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

Via electronic portal: https://cara.fs2c.usda.gov/Public/CommentInput?Project=301822

RE: Telluride Ski Resort Improvements Objection

Dear Objection Reviewing Officer:

Pursuant to 36 CFR 218, the entities listed below object to the proposed decision by GMUG Forest Supervisor Chad Stewart to approve improvements at Telluride Ski Area, as described in the Draft Decision Notice and Finding of No Significant Impact, and the Environmental Assessment for the proposed project.

Sheep Mountain Alliance shall be the lead objector.

I. Approval of the High Camp Restaurant Conflicts with the Binding 2000 Settlement Agreement, Rendering the Decision Arbitrary, Capricious, and Otherwise Not in Accordance with Law

Objectors addressed this issue in section II of our comments on the draft EA, dated May 11, 2026.

Factual and legal background
The 1999 Record of Decision for the Telluride Ski Area Expansion ("1999 ROD") authorized, in Table 1, a PHQ/warming hut/interpretive center within the Prospect Basin Lift Pod of up to 3,000 square feet, including a formal interpretive center, as well as up to four restaurant facilities elsewhere in the expansion area — the Top of Lift 5 Restaurant, an expanded Plunge Restaurant, a Top of Lift 10 Restaurant, and, only if the Top of Lift 5 site proved unsuitable, a Mid-Prospect Basin (cafeteria). *1999 ROD* Table 1 at 8–9.

That decision was challenged in *Philip and Linda Miller, Colorado Wild, Inc., and Sheep Mountain Alliance v. U.S. Forest Service and Telluride Ski & Golf Company*, LLLP, No. 99-AP-1910 (D. Colo.). The litigation was resolved by a Release and Settlement Agreement dated February 2, 2000 ("Agreement"), which by its express terms "binds all parties hereto and their successors-in-interest." *Agreement at 1*. Rocky Mountain Wild is Colorado Wild, Inc.'s successor-in-interest.

Two provisions of the Agreement are directly implicated here. Paragraph 4 ("No Interpretive Center") reduced the 1999 ROD-authorized PHQ/warming hut/interpretive center from 3,000 square feet to "no more than 1,000 square feet," restricted its permitted uses to "ski patrol headquarters, warming hut and other ski-related uses," and provided that "[t]his structure shall not be used as a formal interpretive center." *Agreement* ¶ 4. Paragraph 15 ("No Restaurant") separately and categorically provides: "No

restaurants, including the Mid-Prospect Basin (cafeteria) referred to in Table 1 of the ROD, shall be constructed in the Prospect Basin Area as shown on Exhibit RSA-2." *Agreement* ¶ 15.
The Final EA proposes to convert the existing High Camp warming hut — located at the top of Lift 12, within the Prospect Basin area — into a full-service restaurant with on-site food preparation, expanded seating, and an approximately 2,000-square-foot addition to the existing structure. *Final EA* at 14, 24. The Final EA itself acknowledges the conflict: "The 1999 ROD for the Telluride Ski Area Expansion was litigated by Philip and Linda Miller, Colorado Wild and Sheep Mountain Alliance. The lawsuit resulted in the 2001 Settlement Agreement that restricted High Camp from operating as a full-service restaurant, including the ability to prepare food on-site." *Final EA* at 14.

The Forest Service's rationale for disregarding the Agreement does not withstand scrutiny
Rather than seeking a modification of the Agreement, the Forest Service's Response to Comments ("RTC") takes the position that the restaurant restriction no longer applies. Relying on Recital A — which states that "this Agreement applies only to rights and obligations arising from the ROD except as specifically agreed to herein" — the RTC reasons that because Paragraph 15 references "Table 1 of the ROD," it is a right or obligation "arising from the ROD" rather than something "specifically agreed to," and therefore "does not preclude the Forest Service from revisiting or analyzing those or related decisions in new NEPA analysis." *RTC* at 144–145 (*Final EA* at 144–145).

That reasoning cannot be reconciled with the Agreement's own text and structure, for at least six independent reasons:

First, Recital A's exception — "except as specifically agreed to herein" — necessarily refers to the twenty-three numbered paragraphs that make up the operative Agreement. If a paragraph that happens to identify a ROD-referenced structure is automatically read out of that exception, the exception clause is left with no work to do, contrary to the settled principle that contracts should not be interpreted to render a provision meaningless.

Second, the Forest Service's rationale for violating the settlement agreement changed from the scoping notice to the final EA. Originally, the agency claimed that "given the time since the settlement agreement, the extensive changes around the resort, and the desires of resort guests; conversion to a full-service facility capable of preparing and serving hot food on-site is necessary and broadly supported." *April 28, 2025 Scoping Letter* at 4. The unexplained pivot from admitting the settlement agreement applies to arguing it lacks force is arbitrary and capricious.

Third, the Agreement contains no expiration date, sunset clause, or language limiting any restriction to a single decision cycle. Where the parties intended a conditional or time-bound obligation, they said so expressly — for example, Paragraph 5 conditions the opening of the Prospect Basin Lift on "one year of avalanche studies." No comparable qualifying language appears anywhere in Paragraph 15's restaurant ban.

Fourth, Paragraph 21 provides that "no change, modification or waiver of any provision of this Agreement shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed

by all Parties." *Agreement* ¶ 21. The Forest Service, itself a signatory, cannot achieve through a unilateral NEPA decision what Paragraph 21 requires to be accomplished only by written agreement of all parties.

Fifth, Paragraph 23 provides that the parties "shall be entitled to enforce specifically the terms and provisions hereof," contemplating that the Agreement's restrictions remain enforceable as ongoing obligations rather than as conditions that lapsed once the ROD was implemented.

Sixth, and most fundamentally, the Agreement resolved federal litigation in exchange for permanent, forward-looking development limits — not a temporary delay that could be revisited once the litigation risk had passed. Reading Paragraph 15 as expiring with the ROD would allow the Forest Service and Telski to obtain, through a 2026 MDP-implementation EA, precisely what the 1999–2000 litigation was brought to prevent, depriving Objectors of the benefit of their bargain.

The unresolved conflict independently violates NEPA's hard-look requirement

Objectors addressed this issue in section I B of our comments on the draft EA, dated May 11, 2026.

Even apart from the underlying contract question, an EA that identifies a binding legal constraint on the proposed action, resolves the resulting legal conflict through a contested and self-serving interpretation without disclosing it as a legal risk to the decision, and declines to analyze a reasonable alternative that would avoid the conflict, has not taken the "hard look" NEPA requires. *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1225–26 (10th Cir. 2002). The RTC dismisses Objectors' requested settlement-compliance alternative — which would have deferred or omitted the High Camp Restaurant absent a formal Agreement modification — solely on the ground that no "unresolved resource issue" requires an additional alternative. *RTC* at 159–160. But the issue here is legal, not merely a resource-based dispute of the kind 7 C.F.R. § 1b.5(c)(2)(ii) contemplates, and the Final EA's own text concedes that the conflict exists. *Final EA* at 14.

Requested remedy

Objectors request that the Forest Service (a) remove the High Camp Restaurant from the approved alternative, or defer any decision on that component until the Agreement is formally modified in writing by all parties consistent with Paragraph 21; or, in the alternative, (b) prepare a supplemental or revised EA analyzing a settlement-compliance alternative that omits or defers the High Camp Restaurant expansion.

Reservation of rights

This objection addresses the NEPA and Administrative Procedure Act dimension of the Forest Service's proposed action — namely, that the agency cannot reasonably rely on a disputed and internally inconsistent interpretation of its own binding settlement commitments to support a NEPA decision. Nothing in this objection should be construed as a waiver of, and Objectors expressly reserve, all rights to pursue separate breach-of-contract and specific-performance remedies for violation of the 2000 Settlement Agreement, independent of and in addition to this administrative objection process.

II. The Forest Service does not protect lynx habitat as required

Objectors addressed this issue in sections IV, V C and VI of our comments on the draft EA, dated May 11, 2026.

There is high quality lynx habitat in the project area

Objectors addressed this issue in section VI A of our comments on the draft EA, dated May 11, 2026.

Surveys "identified suitable habitat structure throughout forested portions of the Project Area." Biological Assessment (BA) at 31.

> Habitat occurring within this LAU is generally considered to be of high quality for geographic Unit 6 of the Contiguous United States DPS.

BA at 27.

Furthermore, in the Iron Mountain LAU, in which the project area lies,

> General habitat conditions throughout the vicinity are highly suitable for the species and predominantly represent the [physical and biological feature]s identified for proposed critical habitat.

BA at 65.

Finally,

> The Proposed Action and anticipated disturbance footprints occur entirely within the boundaries of proposed critical habitat.

BA at 64.

The project area is within the recently finalized critical habitat for lynx. See 91 Fed Reg 43772, July 16, 2026. Compare with the proposed rule at 89 Fed Reg 94680, November 29, 2024. The proposed and final designations appear identical.

The proposed glading and tethered logging would degrade or eliminate lynx habitat in the project area

Objectors addressed this issue in section V C of our comments on the draft EA, dated May 11, 2026.

Under the proposed action, various areas would be gladed. All of the proposed glades are in likely lynx habitat. See BA Figure 7 at 29. The glading would include one sizable block around Lift 10. See EA Figure 1 at 73.

Using "cut-to-length logging equipment that travels over a slash mat" as is proposed, skid trail could be placed every 50-60 feet. EA at 70. Implementation of this scheme would mean quite a number of trees

would be removed from each area logged, and the small trees near them would likely be destroyed as well.

As the BA observes,

> Impacts from this activity include: reduced habitat effectiveness by removal of dense horizontal cover, reduction in these areas to act as denning habitat by removal of snags and trampling/smashing of vegetation by logging machinery, and an increase in snow compaction (see Table 7) due to an expected increase in recreational winter use by skiers. Approximately 345.61 acres will be temporarily impacted from this proposal.

BA at 54. See also EA at 153.

TSR is proposing to use tethered cut-to-length logging equipment to implement important forest management work intended to mitigate hazardous fuels, improve forest health, remove hazard trees, and improve recreational skiing. EA at 13.

The BA assumes that areas cut via tethered logging could soon be considered areas of advanced regeneration as trees and shrubs begin to establish after canopy opening:

> As gladed areas begin to recover and young trees, shrubs, and other vegetation become more prevalent, this would likely increase foraging areas and opportunities for snowshoe hare.

BA at 54; see also id. at 24.

However, to maintain the glades, any new trees that regenerated would have to be cut or otherwise knocked over to keep the terrain skiable. Otherwise, trees would fill in the glades when they got tall enough to protrude above the snowpack and make it difficult or unsafe to ski. Young trees could also be crushed by snow compaction from skiers. Snow mold could also kill trees that remain submerged under compacted snow for longer periods than would otherwise occur.

It is not even clear that new trees would regenerate in treated areas. Tethered logging equipment would lay down slash mats for operations. EA at 14. Equipment running over the slash mats would compact soil, making it difficult for trees to regenerate and grow. The slash would decompose slowly at the high elevation of the ski area. Areas between logging trails may also be too open for regeneration of shade-tolerant trees like Engelmann spruce and subalpine fir. Alexander, 1987, explains that exposed seedbeds can dry out and heat rapidly, causing germination failure and seedling mortality. Alexander, 1987, at 25.

Even if a sufficient density of trees did regenerate, it would likely be decades before they were tall enough to provide dense horizontal cover for hare and lynx, due to the short growing season at high elevation. Trees must protrude well above the winter snowpack before they provide effective cover for snowshoe hare and lynx.

Note that recent research shows that lynx consistently selected areas with higher horizontal cover. Squires et al, 2020 at 8. But the proposed action would reduce horizontal cover, as stated at BA p. 54. (See quote above.)

As observed in project documents, glades will get increased human use, which will at least delay recovery of vegetation. Areas to be gladed likely see little to no use now, but "[these] areas will see some increase in recreational use". EA at 155.

> There is potential for these logged areas to also see an increase in recreation if treatments open treated areas enough to be skied. In this case negative impacts to advanced regeneration could occur from skiers delaying recovery of these stands.

BA at 56.

The Draft Decision Notice admits that gladed areas would at least recover more slowly because of skier use:

> Gladed areas would remain more open than pre-treatment conditions and may recover more slowly where skier use affects regeneration.

DN-3.

Because recovery of vegetation in the glades is assumed, project documents conclude that any impacts to lynx habitat will be temporary. But to keep the glades as glades, removal of regenerating trees would have to be done, unless frequent use by skiers killed new trees by crushing them or preventing them from regenerating in the first place. Skiers would compact snow, which would keep trees under snow for a longer period, shortening their growing season. Snow molds could also kill trees. The compacted snow would decrease lynx' natural advantage in deep (uncompacted) snow by allowing other predators (fox, coyote, etc.) to access areas they do not now get to and compete with lynx for prey.

The net result of this is that the glading would cause a permanent loss of lynx habitat.

This would increase the stress on lynx and habitat:

> Increasing human presence would be expected to exacerbate existing pressures throughout the LAU and lynx habitat throughout the greater vicinity.

BA at 53.

The BA states that it is not clear if a viable population of lynx will be maintained, even with application of mitigation measures described in Forest Plan guideline FW-GDL-SPEC-19. BA at 40. To address this, "[m]itigations could include preserving inner tree islands from activities as well as closing off to public ski use." Id. at 41. However, no such measures are proposed.

The proposed project violates the Forest Plan and the Southern Rockies Lynx Amendment

Objectors addressed this issue in section VI C of our comments on the draft EA, dated May 11, 2026.

The Southern Rockies Lynx Amendment[1] has the following objective:

> Objective HU O1

[1] See Rocky Mountain Lynx Management Direction (commonly referred to as the Southern Rockies Lynx Amendment or "SRLA") Record of Decision (ROD) at pp. Attachment 1-1 et seq.

> Maintain the lynx's natural competitive advantage over other predators in deep snow, by discouraging the expansion of snow-compacting activities in lynx habitat.

As discussed above, the proposed project would increase snow compaction by opening up gladed skiing. In fact, the project is specifically designed to do this. (See purpose and need, final bullet point, EA at 7 and; quoted below.) The proposed project would not meet this objective, as the BA admits on p. 34.

The EA attempts to dodge this by asserting that logging at the ski resort is strictly for vegetation management:

> However, implementation of tethered logging within the resort's SUP area is considered a vegetation management project and is therefore not applicable to this objective…Objectives are descriptions of desired resource conditions that require consideration; however, they do not require consistency with a proposed action.

EA at 155; see also BA at 34.

This statement is inaccurate. First of all, compliance with objectives is required in projects. Otherwise, what would be the point of having objectives in the first place? Objectives are "intended to promote achieving programmatic goals"; for SRLA, the goal is "Conserve the Canada Lynx". Id at 1-1. SRLA ROD at Attachment 1-13. Standards and guidelines to maintain lynx habitat follow from this and other objectives; they would also be rendered impotent if the objectives were not followed.

Second, the proposed project is intended for vegetation management project and to improve skiing:

> TSR is proposing to use tethered cut-to-length logging equipment to implement important forest management work intended to mitigate hazardous fuels, improve forest health, remove hazard trees, and improve recreational skiing.

EA at 13; emphasis added.

Note that the map in EA Figure 1 at p. 73 shows the areas to be cut; in the legend, they are labelled "Tethered Logging Glading". In other words, at least a good part, if not all, of the proposed logging is for glading, a proposed human use.

Human use and vegetation management are even part of the purpose and need for the project:

> Promote forest health and resilience through selective vegetation removal (glading) in areas previously approved for treatment, consistent with the Spruce Beetle Epidemic and Aspen Decline Management Response and the 2015 TSR Forest Vegetation Management Plan.

EA at 7. Glading is for improved, or at least expanded, skiing.

Since tethered logging would be used to cut the proposed glades as well as to reduce hazardous fuels and promote forest health and resilience, logging is both for vegetation management and for human use. The two uses cannot be separated, as logging will be conducted to support both uses. Therefore, Objective HU 01 applies to the proposed action.

Similarly, SRLA Objective HU O2 would not be met. It states "Manage recreational activities to maintain lynx habitat and connectivity". With permanent conversion of habitat to unsuitable and increased human use, lynx habitat would not be maintained. With diminished lynx habitat in the project area, connectivity with the LAU would likely not be maintained.

Guideline HU G3 requires maintaining effectiveness of lynx habitat:

> Recreation development and recreational operational uses should be planned to provide for lynx movement and to maintain the effectiveness of lynx habitat.

With the increased human use in the gladed and other logged areas, which now see little to no human use, lynx habitat effectiveness would be decreased.

Other SRLA components that would not be met:

> Objective VEG O1
> Manage vegetation to mimic or approximate natural succession and disturbance processes while maintaining habitat components necessary for the conservation of lynx.
>
> Objective VEG O2
> Provide a mosaic of habitat conditions through time that support dense horizontal cover, and high densities of snowshoe hare. Provide winter snowshoe hare habitat in both the stand initiation structural stage and in mature, multi-story conifer vegetation.

By cutting or otherwise damaging or destroying young trees that form dense horizontal cover, a key lynx habitat component, as described in subsection B above, the proposed action would not meet these objectives.

> Objective ALL O1
> Maintain or restore lynx habitat connectivity in and between LAUs, and in linkage areas.
>
> Standard ALL S1
> New or expanded permanent developments and vegetation management projects must maintain habitat connectivity in an LAU and/or linkage area

By carving up areas that now have good lynx habitat, connectivity would not be maintained and may be reduced.

Overall, the proposed project would violate SRLA, and also the Forest Plan, as Plan standard FW-STND-SPEC-34 specifically requires SRLA to "be applied".

The proposed action fails to adequately analyze tethered logging in the project area.

Objectors addressed this issue in section V A of our comments on the draft EA, dated May 11, 2026.

The proposed action relies on several justifications to support the use of tethered logging methodology in the proposed treatment area, including the 2016 SBEADMR EIS, 2022, SBEADMR SIR, and the 2024 Forest Plan. See Final EA at 11. While these previous decisions include analysis of all but 65.1 acres of the project area for treatment under SBEADMR, the entirety of the project area has not been sufficiently analyzed for the use of tethered logging methodology.

Previously, projects at TSR occurred under the 2016 SBEADMR ROD and the 2015 Telluride Ski Resort Vegetation Management Plan. See EA at 13. Per the 2016 SBEADMR analysis, these treatments were compliant with the 2016 decision, and utilized methodologies including ground-based skid crews and helicopters at higher slope angles.

In 2022, the SBEADMR Supplemental Information Report on Cut-to-Length and Tethered Logging technologies analyzed the "language of the design criteria in the SBEADMR checklist and the FEIS analysis to determine whether or not the language is consistent with use of newer technology," including cut-to-length systems which may be used with a tether on steep slopes. The report found the language to be "consistent with Forest Plan Standards and the analysis of impacts in the SBEADMR EIS given the location of some of the steeper slopes where this equipment is likely to be used." See SIR at page 4. However, the SIR did not analyze the use of tethered logging technology in reference to the 2024 Forest Plan revision.

Consequently, neither the 2022 SIR nor the DEA addresses tethered logging in the context of the 2024 Forest Plan Revision.

Furthermore, the SBEADMR AMG agreed that this new technology would be implemented only in "pilot projects," which would include a provision for pre and post-project monitoring to "measure[e] the ability to meet project objectives while minimizing soil disturbance (erosion, displacement, and compaction)."

While analysis in the Biological Assessment of the DEA analyzes the impacts of tethered logging under the SRLA objectives, the methodology itself has never been formally or practically analyzed for the project area in the EA. The 2022 SIR does not provide sufficient information and clarity regarding the potential impacts of tethered logging nor where tethered logging may occur. Furthermore, the Final EA fails to mention if, or how, tethered logging would comply with 2024 Forest Plan criteria.

Together, neither the 2016 nor 2022 updates to SBEADMR adequately analyze tethered logging methodology, nor do they constitute "previously approved" forest health projects (9) without a more thorough analysis of this brand new logging technology. Furthermore, the cancellation of the 2022 Telluride Ski Resort pilot project indicates the lack of analysis and clarity surrounding tethered logging methodology in this exact location.

The lack of analysis for tethered logging in the context of the 2024 Forest Plan and in the proposed project area itself, as well as the absence of historically successful projects or implementation frameworks, indicates that the Forest Service must conduct a supplemental EIS to the original SBEADMR decision that adequately addresses the impacts of tethered logging in the GMUG, including in the proposed project area.

The Forest Service has not considered sufficient alternatives to the proposed action

Objectors addressed this issue in section IV of our comments on the draft EA, dated May 11, 2026.

The Purpose and Need is written so that only the proposed action would meet it. The stated need includes adding ski terrain variety, improving skier egress, upgrading dining facilities, adding a bike trail, approving the Heritage Trail, and promoting forest health through glading. EA at 7. That is essentially a list of the applicant's proposed projects. NEPA does not allow the agency to define the purpose and need so narrowly that only one alternative could meet it. See Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 195-96 (D.C. Cir. 1991); Colorado Envtl. Coal. v. Dombeck, 185 F.3d 1162, 1174-75 (10th Cir. 1999).

To our request for consideration of additional alternatives, including one with no glading, the Forest responds by saying

> The analysis conducted for the Final EA has not identified unresolved resource issues that would drive the creation of another action alternative.

EA at 160. This is not true. Clearly there is a conflict between cutting trees for fuel reduction, forest health, resilience, and glading on the one hand versus maintaining the integrity and connectivity of lynx habitat on the other hand, as is discussed in detail above.

An alternative that fully or largely avoided cutting lynx habitat would still meet much of the purpose and need while greatly reducing impacts to lynx.

In our comments on the draft EA, we suggested several other possible alternatives. See comments at 4-5. These alternatives should also be considered.

Requested remedy

Objectors request that:

1. In a supplemental EA, the Forest Service analyzes the impacts of at least one new alternative to the proposed action that includes no glading and at least some of the other provisions we recommended in our DEA comments dated May 11, 2026.
2. Redesign the proposed action to reduce, or preferably eliminate, glading, especially in the large intertrail island near lift 10 and the sizable island between lifts 4 and 5.
3. Reduce or eliminate logging in areas of lynx habitat so that dense horizontal cover is retained.
4. Conduct a supplemental EIS to the original SBEADMR decision that adequately addresses the impacts of tethered logging in the GMUG, including in the proposed project area.

Sincerely,

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REFERENCES

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