Forest Service's responsibilities as a land steward and to the public.

Considering the significance of the issues at stake with these proposed projects, particularly pertaining to the Rio Hondo Watershed and Wilderness lands near to or adjacent to the Special Use Permit (SUP)

PO Box 631 Bozeman, Montana 59771  
TEL (208) 629-1986 | [heisen@winterwildlands.org](mailto:heisen@winterwildlands.org)  
[www.winterwildlands.org](http://www.winterwildlands.org)



boundary, this proposal must be analyzed with an EIS and the EIS must include a broad range of alternatives. “Both an EA and an EIS must consider a range of reasonable alternatives, but the depth of discussion and analysis required for an EIS is more extensive than for an EA.” *Bd. of Cnty. Commissioners of Cnty. of San Miguel v. United States Bureau of Land Mgmt.*, 584 F. Supp. 3d 949, 954 (D. Colo. 2022) (internal citations omitted). “The “heart” of an EIS is its exploration of possible alternatives to the action an agency wishes to pursue. 40 C.F.R. § 1502.14.” *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708–09 (10th Cir. 2009). NEPA “directs federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *W. Watersheds Project v. Rosenkrance*, 2011 WL 39651, at \*8 (D. Id. Jan. 5, 2011) (citing and quoting 42 U.S.C. § 4332(2)(E)). There are a number of unresolved conflicts with this proposal, including concerns over impacts to the Rio Hondo Watershed and impacts to public access to the Wheeler Peak and Columbine-Hondo Wilderness areas. These concerns, which were raised during scoping, are not sufficiently addressed in the EA, in part because the EA’s range of alternatives (or lack thereof) fails to provide the opportunity to analyze the questions and concerns raised by the public.

Even if the Forest Service continues to believe that an EA is sufficient, the final EA must include and analyze additional alternatives beyond the Proposed Action. “[O]nce an agency establishes the objective of the proposed action—which it has considerable discretion to define—the agency need not provide a detailed study of alternatives that do not accomplish that purpose or objective, as those alternatives are not ‘reasonable.’” *Biodiversity Conservation All. v. Jiron*, 762 F.3d 1036, 1083 (10th Cir. 2014). While “The [agency] may eliminate alternatives that ... do not meet the purposes and needs of the project.” *Biodiversity Conservation Alliance v. Bureau of Land Mgmt.*, 608 F.3d 709, 715 (10th Cir. 2010), this is not a basis for eliminating *all* possible alternatives. “While it is true that defendants could reject alternatives that did not meet the purpose and need of the project, they could not define the project so narrowly that it foreclosed a reasonable consideration of alternatives.” *Utah Env’t Cong. v. Bosworth*, 439 F.3d 1184, 1195 (10th Cir. 2006) (internal citations omitted).

In the Tenth Circuit,

When evaluating the adequacy of the Forest Service’s alternatives analysis (i.e., the number of alternatives the Forest Service was required to consider and the requisite level of detail), we employ the “rule of reason” to ensure the environmental [document] contained sufficient discussion of the relevant issues and opposing viewpoints to enable the Forest Service to take a hard look at the environmental impacts of the proposed expansion and its alternatives, and to make a reasoned decision. We note the National Environmental Policy Act does not require agencies to analyze the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or ... impractical or ineffective. What is required is information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned.

*Colorado Env’t Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999) (internal citations and quotations omitted). Still,



the agency must “rigorously explore and objectively evaluate all reasonable alternatives” for the proposed action in response to a “specified underlying purpose and need.” 40 C.F.R. §§ 1502.13, 1502.14(a). The range of “reasonable alternatives” must at least include the alternative of taking “no action,” 40 C.F.R. § 1502.14(d), which we have described as “the option of taking no new planning action.”

*Jiron*, 762 F.3d at 1051 (10th Cir. 2014) (quoting *New Mexico ex rel. Richardson*, 565 F.3d at 690 (10th Cir. 2009)).

Regarding the “no action” alternative, the courts have explained that “the consideration of a “no-action” alternative is intended to require that agencies compare the potential impacts of the proposed major federal action to the known impacts of maintaining the status quo. For the “no-action” alternative, the current level of activity is used as a benchmark.” *Colorado Off-Highway Vehicle Coal. v. United States*, 505 F. Supp. 2d 808, 817 (D. Colo. 2007) (internal citations and quotations omitted); *see also*, *Custer Cnty. Action Ass’n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir. 2001) (“In requiring consideration of a no-action alternative, the Council on Environmental Quality intended that agencies compare the potential impacts of the proposed major federal action to the known impacts of maintaining the status quo”).

In addition, “where the action subject to NEPA review is triggered by a proposal or application from a private party, it is appropriate for the agency to give substantial weight to the goals and objectives of that private actor.” *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1030 (10th Cir. 2002) (internal citations omitted); *see also Colorado Env’t Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999) (“Agencies also are precluded from completely ignoring a private applicant’s objectives”). “Nevertheless, courts will not allow an agency to define the objectives so narrowly as to preclude a reasonable consideration of alternatives.” *Citizens’ Comm. to Save Our Canyons*, 297 F.3d at 1030 (10th Cir. 2002) (*citing Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002)).

The Taos Ski Valley EA fails to comply with applicable Tenth Circuit case law regarding the development of alternatives and the consideration of the no action alternative. As we note elsewhere in our comments, there are numerous “unresolved conflicts concerning alternative uses of available resources” – here, the natural environment and resources found in the valley including the SUP area managed by TSVI – that should have driven the development of multiple alternatives regarding expansion of winter and summer recreational opportunities on the mountain. For example, winter access to Wheeler Peak and Williams Lake is of particular interest to our constituents. TSVI recently announced a relocation of the historic trail to Williams Lake - Wheeler Peak Trail. An alternate route was placed at the bottom of the El Funko ski run in the resort, within the SUP. This new route is not suitable for skiing or snowshoeing in winter because of the difficult steep and rocky terrain and avalanche dangers from El Funko ski run. In our scoping comments we raised concerns about winter access to Williams Lake and Wheeler Peak and it would have been appropriate for this EA – or an EIS – to include an alternative that enshrined public use of the historic trail. Instead, this EA only considers a new summer hiking trail that fails to meet the desires of winter Wilderness users.

Another unresolved conflict concerns use of water resources. The EA is based on the premise that TSVI has a 200-acre-foot water right, but it is our understand that the resort’s actual water rights only allow



for 21.45 acre-feet of consumptive use, primarily for snow making. The new and upgraded restaurants and bathroom facilities in the Proposed Action presumably will use water year-round, especially given TSVI's goal of increasing spring, summer, and fall recreation. The EA barely touches on water use, simply taking TSVI at their word that the resort holds sufficient water rights and that the state of New Mexico is responsible for overseeing wastewater management. Given the unresolved conflicts regarding the use of available resources, the Forest Service should have developed additional action alternatives. *Rosenkrance*, 2011 WL 39651, at \*8 (D. Id. Jan. 5, 2011); *Bosworth*, 439 F.3d at 1195 (10th Cir. 2006).

Instead, the Forest Service only considered the proposed action alternative: there is no "no action" alternative discussed in the EA. But the law is clear that the agency should have considered and analyzed a no action alternative that would have provided an environmental baseline against which to evaluate the environmental consequences of the proposed action. *Colorado Off-Highway Vehicle Coal.*, 505 F. Supp. 2d at 817 (D. Colo. 2007); *Garvey*, 256 F.3d at 1040 (10th Cir. 2001). Without an accurate environmental baseline, the Forest Service cannot accurately assess the environmental consequences of the proposed action. *Id.*

We also note that while the Forest Service has an obligation to consider TSVI's proposed action, *Dombeck*, 185 F.3d at 1175 (10th Cir. 1999), the agency has never analyzed the environmental consequences of TSVI's master development plan: the Taos Valley Gondola and Other Improvements EA is the first opportunity the public has had to begin to understand the scope, scale, and impact of TSVI's vision for Taos Valley. However, the environmental consequences of a full build-out of TSVI's master development plan are clearly reasonably foreseeable, and as such, should have been analyzed in the EA. *New Mexico ex rel. Richardson*, 565 F.3d at 708–09 (10th Cir. 2009).

The MDP envisions the resort building out to an eventual comfortable carrying capacity (CCC) of 4,630 guests but the EA only considers a new CCC of 4,480. Thus, the EA considers a CCC increase of 170 guests over baseline while the MDP strives for a 319-guest increase, almost double what is analyzed. Obviously the environmental effects of increasing the CCC by 319 guests versus 170 are much greater. The projects in the MDP that would increase the CCC to 319 guests are reasonably foreseeable and should be considered as well. The CCC relates to water quality, impacts to adjacent Forest Service lands and Wilderness, and every other aspect of this EA. The Forest Service must also consider the cumulative impacts of the Proposed Actions and the reasonably foreseeable impacts of private land development in the Kachina Basin.<sup>1</sup> This private land development will have significant impacts to Forest scenery resources, Wilderness character, and water quality in the Rio Hondo Watershed. It is reasonable to conclude that the base-to-base gondola and other proposed projects for Forest Service lands in the Kachina Basin relate to and would support this development. Another reasonably foreseeable cumulative impact that the Forest Service must consider in relation to this project is how the water and wastewater requirements of the Proposed Action will affect or be affected by reconstruction of the Hotel St. Bernard. TSVI recently received approval from the Village of Taos Ski Valley council to rebuild this hotel but both TSVI and the Village have acknowledged that there is not sufficient water available to actually operate the hotel.

---

<sup>1</sup> Kachina Base Area Mast Plan Public Open House. October 2, 2021. Recording available online at <https://designworkshop.app.box.com/s/ilahna8d6nqsm0b6npg7iyg6swpt09o2>



### *Forest Service Manual*

FSM §2343.14(1)e1 states that recreation and facilities at ski areas must harmonize with the natural environment of the site where they would be located by being visually consistent with or subordinate to the ski area's existing facilities, vegetation and landscape. This is a particularly important direction to adhere to because the TSVI resort borders and is visible from many places within the Wheeler Peak Wilderness. To ensure any approved projects align with this direction, the EA should include a viewshed analysis. Although the EA discusses scenery impacts, without a viewshed analysis it is not possible for the public to ascertain whether the EA has fully captured the extent of these impacts.

### Impacts to Adjacent or Nearby Public Lands

The EA fails to fully consider the direct, indirect, and cumulative effects the proposed projects will have on public access to the Wheeler Peak Wilderness via the Williams Lake/Wheeler Peak trailhead. Several trails that are popular with backcountry skiers (as well as summer visitors) are accessed from this trailhead, including the Wheeler Peak and Williams Lake trails. Because short portions of the historical Williams Lake trail crosses private lands owned by TSVI and a TSVI holding company, we have grave concerns over how growth resulting from these proposed TSVI projects will impact future public access to the Wilderness from this popular trailhead.

The EA does not address how or whether construction and operation of the gondola, as well as other project-related construction and staging areas might impede public access to or use of the Williams Lake/Wheeler Peak trails, which are important to backcountry skiers seeking to ski Wheeler Peak and the bowls above Williams Lake. Wheeler Peak, as the highest peak in New Mexico, is a popular backcountry ski destination. While skiers can, and do, access Wheeler Peak from both the Williams Lake and Bull of the Woods trailheads, the Williams Lake/Wheeler Peak trails are, by far, the most popular way to access the Wilderness. The historical trail leading to Williams Lake from trailhead follows the least steep terrain and avoids avalanche paths. In contrast, the route to Wheeler Peak (and a few of the popular backcountry chutes) from Bull of the Woods trailhead is considerably longer, exposed, and often windswept.

While the EA describes how noise and other potential impacts from construction activities may impact the Wilderness itself, it does not describe how or whether construction activities may impact the trailhead and thus public access to the Wilderness. For example, will construction activities block the access road or limit use of the parking lot? Likewise, the EA does not discuss long-term effects to Wilderness access once the gondola is in place. Although the EA does not specify, it is likely that TSVI will charge for use of the new gondola and it is imperative that access to the Williams Lake trailhead remain freely available to all members of the public and not be limited to paying gondola customers. While the Lift 4 hiking trail may provide an alternative for summer visitors looking to hike on a trail, it does not access the peaks and lakes that are major destinations for Wilderness visitors, would not provide for overnight opportunities, and serves no use for winter visitors. Therefore, this trail cannot be considered an offset to any loss of public access to the Williams Lake trail. Our concerns about future access along the historic route to Williams Lake/Wheeler Peak from the Williams Lake trailhead are particularly



pressing because TSVI and the Forest Service have re-routed the portion of the trail that crosses private lands owned by the resort and its associated holding company.<sup>2</sup> The new route is located at the bottom of the El Funko ski run and is not suitable for winter use (backcountry skiing or snowshoeing) because of the difficult terrain and avalanche dangers from El Funko. Thus, the only reasonable access for winter recreationists seeking to travel to Wheeler Peak or Williams Lake areas is via the historic route.

In addition to not fully assessing the impacts of this project on public access to public lands, the EA does not adequately consider how increased visitation to the resort from this project may impact the Wilderness. While some hikers will no doubt choose to use the new Lift 4 trail, however as it does not access the primary attractions of the Wheeler Peak Wilderness it is unlikely that most hikers will choose the new trail over the Williams Lake trail. Thus, the EA's assertion that the new trail will offset the impact of increased visitation to the Wilderness, facilitated by the gondola, is speculative and unlikely.

On page 20 of the EA the Forest Service asserts that the Proposed Actions are not expected to affect the Columbine-Hondo Wilderness because this Wilderness area is not immediately adjacent to the SUP area. This is a facetious claim, as the Columbine-Hondo Wilderness boundary is less than a mile away from the SUP area boundary, the SUP is within the Columbine-Hondo viewshed and soundscape, and increased visitation to TSVI resulting from the Proposed Actions will almost certainly lead to more visitation in the Columbine-Hondo Wilderness as well. These impacts must be analyzed.

Because the EA only analyzes a single alternative it is impossible to draw any meaningful conclusions about the relative level of impacts to public lands adjacent to the resort's SUP area from the proposed action. The EA cursorily describes some impacts but it does not describe how even these impacts compare to the current situation (no action) or other possible approaches to achieving TSVI's stated objectives. While NEPA does not require the Forest Service to make the least environmentally harmful decision, it does require an informed decision and this EA fails to meet that standard.

### Impacts to Water Quality

This past winter TSVI had to close operations twice due to water system failures. Given that TSVI clearly operates beyond the water system's capacity already, we find the EA's conclusion that adding a 5-million-gallon water tank for snowmaking, a new restaurant (with kitchen and restroom facilities – both of which demand high water use), and enlarging the current Whistlestop Café, won't change anything in respect to water resources to be suspect. Although the EA states that TSVI has 200 acre-feet of water available to support the proposed projects, TSVI's water rights only actually allow for 21.45 acre-feet of consumptive use, with only 0.11 acre-feet of daily consumptive use allowed between April 11th and October 25th of each year. In short, the majority of TSVI's water rights are only available for snowmaking and not for the expanded uses contemplated in the EA. This is a very different situation from assuming TSVI has unlimited rights to 200 acre-feet of water year-round. Prior to making a decision on this proposal, the Forest Service must consider whether TSVI even has the water rights necessary to implement the proposed actions. To accurately ascertain how the water required by the proposed

---

<sup>2</sup> The direct, indirect, and cumulative effects from these actions should be considered in a single comprehensive EIS. 40 C.F.R. § 1508.7.





actions will impact water quality and availability in the Rio Hondo Watershed, the analysis must identify the source and specific uses of the water required, as well as the effects of removing the 200 acre-feet of water from the watershed. The effects analysis should consider projected daily use, peak use, and replenishing the storage tank at the projected replenishment interval. Furthermore, until TSVI and the Village of Taos Ski Valley resolve their ongoing water system issues, the Forest Service should hold off on making a decision about water-related projects.

We question the EA's conclusion that there will be no impacts to water quality from the wastewater generated by these proposed projects, as the EA did not actually analyze potential impacts. Instead, the Forest Service has punted its responsibility to the state of New Mexico, stating that septic tank-leach field systems are subject to approval and inspection by the New Mexico Environment Department and (presumably?) assuming that any septic leach field regulated by the state operates without environmental damage. Common sense dictates that this is not true, as state agencies are not omnipresent and accidents occur. The Proposed Action would substantially increase the amount of wastewater generated at TSVI and released into the Rio Hondo Watershed. Even if the Village's water system weren't inclined to failure, this increase in wastewater poses a significant environmental impact that must be considered in an EIS where alternatives to the Proposed Action are analyzed. These alternatives should include a no-action as well as alternative water and sewer system approaches to minimize water use and wastewater generation at TSVI. The EIS should also take into account the ongoing and significant problems with the Village's wastewater treatment plant, and how increased visitation to TSVI resulting from the Proposed Actions will exacerbate these problems.

### Climate Change

Skiing, perhaps more than any other outdoor activity, is directly affected by climate change. Shorter, warmer winters mean snow no longer accumulates where it used to, or in the amounts that it used to. Ski resorts, in response, have had to adapt. This is a major reason many resorts – TSVI included – are pursuing more diverse recreational offerings, including spring, summer, and fall activities. Many resorts – TSVI included – are also turning to increased snowmaking to supplement natural snowfall. The climate impacts of the snowmaking proposal in this Proposed Action must be considered in an EIS. Snow making is a highly energy-intensive activity that burns fossil fuels to turn millions of gallons of water into a relatively small amount of snow in defined areas. Although TSVI operates its daytime operations off of solar power, most snowmaking occurs at night and it is not clear how TSVI powers its snowguns. According to TSVI, quoted in a Taos News article, it takes 8 million gallons of groundwater to make enough snow to cover a 3.5-mile ski run.<sup>3</sup> Approximately 30% of the water used in snowmaking is lost to evaporation, and what does turn to snow is subject to the myriad of pollutants present on the ski hill – from snowmachine exhaust to ski wax – before eventually melting. It's a far cry from aquifer or stream replenishment coming from natural snow in an upper watershed. Furthermore, the process of making snow contributes significantly to the climate change that's driving the need to make snow in the first place. And, in the Southwest where the effects of climate change are intensifying each year and water is

---

<sup>3</sup> Taos News, December 8, 2021. *Ski resorts talk the ins and outs of snowmaking amid climate change and drought.* Available online at [https://www.taosnews.com/news/environment/ski-resorts-talk-the-ins-and-outs-of-snowmaking-amid-climate-change-and-drought/article\\_3d64569a-4ac6-5387-8fe5-21c963d25119.html](https://www.taosnews.com/news/environment/ski-resorts-talk-the-ins-and-outs-of-snowmaking-amid-climate-change-and-drought/article_3d64569a-4ac6-5387-8fe5-21c963d25119.html)



an extremely limited resource, the question of whether snowmaking is an appropriate use of water resources is one that bears significant scrutiny rather than being taken as an accepted need. This issue, alone, merits an EIS.

In conclusion, we have grave concerns about the adequacy of the NEPA analysis for this project, which is thus far insufficient to fully understand the likely impacts of the proposed action. We are also deeply concerned about how the proposed actions will impact public use of neighboring public lands, and the impacts to water quantity and quality in the Rio Hondo Watershed. We encourage the Forest Service to complete a more robust analysis with an EIS, which we believe will illustrate that several of the proposed actions are not a suitable use of National Forest lands.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen", with a stylized flourish at the end.

Hilary Eisen  
Policy Director