



July 28, 2025

**Submitted Electronically**

USDA Forest Service  
Rocky Mountain Region  
Attn: Reviewing Officer  
C/O Director of Strategic Planning  
1617 Cole Blvd., Bldg. 17  
Lakewood, CO, 80401

**Re: Winter Park Resort's Objection to the Winter Park Resort Projects 2025 Draft Decision Notice**

Dear Reviewing Officer:

Winter Park Resort ("WPR") respectfully submits this objection to the June 2025 Draft Decision Notice, Environmental Assessment, and Finding of No Significant Impact for the Winter Park Resort Projects 2025 (the "Project"). WPR appreciates the Forest Service's extensive level of work, public outreach, and coordination in preparing the Draft Decision Notice and Environmental Assessment. WPR submits this objection to preserve its right to participate in any objection resolution meetings that may occur and to request that the Forest Service clarify the points identified below in the Final Decision Notice.

**I. WPR Supports the Adoption of the Proposed Action**

WPR operates a four-season ski resort on National Forest System lands within the Arapaho and Roosevelt National Forests under a long-term special use authorization. The Project area has been a developed ski area for over 80 years. WPR and the Forest Service have a longstanding partnership and have worked together to provide high-quality public recreation on the public lands within WPR's special use permit boundary.

WPR participated in each stage of the Project planning process and submitted comments on the Draft Environmental Assessment. *See Exhibit 1 (April 25, 2025, Comments by WPR on Draft Environmental Assessment)*. WPR appreciates the Forest Service's consideration of its comments on the Draft Environmental Assessment and the Forest Service's clarifications and revisions in response to WPR's comments. *See WPR Projects 2025 Draft EA Consideration of Comments (WPR006-25-002D0)*.

WPR submits this objection as the holder of a long-term authorization for the development and operation of ski area recreation facilities and the Project proponent. WPR supports the Proposed Action. WPR submits this objection to preserve its right to participate in any objection resolution meetings that may occur and respectfully requests that the Forest Service notify WPR of the opportunity to participate in any objection resolution meetings.

The Project is necessary to optimize the operational efficiency of existing mountain infrastructure and to improve and enhance the guest experience at the Resort. Each underlying component of the Project is necessary to accomplish the Project goals and to continue to provide high quality public recreation within WPR's special use permit boundary.

## **II. Compliance with 36 C.F.R. Part 218**

WPR timely submits this objection letter within 45 calendar days of the June 13, 2025 publication of the legal notice in the Coloradoan. WPR has standing to submit this objection pursuant to 36 C.F.R. § 218.5(a). WPR submitted written comments on the Draft Environmental Assessment. *See* Exhibit 1. WPR provides the following information pursuant to 36 C.F.R. § 218.8:

Objector's Name and Address (36 C.F.R. § 218.8(d)(1)):

Doug Laraby  
Planning Director  
Winter Park Resort  
85 Parsenn Rd.  
Winter Park, CO 80482  
970-726-1509  
DLaraby@winterparkresort.com

Name of Proposed Project, responsible official, and location (36 C.F.R. § 218.8(d)(4)):

Name of Proposed Project: Winter Park Resort Projects 2025

Responsible Official: Chris Stubbs, Forest Supervisor

Location: Arapaho and Roosevelt National Forests & Pawnee National Grassland

Consistent with the requirements under 36 C.F.R. § 218.8(d)(6), the issues raised in this objection are based on WPR's prior written comments on the Draft Environmental Assessment, *see* Exhibit 1, or issues arising after the public comment period.

## **III. WPR's Remaining Comment and Objection**

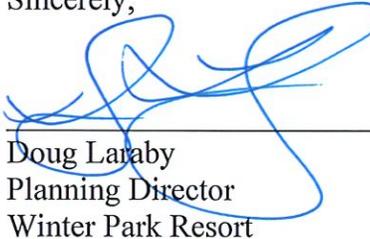
WPR supports the Forst Service's approval of the Project. WPR has one remaining comment and objection on the Draft Environmental Assessment.

**A. The Forest Service should clarify that the conditions of approval in Appendix A aimed at protecting migratory birds and bat species may be satisfied by pre-construction surveying.**

WPR requests that the Forest Service allow a pre-activity survey as an alternative to the timing stipulations aimed at protecting migratory birds and bats in the Project area. Final EA, at Appx. A-7. Presently, the conditions of approval require WPR to avoid construction activities between May 15<sup>th</sup> and July 31<sup>st</sup> for bats and March 1<sup>st</sup> to September 30<sup>th</sup> for nesting bird species. Final EA, at Appx. A-7. These timing stipulations have the potential to unnecessarily constrain WPR's ability to construct improvements in the Project area during the seasonal construction window. WPR requests the Forest Service modify these stipulations to allow surveying as an alternative means of complying with these stipulations. A survey that shows that migratory birds and bats are not present in the construction area would provide the same level of protection for the species as a timing stipulation while affording WPR necessary flexibility to complete Project construction during an already limited summer construction window.

WPR appreciates the Forest Service's careful consideration and collaboration in preparing the Project environmental analyses. The Project is critical to providing world class public recreation on the public lands within WPR's special use permit boundary. WPR understands that the Forest Service may choose to hold objection resolution meetings pursuant to 36 C.F.R. § 218.11 and respectfully requests notice of and the opportunity to participate in any such meetings, including meetings held with other objectors.

Sincerely,



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Doug Laraby  
Planning Director  
Winter Park Resort

# Exhibit A



April 25, 2025

Submitted Electronically

Mr. Christopher J. Stubbs  
Forest Supervisor  
Arapaho and Roosevelt National Forests  
Attn: Erich Roeber  
2150 Centre Avenue, Building E  
Fort Collins, CO 80526

**RE: Winter Park Resort's Comments on the 2025 Winter Park Resort Project 2025 EA  
(Project # 66200)**

Dear Forest Supervisor Stubbs:

Winter Park Resort (the "Resort") respectfully submits these comments on the Draft Environmental Assessment ("Draft EA") for the Winter Park Resort Project 2025 (the "Project"). The Resort appreciates its longstanding partnership with the Forest Service and appreciates this opportunity to comment on the Draft EA.

The Project, and the aggregate elements of it, are critical to the Resort. There is a significant need for the Project to improve and enhance guest experience at the Resort. The Project supports and helps implement the desired objectives for the Resort under the Arapaho & Roosevelt National Forest Management Plan (the "Forest Plan"). The Project builds on the Resort's celebrated history, allowing it to continue to provide high-quality public recreation on the public lands within the Resort's Forest Service special use permit as it has for over 80 years.

We appreciate you taking these comments under consideration and look forward to our continued collaboration. Please add these comments to the administrative record for the Project.

1. The Purpose and Need statement should clarify that the Resort’s objectives for the Project help meet the agency’s objectives under the Forest Plan.

The Resort’s permit area is located within the Winter Park Geographic Area and allocated to Management Area 8.22 under the Forest Plan. The Forest Plan direction for Management Area 8.22 is to manage existing ski areas, including the Resort, “to provide for skiing and related recreational uses.”<sup>1</sup> The specific management direction for the Resort under the Forest Plan is for continued management as a “premier, four-season resort,” including by authorizing “development and use that is compatible with the environment.”<sup>2</sup>

The Forest Plan direction for the Resort reflects, builds on, and continues the Resort’s history as one of North America’s premier ski destinations. For over 80 years, the Resort and the Forest Service have cooperatively partnered to manage the public lands and recreation infrastructure within the Resort’s special use permit to promote world-class skiing and four-season recreation for public visitors. The Project will continue and carry forward this legacy.

The Project will make the Resort better. The elements of the Project are needed to meet existing and future recreational needs and objectives, and provide enhancements, improvements, infrastructure, and other actions necessary to provide high quality four-season recreation at the Resort. The Project has the following objectives:

Optimize the utilization and operational efficiency of existing mountain infrastructure.

Balance lift and trail capacities wherever possible to optimize the guest experience.

Provide maximum capacity for minimum capital and operating costs.

Provide base staging facilities in balance with mountain access and capacity requirements.

Continue to improve the quality of the facilities to meet the expectations of destination skiers and the Colorado front range market.

Upgrade the beginner facilities and terrain to maintain the Resort’s excellent reputation for family skiing and meet demands of increasing ski school participation and a growing population of skiers and riders new to the sport.<sup>3</sup>

The Draft EA accurately states the Project’s important objectives. The Draft EA includes an appropriate and accurate statement of the purpose and need for the Project to meet the agency’s goals and objectives under the Forest Plan. These are to provide: “high-quality recreation and customer service to users of NFS land within the [Resort permit boundary]”; and

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<sup>1</sup> Forest Plan at 384.

<sup>2</sup> *Id.* at 319.

<sup>3</sup> Draft EA § 1.2.2.

“quality recreational opportunities in an environmentally sustainable manner to continue the economic strength of [the Resort] and Grand County.”<sup>4</sup>

The Final EA should connect the Resort’s objectives and the Forest Service objectives for the Project into a cohesive statement of Purpose and Need. The Final EA should make clear that the purpose of the Project is to implement the Resort’s listed objectives and that the Project and its objectives are needed to faithfully implement and meet the Forest Plan direction and objectives for the Resort.

Please revise the Purpose and Need statement in the Final EA into a cohesive statement of Purpose and Need that connects the Resort’s objectives and the Forest Service objectives for the Project. Please state specifically that the purpose of the Project is to implement the Resort’s listed objectives and that the Project and its objectives are needed to faithfully implement and meet the Forest Plan direction and objectives for the Resort.

2. The Draft EA should acknowledge the extensive and thoughtful coordination between the Forest Service, the Resort, and the public.

The Resort has worked diligently and thoughtfully to design the Project to minimize and avoid environmental effects. The Project was not developed overnight; it is over five years in the making. The Resort first proposed the Project in May 2019. The Resort subsequently submitted an amended Master Development Plan, which the Forest Service accepted in 2022, following multiple versions, revisions, and reviews, and a public open house. The Forest Service conducted field visits as part of its initial screening and requested information on design criteria and resource values. The Forest Service formally accepted Winter Park’s amended project proposal in September 2023.<sup>5</sup>

Following this extensive development process, including the solicitation of public input, the Forest Service published a detailed scoping notice in May 2024, initiating a 30-day public comment period. That initial comment period satisfied the Forest Service’s obligations under the National Environmental Policy Act (“NEPA”) for providing public comment.<sup>6</sup> The Forest Service initiated a second public comment period through its publication and request for comments on the Draft EA. Release of the Final EA and draft Decision Notice will provide another opportunity for public review and input because it will be subject to the Forest Service’s public pre-decisional objection and review process set forth in 36 C.F.R. Part 218.

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<sup>4</sup> *Id.* § 1.2.1.

<sup>5</sup> The Fiscal Responsibility Act of 2023 amended NEPA to establish a one-year deadline for preparing and finalizing environmental assessments. 42 U.S.C. § 4336a(g)(1). Almost two years have passed since the Forest Service accepted the proposal for this Project commencing the NEPA process.

<sup>6</sup> *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Engineers*, 524 F.3d 938, 952-53 (9th Cir. 2008); 36 C.F.R. § 218.5(a); 36 C.F.R. § 220.4(e).

The Resort supports the thorough and transparent process employed by the Forest Service. The Project is better because of it. The Project reflects and benefits from the thoughtful planning process that produced it. The Resort requests that the Forest Service acknowledge in the Final EA that the Project is the result of this thorough and extensive public process.

Please state in the Final EA and Draft Decision Notice that the Project is the product of multiple public input opportunities, including two public comment periods.

3. The Resort requests that the Forest Service clarify and correct its analysis of Habitat Effectiveness.

The Resort appreciates the Forest Service’s careful consideration of the Project’s potential effects on wildlife habitat resources within the Project area. One metric for this analysis is Habitat Effectiveness. The Forest Plan defines Habitat Effectiveness and guides the agency to consider an action’s potential effects on Habitat Effectiveness.<sup>7</sup> The Forest Plan establishes general objectives and guidelines for the Forest Service to consider.<sup>8</sup>

The Draft EA thoroughly considers the Project’s effects on Habitat Effectiveness. The Resort requests that the Forest Service clarify and correct this analysis in certain respects. The Resort requests that the Forest Service: (1) recognize the 80-year history of ski area development and operation in the Project area; (2) analyze Habitat Effectiveness in the context of the Forest Plan’s desired conditions and objectives for the Resort under the management direction for Management Area 8.22 and the Winter Park Geographic Area; and (3) acknowledge that the Forest Plan metric for analyzing Habitat Effectiveness is a 300-foot buffer.

a. The analysis of Habitat Effectiveness should better acknowledge that the Project Area is a developed ski area that has been on the landscape for over 80 years.

The Project area has been a developed ski area for over 80 years. The Forest Service first authorized ski area operations on the Forest Service lands within the Resort’s special use permit area on January 2, 1940. The Project area has been intensively used by the public for developed recreation since that time. The Forest Service should better acknowledge, in the analysis of Habitat Effectiveness, that the Project will occur on lands that have been developed and operated as a ski area for over 80 years.

Please state in the analysis of Habitat Effectiveness that the Project Area has been a developed ski area for over 80 years and is not “free of human disturbance” within the meaning of the Forest Plan definition of Habitat Effectiveness.

<sup>7</sup> Forest Plan, Appx. G, p.24.

<sup>8</sup> See Forest Plan at 30-31 (Guidelines 108, 109).

- b. The Project is consistent with the specific Forest Plan goals, objectives, management area designation, and guidelines for the Resort.

The Project helps achieve the Forest Plan management direction for the Resort under Management Area 8.22 and the Winter Park Geographic Area.

Habitat Effectiveness should not be analyzed in a vacuum. The Resort’s permit area is located within Management Area 8.22 of the Forest Plan and within the Winter Park Geographic Area.<sup>9</sup> The management direction for ski areas under Management Area 8.22 contemplates limited opportunities for solitude or isolation in areas managed as ski areas.<sup>10</sup> The Geographic Area management direction for the Resort is continued management as a “premier, four-season resort,” including by authorizing “development and use that is compatible with the environment.”<sup>11</sup>

It is appropriate and important for the Draft EA, in its analysis of Habitat Effectiveness, to recognize that the Project proposes infill use of an existing, operational ski area that helps achieve the Forest Plan’s objectives for the area.<sup>12</sup> This context is important. Without this context, the analysis in the Draft EA that baseline Habitat Effectiveness in the Winter Park Geographic Area is “less than the Forest Plan guideline of 50 percent” and could be reduced further by the Project<sup>13</sup> invites controversy where none is appropriate nor has existed to this point.<sup>14</sup> The Resort requests that the Forest Service provide this needed context.

Please state in the analysis on Habitat Effectiveness that the Project implements the Forest Plan management direction and achieves the desired conditions and objectives for the Resort under Management Area 8.22 and the Winter Park Geographic Area.

- c. The Draft EA requires correction to ensure consistency with the Forest Plan.

The Forest Plan defines “effective habitat” as “mostly undisturbed land area which is buffered (at least **300 feet** in essentially all situations) from regular motorized and nonmotorized use of roads and trails (11 more people or vehicle trips per week).”<sup>15</sup> The Draft EA and the

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<sup>9</sup> See Forest Plan at 319, 384.

<sup>10</sup> *Id.* at 384.

<sup>11</sup> *Id.* at 319.

<sup>12</sup> See Draft EA at 1-1 (statement of Forest Plan objectives for the Resort).

<sup>13</sup> See Draft EA at 3-25.

<sup>14</sup> See generally USFS, Scoping Summary for the Winter Park Resort Enhancement Projects Environmental Assessment (July 2024).

<sup>15</sup> Forest Plan, Appx. G, p.24 (emphasis added).

Arcadis Winter Park Resort 2025 Projects Biological Assessment (“Draft BA”) transpose this 300-foot buffer into 300 **meters**, an area three times larger than 300 feet.<sup>16</sup>

The Draft EA and Draft BA also analyze a 500-foot buffer zone for “open habitats,”<sup>17</sup> that is then transposed into a 500-meter buffer.<sup>18</sup> Neither the 500-foot buffer, nor its conversion into a 500-meter buffer, are supported by the Forest Plan or cited literature.

To ensure compliance with the National Forest Management Act,<sup>19</sup> internal consistency throughout the Draft EA and Draft BA, and consistency with the Forest Plan, we request that the Forest Service clarify that the Forest Plan metric for analyzing effective habitat is a 300-foot buffer, not a 300-meter, 500-foot, or 500-meter buffer.

Please clarify the Habitat Effectiveness analysis to acknowledge that the Forest Plan metric for analyzing effective habitat is 300 feet, and not 300 meters, 500 feet, or 500 meters.

#### 4. Canada Lynx

- a. The Draft EA appropriately concludes that lynx are adapted to developed ski areas, including the Resort.

The Resort takes seriously its role as partner with the Forest Service and U.S. Fish & Wildlife Service (“FWS”) in the management and stewardship of the wildlife resources within the Resort’s special use permit boundary. The Resort appreciates the Forest Service’s thoughtful analysis in the Draft BA and Draft EA about Canada lynx and ski areas. It is well established that lynx tend to avoid the more developed portions of the resort in both winter and summer, and even in less developed areas, they typically are found in areas separate from human presence. To the extent lynx are present within the resort boundary, they avoid human presence.

The Draft BA correctly notes that current lynx research has concluded that “lynx usage of high-intensity developed ski resorts [is] low, with almost no occurrences within the resort boundary.”<sup>20</sup> The Draft EA accurately concludes that it is “likely that lynx avoid the more developed and utilized portions of the resort due to the high human presence in those areas.”<sup>21</sup> The Draft EA acknowledges that while the special use permit area contains large areas of

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<sup>16</sup> Draft EA at 3-18; Draft BA at 25 (“Effective habitat is buffered (at least 300 meters in essentially all situations) from regular motorized and nonmotorized use of roads and trails (11 or more people or vehicles per week).”).

<sup>17</sup> Draft EA at 3-18; Draft BA at 44.

<sup>18</sup> Draft EA, Figure 3-7; Draft BA, Figure 6.

<sup>19</sup> 16 U.S.C. § 1604(i).

<sup>20</sup> Draft BA at 35.

<sup>21</sup> Draft EA at 3-16.

mapped potential lynx habitat, “recent data does not indicate their presence in the area.”<sup>22</sup> And the Draft EA recognizes that current studies on winter recreation and lynx in Colorado conclude that lynx may be able to coexist in areas with human use “depending on the level and intensity of use.”<sup>23</sup>

The Resort appreciates this analysis, and is familiar with the studies cited by the Forest Service in the Draft EA and Draft BA. These studies acknowledge that developed ski areas include considerable infrastructure, tree removal, and continuous maintenance, and that as of 2016, Colorado had “30 developed ski resorts . . . which coincide with lynx distribution.”<sup>24</sup> Recent analyses by the Forest Service similarly conclude that lynx avoid developed ski areas and “do not utilize habitat within the interior of the operational boundary during winter.”<sup>25</sup> Moreover, though lynx may travel through ski area boundaries outside of operational hours, lynx do not rely on or utilize the land within the ski area boundaries for other essential purposes.<sup>26</sup>

The Forest Service analysis in the Draft EA and Draft BA is consistent with its analysis of lynx and ski areas across Colorado showing that lynx have adapted to the presence of developed ski areas in Colorado.

b. The Resort requests that the Forest Service add helpful context to its analysis of proposed lynx critical habitat.

The Resort requests that the Forest Service quantify the Project’s potential effects on proposed lynx critical habitat in relation to the total amount of acreage proposed as critical habitat in the Southern Rockies Unit under FWS’s November 29, 2024 proposed critical habitat designation.<sup>27</sup> This analysis would provide the public with useful context and provide additional support for the Draft BA’s conclusion that the Project is not likely to adversely affect Canada lynx. This approach is consistent with recent EAs prepared by the Forest Service in Colorado.<sup>28</sup>

FWS proposes to list 7,679 square miles (4,914,560 acres) as lynx critical habitat in the Southern Rockies Unit.<sup>29</sup> The Draft BA concludes that the Project may result in loss or

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<sup>22</sup> *Id.* at 3-15.

<sup>23</sup> Draft EA, § 3.6.3.

<sup>24</sup> Olson, et al., *Sharing the Same Slope: Behavioral Responses of a Threatened Mesocarnivore to Motorized and Nonmotorized Winter recreation*, at 8556 (2018).

<sup>25</sup> *See* USFS, *Biological Assessment: Monarch Mountain, No Name Basin Projects*, at 16 (Feb. 1, 2024) (citing Olson, et al., 2018).

<sup>26</sup> *Id.*

<sup>27</sup> Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx, 89 Fed. Reg. 94,656, 94,665 (Nov. 29, 2024).

<sup>28</sup> *See, e.g.*, USFS, *Town of Frisco Backyard Fuels and Recreation Project, Draft EA*, at 99 (Apr. 2025) (concluding that the proposed project will not result in destruction or adverse modification of proposed critical habitat for lynx when the proposal would effect “less than .001% of the proposed critical habitat within Colorado.”).

<sup>29</sup> 89 Fed. Reg. at 94,665.

disturbance of approximately 139 acres proposed for designation as critical habitat.<sup>30</sup> The Draft BA states that these “habitat loss calculations are likely overestimated.”<sup>31</sup> The main reason for the likely overestimation is that the proposed vegetation management activities in Jelly Roll account for 97 of the estimated 139 acres that may be affected by the Project.<sup>32</sup> The Jelly Roll vegetation management activities are beneficial for forest health, and at “the completion of work the area will still be forested and likely still qualify as lynx primary habitat.”<sup>33</sup> Nonetheless, even utilizing these high-end estimates, the Project involves only 0.0028% of the proposed critical habitat in the Southern Rockies Unit. This underscores the negligible impact of the Project on lynx critical habitat and supports the conclusion that the Project is “not likely to adversely affect Canada lynx,” and “will not cause destruction or adverse modification of proposed Critical Habitat for Canada lynx.”<sup>34</sup>

Please acknowledge that the Project will affect only 0.0028% of the proposed lynx critical habitat in the Southern Rockies Unit.

- c. The Resort requests that the Forest Service clarify its statements in the Draft BA on the Project’s potential effect on proposed lynx critical habitat.

Given the considerable analysis and the minimal quantifiable impact on lynx habitat, the Draft EA and Draft BA appropriately conclude that the Project is not likely to adversely affect Canada lynx,” and “will not cause destruction or adverse modification of proposed Critical Habitat for Canada lynx.”<sup>35</sup>

The Resort requests that prior to finalizing its analysis, the Forest Service amend the statement in the Draft BA that the Project “may adversely affect Canada lynx proposed Critical Habitat.”<sup>36</sup> The Draft BA correctly determines: “The Proposed Action may affect, not likely to adversely affect Canada Lynx . . . [and] will not cause destruction or adverse modification of proposed Critical Habitat for Canada lynx.”<sup>37</sup> The Draft BA then goes on to state later in the same paragraph that “this project may adversely affect Canada lynx proposed Critical Habitat.”<sup>38</sup>

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<sup>30</sup> Draft BA at 32-35.

<sup>31</sup> *Id.* at 33.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 47.

<sup>35</sup> *Id.*; *see also* Draft EA at 3-26 (“Finally, the proposed action, combined with known or reasonably foreseeable future WPR, public, or private actions, may affect but is unlikely to adversely affect federally listed Monarch butterfly, Canada lynx, or gray wolf, and would have no effect on Suckley’s cuckoo bumblebee in the project area or regionally.”).

<sup>36</sup> Draft BA at 47.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

This last sentence is misplaced and could lead to unnecessary and avoidable confusion, including because the Project would affect only 0.0028% of proposed lynx critical habitat.

FWS states in the revised proposed designation of Canada lynx critical habitat that the analysis for determining whether an action adversely affects critical habitat is the same as the analysis for determining whether an action is likely to affect the species itself.<sup>39</sup> Meaning that if an agency determines that an action is “not likely to adversely affect” Canada lynx, the same necessarily applies to lynx critical habitat.

The Forest Service, in the Draft BA and Draft EA, concludes that the Project is not likely to adversely affect Canada lynx. The analysis supporting this determination – and the fact that the Project involves only 0.0028% of proposed critical habitat – makes clear that the Project “will not cause destruction or adverse modification of proposed Critical Habitat for Canada lynx.”<sup>40</sup> The final sentence in the Draft BA’s determination on Canda lynx seems inadvertently misplaced. The Resort respectfully requests that the Forest Service revise this section to delete this final sentence of its determination.

Please delete the final sentence in the Canada lynx determination in the Draft BA that states the Project “may adversely affect Canada lynx proposed Critical Habitat” because the analysis that precedes it does not support it.

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The Resort thanks the Forest Service in advance for its work preparing the Final Environmental Assessment and looks forward to continuing to work cooperatively with the Forest Service and other stakeholders.

Sincerely,



Doug Laraby  
Planning Director  
Winter Park Resort

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<sup>39</sup> 89 Fed. Reg. at 94,668.

<sup>40</sup> Draft BA at 47.