



Axel Buchwalter
T (602) 440-4806
F (602) 257-9582
Email: abuchwalter@clarkhill.com

Chris Clare
T (202) 572-8671
F (202) 572-8691
Email: cclare@clarkhill.com

Clark Hill
3200 North Central Avenue, Suite 1600
Phoenix, AZ 85012
T (602) 440-4800
F (602) 257-9582

1001 Pennsylvania Ave. N.W., Suite
1300 South, Washington, DC 20004
T (202) 772-0909
F (202) 772-0919

September 23, 2026

BY ELECTRONIC SUBMISSION

White River National Forest
Brian Glaspell, Forest Supervisor
900 Grand Avenue
Glenwood Springs, CO 81601

White River National Forest
Leanne Veldhuis, District Ranger
Eagle-Holy Cross Ranger District
24747 US Hwy 24
Minturn, CO 81645

Re: Comments on Sweetwater Lake Recreation Management and Development Project and Plan Amendment Draft EIS

Dear Mr. Glaspell and Ms. Veldhuis:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement ("DEIS") for the Sweetwater Lake Recreation Management and Development Project (the "Project") and its proposed amendment to the White River National Forest Land and Resource Management Plan, 2002 Revision (the "Forest Plan"). We submit these comments as authorized counsel for LKS Outfitters, LLC d/b/a Flat Tops Wilderness Guides ("Flat Tops") and Turret's End Stann Ranch, LLC ("Turret's End"). Flat Tops conducts expeditions and summer adventures within the White River National Forest ("White River NF") from Turret's End lodge, located on Garfield County Parcel No. 186308100043, an inholding adjoining the Project's northwestern boundary.

Each client independently submits these comments under the procedures identified in the Forest Service's notice, including 36 C.F.R. §§ 218.2, 218.5, 218.25, 219.53, and 219.62. For this submission, each client may be contacted through counsel at the mailing address and email listed in this letter's header. The undersigned are authorized to submit and sign these comments on behalf of each client.

Flat Tops and Turret's End request that the final EIS identify Alternative 3, with the focused protections described below, as the preferred alternative. Alternative 3 would provide targeted recreation improvements with substantially less disturbance, retain existing habitat-oriented management-area direction, and require fewer continuing construction and operating

commitments. The DEIS attributes resource-protection benefits to Colorado Parks and Wildlife's ("CPW") proposed management under a 20-year special use permit ("SUP"), but does not adequately substantiate the operating limits, mitigation performance, funding, staffing, and allocation of responsibilities on which those benefits depend. Nor does it adequately reconcile access, siting, utility, and resource constraints with the proposed footprint. Those deficiencies, together with the documented differences among the alternatives, support a preference for Alternative 3. If that reduced program cannot be adequately implemented with the necessary protections, the final EIS should instead identify Alternative 1, the No Action Alternative, as preferred.

Each client independently adopts and incorporates its August 1, 2024, comment letter, identified as **Attachment 1**, and renews the issues raised there that remain unresolved in the DEIS. Those issues include the proposed development and Forest Plan amendment, legal and procedural concerns, traffic and emergency access, traditional uses, wildlife and other natural resources, and community impacts. The discussion below explains the continuing relevance of those concerns to the DEIS: Sections III and IV address the proposed operation and alternatives; Section V addresses the amendment and retained Forest Plan direction; and Section VI addresses access and resource constraints. Each client requests consideration of its prior comments together with the specific reasons and requested actions stated here.

Each client also independently adopts as its own and incorporates the September 23, 2026, comment letter of Sweetwater Community Club, Inc. and the Sweetwater Lake Working Group, identified as **Attachment 2**, including its factual and legal arguments, supporting analyses, and requests concerning predetermination and substantive omissions in the DEIS. The adoption supplements the clients' specific comments in this letter. Each client requests that the Forest Service consider the incorporated issues and supporting reasons as part of its comments on the DEIS.

I. Background.

A. *The Community Supported Federal Acquisition to Preserve Sweetwater Lake's Character and Traditional Uses.*

The acquisition of Sweetwater Lake originated in a community effort to protect a valued landscape from threatened private development. Community members supported that effort and contributed funds with the understanding that federal ownership would preserve the area's existing character, traditional uses, and public access. Their support for acquisition and stewardship did not constitute support for the substantially expanded development now proposed under Alternative 2.

Sweetwater Lake has long accommodated fishing, boating, camping, horseback riding, outfitting, and lodging, while providing access to the surrounding White River NF and Flat Tops Wilderness. These uses existed within a landscape containing important Ute cultural resources, wetlands, wildlife habitat, and historic structures. Preserving that combination of established recreation and natural and cultural resources was central to the community's support for federal acquisition of the privately held property.¹

Beginning in 2019, Eagle Valley Land Trust ("EVLT"), The Conservation Fund, and local supporters pursued conservation through the "Save the Lake" campaign. The contemplated transaction would place the approximately 488-acre property in The Conservation Fund's

¹ See *Sweetwater Lake Recreation Management and Development Project, DRAFT Environmental Impact Statement*, USDA Forest Service, 2-5 (June 2026); Sweetwater Lake Public Meeting Presentation, slides 6-7 (Mar. 6, 2023).

temporary ownership while the Forest Service secured funding through the federal Land and Water Conservation Fund ("LWCF") for its incorporation into the White River NF.²

On July 1, 2020, The Conservation Fund announced its acquisition of the property with support from Great Outdoors Colorado, a \$500,000 contribution from Eagle County, and approximately \$350,000 in private community donations raised through EVLT. The announcement emphasized protection from private development and conservation of wildlife habitat.³ The Forest Service completed the federal acquisition on August 31, 2021, using LWCF funding.

Federal acquisition created an opportunity to preserve Sweetwater Lake while improving stewardship of its existing uses and resources. The subsequent proposal for substantially expanded development under Alternative 2 departs from the conservation purpose that motivated the community's efforts and contributions. That departure demands a persuasive explanation for why Alternative 2's greater disturbance is warranted when Alternative 3 would allow targeted improvements while retaining existing Forest Plan protections.

B. The Agencies Advanced the State-Park Initiative and CPW Management Before EIS Scoping Began.

The proposed management direction was publicly announced soon after federal acquisition. On October 20, 2021, less than two months after the Forest Service acquired Sweetwater Lake, Governor Jared Polis announced plans for it to become Colorado's 43rd state park. The arrangement contemplated continued federal ownership with CPW managing the recreation area. Forest Supervisor Scott Fitzwilliams cited limited Forest Service funding and staffing as reasons for pursuing the partnership.⁴

Community members first learned of the CPW management proposal through that announcement, after they had contributed to the acquisition. They had supported federal ownership to protect Sweetwater Lake's character and traditional uses. They had not agreed to the scale of development now proposed under Alternative 2 and would not have supported the acquisition had that development been presented as its intended outcome.

The announcement was part of a developing agency commitment to CPW management. The Forest Service, the State of Colorado, and EVLT had entered into an October 2021 memorandum of understanding ("MOU"). An April 2023 Challenge Cost Share Agreement and a September 2023 MOU addressing environmental review further developed the partnership.⁵ The DEIS describes an arrangement under which the Forest Service could provide limited funding for capital improvements and deferred maintenance, while CPW would be expected to fund most capital improvements and long-term maintenance.⁶ These steps were taken before EIS scoping began.

² See Tom Lotshaw, *Trust Our Land: A Piece of the Sweetwater Puzzle*, Eagle Valley Land Trust (June 4, 2020).

³ See *The Conservation Fund Purchases Sweetwater Lake*, The Conservation Fund (July 1, 2020).

⁴ See Nate Peterson & John Stroud, *A 'sweet spot' for Sweetwater Lake*, The Aspen Times (Oct. 20, 2021).

⁵ See Memorandum of Understanding with State of Colorado, the Eagle Valley Land Trust, and the Forest Service, No. 22-MU-11021500-001 (Oct. 13, 2021); Challenge Cost Share Agreement between Colorado Department of Natural Resources and the Forest Service, No. 23-CS-11021500-038 (Apr. 10, 2023); Memorandum of Understanding between Colorado Department of Natural Resources and the Forest Service, No. 23-MU-11021500-067 (Sept. 6, 2023).

⁶ See *DEIS*, *supra* note 1, at 30.

This sequence raises a substantial concern that the agencies settled on CPW management and the state park model before undertaking the environmental review meant to compare that approach with less intensive alternatives. The DEIS then identifies as preferred the alternative built around the previously announced partnership, without adequately justifying its greater development and environmental impacts. The Forest Service must address whether its preference follows from an independent comparison of the alternatives or reflects a commitment made before the public had an opportunity to participate in scoping. The EIS cannot simply validate a management direction the agencies had already chosen.

C. The Environmental Review Must Independently Justify the Preferred Alternative.

The Forest Service published its Notice of Intent to prepare an EIS on May 6, 2024, more than two years after the state-park announcement. The ensuing 90-day scoping period included public meetings on June 5 and 6 and closed on August 5, 2024. The agency received 263 unique submissions, including 122 that it classified as containing substantive comments.⁷

Our August 1, 2024, comment letter identified Forest Plan conflicts, legal and procedural concerns, and potential effects on traffic, emergency response, traditional access, wildlife, natural resources, and the community's rural character and economy. Those comments challenged the consequences of the proposed development and the basis for advancing it.⁸

Those unresolved scoping concerns underscore the need for an environmental review that independently evaluates the development and management choices at issue, rather than treating the previously announced CPW partnership as justification for Alternative 2. The agencies' planning history and anticipated funding do not establish that Alternative 2's greater development is warranted. That conclusion requires defined obligations under the proposed SUP and a substantiated comparison of environmental effects. Thus, the final EIS should identify Alternative 3, with the protections requested in this letter, as the preferred alternative or, alternatively, support selection of Alternative 1.

D. Alternatives 2 and 4 Would Substantially Expand Development and Replace Existing Habitat-Oriented Management.

The alternatives materially differ in development intensity, operational responsibility, and the management of surrounding federal lands. The approximately 846-acre Project area includes 433 acres of the acquired property and 413 acres of previously existing National Forest System lands. Alternatives 2 and 4 would replace existing designations for forested habitat and deer and elk winter range with a designation for state- or local-government-managed developed recreation areas. They would also authorize CPW operation and management pursuant to a 20-year SUP.⁹ Therefore, the alternatives present a choice not only about the extent of redevelopment, but also about who would operate the area and which management-area habitat protections would be retained or replaced, alongside applicable forest-wide direction.

Alternative 1: No Action. Alternative 1 would retain existing Forest Service management without the proposed CPW SUP, Forest Plan amendment, or redevelopment.

⁷ See *id.* at 7.

⁸ See Comment Letter dated Aug. 1, 2024.

⁹ See *DEIS*, *supra* note 1, at 2 & n.1, 11–12, 16, 30, 37, 41.

Limited maintenance and existing permitted activities could continue; existing restrictions would remain subject to their terms, and unsafe structures would be removed.¹⁰

Alternative 2: Preferred Alternative. Alternative 2 would introduce 29 new structures, up to 20 conventional campsites, five to seven equestrian campsites, up to 12 cabins, approximately 6.4 miles of new trails, and approximately 1.9 miles of new roads. Facilities would include a lodge, employee housing, maintenance and equestrian facilities, and water and wastewater infrastructure, resulting in approximately 100 acres of short-term and 41 acres of long-term disturbance. CPW would operate under the SUP and a Visitor Use Management Plan intended to manage for 250 visitors on-site at one time. Construction would proceed in funding-dependent phases subject to modification and potential gaps.¹¹

Alternative 3: Reduced Development. Alternative 3 would retain existing Forest Plan designations and Forest Service management without a long-term CPW SUP. Subject to funding, it would provide up to ten campsites, limited day-use and trailhead improvements, two new structures, and approximately 0.7 mile of new trails, without rental cabins or a utility system comparable to Alternative 2's. It would remove most existing structures and could involve a competitively selected campground and day-use concessionaire.¹²

Alternative 4: Expanded Development. Alternative 4 would use Alternative 2's amendment and permit framework while providing 33 new structures, up to 30 conventional campsites, five to seven equestrian campsites, up to 14 cabins, and expanded parking and infrastructure. Capacity would respond to anticipated demand rather than Alternative 2's 250-person management approach.¹³

Alternatives 2 and 4 would replace existing habitat protections, place management with CPW, and authorize substantially more development than Alternative 3. The DEIS does not establish that their expanded facilities and recreation capacity would yield resource benefits sufficient to justify the resulting disturbance and continuing operating demands. Alternative 4's greater intensity provides no justification for Alternative 2. Alternative 3 would deliver targeted recreation improvements with substantially less disturbance while retaining existing Forest Plan protections; Alternative 1 would avoid the proposed redevelopment and enabling amendment altogether. For the reasons explained below, the final EIS should identify Alternative 3, with the protections requested in this letter, as the preferred alternative or, alternatively, identify Alternative 1 as preferred.

II. Federal Law Requires Adequate Evaluation of the Proposed Development, Forest Plan Amendment, and CPW Authorization.

The alternatives described above implicate complementary requirements under the National Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), and the regulations governing special uses of National Forest System lands. NEPA requires an informed comparison of environmental consequences and reasonable alternatives; NFMA governs consistency with the Forest Plan and changes to its protections; and the special use regulations govern the authorization by which CPW would develop and operate the Project. Although these requirements involve distinct determinations, the proposed development,

¹⁰ See *id.* at 13–14.

¹¹ See *id.* at 16–31, 41–42.

¹² See *id.* at 33–37, 41–42.

¹³ See *id.* at 37–42.

amendment, and SUP must be evaluated together because their scope and implementation determine Alternative 2's effects and asserted benefits.¹⁴

A. NEPA Requires a Supported Comparison of Connected Actions and Reasonable Alternatives.

NEPA requires an EIS to address reasonably foreseeable environmental effects, unavoidable adverse effects, reasonable alternatives, including no action, and irreversible or irretrievable resource commitments. Agencies must ensure scientific integrity and use reliable data.¹⁵ CEQ requires evaluation of reasonable alternatives in sufficient detail to permit comparison of their merits. It also requires the EIS to assess the proposed action and inform decision-making, rather than justify a decision already made.¹⁶

The federal agency's evaluation must encompass the relationship among development, the enabling Forest Plan amendment, and the proposed SUP. Under the elected regulatory framework,¹⁷ agencies must evaluate connected actions together when they cannot proceed independently or are interdependent parts of a larger action.¹⁸ Here, the Forest Plan amendment would enable the proposed development, and the SUP would define the CPW operation on which Alternative 2's claimed benefits depend. Because those actions are interdependent, the EIS must analyze their relationship and resulting environmental consequences.

While the Supreme Court recognizes that an agency has substantial discretion over the scope and level of detail in an EIS, it nevertheless requires a reasoned examination of the proposed action's environmental consequences.¹⁹ NEPA requires an examination of reasonably foreseeable environmental consequences and a comparison that fairly evaluates the alternatives on consistent terms. Here, if anticipated CPW staffing, funding, and maintenance are used to justify Alternative 2, the EIS must substantiate those expectations and evaluate the constraints that could affect their performance. Likewise, it must sufficiently analyze access, siting, utility, and resource constraints of the proposed footprint and operation. Later permit review, annual operating plans ("AOPs"), or implementation cannot substitute for information needed to compare the alternatives under consideration.

B. NFMA Requires Evaluation of the Forest Plan Protections Being Changed.

NFMA requires permits and other instruments authorizing National Forest System uses to be consistent with the governing land-management plan.²⁰ The planning regulations permit contemporaneous amendment and project approval, but the resulting project must comply with the plan as amended.²¹

¹⁴ The DEIS establishes that the Forest Service will complete the EIS and ensuing Record of Decision ("ROD") under the prior Forest Service NEPA procedures and the 2020 Council on Environmental Quality ("CEQ") framework used when review began (collectively, the "elected regulatory framework"). See *DEIS*, *supra* note 1, at 1. Citations to 40 C.F.R. parts 1500–1508 therefore refer to the 2023 codification.

¹⁵ See 42 U.S.C. § 4332(2)(C)–(F).

¹⁶ See 40 C.F.R. §§ 1502.2(g), 1502.14(a)–(b) (2023).

¹⁷ See *supra* note 14.

¹⁸ See 40 C.F.R. § 1501.9(e)(1) (2023).

¹⁹ See *Seven County Infrastructure Coalition v. Eagle County*, No. 23-975, slip op. at 6–14 (U.S. May 29, 2025).

²⁰ See 16 U.S.C. § 1604(i).

²¹ See 36 C.F.R. § 219.15(b)–(d).

An amendment must rest on an identified need for change and satisfy applicable public-participation and environmental-review requirements. The responsible official must identify the substantive requirements of §§ 219.8 through 219.11 directly related to the amendment and apply them within its scope and scale. That determination must consider the amendment's purpose and effects. A requirement must be treated as directly related when the amendment would substantially lessen protections for the corresponding resource or use, or the analysis reveals substantial adverse effects associated with that requirement.²² The agency must also use the best available scientific information and document how it informed the amendment.²³

These requirements demand more than mere identification of the replacement management designation. The DEIS must explain which existing protections would be retained, modified, or removed; evaluate the consequences for affected resources and uses; and demonstrate compliance with the directly related planning requirements. Such an analysis is necessary both to evaluate the amendment and to compare Alternatives 2 and 4 against Alternatives 1 and 3, which retain existing Forest Plan direction. Anticipated stewardship under the SUP cannot substitute for an assessment of the protections the amendment would change.

C. The Special Use Requirements Make CPW's Obligations Material to the Alternatives Comparison.

The special use regulations require sufficient evidence that the SUP proponent has, or will have prior to construction, the technical and financial capability to construct, operate, maintain, and terminate the proposed project. They also require a project description sufficient to evaluate feasibility, public benefits, safety, necessary authorization conditions, and legal compliance.²⁴ A Special Use Authorization must contain applicable environmental protections and conditions the authorized officer deems necessary to protect federal interests, other lawful users, lives and property, and the public interest. Permit duration must be justified by the circumstances, including management direction, public benefits, facility life, and financing. The regulations also address preconstruction approvals, liability, indemnification, and discretionary performance security.²⁵

These requirements bear directly on the DEIS's reliance on CPW management to justify Alternative 2's greater development. The asserted benefits depend on defined operating duties, sufficient resources, and effective oversight. The DEIS must therefore identify CPW's and the Forest Service's respective responsibilities for construction, visitor management, staffing, utilities, maintenance, monitoring, and corrective action. The DEIS cannot rely upon protective measures without explaining who would implement them, when they would take effect, and how their performance would be measured.

The proposed 20-year term makes the durability of those arrangements material. A supported comparison requires distinguishing established resources and commitments from contingent funding and explaining how staffing and maintenance would support the assumed facilities and visitation. Because construction would proceed in funding-dependent phases, the analysis must also account for whether expanded use could precede necessary utilities, staffing, or resource protections and identify conditions preventing that mismatch.

²² See *id.* at § 219.13(b)(1)–(5).

²³ See *id.* at § 219.3.

²⁴ See *id.* at § 251.54(d)(3)–(4).

²⁵ See *id.* at § 251.56(a)–(e).

Responsibility during interrupted operations is equally consequential. The analysis must identify who would maintain utilities, secure facilities, protect disturbed areas, manage access if construction stalls or CPW reduces or ceases operations, and handle facility disposition and restoration when the SUP ends. Suspension, revocation, and termination remedies do not themselves establish how those duties would be performed.²⁶ Any assumed transfer of duties to the Forest Service requires support, particularly where limited federal staffing and funding are offered as reasons for preferring CPW management.

The DEIS credits sustained management benefits without adequately establishing the obligations, implementation capacity, and protective arrangements necessary to deliver such benefits. These deficiencies undermine operational advantages claimed for Alternative 2 and leave the DEIS without an adequate basis to prefer its greater disturbance and operating burdens over Alternative 3 or Alternative 1.

D. Mitigation Must Be Sufficiently Evaluated to Support the Protective Benefits Attributed to Alternative 2.

An EIS must discuss mitigation in sufficient detail to permit a fair evaluation of environmental consequences. NEPA does not require a fully developed mitigation plan, but it requires a reasonably complete discussion of the measures relevant to that evaluation.²⁷ The applicable framework separately requires the Record of Decision to state whether all practicable means of avoiding or minimizing environmental harm have been adopted and, where applicable, to adopt and summarize monitoring and enforcement for enforceable mitigation commitments. Measures committed to as part of the decision must be implemented and incorporated into appropriate approvals.²⁸

Accordingly, the DEIS's reliance on visitor-management and resource-protection measures requires a supported explanation of how those measures would function, when they would be implemented, and what adverse effects would remain. Where performance depends on future appropriations, construction phases, or adaptive responses, the analysis must account for those dependencies. Adaptive measures must be described sufficiently to evaluate their likely effectiveness, including the monitoring, response triggers, and corrective actions on which the claimed benefits depend. A commitment to implement a measure does not establish its effectiveness. Without an adequate assessment of likely performance, the anticipated mitigation benefits do not substantiate the preference for Alternative 2's greater development.

III. The DEIS Does Not Substantiate the CPW Operating Arrangement or Sustained Resource Protection Used to Justify Alternative 2.

The DEIS relies on anticipated CPW management to justify Alternative 2's greater development and replacement of existing Forest Plan protections. It does not, however, adequately define the proposed operation or establish the obligations, resources, and implementation capacity necessary to achieve the benefits attributed to that management. The alternatives comparison instead assumes controlled visitation despite inconsistent use limits, completed infrastructure despite contingent construction phases, and sustained resource protection despite unresolved funding and performance responsibilities.

²⁶ See 36 C.F.R. § 251.60.

²⁷ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–53 (1989).

²⁸ See 40 C.F.R. §§ 1505.2(a)(3), 1505.3 (2023).

The SUP's material scope and conditions affect the construction, operation, maintenance, and disposition of the proposed facilities. The descriptions of duties in the DEIS therefore must be connected to the timing, capacity, and enforceable limits assumed in the impact analysis. The following issues explain why the described operating arrangement does not yet substantiate the comparative advantage attributed to the larger program.

A. The Proposed Development and Forest Plan Amendment Depend on Material Operating Commitments That Remain Unresolved.

Alternative 2's development, Forest Plan amendment, and CPW authorization are interdependent components of the same proposal. The SUP would authorize CPW's construction, operation, and maintenance throughout approximately 846 acres. The amendment would apply Management Area ("MA") 8.22, State or Local Government Managed Developed Recreation Areas, to that area, with management implemented through Forest Service-approved AOPs.²⁹ CPW's anticipated performance supplies the management rationale for both the additional development and the change in Forest Plan direction.

The connected-action requirement demands evaluation of that operational relationship.³⁰ Merely identifying the development, amendment, and SUP in the same document does not establish how their implementation would produce the effects and benefits attributed to Alternative 2. The DEIS must evaluate the material commitments governing staffing, maintenance, visitor controls, utilities, and resource protection because those commitments determine the consequences of the proposed facilities.

Deferring those matters to subsequent permit processing or AOPs leaves the alternatives comparison incomplete. Different occupancy limits, infrastructure prerequisites, maintenance obligations, or funding conditions could materially alter the impacts of the proposed operation and the relative merits of the alternatives. Tiering permits appropriate deferral of implementation details; it does not supply a basis for preferring an alternative whose essential operating assumptions remain undefined.³¹

The geographic scope of the authorization presents a related deficiency. Alternative 2's eight management zones total approximately 188.7 acres, including an environmentally sensitive protection zone, whereas the SUP and amendment would encompass approximately 846 acres.³² The DEIS does not adequately identify the uses and responsibilities requiring that broader authorization or explain why the entire Project area must receive developed-recreation management direction. The need to operate particular facilities does not establish the necessity of replacing habitat-oriented protections across the surrounding lands. The special use policies addressing appropriate uses and the minimum necessary area and duration reinforce the need for a project-specific justification.³³

The availability of statutory authority does not resolve these questions. The Granger-Thye Act authorizes use of Forest Service-controlled structures, improvements, and connected lands, but the proposed authorization must identify the rights conveyed and responsibilities retained.³⁴ Likewise, although the proposed 20-year term falls within the statutory ceiling, its duration must be justified by the circumstances, including management direction, public

²⁹ See *DEIS*, *supra* note 1, at 6, 12, 16, 30; *id.* at B-10-B-12.

³⁰ See 40 C.F.R. § 1501.9(e)(1) (2023).

³¹ See *id.* at §§ 1501.11, 1502.4(b), 1502.5 (2023).

³² See *DEIS*, *supra* note 1, at 16-30, 41.

³³ See Forest Service Manual ("FSM") §§ 2703.2-2703.3.

³⁴ See 16 U.S.C. § 580d; 36 C.F.R. §§ 251.54(d)(4), 251.55.

benefits, facility costs and useful life, and financing.³⁵ The uncertain construction schedule leaves unresolved when the completed operation's benefits would begin, how long they would continue, and what obligations would remain at expiration.

The DEIS also fails to establish CPW's authority to undertake the specific obligations attributed to it. The special use regulations address the underlying authorization for a governmental proposal and whether an authorized entity is willing to accept responsibility for compliance.³⁶ However, the general authority to manage recreation areas does not establish the authority and capacity to perform the particular funding, construction, corrective-action, and restoration duties assumed in the DEIS. Neither the cooperative agreements nor CPW's designation as the intended permittee establishes those commitments.

Accordingly, the DEIS relies on the benefits of an operating arrangement without adequately establishing its material scope and obligations. The anticipated benefits cannot substantiate the preference for Alternative 2's development and enabling amendment.

B. Inconsistent Operating Limits Undermine the DEIS's Impact Analysis and Controlled-Visitation Rationale.

The DEIS does not consistently define the intensity of use contemplated under Alternative 2. Although it describes staffing, reporting, maintenance, and emergency-planning functions, those descriptions do not establish the limits governing visitation, traffic, utility demand, and resource disturbance.³⁷

First, the DEIS repeatedly distinguishes Alternative 2 through management for 250 visitors on-site at one time.³⁸ Appendix A of the DEIS, however, permits that level to be exceeded on as many as ten days without crossing the stated annual threshold, does not specify the magnitude or duration of exceedances, and contemplates upward capacity adjustments and graduated management responses.³⁹ Those provisions establish a materially different operating condition from a 250-person maximum.

That difference affects the analysis. Peak occupancy can determine parking demand, wastewater loading, congestion, and emergency access even when an annual threshold has not been exceeded. The DEIS cannot rely on a fixed ceiling to evaluate those effects while proposing a management system that permits an undefined range of exceedances. It must reconcile the operative restrictions with the assumptions underlying its conclusions.

Simultaneous occupancy also does not establish daily attendance or vehicle trips. Overnight guests, employees, day-use turnover, and reservation categories must be reconciled with the visitation, traffic, and utility estimates. Without that relationship, the stated capacity does not reliably describe the demands that Alternative 2 would impose on County Road 150 or the proposed facilities.

Second, Appendix A anticipates recurring queues and possible subsequent changes to parking and permit systems without establishing where vehicles would wait or turn around when facilities are full, how rejected arrivals would be managed, or how emergency and neighboring access would be maintained.⁴⁰ Admission restrictions do not eliminate traffic

³⁵ See 36 C.F.R. § 251.56(b)(1).

³⁶ See *id.* at § 251.54(d)(2)(ii)(A), (e)(5)(v).

³⁷ See *DEIS*, *supra* note 1, at 30–33.

³⁸ See *id.* at 31, 38, 41.

³⁹ See *id.* at A-6–A-9.

⁴⁰ See *id.* at A-7–A-8.

generated by arriving visitors. They can instead displace congestion and parking beyond the entrance. Those consequences are part of the proposed operation and must be evaluated before access controls can be credited as effective mitigation.

Third, the watercraft provisions are inconsistent with the wildlife analysis. The Terrestrial and Aquatic Wildlife Biological Evaluation ("Wildlife Biological Evaluation") relies on a 13-watercraft restriction during nesting season, but Resource Protection Measure ("RPM")-WLD-8 omits that numerical limit. Appendix A separately identifies a 25-watercraft limit outside nesting season, while the main text does not establish a consistent lake-wide cap.⁴¹ The biological conclusions cannot reliably depend on a restriction that the operating provisions do not consistently establish.

Finally, Alternative 2 expressly includes year-round cabin opportunities.⁴² Year-round public lodging creates traffic, utility, staffing, and disturbance demands distinct from year-round employee occupancy. The DEIS does not adequately define those seasonal operations or explain how they would be constrained by wildlife and other resource protections. Appendix A's exclusion of organized recreation events and other activities likewise limits the operation evaluated.⁴³ Any subsequent expansion of those uses would require consideration of whether the existing authorization and environmental analysis encompass the resulting effects.

These inconsistencies prevent the DEIS from establishing a coherent operating program. An AOP may implement an evaluated framework, but it cannot supply material use limits omitted from the alternatives comparison. The controlled-visitation rationale therefore does not support the weight assigned to Alternative 2.

C. Deferred Monitoring, Staffing, and Corrective Measures Do Not Establish Effective Resource Protection.

The DEIS attributes protective benefits to adaptive management without adequately evaluating the monitoring and response capabilities necessary to achieve them. Under the relevant Forest Service procedures, an adaptive-management alternative must identify potential adjustments, disclose their effects, and describe the monitoring that would inform implementation.⁴⁴ Appendix A leaves essential elements of that framework to future decisions and available resources.

Specifically, Appendix A defers monitoring locations, frequency, personnel, and protocols to future AOPs; permits protocols to change based on responsiveness and cost; and makes adaptive actions contingent on physical and financial capacity.⁴⁵ Those contingencies determine whether adverse conditions would be detected and corrected before material harm occurs. A monitoring commitment does not establish effective protection where observations may be too infrequent, response triggers remain uncertain, or personnel and funding are unavailable when intervention is required.

The necessary response period depends on the impact. Obstruction of emergency access can require immediate intervention. Utility failures can require prompt restrictions on occupancy. Nesting disturbance and erosion affecting connected drainage features can cause

⁴¹ See *id.* at 24; *id.* at A-17; Terrestrial and Aquatic Wildlife Biological Evaluation for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement, USDA Forest Service, 76–77 (June 2026), ("Wildlife Technical Report").

⁴² See *DEIS*, *supra* note 1, at 6.

⁴³ See *id.* at A-20.

⁴⁴ 36 C.F.R. § 220.5(e)(2) (2024).

⁴⁵ See *DEIS*, *supra* note 1, at A-6.

harm before an annual threshold or periodic review prompts corrective action. The DEIS does not adequately relate those risks to monitoring frequency, responsible personnel, response requirements, and feasible corrective measures.

The contemplated adjustments also may produce environmental consequences of their own. Expanded parking, increased visitor capacity, revised reservations, and access restrictions can redistribute traffic, disturbance, and recreation pressure. Characterizing those changes as adaptive management does not establish that their effects have been evaluated. Nor does the possibility of a later permit modification under 36 C.F.R. § 251.61 establish that the original analysis encompasses the modified operation.

The staffing assumptions present the same deficiency. Anticipated positions do not establish adequate coverage during construction, peak visitation, vacancies, emergencies, or simultaneous incidents.⁴⁶ Where personnel would perform visitor control, maintenance, monitoring, and emergency-response functions, the analysis must account for competing demands. The DEIS attributes benefits to those functions without adequately establishing the capacity to perform them under the conditions the proposed operation would create.

Likewise, a future Emergency Response and Evacuation Plan does not establish sufficient access, equipment, communications, or coordination for the proposed intensity of use. CPW's responsibilities must be distinguished from services expected of the Forest Service, counties, and other responders, and that collective capacity must be evaluated against foreseeable congestion and construction conditions.

Mitigation must be discussed sufficiently to permit a fair evaluation of environmental consequences.⁴⁷ Here, the unresolved matters determine whether the measures credited to Alternative 2 would function as assumed. The absence of an adequate assessment of their likely performance, including the consequences of delayed or incomplete responses, eliminates the asserted resource-protection advantage.

D. Contingent Financing and Construction Phasing Undermine the Feasibility and Timing of the Claimed Benefits.

The DEIS anticipates that CPW would finance most capital improvements and long-term maintenance, potentially supplemented by Forest Service contributions. It also acknowledges that site revenue would not be reserved exclusively for Sweetwater, expenditures would depend on budgeting, and adaptive responses would remain subject to financial capacity.⁴⁸ Those contingencies preclude treating the completed CPW operation as an established management advantage without further supporting analysis.

The special use regulations require sufficient evidence that the proponent has, or before construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project. They also require consideration of applicant qualifications and technical and economic feasibility.⁴⁹ The opportunity to establish capability before construction does not permit unsupported future resources to be credited as evidence of superior environmental performance in the alternatives comparison.

The DEIS does not adequately connect available resources and commitments to the obligations it assumes would be performed. Those obligations include utility operation,

⁴⁶ See *DEIS*, *supra* note 1, at 31–33.

⁴⁷ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–53 (1989).

⁴⁸ See *DEIS*, *supra* note 1, at 30; *id.* at A-6.

⁴⁹ See 36 C.F.R. § 251.54(d)(3), (e)(5).

staffing, monitoring, routine maintenance, capital replacement, corrective work, and stabilization during interruptions, in addition to initial construction. CPW's institutional experience does not establish the resources available for those duties or their priority within future state budgets. Limited federal contributions for capital improvements and deferred maintenance likewise do not establish sustained funding for the proposed operation.⁵⁰

The financial assumptions also depend on the allocation of expenses, applicable permit fees, and any proposed waivers or offsets.⁵¹ The federal-state cooperative relationship does not establish which agency would bear a shortfall or whether essential services would continue if anticipated funding did not materialize.

Those uncertainties directly affect construction impacts. The DEIS describes four illustrative phases whose timing and sequence may change, with potential gaps between phases.⁵² Prolonged intermediate conditions are therefore foreseeable. An analysis centered on completed development does not adequately account for overlapping construction and visitation, incomplete utilities, or disturbed land awaiting subsequent work.

The material question is whether protective infrastructure and services would precede the use or disturbance they are intended to control. Functioning water and wastewater facilities, adequate staffing, safe access, parking, erosion controls, and emergency arrangements must be related to each material increase in construction and occupancy. The DEIS neither adequately establishes those prerequisites nor evaluates the consequences if expanded use precedes their implementation.

A funding interruption after construction begins could leave exposed ground, unfinished roads, incomplete utilities, or partially occupied facilities requiring continuing protective work. The DEIS does not adequately establish the resulting conditions, the responsible parties, or the resources available to maintain and stabilize the site. Subsequent approval of construction plans under 36 C.F.R. § 251.56(c) does not substitute for evaluation of those consequences.

The same uncertainty affects the timing of benefits. Protection dependent on later phases cannot be assumed to offset earlier disturbance without analysis of the intervening conditions. Nor can the full benefits of completed development be credited without addressing the consequences of interruption before completion.

Alternative 3 also is subject to funding constraints, but its smaller development program creates fewer facilities and continuing obligations exposed to delay or interruption. The comparison must evaluate both alternatives under consistent assumptions. Treating federal budget constraints as decisive against Alternative 3 while crediting contingent CPW funding as sufficient for Alternative 2 improperly favors the larger operation.

E. Unresolved Performance and Transition Responsibilities Undermine the Claimed Durability of CPW Management.

Alternative 2's asserted advantage depends on resource protection that continues during construction suspension, funding shortfalls, operational withdrawal, and termination. The DEIS does not adequately establish how utilities, facilities, disturbed areas, and access would be managed under those conditions.

⁵⁰ See *DEIS*, *supra* note 1, at 30.

⁵¹ See 36 C.F.R. § 251.57.

⁵² See *DEIS*, *supra* note 1, at 29–30.

The regulatory mechanisms address distinct risks. Section 251.56(d) governs liability and indemnification, while § 251.56(e) authorizes bonds or other security for permit obligations. Coverage for injury claims does not itself finance completion of wastewater infrastructure, maintenance of unused facilities, or stabilization of disturbed land. General references to insurance or state responsibility therefore do not establish the performance necessary to protect resources.

Any limitations on CPW's authority to undertake indemnity or continuing financial obligations must be addressed in relation to the particular duties assumed in the analysis. Tort liability, contractual responsibility, self-insurance, and performance security are not interchangeable. The DEIS must establish how the proposed arrangement would secure timely protective work within the applicable legal constraints.

Suspension and revocation authority does not supply that operational capacity. The Forest Service may address noncompliance and immediately suspend use when necessary to protect public health, safety, or the environment.⁵³ Suspending admissions, however, does not maintain utilities, secure improvements, control erosion, or restore damaged resources. Those duties continue, and their performance requires identified responsibilities and available resources.

An assumed Forest Service takeover is particularly unsupported where limited federal staffing and funding are offered as reasons for the CPW partnership.⁵⁴ Continued federal ownership does not establish personnel or appropriated funds sufficient to sustain Alternative 2's larger operation.⁵⁵ If interruption would instead result in closure, reduced services, or deferred maintenance, those consequences must inform the comparison. The possibility of a substitute operator does not establish continuity during the transition.

The end of the authorization presents additional consequences. Section 251.60(g) generally requires removal of improvements and restoration following revocation or termination unless removal is waived. The proposed term does not eliminate the lasting effects of roads, structures, utilities, and habitat conversion. Retaining facilities can impose continuing maintenance burdens; removal can cause additional disturbance. The DEIS does not adequately address the foreseeable disposition of major facilities or responsibility for unfinished work, stabilization, and restoration.

Alternative 2 would create substantially more infrastructure and disturbed land dependent on continued performance. The failure to evaluate protection during foreseeable interruptions and termination understates those continuing burdens and overstates the durability of the management benefits attributed to CPW.

F. Unresolved Access and Compatibility Requirements Prevent a Supported Finding of Improved Public Access and Reduced Use Conflicts.

The DEIS's asserted public-access benefits depend on operating rules that remain insufficiently defined. Its descriptions of typical CPW fees and protections for through-travel and Hilltop Trailhead parking do not establish how access would function during full

⁵³ See 36 C.F.R. § 251.60(a)(2), (d)–(e).

⁵⁴ See *DEIS*, *supra* note 1, at 30–33.

⁵⁵ See 31 U.S.C. § 1341(a)(1).

occupancy, queues, construction, or closures.⁵⁶ Exemption from a fee does not ensure physical access where congestion or entrance controls obstruct the route.

These conditions also affect existing permittees and neighboring lands. Reservations, staging requirements, parking restrictions, and rejected arrivals can displace use beyond the recreation facilities. The special use regulations make unreasonable interference with authorized uses and adjoining lands relevant to screening and require protective authorization conditions.⁵⁷ The proposed access controls must be evaluated against those interests.

Proposed MA 8.22 Recreation Guideline 1 introduces an additional dependency by conditioning independent outfitting on compatibility with the governmental operator's AOP and avoidance of significant conflict.⁵⁸ Because the material AOP provisions remain unresolved, the DEIS does not establish the conditions under which Flat Tops and other operators could continue their activities. Operating hours, equestrian access, staging, parking, reservations, and seasonal restrictions can determine whether an existing authorization remains practicable to exercise.

Although the DEIS anticipates continuation of priority outfitter-and-guide authorizations and temporary permits for certain other uses pending a prospectus, it does not adequately explain their interaction with CPW's operating controls.⁵⁹ The treatment of compatibility disputes, the allocation of decision-making authority, and the preservation of applicable authorization rights remain material to the analysis. Easements, reserved interests, acquisition restrictions, and water rights likewise must be addressed where they constrain the proposed operation.

State authority over rates and services does not resolve these issues or enlarge the rights conveyed by the SUP.⁶⁰ Nor does the anticipated partnership establish the authorization process supporting the specific services and obligations attributed to CPW. The DEIS contemplates a competitive prospectus for Alternative 3's limited concession, and the special use process addresses commercial proposals involving competitive interest.⁶¹ The basis for different treatment must be established to the extent it affects the feasibility and terms of the proposed arrangement.

The resulting uncertainty concerns lawful access, continued authorized use, and displacement, rather than protection from competition. Until those consequences are adequately evaluated, the DEIS cannot substantiate the improved access and reduced conflicts attributed to CPW management.

IV. The DEIS Does Not Establish That Alternative 2's Greater Development Is Necessary to Achieve the Claimed Management Benefits.

The foregoing deficiencies reveal a fundamental weakness in the alternatives comparison. The DEIS couples greater development with CPW management without demonstrating that the additional development is necessary to obtain the asserted

⁵⁶ See *DEIS*, *supra* note 1, at 23 n.7, 30.

⁵⁷ See 36 C.F.R. §§ 251.54(e)(1)(iv)–(v), 251.56(a).

⁵⁸ See *DEIS*, *supra* note 1, at B-12.

⁵⁹ See *id.* at 14.

⁶⁰ See 36 C.F.R. § 251.56(f)(1).

⁶¹ See *DEIS*, *supra* note 1, at 37; 36 C.F.R. § 251.54(e)(3).

stewardship benefits.⁶² The identity of the operator and the scale of development are distinct considerations. Their relationship must be substantiated before the anticipated benefits of one can justify the impacts of the other.

The Project's objectives include sustainable recreation, appropriate scale, resource protection, and year-round oversight.⁶³ Those objectives do not establish a need for Alternative 2's additional cabins, lodge, roads, support facilities, and utilities. Targeted staffing, maintenance, monitoring, and access improvements could serve relevant objectives without the same expansion. The DEIS does not adequately explain why the claimed benefits depend on Alternative 2's footprint or why reduced development could not provide material management improvements.

Appendix A's discussion of other layouts and management approaches does not supply that explanation. General references to feasibility, logistics, jurisdiction, and satisfaction of purpose and need, followed by examples addressing particular facility locations, do not establish the necessity of the larger program.⁶⁴ Nor do they demonstrate why relocatable administrative and support functions require additional disturbance within the Project area. The reasonable-alternatives requirement demands a supported assessment of those choices.⁶⁵

The comparison also must distinguish environmental improvements from measures required to manage impacts caused by expansion. Additional wastewater capacity, parking controls, staffing, and maintenance may be necessary to accommodate increased lodging and visitation. Their inclusion does not, without further analysis, establish an environmental advantage over an alternative that creates substantially less demand. The comparison must account for the additional burdens, the mitigation required to address them, and the adverse effects that remain.

Alternative 3 offers affirmative advantages in that assessment. It would provide limited recreation improvements while retaining existing Forest Plan protections and avoiding the facilities and utilities associated with Alternative 2's expanded overnight program. Its smaller footprint also reduces the construction, maintenance, funding, and transition obligations exposed to the uncertainties identified above. Those advantages cannot reasonably be discounted through an inconsistent assessment of contingent state resources and constrained federal budgets.

The missing information concerns assumptions essential to evaluating reasonably foreseeable effects and making a reasoned choice.⁶⁶ Subsequent permit documents, AOPs, or separate records productions cannot substitute for analysis of those assumptions and their environmental consequences within the EIS process. Accordingly, the DEIS does not establish that CPW's proposed operation would provide sustained resource protection sufficient to justify Alternative 2's greater disturbance and displacement of existing management protections.

⁶² See *DEIS*, *supra* note 1, at 30–42.

⁶³ See *id.* at 2–5.

⁶⁴ See *id.* at A-20–A-21.

⁶⁵ See 36 C.F.R. § 220.5(e); 40 C.F.R. § 1502.14(a)–(b) (2023).

⁶⁶ See *id.* at § 1502.21.

V. The DEIS Does Not Justify Replacing Existing Habitat Protections to Accommodate Alternative 2.

The deficiencies in the proposed CPW operation also affect the amendment on which Alternative 2 depends. The DEIS relies on anticipated stewardship under the SUP to justify replacing existing habitat-oriented management direction throughout the Project area, but does not adequately identify the protections that would be lost, establish how the proposed direction would address that loss, or demonstrate compliance with the substantive planning requirements discussed in Section II.B.

That omission independently undermines the alternatives comparison. Even a sufficiently defined CPW operation would not, by itself, justify changing the governing Forest Plan. The Forest Service must evaluate the amendment's consequences and establish consistency with the requirements that would remain applicable. Without that analysis, the DEIS fails to give appropriate weight to Alternatives 1 and 3's retention of existing Forest Plan protections.

A. The DEIS Does Not Adequately Distinguish the Amendment's Broader Scope from Its Application at Sweetwater or Identify the Protections It Would Displace.

Appendix B describes two related decisions: adoption of MA 8.22 as Forest Plan direction and application of the designation to the 846-acre Project area. Page B-5 and footnote 184 describe forest-wide scope for the life of the Plan; page B-6 emphasizes the Sweetwater application; and page B-10 anticipates separate review before application elsewhere. The analysis must distinguish the consequences of establishing the management framework from those of applying it to this Project.

That distinction determines the appropriate scope of environmental analysis and public review. The planning rule ties environmental documentation to an amendment's scope, scale, and likely effects and establishes additional comment requirements for qualifying amendments that extend beyond a single project.⁶⁷ Although amendment notice was provided, the analysis still must explain what direction would be adopted now, where it would apply, and what decisions would remain subject to subsequent review. Future review of additional sites does not eliminate the need to evaluate the direction established by the present amendment, and adoption of that direction does not independently justify its application throughout Sweetwater.

The immediate change is substantial in geographic reach. The Project area contains approximately 741 acres designated MA 5.4, Forested Flora and Fauna Habitats, and 105 acres designated MA 5.41, Deer and Elk Winter Range.⁶⁸ MA 5.4 includes road-density and compatible-recreation direction. MA 5.41 emphasizes winter forage, cover, and solitude, with associated road, vegetation, and seasonal-use provisions.⁶⁹ Replacing those designations changes the management direction against which development and continuing use would be evaluated.

The DEIS must therefore identify the particular protections retained, modified, or removed and explain the consequences of each material change. A statement that forest-wide direction would continue does not establish that the displaced management-area

⁶⁷ See 36 C.F.R. §§ 219.13(b)(3), 219.16(a)(2).

⁶⁸ See *DEIS*, *supra* note 1, at 11.

⁶⁹ See *Land and Resource Management Plan 2002 Revision for The White River National Forest*, USDA Forest Service, 3-55-3-59 (2002) (the "*Forest Plan*").

provisions are redundant. Forest-wide requirements and area-specific habitat protections serve different functions and must be evaluated accordingly.

The legal character of the affected provisions also matters. Standards, guidelines, and desired conditions impose different consistency obligations, and existing provisions must be applied according to their governing terms and applicable amendments.⁷⁰ Appendix B's reliance on future SUP conditions and AOPs does not establish an equivalent level of protection.⁷¹ An AOP cannot waive a binding plan standard. Where the amendment would replace existing direction with operating discretion, the resulting change in protection must be disclosed and evaluated.

As explained in Section III.A, the anticipated CPW arrangement does not establish why the entire Project area requires the proposed designation. Appendix B leaves the corresponding planning question unresolved: whether the resource protections being displaced are adequately addressed by the direction proposed in their place.

B. Appendix B Does Not Adequately Apply the Substantive Requirements Triggered by a Substantial Lessening of Resource Protection.

Appendix B identifies sustainable recreation and social and economic sustainability as directly related substantive requirements, while relying on limited acreage, retained forest-wide direction, and population-level effects to address ecological concerns.⁷² That reasoning does not adequately evaluate whether the amendment would substantially lessen protection for particular resources or uses within the affected area.

Section 219.13(b)(5) requires the Forest Service to identify the substantive requirements directly related to the direction being added, modified, or removed and apply them within the amendment's scope and scale. The determination must consider both the amendment's purpose and its effects. A requirement must be treated as directly related where the analysis reveals associated substantial adverse effects or the amendment would substantially lessen protection for a specific resource or use.⁷³

The Project's small proportion of total Forest acreage does not answer that inquiry. Appendix B itself anticipates concentrated use and localized effects.⁷⁴ The relevant issue is whether replacing habitat and winter-range direction would materially reduce protection where those resources occur. Limited acreage does not establish limited ecological importance or demonstrate that the protections governing that acreage can be removed without consequence.

Nor does a conclusion about Forest-wide population viability resolve the loss of local habitat protection. Increased roads, trails, seasonal visitation, and development can affect habitat connectivity, winter solitude, and riparian cover without producing a demonstrated decline across an entire population. The substantial-lessening inquiry expressly concerns the protections being changed. It cannot be reduced to whether the amendment would threaten population viability at the broadest geographic scale.

The legacy-plan provisions require a related species-specific determination where their predicates are met. If species of conservation concern have not been identified for the plan

⁷⁰ See 36 C.F.R. § 219.15.

⁷¹ See *DEIS*, *supra* note 1, at B-10–B-12.

⁷² See *id.* at B-6–B-9.

⁷³ See 36 C.F.R. § 219.13(b)(5)(i)–(ii)(A).

⁷⁴ See *DEIS*, *supra* note 1, at B-7–B-8.

area and the amendment would cause substantial adverse impacts to a particular species or substantially lessen its protection, the responsible official must determine whether that species is a potential species of conservation concern and, if so, apply § 219.9(b).⁷⁵ General population conclusions do not establish that this inquiry has been satisfied.

The scientific basis for those determinations also must be explained. Section 219.3 requires the Forest Service to identify the best available scientific information, explain its selection, and document its application to the planning issues. Here, that requires connecting the scientific information to the effects of removing or changing direction governing wildlife habitat, winter use, riparian continuity, roads, scenery, and recreation intensity. Citation to technical reports does not substitute for that application.

Appendix B accordingly does not establish that its identification and application of directly related requirements adequately account for the protections Alternative 2 would displace. That omission undermines both the amendment analysis and the comparative weight assigned to the preferred alternative.

C. Unresolved Resource Requirements Prevent the DEIS from Establishing That the Preferred Footprint Is Consistent with the Forest Plan or Supported by a Lawful Amendment.

The amendment analysis must distinguish requirements that would remain applicable from those the Forest Service proposes to change. Alternative 2 must satisfy the former, while changes to the latter require their own justification and effects analysis. The DEIS does not adequately resolve that distinction for several resource requirements directly implicated by the proposed footprint.

1. Wildlife, Riparian Habitat, and Seasonal Use.

The Forest Plan addresses seasonal habitat protection, cave-associated bats, suitable wildlife cover along at least 80 percent of riparian-zone length within the project area, and elk habitat effectiveness of 0.40 by Data Analysis Unit ("DAU"), including protection against further reduction in qualifying depleted habitat.⁷⁶ These provisions concern different resources, measures, and geographic scales. Disturbance-acreage tables and generalized viability conclusions do not establish how Alternative 2 performs against them.

For riparian habitat, the analysis must relate the proposed facilities and use to the relevant riparian length and distribution of suitable cover. Total disturbed acreage does not disclose whether development would interrupt the continuity protected by the applicable direction. For elk habitat effectiveness, the analysis must identify the relevant DAU and existing conditions, assess the effects of additional roads, trails, and recreation, and determine whether restrictions on further reductions in depleted habitat apply. The treatment of cave-associated bats and seasonal habitat likewise must address the proposed operation under the provisions governing those resources.

The mapped management designations impose an additional analytical obligation. MA 5.41's emphasis on winter forage, cover, and solitude must be evaluated against Alternative 2's seasonal use, including year-round cabin opportunities. MA 5.4's road-density and compatible-recreation direction bears directly on the expanded travel system and visitation.⁷⁷

⁷⁵ See 36 C.F.R. § 219.13(b)(6).

⁷⁶ See *Forest Plan*, *supra* note 69, at 2-16-2-17.

⁷⁷ See *id.* at 3-55-3-59; *DEIS*, *supra* note 1, at 6, 11;

The Wildlife Biological Evaluation cites a 2021 Sweetwater wildlife assessment and evaluates effects of the proposed facility layout. The final EIS should compare the siting of new overnight, equestrian, and outfitter facilities with feasible use of previously disturbed locations south of County Road 150 and explain how each layout would affect winter range, cover, and wildlife movement. It should evaluate appropriate seasonal restrictions for both the larger development alternatives and Alternative 3 without assuming that an earlier wildlife recommendation or a later operating plan establishes the effectiveness of a particular location or closure.⁷⁸ See Wildlife Biological Evaluation at 55, 60, 75; DEIS at 67.

The applicable provisions must be treated accurately. Seasonal dates associated with MA 5.43 do not independently govern lands designated MA 5.4 or MA 5.41, and the guidelines at page 3-58 are not categorical prohibitions. The relevant question is how Alternative 2 would comply with the direction that actually applies or what environmental consequences would follow from changing it.

Peregrine-falcon consistency also requires reconciliation. DEIS Table 2-3 at page 67 identifies an inconsistency with Wildlife General Standard 9 under Alternative 2 and identifies the same issue under Alternative 3 and No Action. The narrative at page 214, however, finds consistency for Alternative 2 based on the standard's allowance for a smaller distance justified by topography and proposed protection measures. The agency should reconcile those conclusions, identify the controlling seasonal restrictions and buffer, and disclose the site-specific evidence supporting any reduction. A categorical half-mile violation cannot be assumed without considering the exception, and Alternative 3 is not automatically free of the issue. Our request for Alternative 3 includes the protections needed to comply with the applicable standard.

The retained Wildlife General Standard 8 separately addresses land uses that adversely alter peregrine hunting habitat or the prey base within ten miles and immediate habitat within one mile. The DEIS recognizes that additional watercraft can reduce waterfowl prey availability. The final EIS should evaluate that potential effect and explain consistency with Standard 8 under each alternative, including the watercraft limits and seasonal protections actually required.⁷⁹

Appendix A measure RPM-WLD-12 allows construction begun before March 15 to continue into the peregrine nesting period, while the effects discussion acknowledges that construction noise begun before or during nesting may deter use of the nest for that year. The final EIS should reconcile that allowance with the Standard 9 finding, identify the locations and duration of continuing work and effective seasonal controls, and evaluate the remaining effects under every alternative to which the measure applies.⁸⁰

The bald-eagle analysis should likewise show how trails, viewpoints, and winter use relate to the retained Forest Plan nest and roost provisions. Measures RPM-WLD-9 and RPM-WLD-10 contemplate a behavior-triggered restriction on Trail 1855 and a 400-yard Nature Overlook closure, respectively. The final EIS should map the trail and other foreseeable viewing access against active-nest and winter-roost areas; explain when preventive or responsive restrictions would apply; and identify the substance and timing of any required nest or roost management plan. This request applies to Alternatives 2 and 3.⁸¹

⁷⁸ See Wildlife Biological Evaluation at 55, 60, 75; DEIS at 67.

⁷⁹ See Forest Plan at 2-24; Wildlife Biological Evaluation at 18; DEIS at 214, A-17.

⁸⁰ See DEIS at 214, A-18.

⁸¹ See Forest Plan at 2-24; Wildlife Biological Evaluation at 44-45; DEIS at 213-214, A-17-A-18.

2. Soils, Reclamation, and Travel-System Maintenance.

Forest Plan soil and water direction calls for minimizing roads and disturbed sites consistent with their purposes and reclaiming sites when use ends.⁸² Alternative 2's expanded roads, utilities, cabins, lodge, and equestrian facilities implicate that direction by increasing both disturbance and the work required to restore affected areas.

The presence of existing disturbance does not establish that the additional footprint is consistent with the applicable direction. The analysis must address whether the proposed roads and disturbed areas have been minimized, what disturbance would persist, and what reclamation could reasonably achieve. Assumed future recovery cannot offset present impacts without support concerning restoration methods, timing, and expected success.⁸³

The funding and transition deficiencies discussed in Sections III.D and III.E reinforce this issue. They leave unresolved whether reclamation and stabilization would occur under the conditions assumed in the analysis. The Forest Plan inquiry requires the agency to evaluate that performance against the applicable resource direction, rather than rely on a general expectation that disturbed areas would eventually recover.

Travel-system maintenance presents a similar problem. Forest Plan page 2-39 and applicable travel direction address maintenance necessary to support the retained or expanded system. Expected grants do not establish adequate maintenance or resolve the resource consequences of deferred work. Hilltop access, switchbacks, parking, horse-trailer conflicts, and emergency passage also constrain the feasible design and operation of the proposed system.⁸⁴ As discussed in Section III.F, the governing access instruments must be considered in determining which improvements and restrictions are available.

These unresolved requirements prevent the DEIS from establishing that Alternative 2's larger footprint would satisfy the retained soil, water, travel, and access direction. Alternative 3 reduces the disturbance and continuing obligations giving rise to those concerns.

3. Recreation Settings, Facility Siting, and Authorized Uses.

The Forest Plan's recreation direction requires evaluation of the proposed facilities and operating intensity in their actual locations. Relevant provisions include the 100-foot camping standard and its allowance for justified exceptions, summer and winter Recreation Opportunity Spectrum ("ROS") classifications, and outfitter-and-guide direction governing compatibility and allocation of use.⁸⁵

The camping provision requires identification of affected sites and the basis for any exception. The ROS direction requires assessment of how structures, roads, visitor concentrations, and seasonal operations would affect the applicable recreation setting. Outfitter-and-guide direction requires consideration of whether authorized services and

⁸² See *Forest Plan*, *supra* note 69, at 2-5.

⁸³ See *DEIS*, *supra* note 1, at A-13-A-15; *Soils and Geology Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service (June 2026), ("[Soils Technical Report](#)"); *Hydrology Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service (June 2026), ("[Hydrology Technical Report](#)").

⁸⁴ See *DEIS*, *supra* note 1, at 23 n.7, 30-31; *Traffic, Parking, and Roads Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service 31, 39-42 (June 2026), ("[Traffic Technical Report](#)").

⁸⁵ See *Forest Plan*, *supra* note 69, at 2-34-2-35.

traditional access remain compatible with the proposed development and operating restrictions.⁸⁶

Accessibility, sanitation, visitor information, and appropriate design are legitimate objectives, but they do not establish that Alternative 2's scale is necessary or that its facilities would comply with the governing direction. As explained in Section IV, the benefits of targeted improvements must be distinguished from the impacts of expanded recreation capacity. Rental cabins also must be evaluated under the provisions governing their actual use, rather than treated as recreation residences merely because both involve lodging.

The DEIS does not adequately connect the proposed facility locations, services, and operating assumptions to these requirements. General statements of recreational benefit therefore do not establish consistency or justify replacing existing protections to accommodate the preferred development.

D. Retention of Existing Forest Plan Protections Provides an Additional Basis for Preferring Alternative 3.

Alternative 3's comparative advantage extends beyond its smaller physical footprint. It would retain MAs 5.4 and 5.41 while allowing limited recreation improvements, thereby preserving habitat-oriented direction governing development and continuing use.⁸⁷ Alternative 1 likewise would retain that direction while avoiding the proposed redevelopment.

The DEIS cannot discount those advantages by assuming that retained forest-wide provisions and anticipated CPW stewardship would compensate for displaced management-area protections. The former do not establish that the removed provisions are redundant, and the latter remain insufficiently defined and substantiated for the reasons discussed above.

Because the DEIS does not adequately evaluate the protections being displaced, apply the directly related planning requirements, or establish compliance with retained direction, the amendment analysis supplies no adequate basis for preferring Alternative 2. These deficiencies provide an additional reason to identify Alternative 3, with the protections requested in this letter, as the preferred alternative or, alternatively, to support selection of Alternative 1.

VI. The DEIS Does Not Adequately Resolve the Access, Siting, Utility, and Resource Constraints That Could Materially Alter Alternative 2's Footprint and Effects.

The operational and Forest Plan deficiencies discussed above are compounded by unresolved physical and resource constraints. Alternative 2 depends on accommodating expanded facilities and visitation within a remote valley containing constrained access, geologic hazards, sensitive hydrology, wetlands, occupied plant habitat, and cultural resources. The DEIS does not adequately establish how those constraints would affect the proposed development or substantiate the restoration and recreation benefits offered to justify its greater disturbance.

These matters bear directly on the comparison required by Section II.A. Final engineering and implementation details may follow environmental review, but questions that

⁸⁶ See *Recreation Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service (June 2026), ("[Recreation Technical Report](#)"); *Scenery Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service (June 2026), ("[Scenery Technical Report](#)");

⁸⁷ See *DEIS*, *supra* note 1, at 33–37, 41–42.

could materially change facility locations, utility requirements, operating capacity, or resource effects must be addressed sufficiently to support the alternatives comparison. The DEIS cannot treat Alternative 2's proposed footprint and anticipated benefits as established while leaving unresolved the conditions necessary to achieve them.

A. Constrained Access and Emergency-Response Capacity Limit the Operation That Can Reliably Be Supported.

Sections III.B–III.C identify deficiencies in the proposed visitor controls and emergency arrangements, while Section V.C.2 addresses travel-system requirements. The physical limitations of the access route present an additional issue: whether the proposed development and visitation can be accommodated under the conditions the DEIS assumes. Hilltop access, switchbacks, parking, horse-trailer movements, and emergency passage must be evaluated together, including during construction and peak visitation.⁸⁸ Anticipated staffing and admission controls do not establish that vehicles can safely pass, turn, wait, or evacuate along constrained segments.

Forest Service road guidance reinforces the need for that assessment. Forest Service Handbook (“FSH”) 7709.59 §§ 41.1 and 41.7 address safety considerations and the limitations of crash histories on low-volume National Forest System roads. A limited history of reported crashes does not, by itself, establish that a route can accommodate materially different traffic volumes and vehicle movements. The guidance must nevertheless be applied within its National Forest System road scope; county and private segments remain subject to their respective jurisdictions and governing rights.

Federal closure authority likewise does not resolve the access problem. Under 36 C.F.R. § 212.52(b)(2), the responsible official must close an affected National Forest System road, trail, or area upon determining that motor vehicle use is directly causing or will directly cause the specified considerable adverse effects. That conditional duty neither supplies needed improvements nor extends to any county road the Forest Service might wish to restrict. If closure or substantial use restrictions could become necessary, their consequences for the proposed operation and neighboring access belong in the analysis.

The emergency-response discussion leaves a related gap. County-wide descriptions of services do not establish response capability at Sweetwater. The analysis must relate dispatch, communications, apparatus clearance, evacuation or shelter arrangements, and foreseeable road obstructions to the proposed occupancy and construction conditions. It must also distinguish CPW's capabilities from fire, medical, sheriff, and search-and-rescue services supplied by others.⁸⁹ Without that assessment, anticipated CPW presence cannot substantiate the safety and management benefits attributed to the larger operation. Alternative 3's reduced facility program limits the additional demands associated with development, although its access and emergency requirements also must be evaluated.

⁸⁸ See *id.* at 23 n.7, 30–33; *Traffic Technical Report*, *supra* note 84, at 31, 39–42.

⁸⁹ See *DEIS*, *supra* note 1, at 31–33; *Socioeconomics Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service 39–42, 49–50 (June 2026), (“*Socioeconomics Technical Report*”).

B. *Unresolved Geotechnical and Utility Requirements Could Materially Change Alternative 2's Footprint.*

1. *Geologic Hazards Require a Supported Assessment of Feasible Facility Locations and Associated Disturbance.*

The soils and geology record identifies debris-flow, alluvial-fan, sheetwash, flooding, and landslide concerns near proposed facilities. RPM-SOIL-3 through RPM-SOIL-6 defer geotechnical investigation in several development zones.⁹⁰ Those investigations may determine whether facilities can occupy the locations used in the effects analysis or require relocation, stabilization, drainage work, or additional excavation.

The distinction between final design and basic siting feasibility is controlling. Foundation specifications may appropriately remain for engineering, but the alternatives comparison must account for reasonably foreseeable work needed to make the selected locations usable. If stabilization or relocation would enlarge the disturbance footprint or affect additional resources, the DEIS must evaluate those consequences or establish design constraints that keep development within the effects analyzed. Assuming that later engineering will resolve the hazards without materially changing the Project understates the uncertainty in Alternative 2's footprint.

The earlier geotechnical assessment does not resolve that uncertainty because it concerned a different proposed development.⁹¹ Its findings may inform the analysis, but they do not establish the feasibility of the current facility locations and intensity.

Floodplain requirements warrant a separate determination. Executive Order 11988 § 2 requires identification of floodplain involvement, consideration of avoidance, and the applicable findings and explanation before proceeding with floodplain development. An alluvial-fan designation does not itself establish the governing floodplain boundary, and the absence of a mapped boundary does not eliminate the need to evaluate available information. The agency must determine which proposed facilities implicate those requirements and account for any resulting siting restrictions.

2. *Water Rights and Demand Estimates Do Not Establish a Reliable Physical Supply or the Footprint Needed to Provide It.*

The August 28, 2025 water and wastewater memorandum estimates Alternative 2's average demand at 7,130 gallons per day, maximum-day demand at 17,825 gallons per day, and peak-hour demand at 24.8 gallons per minute. It also reports an observed spring flow of 7.3 gallons per minute in October 2023.⁹²

Those figures measure different periods and do not establish an inevitable supply deficit. They do, however, require a supported explanation of how seasonal source yield, usable storage, refill rates, treatment capacity, and operating limits would meet demand. The occupancy inconsistencies discussed in Section III.B make that explanation particularly important: a system evaluated against one demand assumption may not support the exceedances or seasonal operations contemplated elsewhere.

⁹⁰ See *Soils Technical Report*, *supra* note 83, at 26–33, 50–55; *DEIS*, *supra* note 1, at A-14–A-15.

⁹¹ See Ground Engineering, *Geologic Hazard Assessment and Preliminary Geotechnical Recommendations* 3–5, 8–13 (Sept. 9, 2005); Karen Houck, *Geologic Hazards at the Sweetwater Lake Property* 1 (Dec. 2023); *Geology at the Sweetwater Lake Property* 1 (Dec. 2023).

⁹² See Chris Durluo, *Sweetwater Lake Water and Wastewater Demand*, TetraTech 3–4, 13–16 & tbl. 17 (Aug. 28, 2025).

The Hydrology Technical Report concludes that existing King Spring and Ditch rights, including a decreed domestic rate of 1.5 cubic feet per second, can legally meet demand.⁹³ Legal entitlement does not establish the water physically available during dry periods or the infrastructure needed to collect, store, treat, and distribute it. The DEIS acknowledges that additional storage or an augmentation pond may be necessary.⁹⁴ Those facilities could change excavation, utility alignments, hydrology, and permanent disturbance. Their reasonably foreseeable consequences must therefore inform the comparison rather than remain outside Alternative 2's stated footprint.

3. *Separate Wastewater Systems Require Evaluation of Their Combined Effects.*

The proposal for six wastewater systems, each below 2,000 gallons per day, does not establish that their combined effects would be insignificant. Individual permitting classifications do not determine the environmental consequences of multiple systems serving the same development and potentially affecting connected groundwater, wetlands, the lake, and other surface waters.

The analysis must relate design flows, system locations, treatment assumptions, and required separations to those receiving resources. It must also account for the land and construction disturbance necessary to provide feasible treatment and disposal. Later permits may resolve technical requirements, but their anticipated issuance cannot substitute for evaluating effects material to the present choice. Together, the unresolved water and wastewater requirements weaken the basis for preferring Alternative 2's larger utility-dependent program over Alternative 3's reduced facilities and demand.

C. *Greater Wetland and Habitat Disturbance Is Not Justified by Uncertain Restoration Benefits.*

The DEIS's quantified wetland and riparian comparison favors reduced development. Alternative 2 would cause approximately 0.05 acre of long-term wetland disturbance and 0.56 acre of upland-riparian disturbance, compared with approximately 0.02 and 0.22 acre, respectively, under Alternative 3.⁹⁵ Those figures must be considered alongside the full road, utility, lake-access, and ditch footprint, including any consequences of Keep Ditch piping or diversion for wet-meadow hydrology. Disturbance acreage alone does not disclose whether changes in water delivery would impair wetland function beyond the construction footprint.

Executive Order 11990 §§ 1–2, 5, and 7 reinforces the significance of avoidance. For covered new construction in wetlands, § 2 requires, to the extent permitted by law, a finding that no practicable alternative exists and inclusion of all practicable measures to minimize harm. The Order also addresses federal land management and defines wetlands independently of whether a particular discharge requires a Clean Water Act permit. Its application therefore cannot be reduced to the anticipated outcome of discharge permitting.⁹⁶

Alternative 3's smaller wetland footprint does not establish complete avoidance or, standing alone, resolve the practicable-alternative inquiry. It does require the Forest Service to explain why additional wetland construction is warranted and whether a reduced program or different siting could avoid or further minimize that construction. References to final design,

⁹³ See *Hydrology Technical Report*, *supra* note 83, at 53–55.

⁹⁴ See *DEIS*, *supra* note 1, at 29.

⁹⁵ See *Wetland Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service 43–44 & tbl. 10 (June 2026), ("*Wetlands Technical Report*").

⁹⁶ See also FSM §§ 2527.03–2527.04, 2527.3–2527.4; *Wetland Technical Report*, *supra* note 95, at 20, 39, 42–43

monitoring, and later permits do not supply that explanation. The acknowledged difference in disturbance is a concrete reason to favor reduced development unless the agency provides a supported basis for accepting the additional loss.

The restoration analysis does not establish that basis. The Wetlands Technical Report credits anticipated CPW restoration while discounting comparable benefits under Forest Service management because of resource limitations.⁹⁷ Yet RPM-WET-8's contemplated wet-meadow restoration and beaver management or reintroduction, and RPM-WET-9's revegetation measures, remain insufficiently defined to substantiate the gains attributed to them.⁹⁸ The analysis must identify the expected treatment areas, necessary hydrologic work, implementation timing, measures of success, monitoring, and funding assumptions sufficiently to evaluate likely performance.

It must also distinguish restoration of existing degradation from repair of damage caused by the proposed construction. Returning newly disturbed land toward its prior condition does not establish a net improvement over an alternative that avoids the disturbance. As Sections II.D and IV explain, mitigation must be evaluated for likely effectiveness, and management benefits must be assessed consistently across alternatives. Crediting uncertain restoration under Alternative 2 while failing adequately to evaluate targeted restoration under Alternative 3 distorts that comparison.

The botanical analysis presents a similar inconsistency. DEIS pages 77–78 identify loss of occupied Harrington penstemon habitat and characterize long-term loss as irreversible, while also invoking possible recovery. The agency must reconcile those descriptions by identifying the expected recovery period, the evidentiary basis for recovery, and the habitat loss that would remain. Eventual biological recovery, if feasible, does not eliminate the consequences of prolonged habitat loss.⁹⁹ Alternative 3's smaller footprint would reduce the disturbance requiring recovery and the opportunities for invasive-species establishment. Unsupported recovery expectations do not justify assigning less weight to those differences.

D. Incomplete Cultural-Resource Review Leaves Material Siting and Avoidance Questions Unresolved.

The DEIS reports differing cultural-resource inventory coverage and ongoing consultation but does not adequately establish how affected resources relate to proposed demolition, trails, utilities, construction access, and facility locations.¹⁰⁰ Those relationships matter because avoidance or protection measures could materially change the preferred footprint.

Section 106 of the National Historic Preservation Act requires the Forest Service to consider effects on historic properties and afford the required opportunity for comment.¹⁰¹ Its timing requirements preserve meaningful consideration of avoidance and mitigation before commitments restrict the available alternatives.¹⁰² Ongoing consultation does not itself

⁹⁷ See *id.* at 39, 42.

⁹⁸ See *DEIS*, *supra* note 1, at A-16–A-17.

⁹⁹ See generally *Botanical Biological Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service (June 2026), ("*Botanical Technical Report*"); *Noxious and Invasive Species Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service (June 2026), ("*Invasive Species Technical Report*"); *DEIS*, *supra* note 1, at A-11–A-13.

¹⁰⁰ See *DEIS*, *supra* note 1, at 78–81.

¹⁰¹ See 54 U.S.C. § 306108; 36 C.F.R. §§ 800.4–800.6.

¹⁰² See 36 C.F.R. § 800.1(c).

establish a violation or require every issue to be resolved before publication of a DEIS. It does prevent the agency from treating compatibility between the proposed footprint and cultural-resource protection as established without adequate supporting analysis.

The comparison must therefore explain, to the extent consistent with confidentiality requirements, what areas have been evaluated, what material uncertainties remain, and how the alternatives differ in their potential to affect protected resources or require relocation. Sensitive tribal and site information can remain confidential while the agency discloses meaningful comparative findings. CPW's proposed operation does not transfer the Forest Service's federal responsibilities or resolve those siting questions.

E. Aggregate Recreation and Economic Projections Do Not Resolve Localized Effects on Wilderness Access, Scenery, and Existing Uses.

Alternative 2's additional facilities and overnight capacity also require a supported assessment of the recreation pressure they would generate. Trailhead demand, encounter levels, guided and unguided use, and displacement of existing access bear on the setting and use of the surrounding lands.¹⁰³ The analysis must connect those effects to the proposed development rather than assume that additional recreation capacity necessarily improves existing recreation opportunities.

Visitor pressure and regulated construction raise distinct questions. The applicability of roadless restrictions or exceptions depends on the location and nature of the proposed road construction, reconstruction, tree cutting, or other regulated activity.¹⁰⁴ Compliance with requirements governing physical work does not resolve the separate effects of increased use on wilderness access and recreation experience.

Localized scenic effects likewise remain material where more distant views are screened. The Scenery Technical Report identifies effects near Hilltop and surrounding lands.¹⁰⁵ Building mass, lighting, vehicles, construction activity, and changes in the recreation setting must be evaluated against the applicable scenic objective at those affected locations. General references to rustic architecture do not establish that the larger facility program would meet that objective or adequately reduce its effects. Alternative 3 would reduce the structures and associated activity producing those changes.

The same location-specific analysis is necessary for traditional hunting, outfitting, and access. As Section III.F explains, operating restrictions must be evaluated against existing authorizations and lawful access. Their practical consequences also depend on where and when restrictions apply, the availability of staging and trailer parking, fees and reservation requirements, concession arrangements, and the routes that remain usable.¹⁰⁶ Historical use does not establish unlimited rights, but neither that qualification nor the possibility of justified safety restrictions eliminates the need to evaluate displacement. Increased aggregate visitation does not demonstrate improved recreation opportunities for users whose access becomes more difficult or impracticable.

¹⁰³ See *Wilderness Technical Memorandum for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service 1–3 (June 2026), ("*Wilderness Technical Report*"); *Colorado Roadless Areas Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service 33–47 (June 2026), ("*Roadless Areas Technical Report*").

¹⁰⁴ See *id.* at 33–47; *Forest Plan*, *supra* note 69 (discussing the Alpine Roadless Area).

¹⁰⁵ See *Scenery Technical Report for the Sweetwater Lake Recreation Management and Development Project Environmental Impact Statement*, USDA Forest Service 39–44 (June 2026), ("*Scenery Technical Report*").

¹⁰⁶ See *DEIS*, *supra* note 1, at 6, 23–24, 30–33.

Finally, modeled employment, spending, and tax receipts do not resolve those localized effects or establish funding for additional public-service demands. The analysis must distinguish new from displaced spending, temporary construction activity from continuing operations, and revenues available to local service providers from receipts accruing elsewhere.¹⁰⁷ A quantified business loss is not necessary to identify material access, parking, and operational burdens, and our clients' concerns should not be treated as losses already quantified by those reports. The relevant deficiency is the failure to adequately reconcile the projected gains with the location, duration, and distribution of the associated burdens.

These unresolved constraints establish that the DEIS has not sufficiently supported the footprint, operating intensity, and benefits used to justify its selection. Combined with the operational and amendment deficiencies discussed above, they provide further grounds to identify Alternative 3, with the protections requested in this letter, as the preferred alternative or, alternatively, to support selection of Alternative 1.

VII. The DEIS's Comparative Findings Support Identifying Alternative 3 as Preferred or, Alternatively, Supporting Selection of Alternative 1.

The operational, planning, and resource deficiencies discussed above leave the DEIS without an adequate basis for preferring Alternative 2. The DEIS's own findings instead support Alternative 3, which would provide targeted recreation improvements with substantially less disturbance, retain existing Forest Plan protections, and impose fewer continuing construction and operating obligations. Those documented differences cannot reasonably be outweighed by anticipated management benefits the DEIS has not substantiated.

A. Alternative 3 Would Provide Targeted Improvements with Substantially Less Disturbance and Fewer Continuing Obligations.

Alternative 3 would retain Forest Service management and MAs 5.4 and 5.41, organize activities within four management zones, and avoid the proposed Project-wide CPW authorization and MA 8.22 amendment. It would cause approximately 33 acres of short-term and six acres of long-term disturbance, compared with approximately 100 and 41 acres, respectively, under Alternative 2.¹⁰⁸ Its lower wetland and riparian losses further support reduced development.¹⁰⁹ These differences directly reduce the activities producing the principal impacts identified in Sections V and VI.

The reduced program would provide up to ten campsites, vault toilets, day-use and fishing improvements, parking and trail connections, and repair of the guard station for administrative use. It would remove campground sites near the Ute-Deep trailhead and restore the associated road template. It would omit Alternative 2's rental cabins, lodge, equestrian-specific campsites, extensive employee facilities, and potable-water and electrical hookups for the new campground.¹¹⁰ Those differences reduce utility demand, overnight capacity, construction, and future maintenance and replacement obligations while preserving meaningful public recreation improvements.

¹⁰⁷ See *Socioeconomics Technical Report*, *supra* note 89, at 24–25, 39–44, 49–50 & §§ 5–8

¹⁰⁸ See *DEIS*, *supra* note 1, at 33–37, 42 & tbl. 2-2.

¹⁰⁹ See *Wetlands Technical Report*, *supra* note 95, at § 6.4

¹¹⁰ See *DEIS*, *supra* note 1, at 33–36

Alternative 3 also avoids dependence on CPW accepting and sustaining the proposed 20-year arrangement throughout the Project area. The DEIS allows a limited concession for the Campground and Day Use Zone, selected through a competitive prospectus that excludes CPW.¹¹¹ Any concession would require appropriate qualifications, defined authorization terms, and sufficient environmental review. Its limited scope would allow those obligations to be evaluated without assuming the broader financing and performance commitments attributed to CPW under Alternative 2.

Alternative 3 therefore reduces both the physical impacts of development and the management obligations necessary to address them. As explained in Section IV, the DEIS has not established that Alternative 2's additional facilities are necessary to obtain the claimed stewardship benefits or that those benefits justify its additional burdens.

B. Funding Uncertainty Requires Consistent Evaluation of Both Alternatives and Supports Consideration of a Smaller Program.

Alternative 3 depends on future federal funding, and its implementation must be evaluated accordingly. The same scrutiny must apply to Alternative 2's dependence on state appropriations, construction funding, staffing, and continuing maintenance. As Section III.D explains, federal budget constraints cannot reasonably be treated as decisive against reduced development while contingent state resources are credited as sufficient for a substantially larger operation.

Forest Service recreation guidance reinforces the need to consider a smaller program. FSH 2309.13 § 12.1 calls for consideration of the lowest facility development scale that meets program needs and designs that permit capacity to adjust to future demand and site conditions.¹¹² The Handbook also addresses operating and maintenance plans, capacity management, closure, and decommissioning, and expressly recognizes that drinking water need not be provided at every developed recreation site.¹¹³

That guidance supports evaluating a facility and service level that available resources can sustain. The comparison must account for construction, operation, maintenance, replacement, and eventual removal or restoration, together with the consequences of funding shortfalls. Alternative 3 reduces those obligations at their source. The DEIS does not establish why Alternative 2's substantially greater continuing obligations provide a more reliable response to the funding limitations invoked to justify the proposed partnership.

C. Alternative 3 Should Incorporate Focused Protections Consistent with Its Reduced Footprint and Existing Management Direction.

The requested preference for Alternative 3 includes the protections necessary to support its smaller program. Demolition, two new roads, parking, camping, and lake access would still produce disturbance and operating demands. The proposed 45-foot combined vehicle-length limit does not alone establish safe passage, and the DEIS anticipates limited federal patrols and weed treatment without on-site aquatic-nuisance-species inspection.¹¹⁴ Those limitations require an adequate assessment of the protective measures and resources necessary for implementation.

¹¹¹ See *id.* at 37

¹¹² See FSH 2309.13, ch. 10, amendment 2309.13-2018-1, § 12.1, at 30 (Jan. 25, 2018).

¹¹³ See FSH 2309.13, ch. 50, amendment 2309.13-2021-2, §§ 52.2, 53.24, 53.35, 53.39 (June 25, 2021).

¹¹⁴ See *DEIS*, *supra* note 1, at 35–37.

Consistent with Sections III.F, V, and VI, the reduced program should protect safe public and lawful private access; provide adequate sanitation; address geologic, hydrologic, and cultural-resource constraints in facility siting; preserve wildlife and seasonal habitat; and protect wetlands and water quality. The analysis should also evaluate targeted cave protection, wet-meadow stewardship, and invasive-species controls, including management of aquatic-nuisance-species risks without on-site inspection.

These measures must be supported by feasible maintenance, monitoring, and corrective arrangements. Their scope, timing, responsible parties, and expected performance should be defined sufficiently to evaluate the resulting effects, with construction and use tied to the protections and resources available to support them. This request applies the same requirement for substantiated management benefits to Alternative 3 that the DEIS has not adequately satisfied for Alternative 2.

The requested protections should preserve Alternative 3's smaller footprint, existing Forest Plan direction, and federal management. They support targeted stewardship without requiring Alternative 2's expanded facilities or Project-wide CPW arrangement.

D. Alternative 1 Should Be Preferred if the Reduced Program Cannot Be Adequately Implemented with the Requested Protections.

If Alternative 3 cannot be adequately supported with those protections, the Forest Service should support selection of Alternative 1, the No Action Alternative. Alternative 1 would continue existing federal management, limited uses and authorizations, applicable safety responsibilities, and closures for their lawful duration.¹¹⁵ It would avoid the proposed redevelopment and enabling amendment while retaining existing Forest Plan protections.

Deteriorating structures, limited patrol and weed-treatment capacity, and existing hazards remain material considerations. No Action does not eliminate those conditions or guarantee unchanged visitation. The agency must nevertheless compare them against the additional disturbance and continuing obligations of redevelopment without assuming that CPW management would deliver benefits the DEIS has not established. Existing problems do not independently justify Alternative 2.

Nor does Alternative 4 provide that justification. It relies on the same CPW authorization and amendment while adding development. Alternative 2's smaller scale relative to Alternative 4 does not answer the comparative evidence favoring Alternative 3 or No Action. The agency must substantiate why additional impacts are warranted when less intensive alternatives remain available.

VIII. Conclusion.

The DEIS does not justify identifying Alternative 2 or Alternative 4 as the preferred alternative. Both would replace existing habitat protections, place management of the Project area with CPW, and authorize substantially more development than Alternative 3. The benefits attributed to CPW management depend on permit obligations, funding, staffing, and performance measures that the DEIS has not established. Unresolved access, siting, utility, and resource constraints further weaken the basis for the proposed footprint and its projected effects. Alternative 4 would intensify these concerns; Alternative 2 is not justified merely because it is less intensive than Alternative 4.

¹¹⁵ See *id.* at 13-14.

The comparison instead supports identifying Alternative 3 as the preferred alternative. It would provide targeted recreation and stewardship improvements with substantially less disturbance while retaining existing Forest Plan protections and federal management. The final EIS should identify Alternative 3, with the focused protections requested in this letter, as the preferred alternative. If that reduced program cannot be adequately supported with those protections, the final EIS should instead support selection of Alternative 1. Existing maintenance and management needs warrant attention, but they do not establish a need for the proposed redevelopment or Forest Plan amendment.

The agencies' earlier partnership and cost-share arrangements do not justify preferring the more intensive alternatives.¹¹⁶ Prior commitments may not constrain the choice among reasonable alternatives before the required review is complete.¹¹⁷ The Forest Service should base the preference stated in the final EIS on the alternatives' documented effects and obligations.

Flat Tops and Turret's End reserve the right to supplement these comments as additional information becomes available and to pursue applicable administrative and judicial remedies.

Best regards,

CLARK HILL



Axel Buchwalter



Chris Clare

Counsel for LKS Outfitters, LLC d/b/a Flat Tops Wilderness Guides and Turret's End Stann Ranch, LLC.

¹¹⁶ See *id.* at 30.

¹¹⁷ See 40 C.F.R. § 1506.1 (2023).

Attachment 1:

August 1, 2024 Comment Letter submitted on behalf of
LKS Outfitters, LLC d/b/a Flat Tops Wilderness Guides
and
Turret's End Stann Ranch, LLC



Axel Buchwalter
T (602) 440-4806
F (602) 257-9582
Email: abuchwalter@clarkhill.com

Chris Clare
T (202) 572-8671
F (202) 572-8691
Email: cclare@clarkhill.com

Clark Hill
3200 North Central Avenue, Suite 1600
Phoenix, AZ 85012
T (602) 440-4800
F (602) 257-9582

1001 Pennsylvania Ave. N.W., Suite
1300 South, Washington, DC 20004
T (202) 772-0909
F (202) 772-0919

August 1, 2024

BY EMAIL AND FIRST CLASS MAIL

White River National Forest
Scott Fitzwilliams, Forest Supervisor
900 Grand Ave., P.O. Box 948,
Glenwood Springs, CO 81601

White River National Forest
Leane Veldhuis, District Ranger
Eagle-Holy Cross Ranger District
P.O. Box 190
Minturn, CO 81645

Re: Flat Tops Wilderness Guides Comments & Objections to the Proposed Sweetwater Lake Recreation Management and Development Project

Dear Mr. Fitzwilliams:

Thank you for the opportunity to submit comments and objections to the proposed Sweetwater Lake Recreation Management and Development Project ("Project"). We represent LKS Outfitters, LLC dba Flat Tops Wilderness Guides ("Flat Tops"), an operator of expeditions and summer adventures within the White River National Forest ("White River NF"). Flat Tops operations are based at Turret's End lodge, which is located on Garfield County Parcel No. 186308100043, which is an inholding within the White River NF that abuts the northwestern boundary of the Project area.¹

Flat Tops is deeply concerned that the proposed Project is fundamentally inconsistent with the resource management requirements established by *Land and Resource Management Plan 2002 Revision for the White River National Forest* ("Forest Plan"). Additionally, amending the Forest Plan to accommodate the Project would be inconsistent with United States Forest Service ("Forest Service") regulations and would violate federal law. Moreover, discrepancies between the proposed action described in the Notice of Intent ("NOI") published in the Federal Register on March 6, 2024, and other Project Documents (defined below) render the planning

¹ We also represent Turret's End Stann Ranch, LLC ("Turret's End"), the owner of Parcel No. 186308100043 and Turret's End lodge. These comments and objections are made on behalf of Flat Tops and Turret's End.

process for the Project materially deficient. Further, the proposed Project would be inconsistent with Land and Water Conservation Fund ("L&WCF") requirements applicable to the Sweetwater Property (defined herein). These deficiencies should be addressed by the Environmental Impact Statement ("EIS") or corrected before the EIS is prepared.

I. BACKGROUND.

In 2020, the Conservation Fund acquired 488 acres (the "Sweetwater Property"), including Sweetwater Lake within the exterior boundaries of the White River NF. The following year, in 2021, the Forest Service purchased the Sweetwater Property from the Conservation Fund using monies from the L&WCF.

A. The Sweetwater Property is part of the White River NF.

The Sweetwater Property became part of the White River NF when it was acquired by the Forest Service in 2021 and must be permanently reserved, held, and administered as national forest lands. The Forest Service has both general and specific authority to acquire private lands. The Act of August 3, 1956, (the "Act") provides that the United States Department of Agriculture ("USDA") can purchase land or interests therein as necessary to carry out its authorized work.² This Act serves as the primary authority for the Forest Service to purchase land using monies from the L&WCF.³ Lands acquired by the Forest Service pursuant to the Act automatically become part of the National Forest System and are integrated into the national forest within which they are located.⁴ The Sweetwater Property was an inholding within the boundaries of White River NF prior to its acquisition by the Forest Service. Therefore, upon its acquisition by the Forest Service, it became part of the White River NF and must be permanently reserved, held, and administered as national forest lands.⁵

B. The Project area is part of the White River NF.

The entire Project area is part of the White River NF and must be permanently reserved, held, and administered as national forest lands. The Project area encompasses 832 acres, consisting of the recently acquired 466-acre Sweetwater Property and 366 acres of existing National Forest System land. The 366-acre portion has been part of the White River NF since the Forest Plan was established in 2002. As previously explained, the 466-acre Sweetwater Property also became part of the White River NF when it was acquired by the Forest Service in 2021 pursuant to the Act, using L&WCF monies. Consequently, the entire Project area must be permanently reserved, held, and administered as part of the White River NF.

II. PROJECT DOCUMENTS.

On March 6, 2024, the Forest Service published an NOI to prepare an EIS to evaluate the potential environmental impacts of the Project. Additionally, the Forest Service released a scoping letter, a proposed action fact sheet, a news release, a project map, and an aerial project map. Collectively, these documents, along with the NOI, are referred to as the

² See 7 U.S.C.A. § 2268a.

³ See Forest Service Manual 5420.11b.

⁴ See 16 U.S.C.A. § 1609.

⁵ See 16 U.S.C.A. § 521.

"Project Documents."⁶ These Project Documents inconsistently describe the Project's purpose and need, as well as the proposed action.

A. *Inconsistencies between Project Documents render this planning process deficient.*

Inconsistencies within the Project Documents render the Project planning process deficient, as it is unclear whether the proposed action includes amending the Forest Plan or establishing a special interest management area. Forest Service regulations and federal law mandate that the Forest Service provide formal public notification to initiate the development of a Forest Plan amendment or the establishment of a special interest management area.⁷ The notice "must clearly describe the action subject to notice and the nature and scope of the decisions to be made."⁸ Additionally, Forest Plan amendments and the establishment of a special interest management area must conform to the requirements of the 2012 Planning Rule.⁹

The NOI states that the "proposed action *may* require amending the forest plan" and does not reference establishing a special interest management area.¹⁰ However, the scoping letter states that the "Proposed Action *would* also amend the White River National Forest Land and Resource Management Plan (forest plan) to designate approximately 832 acres of federal land (466 acres of newly acquired private land and 366 acres of other National Forest System land) *as a special interest management area*."¹¹ Furthermore, the proposed action fact sheet and the news release do not mention amending the Forest Plan.¹²

As published, the NOI does not provide formal notification to the public that the White River NF is seeking to amend the Forest Plan or create a special interest management area. Therefore, if the Forest Service intends to amend the Forest Plan or create a special interest management area for the Project, as described in the other Project Documents, it has not completed the steps necessary to initiate the required planning process. The Forest Service must publish a revised NOI in the Federal Register if it plans to amend the Forest Plan or establish a special interest management area. Thus, the EIS must be limited to an assessment of the environmental impacts of the Project given the existing Forest Plan, and not evaluate the environmental impact of a Forest Plan amendment or the establishment of a special interest management area.

⁶ The Forest Service also created a webpage for the Project, which includes a description, location summary, project milestones, and links to the Project Documents. On April 1, 2024, the Forest Service published a Schedule of Proposed Action ("SOPA") report referencing the Project.

⁷ See 36 C.F.R. § 219.16

⁸ See *Id.*

⁹ See Forest Service Manual 1920.12.

¹⁰ See NOI dated March 6, 2024 (Emphasis added).

¹¹ See scoping letter dated March 3, 2024 (Emphasis added).

¹² See proposed action fact sheet dated March 2024 see *also* news release dated March 3, 2024.

III. FOREST PLAN.

The EIS must assess whether the Project is compatible with the forest-wide standards and guidelines, and management area direction established by the Forest Plan, given that the entire Project area is National Forest System land located within the White River NF. The National Forest Management Act (“NFMA”) required the Forest Service to develop land and resource management plans for all National Forest System units.¹³ It also requires all “[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands” be consistent with the land management plan of the respective national forest.¹⁴ In addition, it provides that “future permits, contracts, and other instruments” are subject to valid existing rights.¹⁵ The Project located in the “Eagle-Holy Cross Ranger District of the White River National Forest in portions of Sections 5, 8, 9, 15 and 16 of Township 3 South, Range 87 West, Garfield County, Colorado, 6th Principal Meridian.”¹⁶ Therefore, all Project-level decisions, including the authorization of any special use permits, must be consistent with the forest-wide standards and guidelines, and management area direction established by the Forest Plan.

A. *Applicable forest-wide standards and guidelines.*

The Forest Plan provides mandatory standards and guidelines for the management of National Forest System land within the White River NF. These forest-wide standards and guidelines apply to the Project area. Therefore, the EIS must assess if the Project is consistent with the standards and guidelines for: (1) Soil; (2) Wildlife; (3) General Recreation; (4) Developed Recreation; and (5) Travel System Infrastructure.

1. *Soil.*

The Project is inconsistent with the forest-wide standards and guidelines for soil. The Forest Plan requires that roads and other disturbed sites be limited to the minimum feasible number, width, and total length consistent with the purpose of specific operations, local topography, and climate.¹⁷ Additionally, it mandates that roads and other disturbed sites be reclaimed when use ends to prevent resource damage.

Components of the proposed action are inconsistent with these forest-wide standards and guidelines for soil. The Project proposes to expand roads and disturbed sites within the Project area for a new campground area, cabins, equestrian facilities, lake access, lodge, and maintenance facilities.¹⁸ Moreover, the Project proposes to repurpose the “previously disturbed” middle pasture rather than reclaim the site. The EIS must evaluate whether these proposed actions are compatible with these forest-wide standards and guidelines for soil. If these proposed actions are inconsistent with the forest-wide standards and guidelines for soil, the Project must be rejected.

¹³ See 16 U.S.C.A. § 1604.

¹⁴ See *Id.* NFMA also establishes extensive analytical and procedural requirements for the development, revision, and amendment of forest plans.

¹⁵ See *Id.*

¹⁶ See NOI.

¹⁷ See Forest Plan at 2-5 see *also* Forest Plan Amendment No. 1.

¹⁸ See NOI.

2. *Wildlife.*

The Project is inconsistent with the forest-wide standards and guidelines for wildlife. The Forest Plan requires seasonal restrictions to reduce disturbances in key wildlife habitats.¹⁹ In addition, the Forest Plan requires vegetation cover in riparian areas to be managed to provide suitable wildlife habitat along a minimum of 80 percent of the length of riparian zones, and new corridor interruptions must be spaced to minimize interruptions to habitat connectivity.²⁰ It also prohibits new roads or trails that would reduce the elk habitat effectiveness index below 0.4 in Data Analysis Units ("DAU").²¹

Components of the proposed action are inconsistent with these forest-wide standards and guidelines for wildlife. The Project proposes to allow year-round recreation, whereas seasonal restrictions are required in the Project area due to its designation as deer and elk winter range.²² Moreover, the Project proposes to "[d]evelop additional lake access points," which would create impermissible interruptions to riparian areas.²³ The Project also proposes to construct a new campground area, cabins, equestrian facilities, lodge, and maintenance facilities, which would negatively impact the elk habitat within the Project area below required levels.²⁴ The EIS must evaluate whether these proposed actions are compatible with these forest-wide standards and guidelines for wildlife. If these proposed actions are inconsistent with the forest-wide standards and guidelines for wildlife, the Project must be rejected.

3. *General Recreation.*

The Project is inconsistent with the forest-wide standards and guidelines for general recreation. The Forest Plan prohibits "camping within 100 feet of lakes and streams and system trails."²⁵ In addition, it requires that outfitter and guide permits be issued "based on need, administrative capability, and a suitable mix of guided and non-guided public capacity as determined by a forest-wide capacity study... [or] on an area-specific basis."²⁶ It also requires that proposed actions be consistent with the Recreation Opportunity Spectrum ("ROS") User's Guide for the adopted summer and winter ROS classes for the Project area.²⁷

Components of the proposed action are inconsistent with these forest-wide standards and guidelines for general recreation. The Project proposes to construct a campground, cabins, and lodge within prohibited areas near Sweetwater Lake, streams, and system trails.²⁸ Moreover, the Project proposes to construct recreation facilities, including equestrian facilities without regard for the need, administrative capability, or any capacity validation. Furthermore, the proposed campground area, cabins, equestrian facilities, lake access, lodge, and maintenance facilities are not consistent with the Project area's Semi-primitive ROS class designation.²⁹ The EIS must evaluate whether these proposed actions are compatible with

¹⁹ See Forest Plan at 2-16.

²⁰ See Id.

²¹ See Id.

²² See White River NF Management Areas.

²³ See NOI.

²⁴ See Id.

²⁵ See Forest Plan at 2-34.

²⁶ See Forest Plan at 2-18.

²⁷ See Id.

²⁸ See Project Map.

²⁹ See Summer ROS Map see *also* Winter ROS Map.

these forest-wide standards and guidelines for general recreation. If these proposed actions are inconsistent with the forest-wide standards and guidelines for general recreation, the Project must be rejected.

4. *Developed Recreation.*

The Project is inconsistent with the forest-wide standards and guidelines for developed recreation. The Forest Plan requires that “[a]ll new or reconstructed recreation facilities [provide] a range of universally accessible opportunities within the limits of the site characteristics and ROS classification.”³⁰ In addition, recreation facilities must blend with the elements found in the natural landscape, and existing recreation residences may only continue to be allocated if an environmental analysis does not show a higher need for the land.³¹ Moreover, facilities at trailheads must be consistent with the recreation setting and provide “parking, trailhead panels for trail information, and appropriate sanitation facilities.”³²

Components of the proposed action are inconsistent with the forest-wide standards and guidelines for developed recreation. The Project proposes developing recreation facilities, including a campground area, cabins, equestrian facilities, a lodge, and maintenance facilities, that do not provide a range of universally accessible opportunities within the Project area.³³ Additionally, these proposed facilities would not blend with the natural landscape, failing to maintain the aesthetic and environmental integrity of the area. Moreover, the EIS must assess if there is a higher need for the land to determine if existing structures should continue to be allocated or must be removed. The EIS should also assess the long-term impacts that developing recreation facilities will have on the natural landscape and local ecosystems. It must evaluate whether the Project will disrupt wildlife habitats, water quality, and the overall ecological balance of the Project area. Furthermore, the EIS must consider the social and economic implications for the local community, including the impact that increased recreation will have on the Flat Tops inholding and the Hill Top trailhead. The EIS must evaluate whether these proposed actions are compatible with the forest-wide standards and guidelines for developed recreation. If these proposed actions are inconsistent with these standards and guidelines, the Project must be rejected.

5. *Travel System Infrastructure.*

The Project is inconsistent with the forest-wide standards and guidelines for travel system infrastructure. The Forest Plan requires that “[n]ewly acquired facilities will not be retained unless sufficient maintenance funding is available or cooperative maintenance can be secured and substantial government benefit can be demonstrated.”³⁴ In addition, public access restrictions should be imposed for health, safety, or other considerations.³⁵ Moreover, seasonal restrictions should be considered if it is necessary to resolve conflicts between users.³⁶

³⁰ See Forest Plan at 2-35.

³¹ See Id.

³² See Id.

³³ See NOI.

³⁴ See Forest Plan at 2-39.

³⁵ See Id.

³⁶ See Id.

The proposed action must include access restrictions to the Hill Top trailhead from Sweetwater Road to avoid conflicts with inholdings and address health, safety, and other considerations. Additionally, if maintenance funding is unavailable to improve the Hill Top trailhead, the Project should limit public access by way of Sweetwater Road. The Hill Top trailhead is located on an inholding with no public parking and accessible only by traversing a dirt road with a steep grade and switchbacks. The roadway is in desperate need of repair, and additional traffic or use will pose a health and safety risk to recreationists. Moreover, the proximity to inholdings often results in conflicts when individuals park along the road, causing disruptions to Flat Tops' and other inholders' existing rights.³⁷ The EIS must evaluate whether the proposed Project should include restrictions on accessing the Hill Top trailhead. If the proposed actions are determined to significantly impact the amount of traffic attempting to access the Hill Top trailhead, the Project must be rejected if the impacts cannot be mitigated with access restrictions or improvements to Sweetwater Road.

B. Applicable management area direction.

The Forest Plan provides mandatory standards and guidelines for the management of specific areas within the White River NF. These management area standards and guidelines establish what activities can be conducted and what types of public use are permitted on specific National Forest System lands. According to the Forest Plan, the Project area includes lands designated as: (1) Deer and Elk Winter Range and (2) Elk Habitat. Therefore, the EIS must assess if the proposed actions are consistent with the standards and guidelines for Deer and Elk Winter Range and Elk Habitat.

1. Deer and Elk Winter Range.

The Project is inconsistent with the management area standards and guidelines for deer and elk winter range. Portions of the Project area have been designated by the Forest Plan as deer and elk winter range. National Forest System land within the White River NF designated as deer and elk winter range must be managed to provide adequate amounts of quality forage, cover, and solitude for deer, elk, and other species.³⁸ The Forest Plan requires that human activities in these areas be restricted to prevent habitat manipulation, recreation, and development, in order to protect wintering big game from disturbance.³⁹ Specifically, the Forest Plan requires that the White River NF "[r]estrict recreation activities that would disturb deer and elk during winter and spring periods."⁴⁰ In addition, the Forest Plan mandates that the White River NF must "[d]iscourage special uses that require access during winter and spring periods."⁴¹

Components of the proposed action are inconsistent with these management area standards and guidelines for deer and elk winter range. The Project proposes to allow year-round recreation on National Forest System land where the Forest Plan requires recreation be restricted during the winter and spring. In addition, the Project proposes to construct a new campground area, cabins, equestrian facilities, lake access, lodge, and maintenance facilities in the Project area, which is inconsistent with the Forest Plan's preclusion on developing

³⁷ Sweetwater Road is not wide enough to allow trucks trailering horses to pass each other.

³⁸ See Forest Plan at 3-57 to 3-59.

³⁹ See Id.

⁴⁰ See Id.

⁴¹ See Id.

recreation facilities within lands designated for deer and elk winter range.⁴² The EIS must evaluate whether these proposed actions are compatible with the management area standards and guidelines for deer and elk winter range. If these proposed actions are inconsistent with these standards and guidelines, the Project must be rejected.

2. *Elk Habitat.*

The Project is inconsistent with the management area standards and guidelines for elk habitat. The entire Project area has been designated by the Forest Plan as elk habitat. The Forest Plan requires that National Forest System land within the White River NF designated as elk habitat be managed for elk.⁴³ Specifically, elk habitat must be managed to maintain low road densities and optimum forage and cover ratios.⁴⁴ The Forest Plan also requires that human activities in elk habitat be restricted in winter from December 1 to April 14 and for calving from May 15 to June 20.⁴⁵

Components of the proposed action are inconsistent with the management area standards and guidelines for elk habitat. The Project proposes to allow year-round recreation in elk habitat when the Forest Plan requires that recreation in elk habitat must be restricted during portions of the year.⁴⁶ Moreover, the Project proposes to construct a new campground area, cabins, equestrian facilities, lake access, lodge, and maintenance facilities within elk habitat, which would be inconsistent with the management area standards and guidelines for those areas. The EIS must evaluate whether these proposed actions are compatible with the management area standards and guidelines for elk habitat. If these proposed actions are inconsistent with these standards and guidelines, the Project must be rejected.

C. *Special use permit concerns.*

Authorizing a special use permit for Colorado Parks and Wildlife ("CPW") under the Granger-Thye Act to implement and maintain Project improvements and manage the Project area would be inconsistent with Forest Service policy and violate federal law. Section 7 of the Granger-Thye Act of April 24, 1950, authorizes special-use permits for up to 30 years for the use of structures or improvements under the administrative control of the Forest Service and for the use of land in connection therewith, without acreage limitation. However, the application and authorization process for special uses is established by 36 CFR 251.54, and Forest Service Handbook 2709.11 provides term limits for specific types of special uses. The proposed Project does not comply with the requirements of 36 CFR 251.54 or Forest Service policy.

CPW has not submitted the information required by 36 CFR 251.54 for the Forest Service to evaluate and authorize their request for a special use permit. Specifically, CPW is required to submit a description of the proposed activity, the location and description of the National Forest System lands and facilities they would like to use, the estimated number of participants and spectators, and a copy of the authorization under which the proposal is made. CPW has not provided an estimate of the number of participants and spectators nor a copy of

⁴² See NOI.

⁴³ See Forest Plan at 3-61 to 3-69.

⁴⁴ See Id.

⁴⁵ See Id.

⁴⁶ See NOI.

the authorization under which the proposal was made. Therefore, the proposal does not meet the required criteria for the Forest Service to formally accept it as an application. This lack of information hinders the public's ability to properly evaluate the NOI and determine its compliance with federal regulations and policies. Therefore, the Forest Service cannot continue to evaluate a proposal for which it does not have the information required by statute.

Additionally, the proposed 20-year special use permit does not comply with the term limits established by Forest Service Handbook 2709.11. Specifically, for recreation special uses involving government-owned improvements, the allowable permit terms for campgrounds are 5+5 years, and the term for outdoor recreation improvements is limited to ten years. Forest Service Handbook 2709.11 also indicates that the Granger-Thye Act is not the proper authority for a special use permit for equestrian facilities, cabins, or lodges. Therefore, the NOI asserts the incorrect authority for granting a special use permit for the purposes described. The EIS must evaluate whether these proposed actions are compatible with Forest Service policy for special uses and federal law. If the proposed 20-year special use authorization is inconsistent with Forest Service policy and federal law, as it clearly is, the Project must be rejected.

IV. ADDITIONAL COMMENTS.

A. Emergency services.

Flat Tops is concerned that the proposed Project will negatively impact the ability to obtain emergency services within the Sweetwater community. Currently, it is already challenging to get an emergency responder to the Sweetwater area in a timely manner due to the remote location and limited accessibility. An increase in traffic resulting from the Project will exacerbate this issue, making it even more difficult for emergency services to respond promptly. Moreover, the proposed Project is likely to bring more visitors to the area, which will further strain the already limited emergency services.

Therefore, it is crucial that the Project includes the development of comprehensive emergency protocols to ensure the safety and well-being of both residents and visitors. These protocols should include clear procedures for emergency response, coordination with local and regional emergency services, and adequate resources to address emergencies effectively. The EIS must thoroughly evaluate the potential impact of increased traffic on emergency response times and propose necessary measures to mitigate these risks. Without these protocols, the Project poses a significant safety risk to the community and visitors to the National Forest and wilderness areas.

B. Hunting restrictions.

Flat Tops is also deeply concerned that the proposed Project will restrict access to areas within the Project area that have been open to hunting for generations. These hunting grounds are not only a significant part of the local heritage and culture, but they also provide vital recreational opportunities for residents and visitors alike. Limiting access to these areas would disrupt long-standing traditions and negatively impact the local community, which relies on these lands for seasonal hunting activities. Additionally, hunting in these areas contributes to the local economy through tourism and related businesses. The potential restrictions could diminish these economic benefits and adversely affect those who depend on hunting for economic and recreational purposes. The planning process must thoroughly

evaluate the implications of restricted access on hunting activities and consider measures to preserve these historical and cultural practices within the Project area.

C. Conflicts with prior rights.

Flat Tops is concerned that the proposed Project will significantly impact their prior rights to access their inholding, particularly regarding clients visiting Turret's End lodge. Increased traffic through and to the Project area will make it difficult for clients of Flat Tops to reach Turret's End lodge, a problem that will become untenable if day use limits are not enforced and overflow parking is allowed along Sweetwater Road. Traffic counts conducted by both Garfield and Eagle Counties support these concerns, indicating that the Forest Service can expect a notable increase in traffic for the proposed action compared to the no-action alternative.

The planning process must thoroughly evaluate the potential impact of increased traffic on Flat Tops' existing right to access its inholding and for clients to visit Turret's End lodge. The EIS must also evaluate and propose measures to mitigate these impacts, such as access restrictions. Without such restrictions, the Project poses a significant safety risk to the community and visitors to the White River NF, and improperly impacts the prior rights of Flat Tops by undermining their access and negatively affecting their business.

D. Community impacts.

The proposed Project will fundamentally alter the inherent nature of the Sweetwater region, leading to permanent and irreversible changes. This transformation will disrupt the unique character and natural beauty that have long defined the area, making it less appealing to current residents and visitors who value its pristine condition.

As a result, members of the Sweetwater community, including Flat Tops, will face significant economic losses. The attractiveness of their properties, which has been heavily reliant on the untouched natural environment and tranquil setting, will be diminished. This reduction in appeal will likely lead to a decrease in economic opportunities, making it difficult for owners to operate their business at pre-Project levels. Furthermore, the influx of traffic, environmental degradation, and increased commercialization will detract from the area's desirability as a recreational location. Local businesses, especially those catering to eco-tourism, outdoor recreation, and nature enthusiasts will suffer as the area's natural allure is compromised. The loss of these economic opportunities will be felt throughout the community, reducing income and employment prospects for residents. These economic consequences are compounded by the fact that these changes are permanent. Once the area's nature is altered, it cannot be restored to its original state, meaning the economic losses incurred will be enduring and impossible to recover. The Project planning process must thoroughly assess these economic impacts and consider alternatives or mitigation measures to preserve the area's character and prevent these substantial and lasting economic losses.

V. CONCLUSION.

Flat Tops is deeply invested in the preservation and proper management of the Project area. As a member of the Sweetwater community, it has significant concerns that the proposed action is inconsistent with the Forest Plan and that inconsistent Project Documents undermine the integrity of the planning process. The EIS must rigorously assess the Project's

compatibility with the Forest Plan's standards and guidelines, including those for soil, wildlife, general recreation, developed recreation, and travel system infrastructure. Additionally, the EIS must evaluate the Project's alignment with management area directions for deer and elk winter range and elk habitat.

Flat Tops is also concerned about procedural deficiencies related to the proposed special use permit for CPW. CPW has not provided the requisite information for evaluation, and the proposed 20-year permit does not comply with Forest Service policy term limits. The planning process should ensure the Project aligns with Forest Service policy and federal law.

Additional concerns include the Project's potential to hinder emergency services, restrict hunting access, and impact prior rights to access Turret's End lodge. Increased traffic will exacerbate emergency response times, strain limited local services, and disrupt longstanding hunting traditions, making it difficult for Flat Tops' clients to access their inholding. Flat Tops strongly urges that the planning process thoroughly evaluate these impacts and propose alternatives to mitigate the Project's effects or reject the Project. Without proper mitigation, the Project poses significant risks to the community, natural environment, and local businesses. The EIS and planning process must address these critical issues to protect the Sweetwater community's well-being and the integrity of the White River NF.

Flat Tops and Turret's End reserve the right to supplement these comments and objections related to the proposed Project. As the planning process progresses, additional information and developments may arise that could further inform our position and concerns. Flat Tops and Turret's End remain committed to actively participating in this process to ensure that the interests of the Sweetwater community and the integrity of the White River NF are upheld.

Best regards,

CLARK HILL



Axel Buchwalter



Chris Clare

Attachment 2:

September 23, 2026 Comment Letter submitted on behalf of

Sweetwater Community Club, Inc.

and

Sweetwater Lake Working Group

September 23, 2026

Via Online Portal

Forest Service Project Portal

<https://cara.fs2c.usda.gov/Public/CommentInput?Project=284162>

Via Email

Brian Glaspell, Forest Supervisor

White River National Forest

U.S. Forest Service

brian.glaspell@usda.gov

Leanne Veldhuis, ID Team Leader

Eagle-Holy Cross District Ranger

White River National Forest

U.S. Forest Service

leanne.veldhuis@usda.gov

RE: Comments on the Forest Service's Draft Environmental Impact Statement for the Sweetwater Lake Recreation Management and Development Project

On behalf of Sweetwater Community Club, Inc.; the Sweetwater Lake Working Group (a subcommittee of Sweetwater Community, Club); Wendy T. Cogdal; Derrick Wiemer; Mary Stephens; Bill Stephens; and Joel Walker, we hereby submit comments on the Draft Environmental Impact Statement ("Draft EIS") for the proposed Sweetwater Lake Recreation Management and Development Project (the "Proposed Action").¹

The Proposed Action aims to increase recreational opportunities at Sweetwater Lake by issuing a 20-year special use permit ("SUP") to Colorado Parks and Wildlife ("CPW") to operate and maintain the 846-acre SUP area around Sweetwater Lake. The Proposed Action also includes a forest-wide amendment to the 2002 White River National Forest Land and Resource Management Plan (the "Forest Plan"), which would create a new Management Area ("MA") in the White River National Forest (called MA 8.22 – State or Local Government Managed Developed Recreation Areas) and then apply that designation of MA 8.22 to the entire 846-acre SUP area.

¹ Sweetwater Community Club is a nonprofit organization that was founded in the 1970s. Since its founding, Sweetwater Community Club has hosted community gatherings; advocated for safe infrastructure, sustainable recreation, and conservation of the local community near Sweetwater Lake; and engaged with federal, state, and local governmental officials on proposals that would adversely affect the Sweetwater Lake community. Sweetwater Community Club membership is approximately 85 households.

As it currently stands in the Draft EIS, technical reports, and references, the Forest Service's analysis of various topics is deficient, inaccurate, missing, or misleading in numerous important respects. These serious defects preclude an objective understanding of the Proposed Action, alternatives, and impacts, therefore rendering it impossible for the public and the Forest Service to evaluate which alternative best serves the Forest Service's purpose and need, as well as the applicable Forest Plan standards, goals, and objectives. Accordingly, the Forest Service should address the issues below and publish a supplemental Draft EIS that corrects these deficiencies and facilitates a more accurate, objective examination of the Sweetwater Lake Recreation Management and Development Project.

At minimum, if the Forest Service refuses to prepare and publish a Supplemental Draft EIS, the Forest Service must at least address and/or respond to the issues highlighted below before reaching a final decision on whether to proceed with the Proposed Action or some other alternative. If the Forest Service fails to meaningfully address the issues raised in this letter, the agency will be in violation of the procedural and substantive mandates of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347, the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600-1614, and the Administrative Procedure Act, 5 U.S.C. § 706.

I. THE PROPOSED ACTION—AND THE ENTIRE NEPA PROCESS—APPEARS SKEWED TO SUPPORT A PREORDAINED OUTCOME TO ALLOW CPW TO MANAGE SWEETWATER LAKE AS COLORADO'S 43RD STATE PARK

NEPA's effectiveness depends entirely on involving environmental considerations in the initial decisionmaking process. *See, e.g., Metcalf v. Daley*, 214 F.3d 1135, 1145 (9th Cir. 2000) (citation omitted). Accordingly, an agency's examination of impacts and alternatives "must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made." *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 629, 712 (10th Cir. 2010) (quoting *Metcalf*, 214 F.3d at 1142) (internal quotation marks omitted). Utilizing the NEPA process as nothing more than a ruse to justify or rationalize a decision already made is therefore a violation of the letter and spirit of NEPA. *See id.* ("[I]f an agency predetermines the NEPA analysis by committing itself to an outcome, the agency likely has failed to take a hard look at the environmental consequences of its actions due to its bias in favor of that outcome and, therefore, has acted arbitrarily and capriciously.").

Although there is a "high standard to prove predetermination," *Forest Guardians*, 611 F.3d 692 at 714, the Forest Service's Draft EIS process here certainly appears to be foreordained to achieve a specific outcome—indeed, an outcome urged aggressively by the State of Colorado long before the NEPA process—to effectively make Sweetwater Lake, located on federal land, Colorado's 43rd state park by handing over federal management of this land to CPW. In fact, documents in the Forest Service's decisionmaking record make clear that CPW taking over management of Sweetwater Lake is already a foregone conclusion, despite the purported purpose of this NEPA process to analyze *whether* the Forest Service should ultimately allow CPW to manage Sweetwater Lake through issuance of an SUP.

For example, in June 2021, Forest Service emails show recognition that "CPW is officially joining in as a partner on the Sweetwater Project." Exhibit 1. Soon thereafter, in

August 2021, a Forest Service official warned other Forest Service staff, as well as CPW staff, to avoid calling the now-proposed SUP area a “state park” because that “gives the appearance of a pre-decision” well before the initiation of the NEPA process. Exhibit 2. While acknowledging the close partnership between Colorado Governor Jared Polis’s office and the Forest Service on this project, Forest Supervisor Scott Fitzwilliams explained in October 2021 that he “cautioned” the Governor and his staff “to be careful about saying too much about what we plan to build” in order to avoid “getting too out in front” because “[w]e don’t want to be pre-decisional from a NEPA perspective.” Exhibit 3. Despite the Forest Service’s repeated calls for caution in order to downplay the foregone conclusion that the agency would turn over management of Sweetwater Lake to CPW for management by the State of Colorado, an early 2022 state park budget request by the Colorado Department of Natural Resources made clear the State’s view, even before the NEPA process, that Sweetwater Lake would become Colorado’s “newest state park,” which required immediate funding for “personnel and operating resources” in order “to support initial public access” to the park as early as 2022. Exhibit 4.; *see also id.* (referring to Sweetwater Lake, in this 2022 budget request, as “Colorado’s 43rd state park at Sweetwater Lake in Garfield County”). Then, in January 2023, CPW and the Forest Service prepared and publicly distributed a PowerPoint presentation, in which the agencies stated that they “[a]nticipate” that a “final version” of the Forest Service SUP to CPW for Sweetwater Lake management “will be ready for signature *this month*.” Exhibit 5 (emphasis added).²

Given this highly questionable history underlying the project—all of which predated the *start* of the NEPA process by more than a year—this situation smacks of predetermination. Indeed, there is strong evidence that the Forest Service’s actions here, walking in lockstep with CPW for several years prior to finally engaging the public in May 2024 when it began the NEPA process, “amounted to a surrender of the Government’s right to prevent activity in the relevant area.” *Metcalf*, 214 F.3d at 1144. If that is the case, “such a firm commitment before preparing an [EIS]” means that the Forest Service “failed to take a ‘hard look’ at the environmental consequences of [its] actions and, therefore, violated NEPA.” *Id.* at 1145.

In addition to statements made by the Forest Service and CPW in the record, the Draft EIS’s analysis provides further evidence of predetermination. For instance, the Forest Service appears to dismiss Alternatives 1 and 3 in part because they purportedly would fail to achieve consistency with the Forest Plan’s Wildlife General Standard 9, which requires a seasonal restriction of human activities within ½-mile of peregrine falcon nests between March 15 and July 31. *See* Draft EIS at 67. Although the Proposed Action would *also* be inconsistent with Wildlife General Standard 9, *see id.*, the Forest Service goes out of its way to try to explain why this inconsistency is permissible in the context of the Proposed Action based on topography and proposed mitigation. *See id.* at 214. Nowhere, however, is there any similar attempt to explain how Alternatives 1 or 3 might be implemented consistent with Wildlife General Standard 9, even though those alternatives would involve far *less* human activity in the Sweetwater Lake area (and

² It is unclear whether this SUP was ever finalized and signed in or around January 2023 as the agencies anticipated. But the more important point is that the Forest Service and CPW were representing to the public in *January 2023* that they were nearing finalization and execution of the SUP, which was *16 months* before the Forest Service even initiated the NEPA process by filing a scoping notice in the Federal Register. *See* 89 Fed. Reg. 37165 (May 6, 2024).

less developed recreational opportunities that could disturb falcons), thus naturally posing less of a disturbance threat to falcons. Rather than treat Alternatives 1 and 3 objectively and attempt to bring them into consistency with the Forest Plan (as the Forest Service went out of its way to do for the Proposed Action—i.e., Alternative 2), the agency merely asserted that the agency would “continue to face challenges enforcing closure orders intended to limit human entry and other activities in environmentally sensitive areas,” including near falcon nests. *Id.* at 211. But there are two problems inherent in this cursory assertion: (1) the Forest Service has only previously observed “some” limited disturbance of falcons at Sweetwater Lake and there has been fledgling success every year since 2022, *id.* at 208-09; and (2) the Forest Service already implements risk mitigation measures such as “[b]uffers and restrictions” around falcon nests, and there are likely other proven measures that would further enhance compliance with and enforcement of closure orders, such as additional signage, remote cameras, and other tools routinely used by federal, state, and local agencies when protecting and managing wildlife on public lands. The Forest Service’s refusal to consider readily available measures to bring Alternatives 1 and 3 into consistency with the Forest Plan’s General Wildlife Standard 9—while expending significant effort in the Draft EIS to bring the Proposed Action (with far more human activity) into purported consistency with that same standard—demonstrates a NEPA process designed to cook the books so that only one alternative is a lawful, Plan-consistent outcome.

Accordingly, we respectfully request that the Forest Service address the issue of predetermination in a supplemental Draft EIS (or, at minimum, in its Final EIS), explaining in detail the history leading to the NEPA process, any commitments made by the Forest Service prior to initiating the EIS process regarding the specific alternatives the agency would consider in its Draft EIS, Forest Plan consistency among alternatives, and any financial commitments made to date by the Forest Service that are contingent on ultimately issuing the SUP and conferring management authority to CPW for Sweetwater Lake. In addition, we expect that in light of the above discussion, the Forest Service will make a more serious attempt to treat all alternatives objectively—and not just the Proposed Action—by considering readily available measures that could bring each alternative into Forest Plan consistency, as required by NFMA. Unless and until the Forest Service addresses this threshold issue, the EIS process appears to be nothing more than a paperwork exercise intended to rationalize and justify a decision already made long ago by the Forest Service, the Governor’s Office, and CPW.

II. THE PROPOSED ACTION DOES NOT MEET SUP APPLICATION OR ISSUANCE REQUIREMENTS SET FORTH IN THE FOREST SERVICE’S REGULATIONS THAT IMPLEMENT NFMA

Highlighting the peculiar and seemingly predetermined nature of this permitting process is the fact that CPW recently responded to a request under the Colorado Open Records Act for all records related to CPW’s application or proposal for an SUP from the Forest Service to manage Sweetwater Lake, by confirming that CPW has never submitted any such application. This makes no sense. The Forest Service’s regulations clearly require a formal proposal or application before the agency can issue an SUP to occupy Forest Service lands. *See* 36 C.F.R. § 251.54. Yet, here, CPW’s responses to public records requests make clear that no such application or proposal has been made.

Paradoxically, the Draft EIS ignores this important issue entirely. It fails to explain when CPW applied for an SUP, identify the contents of any application, or clarify any terms or conditions to which CPW committed in that application in the event the Forest Service ultimately grants an SUP for Sweetwater Lake. Furthermore, CPW has not publicly accepted the Proposed Action. Rather, CPW has repeatedly stated that it is merely a commenting agency. In turn, CPW has delayed preparing and/or publishing resource management plans until after the Forest Service issues its Record of Decision. This delay has created a critical data gap, depriving the public of the opportunity during the EIS process to comment on vital management plans, financial authorizations, and public safety measures that are essential to a safe, sustainable approach to managing Sweetwater Lake.

In particular, although it analyzes a proposal to issue an SUP, the Draft EIS fails to satisfy the following requirements that apply to every SUP and its respective SUP application, as set forth in the Forest Service's own regulations that implement NFMA:

- 36 C.F.R. § 251.54(d)(2)(ii)(A) (State Authorization Under Which the Proposal is Made): No proof of state authorization has been disclosed in the Draft EIS or elsewhere. If State authorization has not been obtained, the Draft EIS is premature.
- 36 C.F.R. § 251.54(d)(3) (Technical and Financial Capability): CPW has provided no evidence of financial authorization or assurance to construct, maintain, or terminate the project.
- 36 C.F.R. § 251.54(d)(4), (e)(1)(iii) (Project Description & Public Safety): The Draft EIS lacks sufficient detail to evaluate public safety compliance. *See infra* at 6-8.
- 36 C.F.R. § 251.54(e)(1)(ii) (Forest Plan Consistency): The Proposed Action fails to meet several governing Forest Standards as described herein. *See infra* at 11-19.

In addition to not meeting the applicable SUP requirements, the Proposed Action appears to contravene CPW's own requirements set forth in C.R.S. § 33-10-106(1)(c) for site suitability. The record must address the site-specific issues raised here—single-route access and evacuation, sustainable capacity, emergency response, mudslide/rockslide risk, enforceable wildlife closures, and resource compatibility—before the Forest Service relies on CPW as the SUP applicant.

III. THE DRAFT EIS SUFFERS FROM MAJOR OMISSIONS, UNDERANALYSIS, AND MISLEADING EVALUATION THAT UNDERMINES THE PUBLIC'S ABILITY TO FULLY UNDERSTAND AND COMMENT UPON THE PROPOSED ACTION, ALTERNATIVES, AND IMPACTS

The Forest Service ignored numerous important topics, failed to adequately analyze several key issues, and misleadingly presented other issues in the Draft EIS. Below, we

summarize what we view as the most serious defects in the Draft EIS without providing an exhaustive list of every concern.³

1. Reference Materials

The Forest Service did not provide Draft EIS reference materials to the public—including, for example, CPW’s Sweetwater Lake Property Resource Stewardship Plan (2024)—until August 4, 2026, despite the comment period opening on June 26, 2026. There are still multiple reference documents requested that have not been provided for review by the time of this comment letter. These reference materials are crucially important to a full understanding of the Proposed Action, as well as the Forest Service’s broader analysis contained in the Draft EIS.

Accordingly, while the public was afforded a 90-day comment period *on the Draft EIS*, many important, underlying materials were available only for roughly half of that time period (during peak work season for this agricultural based community and at a time when many people travel for summer vacations), which is in our view unacceptable given the Forest Service’s stated commitment to provide 90 days to review and digest this factually complex Draft EIS, technical reports, and (belatedly provided) reference materials. We believe that this fact warrants an extension of the Draft EIS review and comment period, so that we and other members of the public have sufficient time to carefully review and understand the Forest Service’s proposal and related analysis.

2. Public safety

Public safety—including ingress/egress concerns and emergency response concerns due to the fact that Sweetwater Lake may only be accessed by Sweetwater Road (CR 40/CR 150)—is the ***most important issue*** for my clients. This is because the proposed SUP area is at the dead-end of an 11.7-mile, narrow, winding, rural road in a box canyon, bordered by a series of gulches, subject to regular occurrences of mudslides and boulders blocking the only evacuation route for lake visitors, local residents, and staff. In addition, Sweetwater Road sits within a high wildfire risk area, and wildfires in both 2025 and 2020 required the evacuation of all residents and lake visitors from the Sweetwater Lake area, all of whom had to use Sweetwater Road as the only egress option. As a demonstration of the precarious egress situation, during the Derby wildfire firefighters had to cease fire suppression efforts and evacuate due to forecasted rain and the high potential of being trapped due to the single egress (Sweetwater Road) being prone to mudslides and rockslides. Recent newsworthy mudslides carrying boulders blocking Sweetwater Road in multiple locations occurred on August 30, 2026, trapping residents and lake visitors alike, followed by a lightning-caused wildfire only a half mile from Sweetwater Lake on September 2, 2026.

³ Many of the issues raised herein were identified to the agency in significant detail in scoping comments; yet, the Forest Service appears to have simply ignored them without any explanation. See, e.g., *Historical Use Levels, Summer Occupancy and Protection of Wildlife Habitats* (Aug. 1, 2024), <https://cara.fs2c.usda.gov/Public/Letter/4580750?project=284162>.

Despite the obvious and serious concerns with public safety of greatly expanding the number of human visitors (including visitors with large vehicles, such as RVs and trucks with trailers) as the Forest Service proposes in the Proposed Alternative (and Alternative 4), the Draft EIS hardly addresses this highly significant issue. Indeed, in the Draft EIS, the Forest Service states: “[f]or a related analysis of public transportation, emergency medical services, and ingress/egress for natural disaster emergencies (e.g., wildfire) near the Project area, refer to **Section 3.8** of this EIS.” Draft EIS at 170. But Section 3.8 of the DEIS says *nothing* about public safety, let alone ingress/egress issues, emergency evacuation, response plans in the event of mudslides or rockslides, or how these issues will be significantly exacerbated by allowing RVs and trucks with trailers to access Sweetwater Lake under the Proposed Action. Rather, Section 3.8 of the Draft EIS focuses exclusively on *socioeconomics* and how the Proposed Action and alternatives will affect tax revenue and other economic factors in Garfield County and beyond. See Draft EIS at 144-59. This is not a mere typo; the Draft EIS lacks this analysis entirely.

Likewise, in the Traffic, Parking, and Roads Technical Report supporting the Draft EIS, the Forest Service states: “[f]or related analysis of public transportation, emergency medical services, and ingress/egress for natural disaster emergencies (e.g., wildfire) near the Project Area, refer to the *Socioeconomics Technical Report* for the Project.” Draft EIS, *Traffic, Parking, and Roads Technical Report* at 4. But as with the DEIS, the source material to which the Forest Service refers the public does *not* contain the promised discussion. Rather, the Socioeconomics Technical Report, as its name implies, looks at socioeconomic impacts resulting from the Proposed Action and various alternatives, similar to Section 3.8 of the Draft EIS. Nowhere in the Socioeconomics Technical Report does the report even use the words “ingress” or “egress,” and “public safety” is mentioned once in a generic list. See Draft EIS, *Socioeconomics Technical Report* at 39. Although it lacks any analysis other than economic impacts (via increased fees and employment), the Socioeconomics Technical Report does confirm—as is well-established—that there are “recurring wildfire and flash flood hazards, particularly along canyon corridors,” *id.* at 41; “demands for . . . emergency services would increase commensurate with the increase in visitors,” *id.* at 49; and “new visitation to Sweetwater Lake has the potential to increase emergency and fire-related incidents and create additional demand on response teams,” *id.* at 50. Thus, while the Socioeconomics Technical Report purports to consider the *socioeconomic* toll on emergency responders in Garfield County and Eagle County, *id.* at 57-58, nowhere in the Draft EIS or its technical reports is there any analysis of (let alone a hard look at) the adverse public safety effects (including to nearby residents who must also use Sweetwater Road for egress) of authorizing significantly more visitors to Sweetwater Lake under the Proposed Action (and Alternative 4), including with RVs and trucks with trailers, where the only egress in the event of wildfires, mudslides, rockslides, or other emergencies is the winding, perilous Sweetwater Road.

The failure to address this major public safety concern, cited as a “critical” component of the project’s analysis by CPW in its own 2024 scoping comment, is extremely troubling to my clients and the public at large. Evacuations, of which there have been multiple in recent years, will be substantially exacerbated by the increased congestion and limited maneuverability due to potentially hundreds of park visitor evacuees on the single egress road. The Traffic, Parking, and Roads Technical Report supporting the Draft EIS indicates that Sweetwater Road “can accommodate trailers or motorhomes up to 30 feet in length,” Draft EIS, *Traffic, Parking, and Roads Technical Report* at 31. Yet, the Proposed Action allows 36-foot motorhomes without

identifying completed, engineered road improvements showing they can safely navigate Sweetwater Road without entering the opposing lane. Previous evacuations proved complex and time-consuming due to the agricultural base of the community, which requires large-scale evacuations of horses and cattle. Adding more people and large vehicles to evacuate may well place lives in danger, whether local residents, lake visitors, or staff. Accordingly, a proper, lawful natural disaster and public safety emergency ingress/egress analysis is pertinent to determine a safe park capacity as it relates to the 11.7-mile, single egress, Sweetwater Road corridor, in order to avoid risk to local residents and lake visitors alike.

We hope that the Forest Service's failure to address these paramount public safety issues (outside of socioeconomic impacts) was a sincere mistake. Regardless, either in a supplemental Draft EIS (preferably) or at least in a Final EIS, the Forest Service must seriously examine this issue to determine a safe lake visitor capacity level, reconsider allowable vehicle lengths, and adopt risk mitigation measures sufficient to protect the lives and safety of residents, lake visitors, and staff. Absent that analysis, the Forest Service's EIS process flouts NEPA and cannot serve as a lawful predicate for a final decision on whether to adopt the Proposed Action.⁴

3. Baseline Recreational Data

The Forest Service's failure to accurately account for the existing baseline of recreational visitorship and use of Sweetwater Lake permeates all aspects of the Draft EIS. This error significantly affects the adequacy of the Draft EIS, both because it underestimates the increase in visitorship that will result from the Proposed Action or alternatives to it (and therefore calls into question the sustainability of the capacity limits that would be part of the Proposed Action), and because it substantially understates the effects to wildlife and other natural resources based on a misunderstanding of the proportional increase from current recreational visitorship levels and the higher levels of recreational visitorship that occur under the Proposed Action (and alternatives to it). There are several distinct errors that led the Forest Service to greatly underestimate the proportional increase in recreational visitorship from baseline, existing levels.

First, the Draft EIS suggests that there is no reliable data regarding historical use of Sweetwater Lake by recreational visitors. *See* Draft EIS at 106. But that is not correct. Forest Service campground occupancy data available upon request, and the Colorado Department of Public Health water classification for the outfitter operation, are readily available data sets that document historical use levels. In reality, visitorship averaged about 30 people per day up to 2018, with recreational visitors primarily using the existing Forest Service campground and an

⁴ In our view, a lawful public safety analysis here would include, at minimum: (1) an independent route analysis (which models residents, visitors, employees, large vehicles, and incoming responders under realistic fire and debris-flow scenarios); (2) the establishment of a reliable secondary egress (i.e., a feasible secondary egress route in the event of blockage of Sweetwater Road during an evacuation event); (3) an examination of clearance-time results (which evaluates assumptions, vehicle counts, bottlenecks, blockage scenarios, and the time required to clear the Sweetwater Road corridor); and (4) the ultimate adoption of binding limits and conditions in the Record of Decision for occupancy, vehicle type and amount, and closure and emergency conditions that would trigger action.

on-site outfitter with restaurant and cabin rentals. Since 2019, when the on-site outfitter reduced its operations (i.e., closed its restaurant, then cabin rentals phased out through 2020), recreational visitorship dropped noticeably and has remained consistent at those lower levels from 2019 to present. Because of the very low level of human presence and activity since 2019, wildlife and other resources have grown accustomed to solitude and very low levels of human disturbance. Rather than recognizing this obvious fact and using site-specific metrics based on Sweetwater Lake recreational visitorship, the Draft EIS uses an “assumption of full capacity” and acknowledges that this “overestimates actual historic visitation” in a manner that is not reflective of historical averages or the situation from 2019 to present. *See, e.g., id.* at 106. In this way, the Forest Service has failed to identify a lawful, accurate baseline recreational visitorship level, which is essential to inform the agency and the public as to permissible recreational capacity limits that will not overtax wildlife and other resources that will be affected by the Proposed Action (or any action alternative).

Second, the Draft EIS’s analysis of existing daily traffic is also highly misleading, which taints the Proposed Action’s analysis regarding the level of impact and reasonable capacity limits on recreational visitors to Sweetwater Lake. In the Traffic, Parking, and Roads Technical Report, the Forest Service measured average daily traffic in the proposed SUP area along Sweetwater Road for approximately one year (September 2024 to August 2025, excluding May 2025 due to equipment problems). *See Draft EIS, Traffic, Parking, and Roads Technical Report* at 26-27. The report then inexplicably applied multipliers to seasonal traffic averages derived from Interstate 70 (a major artery that serves a very different purpose than Sweetwater Road), rather than applying multipliers based on site-specific data relevant to the Sweetwater Road corridor. *See id.* at 27 n.18 (acknowledging the use of Interstate 70 data for the multipliers). Not only did the generic multiplier overestimate baseline recreational visitorship to Sweetwater Lake, but two other factors did as well: (1) the August – September 2025 data artificially inflates actual, baseline traffic numbers because the Derby Wildfire happened these months and the SUP area served as the primary meeting and staging area for firefighters and emergency responders, and each of their vehicle trips was counted by passive traffic counters, *see id.* at 26 n.17; and (2) the traffic count data fails to account for *non*-recreational use of Sweetwater Road—which traffic counters cannot differentiate from recreational use—and which includes daily, year-round use by semi-trucks, snowplows, delivery vehicles (e.g., UPS or FedEx trucks), and trucks with agricultural or heavy equipment, given that the parking lot at Sweetwater Lake is the *only* large-vehicle turnaround location on the entire 11.7-mile Sweetwater Road. All of these factors contributed to a heavily skewed and overinflated assumption of baseline recreational visitorship that does not comport with the reality on the ground in terms of *recreational* visitors, especially since 2019.⁵

Accordingly, either in a supplemental Draft EIS or at least in the Final EIS, the Forest Service must revisit these problems and identify an accurate, evidence-based, site-specific baseline of recreational visitorship to Sweetwater Lake, and use that updated baseline to analyze

⁵ The passive traffic counters, even when placed within the project area, also fail to distinguish between recreational visitors and Forest Service or CPW staff or consultants that visited the area for administrative, maintenance, or other purposes, including to gather information necessary for the EIS process. This, too, overestimates baseline recreational use.

permissible capacity levels for recreational visitors and the impacts resulting from each alternative in light of the proportional increase in visitorship allowed under each option.

4. Flat Tops Wilderness

The Forest Service similarly underanalyzes the impact of the Proposed Action (and Alternative 4) to the adjacent Flat Tops Wilderness Area, the values that led to its designation as a Wilderness Area, and wildlife and other sensitive resources that are found in the Flat Tops Wilderness Area.

The Draft EIS acknowledges, as it must, that the Proposed Action (and Alternative 4) will result in indirect impacts to the Flat Tops Wilderness Area. *See, e.g.*, Draft EIS at 203. In fact, a specific component of the Proposed Action aims to “provide designated access to the Flat Tops Wilderness for both equestrians and hikers/backpackers.” *Id.* at ES-3; *see also id.* at 6. As a result, the Forest Service states that “[v]isitation to the Flat Tops Wilderness would likely increase” under the Proposed Action (and Alternative 4), and admits that under those alternatives the “[w]ilderness characteristic ‘has outstanding opportunities for solitude or a primitive and unconfined type of recreation’ *may be degraded* by this increase in visitation.” *Id.* at 64 (emphasis added). Conversely, Alternatives 1 and 3 do *not* increase access to the Flat Tops Wilderness, and the Draft EIS notes that “existing patterns of wilderness use” would continue under Alternative 1 and therefore “Alternative 1 is not anticipated to impact the untrammeled, natural, or undeveloped characteristics of the Flat Tops Wilderness.” *Id.* at 203; *see also id.* at 205 (same for Alternative 3).

Despite recognizing that construction plans under the Proposed Action and Alternative 4 will (and are intended to) facilitate increased access to the Flat Tops Wilderness, the Forest Service improperly and inexplicably defers its cumulative effects analysis and management obligations to a future NEPA process, stating: “[s]hould management actions become necessary to control visitation to the Flat Tops Wilderness to meet Forest Plan standards, these actions would be considered in a separate, future NEPA analysis.” *Id.* at 206. Given the foreseeable effects to the Flat Tops Wilderness that will be driven by the Proposed Action’s large increase in recreational visitation and improvements intended to facilitate access to the Flat Tops Wilderness, it is impermissible to defer the Forest Service’s NEPA duties to some future date.

At minimum, either in a supplemental Draft EIS or at least in the final EIS, the Forest Service must objectively analyze the additive impacts of the Proposed Action (and Alternative 4) to the wilderness characteristics, wildlife, and other resources in the Flat Tops Wilderness; explain what strategies and measures will be implemented once certain levels of resource damage or wilderness value impairment occur; and identify measurable criteria and metrics that will determine when the Forest Service must implement those strategies and measures to minimize and mitigate further impacts to the unique resources of the Flat Tops Wilderness.

5. Wildlife

The Forest Service’s analysis of wildlife in the Draft EIS omits myriad important considerations, underanalyzes multiple issues, and fails to sufficiently explain the rationales the

agency presents for deviating from binding Forest Plan standards. Accordingly, unless these issues are properly addressed in a supplemental Draft EIS or at least in the agency's Final EIS, the Forest Service will be in violation of NFMA, NEPA, and the APA.

a. Peregrine Falcons

The Draft EIS correctly acknowledges that peregrine falcons have done remarkably well at Sweetwater Lake in recent years when recreational visitorship has been at very low levels:

Peregrine falcons are confirmed breeders at Sweetwater Lake. The analysis area's cliffs support excellent falcon nesting habitat, and peregrines have fledged young every year since WRNF monitoring began in 2022. Buffers and restrictions established by the WRNF and the USFWS currently limit human activity near active nests.

Draft EIS at 209; *see also* Draft EIS, *Wildlife Technical Report* at 45-46. Yet, the Forest Service now proposes to significantly expand recreational access through the Proposed Action (or even more so under Alternative 4), but in the process the agency has failed to seriously consider the impacts of substantially increased visitorship to active peregrine falcon nests and important falcon habitat surrounding Sweetwater Lake.

i. General Wildlife Standard 8

At the outset, we highlight the Draft EIS's complete failure to identify—let alone assess the Proposed Action's consistency with—binding General Wildlife Standard 8 in the Forest Plan, which requires the Forest Service to “[d]iscourage land use practices and development that adversely alter the character of peregrine falcon hunting habitat or prey base within ten (10) miles of the nest site and the immediate habitats within one (1) mile of the nesting cliff.” Forest Plan at 2-16. The Draft EIS is completely silent as to General Wildlife Standard 8, even though it is plainly applicable to the Proposed Action that will introduce new construction and recreational activities that will unavoidably alter the character of peregrine falcon hunting habitat and its prey base within ten miles of the active nest site, as well as the immediate habitat within one mile of the cliff where the nest is located. In fact, the Draft EIS acknowledges that the use of Sweetwater Lake by watercraft “may decrease waterfowl abundance and thus peregrine prey availability.” Draft EIS at 214. It is reasonable to assume that the massive increase in recreational users of Sweetwater Lake and the surrounding area will also result in decreased waterfowl abundance and peregrine prey availability. Yet, the Draft EIS is devoid of any discussion of how the Proposed Action or alternatives will (or even could) achieve consistency with General Wildlife Standard 8.

The Wildlife Technical Report accompanying the Draft EIS includes General Wildlife Standard 8 in a list of all Forest-wide wildlife standards, *see* Draft EIS, *Wildlife Technical Report* at 18, but nowhere in that document (or elsewhere in the Draft EIS or any technical report) is there any discussion about the consistency of the Proposed Action or alternatives with General Wildlife Standard 8, let alone any consideration of measures that would allow the Proposed Action or other alternatives to become consistent with General Wildlife Standard 8. Given the binding nature of this standard, the Forest Service's failure to address this issue is a flagrant

violation of NFMA (and also a NEPA violation), which must be remedied in a supplemental Draft EIS or at least in the Final EIS. *See, e.g., All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1113-14 (9th Cir. 2018) (noting that each forest plan must include “standards,” which are “binding limitations typically designed to prevent degradation of current resource conditions”); *Native Ecosystem Council v. U.S. Forest Serv.*, 418 F.3d 953, 963 (9th Cir. 2005) (explaining that the public must “be able to reasonably ascertain from the record” that the Proposed Action “is in compliance with the [Forest] Plan standard[s]”).

ii. General Wildlife Standard 9

In contrast to General Wildlife Standard 8, the Draft EIS identifies General Wildlife Standard 9 as applicable to the peregrine falcon eyrie at Sweetwater Lake. *See* Draft EIS at 67, 214. But the Forest Service’s assessment and ultimate resolution of consistency with General Wildlife Standard 9 is patently arbitrary, as explained below.

In the Forest Plan, General Wildlife Standard 9 requires that: “[h]uman activities will be restricted within one-half (½) mile of occupied peregrine falcon areas between March 15 and July 31 for nest sites, or July 1 to September 15 for hack sites”; “[p]rotection distance may vary depending on local topography, potential for disturbance, and location of important habitat components.” Forest Plan at 2-16. Hence, unless there is a compelling site-specific reason, the Forest Service must implement a seasonal, ½-mile restriction on all human activity for falcon nest sites between March 15 and July 31.⁶

Rather than abide by this binding requirement, the Forest Service deemed the Proposed Action and every alternative analyzed in detail in the Draft EIS to be *inconsistent* with General Wildlife Standard 9. *See* Draft EIS at 67. Instead of formulating alternatives that would be consistent with General Wildlife Standard 9—i.e., alternatives that provide increased recreational use without encroaching on a ½-mile seasonal restriction buffer around the peregrine falcon eyrie—the Forest Service instead manufactured several rationales as to why a ½-mile buffer is not necessary for this particular nest, and why a ¼-mile buffer from the cliff bands used by peregrine falcons would instead be sufficient. *See* Draft EIS at 214.

First, the Forest Service asserts that two new recreational zones under the Proposed Action would “fall near the periphery of the half-mile radius of the cliff bands.” *Id.* But whether

⁶ CPW, which will manage the SUP area if the Forest Service approves the Proposed Action (or Alternative 4), also has promulgated its own recommended buffers and seasonal restrictions for Colorado Raptors. *See* CPW, *Recommended Buffers and Seasonal Restrictions for Colorado Raptors* (2020), <https://cpw.widencollective.com/assets/share/asset/fqmg4ds76b>. As with General Wildlife Standard 9 in the Forest Plan, CPW recommends no surface occupancy within a 1/2-mile radius of an active nest from March 15 to July 31. *See id.* CPW also explains that “[d]ue to propensity to relocate nest sites, sometimes up to ½ mile (2640 feet, 800 meters) along cliff faces, it is more appropriate to designate ‘Nesting Areas’ that encompass the cliff system and a ½ mile (2640 feet, 800 meters) buffer around the cliff complex.” *Id.* Although CPW applies these buffers at other state parks that CPW manages, CPW and the Forest Service evidently do not plan to abide by these requirements and recommendations for Sweetwater Lake.

the human activity falls in the periphery of a restriction zone is irrelevant; the question is whether increased recreational visitation and activities in those areas can be expected to disturb falcons, which depends upon the line of sight of those areas from the falcon nesting area. And as to that question, there is no evidence or information provided that explains why a massive influx in recreational visitors within ½-mile of the nest will not disturb falcons.

Second, the Forest Service asserts that “[l]ocal topographic characteristics that would decrease the peregrines’ perceived disturbance resulting from these features include the lake itself, the densely vegetated wetland area upstream of the lake, and the valley between the eyrie and the campgrounds,” and “[t]hese features may be suitable to prevent the occupation and use of the campgrounds from disturbing the peregrines.” *Id.* Not only does the Draft EIS provide zero photographic or other evidence substantiating these topographic features or explaining *why* these features “may” be suitable to avoid falcon disturbance, but the Draft EIS also fails to mention the indisputable fact that all of the new, proposed recreation zones will be in direct line of sight from the peregrine falcon eyrie (including the Sweetwater Lodge, North Day Use, South Day Use, Administrative, Cabin, Interpretive/Education, Equestrian, and Campground zones, in addition to new fishing piers, North Overlook, and an associated trail). Some of these zones and facilities—which are never mentioned in the Forest Service’s justification for ignoring the ½-mile falcon nest buffer—start as close as a mere *800 feet* from the nest cliff. Yet, the Draft EIS merely refers to two other recreation zones—the Equestrian and Campground zones—in providing its justification for a buffer smaller than ½-mile and ignores the rest of these zones and activities. This is not a reasoned justification.⁷

Accordingly, unless the Forest Service can produce photographic or other evidence substantiating its rationale that *none* of the Proposed Action’s zones or activities will be within direct line of sight of the falcon nest, or otherwise explain coherently how this large influx of recreational visitors inside a ½-mile radius of the nest will not disturb falcons or their prey base, the Proposed Action cannot be made consistent with General Wildlife Standard 9 and the Forest Service must therefore select a different alternative that abides by this binding standard (as well as CPW’s peregrine falcon buffer/restriction recommendation), in order to avoid violating NFMA and NEPA.

In addition, as a more general matter, we have serious concerns about the Forest Service’s proposed “mitigation,” in which the agency proposes that all construction under the Proposed Action—which we understand may occur in up to ten different years given the scope of the Proposed Action—“begin either prior to the onset of the nesting season or after the young birds have fledged,” in order to avoid “nestling mortality.” Draft EIS at 214; *see also id.* at A-18 (imposing mitigation measure RPM-WLD-12: “To reduce the risk of nest abandonment and nestling mortality of the known peregrine falcon eyrie, the Forest Service (or CPW under Alternatives 2 and 4) shall avoid initiating disturbance within a half mile of the eyrie during the nesting season (March 15 or after July 31), and instead shall initiate construction either prior to or after this period.”).

⁷ Members of Sweetwater Community Club have recently conducted field visits of the SUP area. All of the Proposed Action’s new zones are in direct line of sight with the falcon eyrie.

There are several problems with this proposed mitigation. First, there is no disclosure or analysis in the Draft EIS of how many years the Forest Service anticipates active construction within ½-mile of the eyrie, which with multiple years of construction (and potential nest failure and/or abandonment) will cause significant cumulative effects to peregrine falcons and their nesting success. Second, while initiating construction after the young birds have fledged (i.e., after July 31) both satisfies General Wildlife Standard 9 and reduces the risk of nestling mortality, it is unclear how the alternative mitigation option either satisfies Standard 9 or reduces the risk of nest abandonment. If, in fact, construction begins “prior to the onset of the nesting season” (i.e., before March 15) but then *continues into the nesting season*—which appears to be allowed by RPM-WLD-12—this mitigation option would still threaten nest abandonment in each year of construction because it would result in the same “noise and commotion” that can “cause peregrines to avoid nesting [at Sweetwater Lake] during the year of construction.” *Id.* at 214. In short, Standard 9 is not concerned with when human activities *initiate* (which is the focus on RMP-WLD-12); it is clearly focused on avoiding *all* human activity within ½-mile of the eyrie between March 15 and July 31, and there is no exception for loud, disturbing activities that started prior to March 15. As a result, the currently proposed mitigation does not satisfy General Wildlife Standard 9 and is thus inconsistent with the Forest Plan.

Accordingly, we urge the Forest Service, in a supplemental Draft EIS or at least in its Final EIS, to fully address the impacts to peregrine falcons, account for the anticipated number of years of construction that would occur within ½-mile of the eyrie, and require mitigation that not only restricts the initiation date for construction within the ½-mile buffer but rather restricts *all* construction and related human activity within ½-mile of the eyrie between March 15 and July 31 in each year of construction.

b. Bald Eagles

As with peregrine falcons, the Forest Service’s Draft EIS glosses over foreseeable impacts to federally protected bald eagles and proposes to act in a manner adverse to bald eagles. In the Forest Plan, the agency set forth two binding standards for bald eagles:

1. If a winter roost or nest site is discovered, write a management plan to ensure that the necessary habitat components are maintained.
2. Human activities should be prohibited within 250 yards of bald eagle winter roosting areas between November 15 and March 1. Human activities should be prohibited within 400 yards of an active nest between February 1 and August 15.

Forest Plan at 2-24. By definition, these standards require the Forest Service to identify the protected resource (i.e., eagles), identify and evaluate the necessary habitat components eagles need in the relevant area (including winter roosts), and impose seasonal spatial restrictions to avoid impairing nesting, roosting, feeding, or sheltering behavior. Here, however, the Forest Service has taken a very different approach than the one required by the

agency's Forest Plan standards (or the buffers and restrictions set forth in CPW's raptor recommendations).⁸

As a threshold matter, while the Forest Service stated that an eagle management plan would be prepared as part of the Proposed Action, *see* Draft EIS at 67, at this time there is no management plan provided to the public, let alone any site-specific studies (including on the tolerance of resident bald eagles to tolerate human disturbance), winter roost evaluations, or other data regarding eagles. As a result, no public evidence demonstrates where winter roosts are located, what distance of buffer is needed around those roosts, and what other mitigation measures might be necessary to come into compliance with the Forest Plan. That alone is highly troubling and runs afoul of the requirements of Bald Eagle Standard 1.

Moreover, although the Forest Service states in the Draft EIS that by imposing a 400-yard buffer *and* “[w]ith implementation of proposed mitigation” the Proposed Action would become consistent with Bald Eagle Standard 2, *see* Draft EIS at 67, that is incorrect for two reasons. First, nowhere does the Forest Service explain whether *these* bald eagles that nest at Sweetwater Lake can withstand substantially increased human activity only 400 yards from active nests, as opposed to a larger buffer (such as the ½-mile buffer that CPW recommends for active eagle nests throughout Colorado).

Second, even if the Forest Service could demonstrate that a 400-yard buffer is appropriate for eagles at Sweetwater Lake, the Proposed Action violates Bald Eagle Standard 2 by *not* applying that same buffer to the Cross Creek Trail (Trail #1855), which falls within 400 yards of an active nest and has two unsanctioned overlooks well within 400 yards of an active nest. Rather than impose the 400-yard buffer with respect to the Cross Creek Trail—i.e., the buffer the Forest Service is applying to all other activities near eagle nests—the Forest Service instead proposed an *adaptive* (or reactive) management approach whereby activities may take place on that trail, and only *later* would measures be considered to reduce disturbance once those activities harm and impair the behavior of Sweetwater Lake's eagles. *See* Draft EIS at A-17. In fact, the Forest Service's proposed mitigation measure states that the Forest Service and CPW would “[a]dd a seasonal timing

⁸ CPW's bald eagle buffer recommendations are as follows:

No Surface Occupancy (NSO) beyond that which historically occurred, within ¼ mile (1320 feet, 400 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nest sites from December 1 through July 31. The majority of bald eagle chicks in Colorado have fledged by July 31; however, for late-nesting or potential re-nesting bald eagles, CPW recommends seasonal restrictions beyond July 31 if chicks are still present in the nest. CPW's recommended buffer is more extensive than the National Bald Eagle Management Guidelines (USFWS 2007) due to the generally open habitat used by Colorado's nesting bald eagles, [which is reflective of conditions at Sweetwater Lake].

restriction(s) on Trail #1855” only “if there is evidence of bald eagles changing winter roosting or nesting behavior in response to human disturbance.” *Id.* In other words, not only does the non-use of a 400-yard buffer on this trail flout Bald Eagle Standard 2, but it also means that no mitigation would be implemented until after “take” of eagles from human disturbance has already occurred in violation of the Bald and Golden Eagle Protection Act, *see* 16 U.S.C. § 668, and the Migratory Bird Treaty Act, 16 U.S.C. § 703. This type of reactive, adaptive mitigation only *after* eagles are harmed is not consistent with the letter or spirit of Bald Eagle Standard 2 (or federal laws that protect bald eagles).⁹

Moreover, the existing monitoring of the Sweetwater Lake eagles and their tolerance to human activity and disturbance cannot establish a lawful or meaningful baseline for anticipating effects to eagles with a massive influx of new recreational visitors, including within roughly 400 yards from active nests. Our understanding is that the Forest Service is relying upon monitoring reports from Bald Eagle Watch (“BEW”) trained volunteers who monitor specific eagle nests. Although our members have formally requested that the Forest Service provide any other bald eagle monitoring data that may have been used as part of the agency’s analysis of bald eagle impacts, the Forest Service has not provided any responsive records at this time. The BEW monitoring is a valuable tool for tracking statewide populations, however it was found to be lacking in the detail and frequency to answer the central questions of this NEPA process—i.e., how many people on average use the nest area now, how the resident bald eagles respond, and what level of future use (and at what distance) would likely cause disturbance? The BEW monitoring forms do not ask volunteers to document the number of recreationists, precise activity type, exact location, duration of the activity, noise levels (measured via a decibel reader), dog presence, boating/shoreline use, or line-of-sight conditions. Many reports only characterize human activity under a generic category “Agriculture or ranch operation,” yet the observation documented on the report occurred when the ranch was closed for the season with no specific indication if humans other than the observer were present.

BEW monitoring also falls short in additional respects. For example, the monitoring frequency and duration are far too limited to establish a reliable, season-by-season recreation baseline, let alone a reliable disturbance threshold for the Sweetwater Lake eagles. Moreover, our understanding is that very little BEW monitoring occurred on weekends, with

⁹ Similar to Forest Service’s discussion of consistency with the Forest Plan’s peregrine falcon standards set forth in our predetermination comments above, *see supra* at 2-4, the Forest Service barely attempts to consider readily available options to bring Alternatives 1 and 3 into consistency with Bald Eagle Standards 1 and 2 (while at the same time the agency goes out of its way to propose *after-the-fact* mitigation to purportedly bring the Proposed Action into consistency with those standards). While it is true that CPW would not have on-site management and enforcement under Alternatives 1 and 3, there are readily available options such as additional signage, remote cameras, and other tools routinely used by federal, state, and local agencies when protecting and managing wildlife on public lands, which could be implemented here to significantly reduce or eliminate human disturbance to eagles. At best, the failure to consider such options is perplexing; at worst, the Forest Service’s actions appear intended to downplay the benefits of Alternatives 1 and 3 to support a preordained outcome.

only two weekend days representing peak season, once in 2022 and once in 2023, which is when recreation use would be the highest. Thus, whatever limited value the BEW monitoring might provide the Forest Service, it is nowhere near sufficient to provide data-driven evidence of current impacts to bald eagles and the foreseeable increase in effects to those same eagles once the Forest Service greatly increases recreational use and human disturbance only 400 yards from active eagle nests.¹⁰

The Forest Service's attempt to downplay the success of the Sweetwater Lake eagles is also misleading. The agency asserts that "[n]esting success" has only been "intermittently successful," due to purported nest failures in 2023 and 2025. *See* Draft EIS, *Wildlife Technical Report* at 44. But it is our understanding that the 2023 nest failure was based on a single visual observation by a BEW volunteer in May 2023, where that volunteer noted the status as "unoccupied/undetermined" after a short, 45-minute observation period. That is by no means sufficient to determine conclusively that the nest failed for the 2023 season.

Likewise, the 2025 nest failure followed a documented disturbance—an incident about which members of Sweetwater Community Club (and its Sweetwater Lake Working Group), along with numerous bird advocacy and conservation organizations, wrote the Forest Service to express concern and urge follow-up action. Despite this reported, documented instance of eagle take—occurring approximately 225 meters from an active nest during the early breeding period, after which the BEW reports indicate the nest failed after the eagles ceased incubating—the Forest Service declined to take action, and now follows that inaction by failing to adopt sufficient buffers, such as the ½-mile buffer recommended by CPW, to avoid similar disturbance to these eagles in the future given that they are obviously highly sensitive to human activity.

The need for eagle nest buffers larger than 400 yards is also underscored by the fact that the bald eagles at Sweetwater Lake have been disturbed by human activity well outside 400 yards. For example, BEW monitoring data shows that on April 2, 2024, human presence (observer) *600 meters from the nest* disturbed the two adult eagles incubating in the nest. The human activity disturbance was documented as "divebomb/circle overhead." This example—during a time period of no recreational use (i.e., only the observer present), compared to the Proposed Action—reinforces the need for more stringent buffers to avoid disturbing and otherwise taking these eagles, especially with the substantial increase in recreational use proposed here.

In sum, at minimum, the Forest Service must ensure that the selected action complies fully with Bald Eagle Standards 1 and 2, including by conducting winter roost surveys, determining an accurate and reliable recreational use and disturbance baseline, preparing an eagle management plan and vetting that plan through the public NEPA process, placing at

¹⁰ As explained above in the recreational baseline section, the Forest Service is wrong that the Proposed Action would only increase recreational activity by "2.5 times the peak day visitor market demand over that which is projected under the No Action Alternative." Draft EIS, *Wildlife Technical Report* at 61. We think that it is closer to a 7-10 times increase, if based on an accurate recreational baseline from 2019 to present. *See supra* at 8-10.

least a 400-yard buffer around the nest for all activities (including Trail #1855), and considering whether a larger buffer (consistent with CPW's recommended buffer for eagles) is necessary given prior disturbances of these eagles at distances greater than 400 yards.

c. Elk and Deer

The Forest Service's Draft EIS is also problematic in its failure to seriously consider the foreseeable, permanent, adverse impacts to elk and deer (and key habitat for those species). We address several of those concerns below.

The Draft EIS acknowledges that "increased use of trails above [Sweetwater] Lake" as part of the Proposed Action (and Alternative 4) will cause "[i]ncreased hiker disturbance to elk & deer." Draft EIS, *Wildlife Technical Report* at 55. In addition, "year-round occupation of the Administrative Zone would add localized impacts to wintering elk and deer that do not currently exist." *Id.* at 60. Furthermore, the Proposed Action will impact "calving/fawning areas from the Campground and Equestrian Zones." *Id.* at 75. And, the Forest Service notes that "new roads, new campground, and a new equestrian facility would be built in severe winter range" under the Proposed Action. Draft EIS at 67. Moreover, the Forest Service explains that "[t]he energy expenditures of deer and elk and other wildlife that result[] from the startle and escape response to human encounters uses valuable energy stores that need to be built up through the summer and fall for survival during winter," and notes that "these increasing summertime energy expenditures may be decreasing survival, fecundity, and natality of elk herds in portions of the WRNF." Draft EIS, *Wildlife Technical Report* at 75.

Despite these serious concerns regarding new impacts to elk and deer from greatly ramping up recreational use, the Forest Service proposes a single, very modest measure as part of the Proposed Action—i.e., "a proposed winter closure on the Keep Ditch Trail from December 1 through April 15 to provide security for elk in mapped winter concentration and severe winter range." Draft EIS at 111; *see also id.* at A-18 ("To provide security for elk in mapped winter concentration and severe winter range, the Forest Service (or CPW under Alternatives 2 and 4) shall institute a winter closure on the Keep Ditch Trail from December 1 through April 15."); Draft EIS, *Wildlife Technical Report* at 77 ("RPM-WLD-17: Institute a winter closure on the Keep Ditch Trail from December 1 through April 15 to provide security for elk in mapped winter concentration and severe winter range."). However, significantly more must be done (or at least *considered and analyzed*) by the Forest Service—via seasonal closures and/or year-round buffers in sensitive areas for elk and deer—to minimize and mitigate the onslaught of impacts to elk and deer that will foreseeably result from a massive increase in recreational visitors and infrastructure under the Proposed Action (and Alternative 4).

Likewise, the Forest Service must consider and address the recommendations from the Forest Service's own biologist (Jen Prusse), which she deemed essential to reduce disturbance of elk and deer. *See* Exhibit 6. As she explained, the Forest Service should "[f]ocus development on already existing disturbed areas south of C.R. 150 to minimize expansion into higher value wildlife habitat." *Id.* at 5. This is because "[a] south-facing slope predominates the landscape on the north side of County Road 150"; "[t]his slope is ideal for wintering ungulates, including mule deer and elk . . . [and] has been mapped by CPW as a mix of elk winter, severe winter, and

winter concentration area.” *Id.* “This same area is valuable spring fawning and calving area for mule deer and elk.” *Id.* As a result, this agency expert recommended that the Forest Service “[m]ove [the] Admin/Employee Area off of the upper bench (currently irrigated meadow) and put it adjacent to where the old barn is or within the area already impacted near the lake, south of C.R. 150” because “[t]his facility, compared to all others proposed to be north of C.R. 150, has the potential to be the most disruptive to ungulates since it will be in use year-round.” *Id.* She also recommended that the agency “[r]elocate the family campground,” “the Equestrian Campground and the Equestrian Day Use/Parking,” and the “[o]utfitter facilities that are proposed to be north of C.R. 150.” *Id.* And, only “[i]f relocation of the Family Campground or Equestrian facilities is not possible, initiate and enforce a closure of these areas from December 1 – June 15.” *Id.* Especially where the Forest Plan contains a standard specifically designed to reduce harm in key wildlife habitats such as this habitat for elk and deer—i.e., General Wildlife Standard 1, *see* Forest Plan at 2-16 (“[s]easonal restrictions will be applied to reduce disturbance in key wildlife habitats”)—it is patently arbitrary for the Forest Service to ignore the possibility of such restrictions north of C.R. 150, given their importance to elk and deer, despite comments from the agency’s own biologist on the necessity of such measures.

In sum, we are very concerned about the amount of planned infrastructure (and associated human activity using that new infrastructure) that will permanently eliminate high-quality elk and deer habitat, and the Forest Service’s failure to consider alternate locations for this infrastructure south of Sweetwater Road or to institute seasonal restrictions prohibiting the use of these facilities from December 1 to June 15. Because the loss of these key habitat areas for elk and deer under the Proposed Action would be permanent and significant, the proposal as written both violates General Wildlife Standard 1 and constitutes an irretrievable loss of winter range and calving habitat functionality for the entire lifespan of the SUP (and likely longer given the likelihood of renewal at the end of the permit term). We urge the Forest Service to more candidly address this issue in a supplemental Draft EIS or at least in the agency’s Final EIS.

6. Ecosystem Health

Also overlooked in the Draft EIS is the Forest Plan’s paramount aim—i.e., Forest Plan Goal 1—to “[p]romote ecosystem health and conservation” of the White River National Forest. Forest Plan at 1-3. Although the Draft EIS pays lip service to the Forest Service’s obligation to ensure consistency with all Forest Plan goals, *see, e.g.*, Draft EIS at 11-12, nowhere does the Forest Service even mention Forest Plan Goal 1, let alone explain how the massive increase in recreational visitors and consequent serious impacts on various resources promotes (rather than detracts from) ecosystem health. We respectfully request that the Forest Service address ecosystem health in a supplemental EIS or at least in its Final EIS, in order to ensure consistency with the Forest Plan and NFMA (as well as NEPA’s disclosure and analysis requirements).

IV. THE ALTERNATIVES ANALYSIS IN THE DRAFT EIS IS SKEWED AND FAILS TO ADDRESS NUMEROUS IMPORTANT ISSUES, BUT A LAWFUL FINAL ALTERNATIVE MUST ADDRESS PUBLIC SAFETY, WILDERNESS, WILDLIFE, ECOSYSTEM HEALTH, AND OTHER IMPORTANT ISSUES

Because of the myriad, serious deficiencies identified above, including both cross-cutting problems with the Draft EIS such as predetermination and lack of accurate baseline recreational visitorship data, as well as issue-specific problems such as impacts to public safety, the Flat Tops Wilderness, wildlife, and ecosystem health, we do not believe that the public can discern from the Draft EIS an objective, comparative analysis of alternatives that has been designed to satisfy the Forest Plan's standards and legitimately balance the purposes and needs identified in the Draft EIS. Accordingly, we respectfully request that the Forest Service, either in a supplemental Draft EIS or at least in its Final EIS, reconsider alternatives and the measures necessary to avoid, minimize, and mitigate impacts to important resources that will be foreseeably affected by the action that the Forest Service ultimately selects.

Because we are hopeful that the Forest Service will conduct a new analysis of alternatives given the problems inherent in the Draft EIS's presentation of alternatives and their respective impacts, we do not take a formal position on which of the alternatives addressed in the Draft EIS is our preferred approach. Nonetheless, we provide some thoughts below to help shape and guide the Forest Service's evolving consideration of alternatives, in light of the agency's statement that the Forest Service will remain open-minded and might ultimately select "a combination of the four alternatives" from the Draft EIS or it may "select components of the action alternatives or develop an entirely new alternative created from components of each." Draft EIS at 11.

First, despite characterizing the Proposed Action (i.e., Alternative 2) as a distinct alternative from Alternative 4 throughout the Draft EIS and contrasting the purportedly greater impacts from Alternative 4 (with no capacity limit) to downplay the impacts of the Proposed Action that will impose a daily recreational capacity limit of 250 visitors, the Forest Service's Visitor Use Management Plan undercuts the central distinction between the two alternatives. There, the Forest Service explains—*for the first time after saying nothing in the Draft EIS itself*—that visitor capacity under the Proposed Action could "be adjusted upwards if trends demonstrate that all objectives are improved and sustainable into the future." Draft EIS at A-8. Not only does this major loophole eliminate the primary distinction between the Proposed Action and Alternative 4—thereby undermining the NEPA process and the duty to explore alternatives in comparative form that materially differ from each other—but it also fails to provide *any* metrics by which the decision to adjust capacity upwards will be governed. If, in fact, the Forest Service wishes to make Alternative 2 and its capacity limit more malleable and subject to adaptive management (i.e., upward adjustment in the event data demonstrates that certain objectives are improved), the agency must discuss this prospect in the Draft EIS itself, explain in its impact analysis how the possibility of increased capacity would be expected to increase impacts to various resources, and provide clear metrics that will be utilized to ascertain whether an upward (or downward, for that matter) adjustment is warranted. Especially because those adjustments would presumably occur outside of public view (without any further NEPA review), it is imperative that the Forest Service fully disclose and vet that information *now* so that the

public can weigh in on the sufficiency of such metrics and measures that will dictate expanded visitor capacity for many years.

Second, at least as currently envisioned, Alternatives 1 and 3 (in contrast to Alternatives 2 and 4) appear to be best aligned with public safety for local residents and Sweetwater Lake visitors. Those alternatives also appear to have the highest potential for achieving consistency with the Forest Plan's paramount goal of ecosystem health and with the wildlife standards that apply to the peregrine falcon and bald eagle, so long as the Forest Service takes steps, as it must, to utilize readily available tools and measures to ensure protection of wildlife. Moreover, Alternatives 1 and 3 also appear to be most aligned with protecting wilderness resource values in the Flat Tops Wilderness and with conserving key habitat for elk and deer. Accordingly, while we do not take a formal position at this time—and instead we request an objective reanalysis of alternatives in a supplemental EIS or at least in the Final EIS, in light of these and other public comments—Alternatives 1 and 3 seem best positioned to balance all of the goals at stake and ensure consistency with the Forest Plan.

With that said, our clients (i.e., local residents in the community surrounding Sweetwater Lake) are open to other options, so long as certain basic conditions are satisfied. Indeed, we have not taken any formal position, nor have any specific preference, for whether the Forest Service or CPW is the primary management agency for Sweetwater Lake. We care only that the alternative ultimately selected does the following:

- The Selected Action and the capacity limits set therein, as well as the analysis of impacts to affected resources, must be based on accurate, site-specific (rather than regional) data of baseline recreational visitorship (excluding visits by staff, emergency responders, or delivery vehicles).
- The Selected Action must be managed with mandatory public safety elements, with natural disaster emergency ingress/egress incorporated into the Selected Action.
 - This requires a natural disaster emergency ingress/egress study, which is made public and subject to comment by affected local residents and municipalities, that determines permissible capacity limits, vehicle sizes, necessary road upgrades and maintenance needs, and response plans.
- The Selected Action must be managed to ensure wildlife protection and consistency with Forest Plan standards or, if necessary, CPW buffer recommendations.
 - With respect to the peregrine falcon, the Forest Service must ensure consistency with General Wildlife Standards 8 and 9, by addressing the issues raised above.
 - With respect to bald eagles, the Forest Service must ensure consistency with Bald Eagle Standards 1 and 2, by addressing the issues raised above.
 - With respect to elk and deer, and to ensure consistency with General Wildlife Standard 1, the Forest Service must relocate the family campground, equestrian

campground and day use/parking, and the outfitter facilities proposed to be north of Sweetwater Road, or if the Forest Service can substantiate in the record why this is not possible the agency must at least initiate a closure of these areas from December 1 to June 15 each year.

- The Selected Action must be consistent with Forest Plan Goal 1 to promote ecosystem health, and the Forest Service must document how the Selected action achieves that goal.

In sum, we would support an alternative that addresses the key issues relevant to future management of Sweetwater Lake, objectively evaluates the impacts of that action, and ensures consistency with the Forest Plan and sustainability of area resources for local residents and a limited number of recreational visitors for many years to come.

V. GIVEN THE MYRIAD, SIGNIFICANT FLAWS IDENTIFIED ABOVE, THE FOREST SERVICE MUST CONFRONT THE PURPOSES BEHIND THE ACQUISITION OF SWEETWATER LAKE AS A FEDERAL PROPERTY AND ENSURE THAT THE SELECTED ALTERNATIVE COMPORTS WITH THE GOALS AND OBJECTIVES THAT LED TO ITS ACQUISITION

Needless to say, the local Sweetwater community is extremely troubled with the Forest Service's handling of this project in the Draft EIS. The local community supported—in fact, outright advocated for—the Forest Service's acquisition of this property through the use of Land and Water Conservation Fund (“LWCF”) money. However, in light of the agency's omission of critically important issues from the Draft EIS, combined with the Forest Service's willful ignorance of historical baseline recreational use as a means to determine a permissible recreational user capacity that will avoid destroying numerous natural resource values (and support public safety), the local community views the Proposed Action (and the Draft EIS process as a whole) as a bait-and-switch from what the Forest Service proposed in applying for LWCF funding with the community's backing.

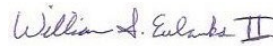
For instance, the Forest Service's application for LWCF funding cited the protection of wetlands, raptor habitat (for both falcons and eagles), elk and mule winter range, and habitat connectivity as specific benefits that would accrue if the Forest Service acquired Sweetwater Lake. *See* Exhibit 7; Exhibit 8. In order to obtain LWCF funding, the Forest Service explicitly represented that: “[a]cquisition of this parcel would bring these valuable and unique water resources under management direction that seeks to maintain the natural character, quality, quantity and health of these resources into perpetuity”; “[k]eeping these lands in open space will contribute to climate change resiliency by preventing fragmentation and potential development” and “[c]onsolidating ownership of these lands will facilitate animal movement and secure migration patterns, improving the ability of wildlife to adapt to climate change”; and acquisition would conserve “ample cliff side habitat that provides nesting opportunities for the American peregrine falcon and golden eagle, both of which have confirmed nests.” Exhibit 9 at 2. The Forest Service also made clear (in order to obtain LWCF funding) that community support is crucial and would be fostered by the acquisition. *See* Exhibit 7 at 6; *see also* Exhibit 10 (scoring acquisition of Sweetwater Lake as a 15 out of 15 points in that it would connect community and be acquired and managed to facilitate community input and support).

In our view, the Proposed Action severely fails to protect the specific resources that the Forest Service identified (and gained strong community support for) in order to obtain LWCF funding and acquire Sweetwater Lake. Had the local community known of the Forest Service's real plans—i.e., the Proposed Action—it certainly would not have supported the initial acquisition of this property. Regardless, at minimum, the Forest Service must address in a supplemental Draft EIS, or at least in the agency's Final EIS, how the action ultimately selected protects the resources identified by the Forest Service that it touted at the time it sought funding and community support to acquire this property. Absent that analysis, the Forest Service has failed to consider an important aspect of the problem, having told the public one thing in order to marshal support for property acquisition only to do something entirely contradictory.

CONCLUSION

We appreciate the opportunity to submit comments on the proposed action. Although we have serious concerns about the legal sufficiency of the Draft EIS as written, we have provided a roadmap in these comments for how the Forest Service can address the most glaring deficiencies and ensure that the Selected Alternative gains the support of local residents. If you would like to discuss these comments in more detail, please contact me at the email below to set up a video or telephone meeting with me (and my clients).

Respectfully submitted,

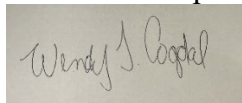


William S. Eubanks
Owner & Managing Attorney
Eubanks & Associates, PLLC
bill@eubankslegal.com

Pursuant to 36 C.F.R. § 218.25, these comments are submitted on behalf of:

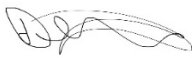
Sweetwater Community Club, Inc.
0600 Sweetwater Road
Gypsum, CO 81637

Authorized Representative Signature (President, Sweetwater Community Club):

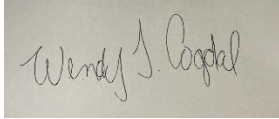


Sweetwater Lake Working Group
0600 Sweetwater Road
Gypsum, CO 81637

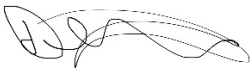
Authorized Representative Signature (Chair, Sweetwater Lake Working Group committee):



Wendy T. Cogdal
1864 Sweetwater Road
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Wendy T. Cogdal". The ink is dark and the background is a light, textured surface.

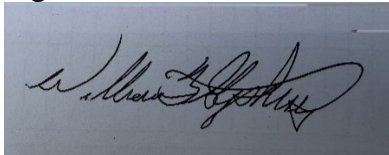
Derrick Wiemer
1760 County Road 151
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Derrick Wiemer". The signature is fluid and stylized, with a long horizontal flourish at the end.

Mary Stephens
0964 Sweetwater Road
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Mary Stephens". The signature is written in a clear, flowing cursive style.

Bill Stephens
0964 Sweetwater Road
Gypsum, CO 81637
Signature:

A handwritten signature in cursive script that reads "Bill Stephens". The signature is bold and stylized, with a prominent initial "B".

Joel Walker
2121 N. Frontage Rd W.
PMB 41
Vail, CO 81657
Signature:

A handwritten signature in cursive script that reads "Joel Walker". The signature is written in a simple, clear cursive style.

EXHIBIT 1

From: Doak, Richard - FS
Sent: Tue, 29 Jun 2021 15:57:00 +0000
To: Hitchings, Diane -FS;Cruz, Paul -FS
Cc: Custer, Matthew - FS
Subject: RE: Sweetwater Lake

All,

After I sent the message yesterday AM to you I learned in the afternoon that Scott, Frank, Dan Gibbs (DNR Director) and the Governor had all been to Sweetwater together on Sunday afternoon.

I don't have much further detail on what transpired; but, I'm guessing that those that need to be in the know are communicating.

Thanks,

Rich



Rich Doak
Recreation and Lands Staff Officer
Forest Service
White River National Forest, Supervisor's Office

p: 970-945-3267

c: (b)(6)

f: 970-945-3266

rich.doak@usda.gov

9th and Grand Ave.
Glenwood Springs, CO 81601

www.fs.fed.us



Caring for the land and serving people

From: Hitchings, Diane -FS <diane.hitchings@usda.gov>
Sent: Monday, June 28, 2021 4:18 PM
To: Doak, Richard - FS <rich.doak@usda.gov>; Cruz, Paul -FS <paul.cruz@usda.gov>
Cc: Custer, Matthew - FS <matthew.custer@usda.gov>
Subject: RE: Sweetwater Lake

That's all good news Rich. I'll definitely keep it between us.

I'm very sad to report that the indemnification issue is not fully resolved. There is some slight movement that Matt Custer has worked on, but we don't have anything official to share. Matt is out this week but I'm sure he would be happy to fill you in verbally.

Are you enjoying retired life?! I hope so. Happy 4th of July



Diane Hitchings
R2 Recreation Special Uses Program Manager

Forest Service
R2, Recreation Lands and Minerals

c: (b)(6)
dhitchings@fs.fed.us

1617 Cole Blvd., Building 17
Lakewood, CO 80401-3315

www.fs.fed.us



Caring for the land and serving people

From: Doak, Richard - FS <rich.doak@usda.gov>

Sent: Monday, June 28, 2021 10:10 AM

To: Hitchings, Diane -FS <diane.hitchings@usda.gov>; Cruz, Paul -FS <paul.cruz@usda.gov>

Subject: Sweetwater Lake

Diane/Paul,

I hope everything is going well with each of you. I'm sure you are both as swamped as ever. Hopefully you are having some fun too.

Just a quick update that CPW is officially joining in as a partner on the Sweetwater Project.

Please keep this to yourselves for the moment. Scott has been trying to get a time with Frank to go over this and we certainly don't want the news to get to him through channels other than Scott. I'm not sure where Jason is at on the communications link. I know he and Scott have informally talked about Sweetwater in the past, but I don't know to what degree. Until that conversation has taken place between Scott and Frank, we don't want this news to get out. Hopefully that will take place soon since the Governor is wanting to make a public announcement.

In addition to working on the rec planning side, we are diving into the authority conversations with CPW that I have already had with each of you. Diane, the big question I have lingering is the insurance question with the State. Did that ever get resolved?

Let me know if you have thoughts/questions.

Thanks for your help to date on this one and I'm sure more assistance to come.

Rich

EXHIBIT 2

c: (b)(6)

f: 970-945-3266

rich.doak@usda.gov

9th and Grand Ave.
Glenwood Springs, CO 81601

www.fs.fed.us



Caring for the land and serving people

From: Woolley, Clark - FS <clark.woolley@usda.gov>

Sent: Friday, August 27, 2021 12:14 PM

To: Doak, Richard - FS <rich.doak@usda.gov>

Subject: FW: Sweetwater MOU

Feedback:

- We need POCs for all parties.
- Identified signatory officials for all parties.
- As we discussed, stating the area as a “state park” upfront gives the appearance of a pre-decision and that the MOU provides authority for this designation which it does not.

Let me know if you want me to generate a draft final document with our suggested edits for the Tuesday meeting.



Clark Woolley
Forest Partnership Coordinator

Forest Service
White River National Forest

p: 970-948-9803

clark.woolley@usda.gov

900 Grand Avenue
Glenwood Springs, CO 81601

www.fs.fed.us



Caring for the land and serving people

From: Brey - DNR, Jacob <jacob.brey@state.co.us>

Sent: Monday, August 23, 2021 10:34 AM

To: Doak, Richard - FS <rich.doak@usda.gov>; Veldhuis, Leanne - FS <leanne.veldhuis@usda.gov>; Hitchings, Diane - FS <diane.hitchings@usda.gov>; Woolley, Clark - FS <clark.woolley@usda.gov>; Bergen Tjossem <bergen@evlt.org>; Jessica Foulis <jfoulis@evlt.org>

Cc: Carlee Koutnik - DNR <carlee.koutnik@state.co.us>; Mitra Pemberton <Mitra.Pemberton@coag.gov>; JT Romatzke - DNR <jt.romatzke@state.co.us>

Subject: Sweetwater MOU

Good morning USFS and EVLT team,

Attached are CPW's comments on the MOU. We had a difficult time editing the original (thanks Mitra!), so there's a redline version as well as just a clean edited version. Looking forward to the call tomorrow!

Thank you,

Jacob Brey
Deputy Regional Manager
Northwest Region



P 970.255.6145 | F 970.255.6111 | C (b)(6)
711 Independent Ave., Grand Junction CO 81505
jacob.brey@state.co.us | cpw.state.co.us



From: Woolley, Clark - FS
Sent: Fri, 27 Aug 2021 18:48:35 +0000
To: Doak, Richard - FS
Subject: RE: Sweetwater MOU

Sounds Great!

Thanks Rich. Have a great weekend.



Clark Woolley
Forest Partnership Coordinator

Forest Service
White River National Forest

p: 970-948-9803
clark.woolley@usda.gov

900 Grand Avenue
Glenwood Springs, CO 81601

www.fs.fed.us
  

Caring for the land and serving people

From: Doak, Richard - FS <rich.doak@usda.gov>
Sent: Friday, August 27, 2021 2:47 PM
To: Woolley, Clark - FS <clark.woolley@usda.gov>
Subject: RE: Sweetwater MOU

I did more edits yesterday and this AM to the MOU based on phone calls with Scott and Leanne, and then Jacob at CPW.

Scott and Leanne have my updated version to review. I did remove all references to a state park plus made changes to a couple other directional items CPW had changed.

Once Scott and Lisa get their review done (hopefully today), we'll send it back to CPW/EVLT. I'll hold off sending any more drafts to you for now unless you just want to see them. I will be relying on you for final edits after we agree on the language.

Thanks,

Rich



Rich Doak
Recreation and Lands Staff Officer

Forest Service
White River National Forest, Supervisor's Office

p: 970-945-3267

c: (b)(6)
f: 970-945-3266
rich.doak@usda.gov

9th and Grand Ave.
Glenwood Springs, CO 81601

www.fs.fed.us



Caring for the land and serving people

From: Woolley, Clark - FS <clark.woolley@usda.gov>
Sent: Friday, August 27, 2021 12:14 PM
To: Doak, Richard - FS <rich.doak@usda.gov>
Subject: FW: Sweetwater MOU

Feedback:

- We need POCs for all parties.
- Identified signatory officials for all parties.
- As we discussed, stating the area as a “state park” upfront gives the appearance of a pre-decision and that the MOU provides authority for this designation which it does not.

Let me know if you want me to generate a draft final document with our suggested edits for the Tuesday meeting.



Clark Woolley
Forest Partnership Coordinator

Forest Service
White River National Forest

p: 970-948-9803
clark.woolley@usda.gov

900 Grand Avenue
Glenwood Springs, CO 81601

www.fs.fed.us



Caring for the land and serving people

From: Brey - DNR, Jacob <jacob.brey@state.co.us>
Sent: Monday, August 23, 2021 10:34 AM
To: Doak, Richard - FS <rich.doak@usda.gov>; Veldhuis, Leanne - FS <leanne.veldhuis@usda.gov>; Hitchings, Diane - FS <diane.hitchings@usda.gov>; Woolley, Clark - FS <clark.woolley@usda.gov>; Bergen Tjossem <bergen@evlt.org>; Jessica Foulis <jfoulis@evlt.org>
Cc: Carlee Koutnik - DNR <carlee.koutnik@state.co.us>; Mitra Pemberton <Mitra.Pemberton@coag.gov>; JT Romatzke - DNR <jt.romatzke@state.co.us>
Subject: Sweetwater MOU

Good morning USFS and EVLT team,

EXHIBIT 3

From: Fitzwilliams, Scott -FS
Sent: Wed, 13 Oct 2021 14:04:43 +0000
To: Jackson, William -FS, LAKEWOOD, CO
Subject: RE: Sweetwater Opportunities - Near future

Thanks; been doing this stuff as fast as I can without much supervision...

Good catch.. the closures are the cliff overlook and around some of the buildings... I will make that clear to the Gov staff

Appreciate all your help on this

From: Jackson, William -FS, LAKEWOOD, CO <william.jackson@usda.gov>
Sent: Tuesday, October 12, 2021 5:39 PM
To: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>; Beum, Frank -FS <frank.beum@usda.gov>
Subject: RE: Sweetwater Opportunities - Near future

Scott, that first bullet is a little confusing: "Sweetwater Lake has been open to the public since August 31 (with some small area closures for public safety)."

The lake and surrounding area have been open to the public for a long time, albeit with limited access, but still open to the public through the campground and area trails. I suspect the recreation amenities that have always existed there (e.g. fishing, boating, trails, etc.) will remain open to the public through this planning process with the State?

For background here is the Sweetwater Campground ROG sheet on the White River NF website as well as the website link for Sweetwater: <https://www.fs.usda.gov/recarea/whiteriver/recarea/?recid=41241>



Bill Jackson
Deputy Director
Forest Service Rocky Mountain
Region
Recreation, Lands, Minerals, &
Volunteers

p: 970-389-2460
william.jackson@usda.gov

1617 Cole Blvd. Bldg 17
Golden, CO 80401

www.fs.fed.us



Caring for the land and serving
people

From: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>
Sent: Tuesday, October 12, 2021 1:56 PM
To: Beum, Frank -FS <frank.beum@usda.gov>
Cc: Jackson, William -FS, LAKEWOOD, CO <william.jackson@usda.gov>
Subject: Sweetwater Opportunities - Near future

Frank...

The Governor asked what he could say about what the public can expect at Sweetwater. We pulled this together and wanted to make sure you had the same info...

I have cautioned his office that he needs to be careful about saying too much about what we plan to build... that falls into the pre-decisional stuff with NEPA (which will begin this winter..)

- Sweetwater Lake has been open to the public since August 31 (with some small area closures for public safety).
- Since then, work was immediately underway to plan for future facilities. What is at Sweetwater Lake now is limited, and we are first determining our most critical needs.
- While Sweetwater Lake has been protected from development of 200+ homes and a water bottling station, there will still be change and we can expect to offer more public access opportunities than have historically been at the lake.
- **We plan to have a new boat dock next spring. Our goal is to upgrade the water treatment system next summer**, and from there we will continue to invest in new and improved facilities in future years.
- **The Forest Service campground remains open (during the open seasons)**
- A proposal for future recreation facilities at Sweetwater will be shared for public comment this winter in December or January. We hope you will provide us with your ideas and help us honor Sweetwater Lake's new legacy in public lands. **(This is where we need to be careful about not getting too out front. We don't want to be pre-decisional from a NEPA perspective.)**



Scott Fitzwilliams
Forest Supervisor
White River National Forest
USDA Forest Service
900 Grand Avenue
Glenwood Springs, CO 81601

p: 970-945-3200
c: (b)(6)
scott.fitzwilliams@usda.gov

www.fs.fed.us



Caring for the land and serving
people

From: Fitzwilliams, Scott -FS
Sent: Mon, 27 Sep 2021 14:41:14 +0000
To: Brey - DNR, Jacob; Dan - Dnr, Prenzl原因; Vilsack - DNR, Douglas; Bergen Tjossem; Jessica Foulis; Mitra Pemberton; Kacie Miller - DNR; Veldhuis, Leanne -FS; Doak, Richard - FS
Subject: RE: Sweetwater Vision Statement

This looks good... thanks all

From: Brey - DNR, Jacob <jacob.brey@state.co.us>
Sent: Tuesday, September 21, 2021 9:02 PM
To: Dan - Dnr, Prenzl原因 <dan.prenzl原因@state.co.us>; Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>; Vilsack - DNR, Douglas <douglas.vilsack@state.co.us>; Bergen Tjossem <bergen@evlt.org>; Jessica Foulis <jfoulis@evlt.org>; Mitra Pemberton <Mitra.Pemberton@coag.gov>; Kacie Miller - DNR <kacie.miller@state.co.us>; Veldhuis, Leanne -FS <leanne.veldhuis@usda.gov>; Doak, Richard - FS <rich.doak@usda.gov>
Subject: Sweetwater Vision Statement

Good evening,

Thanks again for attending the kickoff meeting today. As referred to, attached is the Vision Statement all 3 parties have agreed to. Some version of this will be in the MOU (likely just the 3 principles without the bullet points). However, since this sets the framework for the long term planning, we figured it would be good for everyone to vet them again.

Thank you,

Jacob Brey
Deputy Regional Manager
Northwest Region



P 970.255.6145 | F 970.255.6111 | C 720.215.8879

711 Independent Ave., Grand Junction CO 81505

jacob.brey@state.co.us | cpw.state.co.us



----- Forwarded message -----

From: Mitra Pemberton <Mitra.Pemberton@coag.gov>
Date: Tue, Sep 21, 2021 at 9:51 AM
Subject: retyped vision statement for you to send out to the noon call group
To: jacob.brey@state.co.us <jacob.brey@state.co.us>

From: Gibbs - DNR, Dan
Sent: Tue, 12 Oct 2021 14:15:52 -0600
To: Fitzwilliams, Scott -FS
Cc: Vilsack - DNR, Douglas
Subject: Re: What is Available planned for Sweetwater

Yes I just heard that he now can't make the event because of the time change but he is supportive.

On Tue, Oct 12, 2021 at 2:14 PM Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov> wrote:

FYI... Tom **Jankovsky** - he's of Russian decent not polish 😊

From: Vilsack - DNR, Douglas <douglas.vilsack@state.co.us>
Sent: Tuesday, October 12, 2021 2:08 PM
To: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>
Cc: Gibbs - DNR, Dan <dan.gibbs@state.co.us>
Subject: Re: What is Available planned for Sweetwater

Thanks for the heads up. Gibbs spoke with him about it, so I think we're in good shape, but he can confirm.

Doug Vilsack

Assistant Director - Parks, Wildlife and Lands



P [303.866.3311](tel:303.866.3311) x8664 | C [720.456.8956](tel:720.456.8956)

[1313 Sherman Street #718, Denver, CO 80203](https://www.colorado.gov/dnr)

douglas.vilsack@state.co.us | www.colorado.gov/dnr

On Tue, Oct 12, 2021 at 2:05 PM Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov> wrote:

Thanks...

Just an FYI, when the Garco Commissioners voted on whether to support our acquisition of the property, Tom voted against it... He went on a little rant about Obama and some other unrelated stuff...

I've since talked to him and he does support the concept... just not more "federal control".. so maybe the State Park thing will make him feel better....

From: Vilsack - DNR, Douglas <douglas.vilsack@state.co.us>

Sent: Tuesday, October 12, 2021 2:00 PM

To: Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>

Cc: Gibbs - DNR, Dan <dan.gibbs@state.co.us>

Subject: Re: What is Available planned for Sweetwater

Thanks Scott, I'll summarize and include in the press release and we'll work hard to make sure we/Gov don't get out in front of the process. Current speakers / run-of-show is below as well. I'll let you know once finalized:

- Governor
- Dan Gibbs, DNR
- Dr. Carrie Besnette Hauser, Chair, Colorado Parks and Wildlife Commissioner
- Jeannie McQueeney, Eagle County Commissioner
- Tom Jankowski, Garfield County Commissioner
- Frank Beum, Rocky Mountain Regional Forester, U.S. Forest Service

Doug Vilsack

Assistant Director - Parks, Wildlife and Lands



P [303.866.3311](tel:303.866.3311) x8664 | C [720.456.8956](tel:720.456.8956)

[1313 Sherman Street #718, Denver, CO 80203](https://www.colorado.gov/dnr)

douglas.vilsack@state.co.us | www.colorado.gov/DNR

On Tue, Oct 12, 2021 at 1:48 PM Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov> wrote:

Here is what we can have the Governor say about what is available at Sweetwater and what is planned:

- Sweetwater Lake has been open to the public since August 31 (with some small area closures for public safety).
- Since then, work was immediately underway to plan for future facilities. What is at Sweetwater Lake now is limited, and we are first determining our most critical needs.
- While Sweetwater Lake has been protected from development of 200+ homes and a water bottling station, there will still be change and we can expect to offer more public access opportunities than have historically been at the lake.
- **We plan to have a new boat dock next spring. Our goal is to upgrade the water treatment system next summer**, and from there we will continue to invest in new and improved facilities in future years.
- A proposal for future recreation facilities at Sweetwater will be shared for public comment this winter in December or January. We hope you will provide us with your ideas and help us honor Sweetwater Lake's new legacy in public lands. **(This is where we need to be careful about not getting too out front. We don't want to be pre-decisional from a NEPA perspective.)**

EXHIBIT 4



Department Priority: S-01, BA-03
Request Detail: Staff and Operating for State Park at Sweetwater Lake

Summary of Funding Change for FY 2021-22 and FY 2022-23			
		Incremental Change	
	FY 2021-22 Appropriation	FY 2021-22 Request	FY 2022-23 Request
Total Funds	\$74,716,473	\$93,209	\$426,921
FTE	265.0	0.3	3.0
General Fund	\$6,165,644	\$0	\$0
Cash Funds	\$66,628,193	\$93,209	\$426,921
Reappropriated Funds	\$680,613	\$0	\$0
Federal Funds	\$1,242,023	\$0	\$0

Summary of Request

The Department of Natural Resources (DNR) and Colorado Parks and Wildlife (CPW) request an increase of \$93,209 and 0.3 FTE in FY 2021-22 and \$426,921 and 3.0 FTE in FY 2022-23 from the Parks and Outdoor Recreation Cash Fund. The request is for the personnel and operating resources required to support initial public access for the newest state park at Sweetwater Lake in 2022. Sweetwater Lake is poised to become another iconic destination in Colorado's impressive state park portfolio, providing additional high-mountain recreational opportunities along the I-70 corridor and reducing the strain on other parks and recreation areas. The partnership for the park represents the first of its kind, as the Sweetwater Lake property is a unique combination of federal National Forest system lands and state park management that will expand public access for recreation in support of CPW's Wildly Important Goal to balance outdoor recreation and conservation. This request also includes spending authority for temporary staffing, property maintenance and supplies, utilities, mileage, and fleet vehicles. The request will increase to \$535,218 and 3.0 FTE in FY 2023-24, and ongoing.

Current Program

Colorado is legendary for its outdoor recreation and state parks provide an important gateway for Colorado citizens and visitors to experience the outdoors in a safe, family-friendly environment. The state parks system began with Cherry Creek State Park as the first designated state park in Colorado, created in 1959. However, maintenance and capacity improvements have not kept up with growth in demand, compromising the user experience at Colorado state parks. Visitation at state parks has increased steadily over the last three years, with a net increase of more than 4.5 million visitor days, a 31% increase, from FY 2018-19 through FY 2020-21. To help expand recreational opportunities in Colorado and reduce stresses caused by increased visitation throughout Colorado's state park system, Governor Jared Polis designated Fishers Peak to be opened as Colorado's 42nd state park in September 2019, and the park opened to the public on October 30, 2020. CPW is in the process of opening its 43rd state park at Sweetwater Lake, expanding the state parks system to encompass more than 239,000 acres.

On October 20, 2021, Governor Jared Polis announced a partnership between CPW, the U.S. Forest Service (USFS, White River National Forest), and Eagle Valley Land Trust (EVLTL) to create Colorado's 43rd state park at Sweetwater Lake in Garfield County. The USFS acquired the 488-acre Sweetwater Ranch, including the 77-acre lake, in August 2021 through a federal Land and Water Conservation Fund (LWCF) purchase. The site has high potential to provide modern, quality public recreation opportunities without diminishing the cultural, scenic, and natural resource attributes of the area. The combination of the formerly private land and surrounding National Forest system lands under federal ownership, managed as a state park, has never been done before and allows for exciting new recreational opportunities in this part of Colorado.

The unique, first-of-its-kind partnership between CPW and USFS combines the expertise of the agencies to allow efficient and effective planning, redeveloping and managing of the site into the future. The partners are now working together to develop a long-term management plan to improve recreational facilities and maintain the unique character of the area. This partnership allows the USFS to incorporate local expertise of the EVLT and the recreation management and wildlife expertise of CPW to best serve visitors to the park. The partners are working together on a permit to allow CPW to operate the park, and both CPW and USFS have plans to contribute funding towards infrastructure and real property maintenance projects on the property. With support from The Conservation Fund, EVLT also has established a \$1.1 million Stewardship and Equity Fund to support conservation of the site and to fund projects that reduce barriers for underserved youth and families to visit Sweetwater Lake.

The acquisition of the property significantly increases existing public access to the area, although very little infrastructure is currently in place to facilitate recreation. Improved facilities, including a new boat dock, will be available to the public in 2022.

Additional buildout will follow the completion of a long-term plan, in consultation with the public, for expanding and managing the recreational opportunities at Sweetwater Lake while preserving the unique, relatively undeveloped nature of the property.



Problem or Opportunity

As a high-mountain location, the new state park at Sweetwater Lake will provide increased recreational opportunities for Colorado residents and tourists from around the world, while addressing capacity limitations at other parks. Staffing and operating resources will be required to provide safe recreational opportunities at the park. As the park amenities open, increased visitation will help support the economy of the surrounding area, reach new customers who are unfamiliar with Colorado's state parks, and provide new experiences for CPW's existing customers.

CPW has committed \$10 million in funding for capital infrastructure and development from funds appropriated in H.B. 21-1326, which will be matched with funding from USFS, but does not have spending authority for staffing and operating costs at Sweetwater Lake. During the planning and development phase, the park needs dedicated FTE, operational funds, and vehicle resources to prepare for opening. CPW

regional staff are currently overseeing planning and development of the state park at Sweetwater Lake and are being pulled away from existing duties to complete this important, time-sensitive and time-consuming work to formally establish and operate the partnership. The partnership requires permits and agreements for how the park will operate. Completing these agreements requires making important decisions about roles and responsibilities and is staff- and labor-intensive.

CPW has learned from experience that opening a new state park requires dedicated staff and reassigning current staff to the new park is unsustainable. CPW staff are already at capacity and do not have the bandwidth to take on a project of this magnitude without jeopardizing other work. Pulling staff from other parks or adding to current staff duties leads to staff burnout and risks the safety of visitors at the park they have left short-staffed. It would negatively impact recreational opportunities and customer service at those other parks as well. Additionally, the nearest state park is a 90-minute drive from Sweetwater Lake so it would be an even greater burden to try and implement that model in this instance.

CPW anticipates that the state park facilities at the Sweetwater Lake property will begin to open to public access in 2022. Dedicated staff and operating funds will ensure the park is safe for the public and there is the necessary level of property oversight, management, and maintenance. The Sweetwater partnership is even more complex than a typical park opening, requiring coordination with USFS on securing the permit to allow CPW to operate the park and strong communication to ensure development projects are underway and amenities are available for public access in 2022.

Although the full scope of recreational opportunities at Sweetwater Lake has yet to be determined, CPW anticipates offering many traditional activities such as fishing, non-motorized boating, paddleboarding, swimming, picnicking, hiking, cross country skiing, geocaching, horseback riding, mountain biking, wildlife viewing, and camping. Adjacent public lands will provide additional land and wildlife conservation opportunities and public hunting access. A master planning process that will guide the future development of the park will soon be underway, involving community stakeholders and additional project partners including Great Outdoors Colorado (GOCO). However, because the property is owned by the USFS, this process will occur with public access to the park already available, highlighting the need for immediate management by CPW staff.

CPW was specifically targeted to be a partner in the recreation management at Sweetwater Lake because of its reputation for managing quality recreation properties. The recreation planning process is resource intensive and requires CPW staff to be intimately involved in the details and stakeholder process in order to oversee the project and ensure this jointly managed property has characteristics consistent with Colorado State Parks standards. Without the addition of the requested staff, the new state park is in jeopardy of not operating with the high level of customer service that CPW is known for, and the state's visitors have come to expect.

Proposed Solution

To secure the required staff and operating resources to support the development and initial public opening of Colorado's 43rd state park at Sweetwater Lake, CPW requests an increase of \$93,209 cash funds and 0.3 FTE in FY 2021-22, \$426,921 cash funds and 3.0 FTE in FY 2022-23, and \$535,218 cash funds and 3.0 FTE in FY 2023-24 and ongoing. Costs will be supported by revenue from the Parks and Outdoor Recreation Cash Fund. CPW has determined that it requires a minimum of 3.0 FTE, plus operating costs, to open new state parks, with adjustments for different needs based on each park's unique amenities, location, and size. The current request includes staff, vehicles, and operational funding and is consistent with previous staffing requests for the opening of new state parks, including the approved FY 2021-22 request for staff and operating to open Fishers Peak State Park (FY 2021-22, R-02). The operating costs for Sweetwater Lake are more comparable to other lake-based parks and will be higher than the current costs at Fishers Peak because of the many available recreational opportunities.

PARK PERMANENT STAFF: Beginning in March 2022, CPW requests the addition of one staff member dedicated to Sweetwater Lake at the Park Manager V classification. Due to the mid-year start, this position will only be 0.3 FTE in FY 2021-22 and will increase to 1.0 FTE in FY 2022-23. CPW needs a Park Manager dedicated to Sweetwater Lake as soon as possible to manage the project and planning process with the partners and stakeholders, and to develop and implement a park management plan. Existing staff have been covering these job duties and have been pulled away from equally important work to ensure that the partnership can be formed and that CPW is represented in all discussions and decisions.

CPW requests an additional 2.0 FTE dedicated to Sweetwater Lake starting in FY 2022-23 and ongoing, including 1.0 FTE at the Park Manager III classification serving as a Senior Ranger and 1.0 FTE at the Technician IV classification serving as a Park Resource Technician. The division cannot maintain CPW's current standards of customer service and public safety without adding the proposed dedicated FTE resources to the park.

More details about the work of these three positions are included on the following pages.

Park Managers: Commonly referred to as park rangers, park managers fulfill a variety of crucial roles in the overall management of the park and are the first point of contact for most incidents. A Park Manager has to be available at all times when a park is open. Even when a new park opens with more limited recreational opportunities, or operations are not at 100%, at least two park managers are needed to cover the hours in the week so that a staff member is available at all times when the public is on site. Park Managers are essential in responding to customer needs at the park, responding to emergency situations and injuries that occur, making sure that visitors follow park rules and are respectful of other visitors, and help to make sure that park infrastructure is

safe and functioning properly. These positions will not only serve to handle these situations but will also be tasked with managing temporary employees, managing daily customer service, managing the parks revenue section, and running the operations of the visitors service center. The positions will also coordinate with numerous businesses and operations outside of the park to continue relations within the community. Without sufficient FTE support, Sweetwater Lake will not be able to provide adequate visitor services, safety, and enforcement. Park Managers go through the Peace Officer Standards and Training (POST) certification process and serve as law enforcement officers for CPW.

Park Resource Technician (PRT): PRTs manage park infrastructure and will be an invaluable asset to assist with the necessary maintenance and improvements required for a new park. They provide a safe and pleasant environment for recreational activities by cleaning, repairing, and replacing operating equipment, systems, grounds, maintaining facilities, and park infrastructure. PRTs are responsible for providing services, maintenance functions, natural resource protection, natural resource education, administrative functions, interagency cooperation, and assisting with statewide programs.

PARK OPERATING EXPENDITURES: CPW expects significant construction projects being managed by staff at the park in FY 2022-23. Infrastructure development, such as campgrounds, roads, trails, vault toilets, entrance station, visitor services, day use and overnight parking, maintenance shop, water treatment facility and storage yard will take several years to be completed at the park, therefore park operations will ramp up over the next three fiscal years, through FY 2023-24. Operating costs are estimated at \$250,895 annually, but have been pro-rated in FY 2021-22 (15%) and FY 2022-23 (50%). Although the park will be open and staff will be required to serve the public and maintain the property from day one, it is expected that overnight camping and other recreational opportunities will be phased in as the partners complete the master plan in collaboration with the public and construction projects are completed. These costs will increase as facilities and amenities are added, including the addition of overnight camping, and visitor capacity increases.

In addition to staffing costs outlined above, full operating expenditures (\$250,895) are needed beginning in FY 2023-24 when the park is operating at or near full capacity and temporary staffing is also at full capacity, as detailed below:

- *Temporary staff, \$133,606*: Temporary staff support is vital to the operations of most state parks, including oversight of the land-based activities that all parks have. Parks with lake access, including swimming, paddle boarding and kayaking, require higher levels of staffing during peak seasons than non-water based parks to ensure visitor safety. For example, staff regularly check for valid fishing licenses and ensure visitors are following other rules and regulations on and around the water, such as wearing U.S. Coast Guard-approved, proper fitting, and serviceable life jackets, or not operating

EXHIBIT 5



SWEETWATER LAKE

2022 Season



- The Sweetwater site was operated jointly using two EVLT funded USFS temporary staff and A.J. Brink Outfitters
- There was a slight increase in use of the site over the course of the 2022 summer and fall season
- Site staff provided users with background on the changes in ownership of the site, as well as to inform on the process to determine the long-term management plan
- Additional public input opportunities have been provided via QR codes posted around the site
- The site remains open for public access with minimal recreational opportunities during planning/development

Resource Inventory Surveys



Photo Credit: eaglevalleywild.org



Photo Credit: NPS



Photo Credit: EVLT



Photo Credit: Virginia DWR

- Survey data gathered throughout 2022
 - Plants: Harrington's Penstemon
 - Bats: Townsend's and Hoary
 - Birds/Raptors: Bald Eagles and Peregrine
 - Will need to be considered in the creation of buffer zones
 - Mammals
 - Likely will consider area closures for winter habitat
 - Herptiles
- Resource reports are currently being finalized
 - Will aid in the development of a park Stewardship Plan as well as to guide long-term management and planning decision making

Public Engagement

Sweetwater Lake Working Group

- ~12 self-appointed community members
- Delineate roles and responsibilities
- Identify timelines
- Promote open lines of communication and transparency between groups
- Informs long-term decision making for the property
- Objective to meet bi-weekly to help make recommendations on Proposed Action for NEPA process



Public Engagement

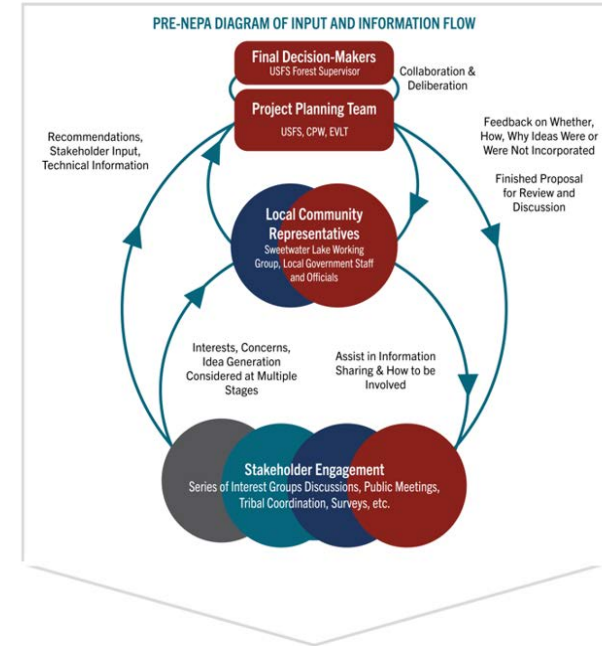
Facilitation and Public Engagement Consultant: CDR

- Partnership messaging group
- Updates to public information on the EVLT website
- Currently working to engage an expanded list of stakeholders and special interest groups
- Will host virtual and in-person open houses

Garfield and Eagle Counties

- Both counties have signed Cooperating Agency Agreements with the USFS for the NEPA process
- Garfield County is observing and listening, but have declined to participate until NEPA officially begins

CDR ASSOCIATES COLLABORATIVE DECISION RESOURCES



Cultural Update



Photo credit: Rocky Mountain Property Inspections

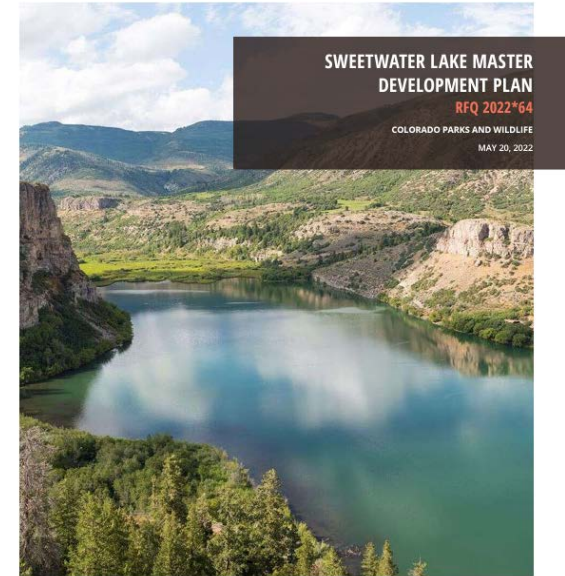


Photo credit: gjhikes.com

- USFS led cultural assessment reports to be submitted to State Historic Preservation Office by February 14th
- Re-evaluation of eligibility of buildings of the resort and Determination of Effect
- Due to date of origin of some buildings, only three have been deemed to contribute to the historical eligibility of the site
- USFS to prepare a map showing Special Resource Areas of avoidance (prehistoric/historic polygons)
- Will need to develop a Cave Management Plan
- In conversation with the Colorado Commission of Indian Affairs
- Consulting on site naming and plans for tribal engagement

Master Planning

- Confluence was selected through a competitive process
- Gather available site data to prepare a base map for preliminary site discussions
- Surveying, geotechnical investigations, utility evaluations, traffic analysis, water systems, financial analysis, etc.
- Prepare preliminary Master Plan and alternatives to initiate the NEPA process



CONFLUENCE

3457 RINGSBY COURT, UNIT 223
DENVER, COLORADO 80216
303-483-7100
WWW.THINKCONFLUENCE.COM



Permit Update

- Special Use Permit with the White River National Forest (25 year permit)
- Drafting the permit has been an extensive process between the COAG and the USFS Office of General Council
- Anticipate final version will be ready for signature this month



“Welcome to your...”

- Working to establish a proposed name for the site
- Best practices: cultural, historical, ecological, geographical considerations
- Will be back for PWC approval



Outfitter/Concessionaire

- USFS is currently working to issue a 2023 permit to A.J. Brink Outfitters
 - Operations plan, grazing plan, facility use, etc.
- Once CPW holds the permit for recreation management, we will issue a concession permit to outfitter
- CPW in conversation with A.J. Brink to determine what opportunities exist for CPW/outfitters/others
- Sweetwater Community Club (501 c3)
 - Submitted a proposal to USFS for minimal repairs to four existing facilities for short-term outfitter use



Photo credit: CDR Associates

Tentative Planning Timeline (November Update)

	2022				2023							July & Beyond
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
(Phase 1) Defining the Project, Roles, Planning, Brainstorming											NEPA Process	
(Phase 2) Draft Concept Plan						☐						
(Phase 3) Final Concept Plan										☐		
NEPA (Plans for Action Alternatives)							☐					
Resource Inventory (Environmental)					☐							
Cultural Analysis (Tribal, Historical)						☐						
Partnership												
Partnership Workshop / Checkins			☑		☐			☐				
Sweetwater Recreation Planning Team (Weekly)												
Communications Workgroup												
Stakeholder Engagement												
Draft Engagement Plan		☑										
Sweetwater Lake Working Group (SLWG) (Bi-Weekly)												
Public Meeting Round 1 - Resource Inventory, Data Collected												
Interest Groups / Listening Sessions												
Survey												
Public Meeting Round 2 - Draft Concept Plan												
Site Visits with Stakeholders												
Public Meeting Round 3 - Final Concept Plan, NEPA Alternatives												
Comment Form / Messaging												

QUESTIONS



EXHIBIT 6

Sweetwater Issues and Opportunities for Wildlife

Issues

Referring to the latest diagram: #20 in the diagram overlaps the Sweetwater special order human entry closure for wildlife/wetland protection (Appendix A), so there is a contradiction there. It is recommended that this area only provides an overlook of the wetland complex and does not include a boardwalk; this is to avoid wetland degradation and loss of prey (i.e., waterfowl) habitat for nesting raptors.

#1: Raptor Nests

As of April 30, 2020, there are two confirmed active raptor nests next to Sweetwater Lake: a bald eagle nest and peregrine falcon eyrie. The following standards apply, with additional measures recommended below.

WRNF LRMP Standard (Wildlife-5): "Protect known active and inactive raptor nest areas. The extent of the protection will be based on proposed management activities, human activities existing before nest establishment, species, topography, vegetation cover and other factors. A no disturbance buffer around active nest sites will be required from nest-site selection to fledging (generally March through July). Exceptions may occur when individuals are adapted to human activity."

1. Bald Eagle:

Pertinent Acts: Bald and Golden Eagle Protection Act; Migratory Bird Treaty Act

- a. **Bald Eagle-1.** If a winter roost or nest site is discovered, write a management plan to ensure that the necessary habitat components are maintained.

We'll need to write a management plan for this nest.

- b. **Bald Eagle-2.** Human activities should be prohibited within 250 yards of bald eagle winter roosting areas between November 15 and March 1. Human activities should be prohibited within 400 yards of an active nest between February 1 and August 15. *This will be a difficult one to follow with recreation activity on the lake.*

Recommendations:

- Shoreline human-entry closure (within 100 meters of shoreline) on the south side of the lake year-round (except existing trails #1855 and #2031) to allow for eagle winter roosting and nesting.
 - This has been enacted in a five-year WRNF special order (Appendix A)
- Fence the west end of the South overlook trail to limit visual disturbance to eagles from human presence.
- Only allow electric motors (5 hp or less – trawling only) – boats to reduce noise disturbance to the eagles.

- Limit aquatic recreation activity to 25 boats/SUPs/etc. on the lake at any one time to give the bald eagles space to fish.
- Fund 1-2 Sweetwater seasonal ranger(s), similar to a state park ranger, to enforce the wildlife closure, boating cap. restrictions, provide education/interp., etc.
- Coordinate with wildlife biologists(s) and CPW DWM(s) before locating long-term and permanent water-dependent facilities, such as boat ramps and marinas, so that they are away from important eagle foraging areas (USFWS Bald Eagle Guidelines).
- Adaptive Management: Add a seasonal timing restriction(s) on Trail #1855 if there is evidence of bald eagles changing winter roosting or nesting behavior in response to human disturbance.

2. Peregrine falcon (PEFA) (LRMP wildlife standard above, and PEFA specific):

- a. **WRNF LRMP Standard:** Discourage land use practices and development that adversely alter the character of peregrine falcon hunting habitat or prey base within ten (10) miles of the nest site and the immediate habitats within one (1) mile of the nesting cliff.
 - i. Peregrine Falcons hunt waterfowl. See wetland section below for recommendations to prohibit human entry into the wetland complex on the west end of the lake to allow for the prey base to persist near the nest site (also, Appendix A).
- b. **WRNF LRMP Standard:** Human activities will be restricted within one-half (½) mile of occupied peregrine falcon areas between March 15 and July 31 for nest sites, or July 1 to September 15 for hack sites. Protection distance may vary depending on local topography, potential for disturbance, and location of important habitat components.
 - See south shoreline human entry restriction in the Bald Eagle section.
 - *For both of these, establish **no climbing areas that is supported by NEPA and a subsequent supervisor's closure order** along the cliff bands in the Sweetwater area (Appendix A, Figures 1, 2).*



Figure 1. No climbing areas extend along the cliff faces.



Figure 2. 'No climbing' area continues.

Issue #2: Wetlands and riparian areas:

- Avoid willow removal and do not build new docks or trails in areas of mapped wetlands, particularly on the west end of the lake. This provides habitat for nesting birds, including peregrine falcon prey, and cover for birds and mammals. Additional disturbance will likely cause abandonment of this area.

- If willow removal is to occur, avoid removal during the breeding season to avoid bird nests if possible: May 1-August 15th. Otherwise request a biologist survey beforehand to check for nests and allow for clearing if nests are absent (Figure 3).
- Do not allow human entry in the wetland complex, starting at the mouth of the inlets and extending to the roads; consider using a buoy line to prevent access (see WRNF Sweetwater special order, Appendix A).
- The wetlands are severely impacted from livestock trampling, based on Melvin Woody's 5.6.21 toad survey in the area. Fence around the wetlands, via an enclosure, to prohibit livestock trampling of the wetlands. Prohibit livestock (including horses) in the wetland area, including the area that has been converted to upland but is surrounded by wetlands.
- **WRNF LRMP Standard (Wildlife-6):** In riparian areas, vegetation cover will be managed to provide suitable wildlife habitat along a minimum of 80 percent of the length of riparian zones within the project area. New corridor interruptions will be spaced to minimize interruptions to habitat connectivity.



Figure 3. Willow nearly abuts road, recommend keeping it intact.

Issue #3- Caves: There are several caves in the area. Three bats were observed in Sweetwater Cave this summer by members of Eagle Valley Outdoor Movement (Renata Araujo, personal conversation).

The following LRMP Standard could apply:

- **LRMP Standard (Wildlife-2).** Restrict actions within 500 feet of cave and mine bat roosts to those that will not negatively alter the vegetative and structural characteristics of roosts or impede the movement of bats. When closing mines or caves in the course of establishing resource protection, or in response to safety concerns, minimize disturbance to resident or seasonal bat or other cave-dependent species endemic to the cave or mine and maintain microclimate conditions important to those species. Where bat concentrations are located outside of caves or mines, human disturbance will be managed to protect those populations.

Additionally:

- Monitoring is needed to determine extent of bat use of this cave.
- Provide education about WNS and decontamination protocols.

Issue #4- Barrow's Goldeneye: WRNF Wildlife Biologist Kim Potter has seen Barrow's goldeneye at Sweetwater and said they use it in for staging.

- Associated LRMP standards and guidelines may apply.
- Surveys will occur this summer into the fall.

Issue #5- Ungulates (Elk, Deer, and Moose):

- Focus development on already existing disturbed areas south of C.R. 150 to minimize expansion into higher value wildlife habitat. Take into consideration winter range and spring fawning and calving periods for deer and elk. Winter range time periods are typically observed from Dec 1 – April 15, and spring fawning/calving periods are usually observed from April 1 – June 30.
- A south-facing slope predominates the landscape on the north side of County Road 150. This slope is ideal for wintering ungulates, including mule deer and elk. This area has been mapped by CPW as a mix of elk winter, severe winter, and winter concentration area. This same area is valuable spring fawning and calving area for mule deer and elk.
- Proposed features on the draft plan show equestrian camping, equestrian parking/day use, family campground, trail, Admin/Employee Area, and outfitter barn and admin site on the north side of County Road 150.

Recommendations

- Move Admin/Employee Area off of the upper bench (currently irrigated meadow) and put it adjacent to where the old barn is or within the area already impacted near the lake, south of C.R. 150. This facility, compared to all others proposed to be north of C.R. 150, has the potential to be the most disruptive to ungulates since it will be in use year-round.
- Relocate the family campground.
- Relocate the Equestrian Campground and the Equestrian Day Use/Parking.
- If relocation of the Family Campground or Equestrian facilities is not possible, initiate and enforce a closure of these areas from **December 1 – June 15.**
- Relocate the proposed trail north of County Road 150. If the trail cannot be relocated, initiate and enforce a closure of that section of the trail from **December 1 – June 15.**
- Relocate the Outfitter facilities that are proposed to be north of C.R. 150.
- Moose are commonly seen in the upper reaches of the Sweetwater drainage, including within the wetland area west of the lake. Construction of a walkway/boardwalk through the wetland area is not recommended, as this will disturb usage by moose, and they may tend to avoid the area as a result. A viewing platform at the northwest corner of the lake would be a preferred alternative. Pets should remain leashed at all times on the State Park.

WRNF LRMP Standard (Wildlife-1): Seasonal restrictions will be applied to reduce disturbance in key wildlife habitats.

- Overall: Recommend keeping the area to non-motorized uses year-round to retain the relative quiet Sweetwater Lake and the immediate vicinity provides for ungulates and other wildlife species.

Issue #6 – Black Bears

- The black bear population in and around the area of Sweetwater Lake is high. Some black bear nuisance activity has been experienced in the Sweetwater community in the last few years. Measures should be implemented to reduce attractants within the State Park.

Recommendations

- Install bear-resistant food storage containers at each campsite.
- Install bear-resistant trash receptacles throughout the park.
- Only use bear-resistant dumpsters for trash collection and ensure that trash is removed frequently by trash hauler
- Educate visitors on the importance of reducing attractants to deter bears from coming into contact with people.
- Pets must remain leashed on the property.

Issue #7 – Mountain Lions

- Mountain Lions are known to be in the area. Post educational material / signs on living with mountain lions, and keep pets leashed on the property at all times.

Opportunities:

- Interpretation:
 - a. Add a bald eagle and peregrine falcon interp. panel near the main buildings and/or the south shore overlook.
 - b. Have a wetland and wildlife viewing overlook adjacent to the two-track on the NW side of the lake (Figure 4 (included in the bubble diagram as of 11/3/2021)).



Figure 4. Location of recommended overlook (not a trail), and view of wetland complex from overlook. This location would limit disturbance and fragmentation to the wetland while allowing visitors to view this wetland complex and its wildlife. (This is an eBird hotspot due to the high bird species richness in this area).

Options for wetland overlook:

- Provide an interp. panel highlighting the importance of wetlands to wildlife, can highlight some waterfowl, such as Barrow's goldeneye, as well.
- Set up a hide in this location for people to view wildlife (they'd be pretty set back so not totally necessary).
 - a. Jen plans to set up a bat acoustic monitoring station to establish a species list for the area.
 - b. Plan to install bat box(s) in this area to provide roosting habitat.
- b. Wildlife interp. guides could give educational talks about the importance of this area to wildlife and encourage LNT principles.
- Wildlife habitat enhancement:
 - a. Prescribed fire in the surrounding landscape (Eagle Burn Blocks 2.0), particularly in aspen stands and mountain shrub communities.
 - b. In areas of contiguous sagebrush greater than five acres, there are opportunities to remove PJ via chainsaw to improve habitat for the Brewer's sparrow (e.g., Figure 5, below).
 - c. Wetlands:
 - B. Add a beaver analog to the inlets to restore the dried portion of the wetland (hypothesized to be dry due to the use of part of the wetland as a pasture) (based on conversation with Ryan Sparhawk; see hydrology report for more details).

- C. Fence the road along the wetlands to prohibit livestock grazing in the wetlands.
- Fence removal on the north side, above Sweetwater Rd.
 - **LRMP Guideline (Wildlife-1):** Structures such as fences, major highways, bridge upgrades or replacements, and canals should be designed and built taking wildlife movement into consideration.

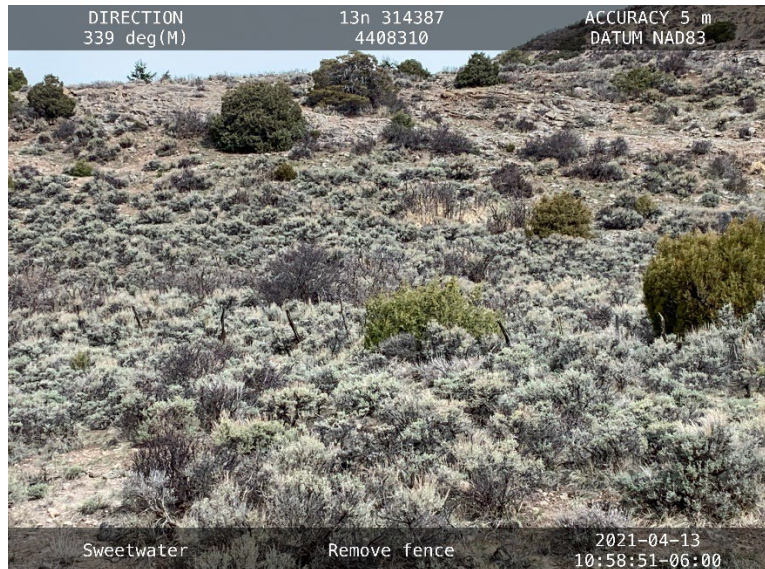


Figure 5. Potential fence removal opportunity.

- Fishing line recycling: Add a couple more PVC tubes at Sweetwater & facilitate removal with concessionaire. There is one PVC tube near the FS restroom/campsites, and it is not cleaned regularly.

Issue #8: Invasive Plants- if not addressed elsewhere, regularly treat for invasive plants to prevent the proliferation of invasive species and degradation of wildlife habitat.

Written By: Jen Prusse (Eagle-Holy Cross Wildlife Biologist, Forest Service), Dan Cacho (Division Wildlife Manager, CPW).

Reviewed by: Julie Mao, CPW Terrestrial Biologist

Literature Cited

Stalmaster, M.V., and J.L. Kaiser. 1998. Effects of recreational activity on wintering bald eagles. Wildlife Monographs 137(1-46).

USFWS 2007. National Bald Eagle Management Guidelines. US Fish and Wildlife Service. 11 June 2007. Accessed on April 28, 2021. <

<https://www.fws.gov/northeast/ecologicalservices/pdf/NationalBaldEagleManagementGuidelines.pdf>>.

November 4, 2021

APPENDIX A

Order Number: #2021-31

FOREST ORDER
USDA FOREST SERVICE
WHITE RIVER NATIONAL FOREST
EAGLE-HOLY CROSS RANGER DISTRICT

Sweetwater Lake Area

Occupancy and Use Restrictions

Pursuant to 16 U.S.C. § 551 and 36 CFR § 261.50(a), the following acts are prohibited on the National Forest System (NFS) lands at Sweetwater Lake and vicinity in the White River National Forest, Garfield County, State of Colorado, described below and shown on the attached map incorporated into this Order as Exhibit A (the "Restricted Areas").

The Restricted Areas are located in Sections 8, 9, 16, and 17, Township 3 South, Range 87 West, 6th P.M., and include Sweetwater Lake and surrounding area in the Eagle Ranger District. The five Restricted Areas include:

- Sweetwater Lake;
- Sweetwater Lake Area, begins along the southern shore of Sweetwater Lake east to the Forest boundary, continues north through the Sweetwater Campground, ties into the north shore of the lake continuing east to the Forest boundary, north to approximately "9,000-foot contour line" and to the western edge of the Forest boundary;
- Fall Hazard Unprotected Cliff Area, bounded by Sweetwater Road 150 to the north;
- Resource Protection Area due south of Sweetwater Campground;
- Raptor Protection Area, which is bounded by Sweetwater Road 150 to the north, Sweetwater Lake and Cross Creek Trail# 1855 to the south and includes approximately 216 acres north and west of the lake. Northern boundary is Sweetwater Road 150.

The purpose of this Order is to protect natural resources, wildlife habitat, and public safety.

PROHIBITIONS

1. Entering or being in the Fall Hazard Unprotected Cliff Area, the Raptor Protection Area or Resource Protection Area. 36 CFR § 261.53(a), (e).
2. Possessing or operating a motorboat with a gas motor or an electric motor of more than 5 h.p. 36 CFR § 261.58 (n)
3. Building, maintaining, attending, or using a fire, campfire, or stove fire outside a FS metal provided fire ring in Sweetwater Campground or designated horse camping area. 36 CFR § 261.52(a)
4. Camping outside the designated campsites in Sweetwater Campground or designated horse camping area. 36 CFR § 261.58(e)

EXEMPTIONS

Pursuant to 36 CFR § 261.50(e), the following persons are exempt from this Order:

1. Persons with a special use authorization or other Forest Service authorization specifically exempting them from the effect of this Order.
2. Any Federal, State, or Local officer or member of an organized rescue or firefighting force in the performance of an official duty.

This Order is effective 10/18/2021 and will remain in effect until December 31, 2026 or until rescinded.

Done at Glenwood Springs, Colorado this 10/18/2021.

SCOTT
FITZWILLIAMS

Digitally signed by
SCOTT FITZWILLIAMS
Date: 2021.10.18
10:02:54 -0600

SCOTT G. FITZWILLIAMS

Forest Supervisor
White River National Forest

A violation of these prohibitions is punishable as a Class B misdemeanor, by a fine of not more than \$5000 for an individual or \$10,000 for an organization, or imprisonment for not more than six months, or both. 16 USC § 551 and 18 USC §§ 3559, 3571, 3581.

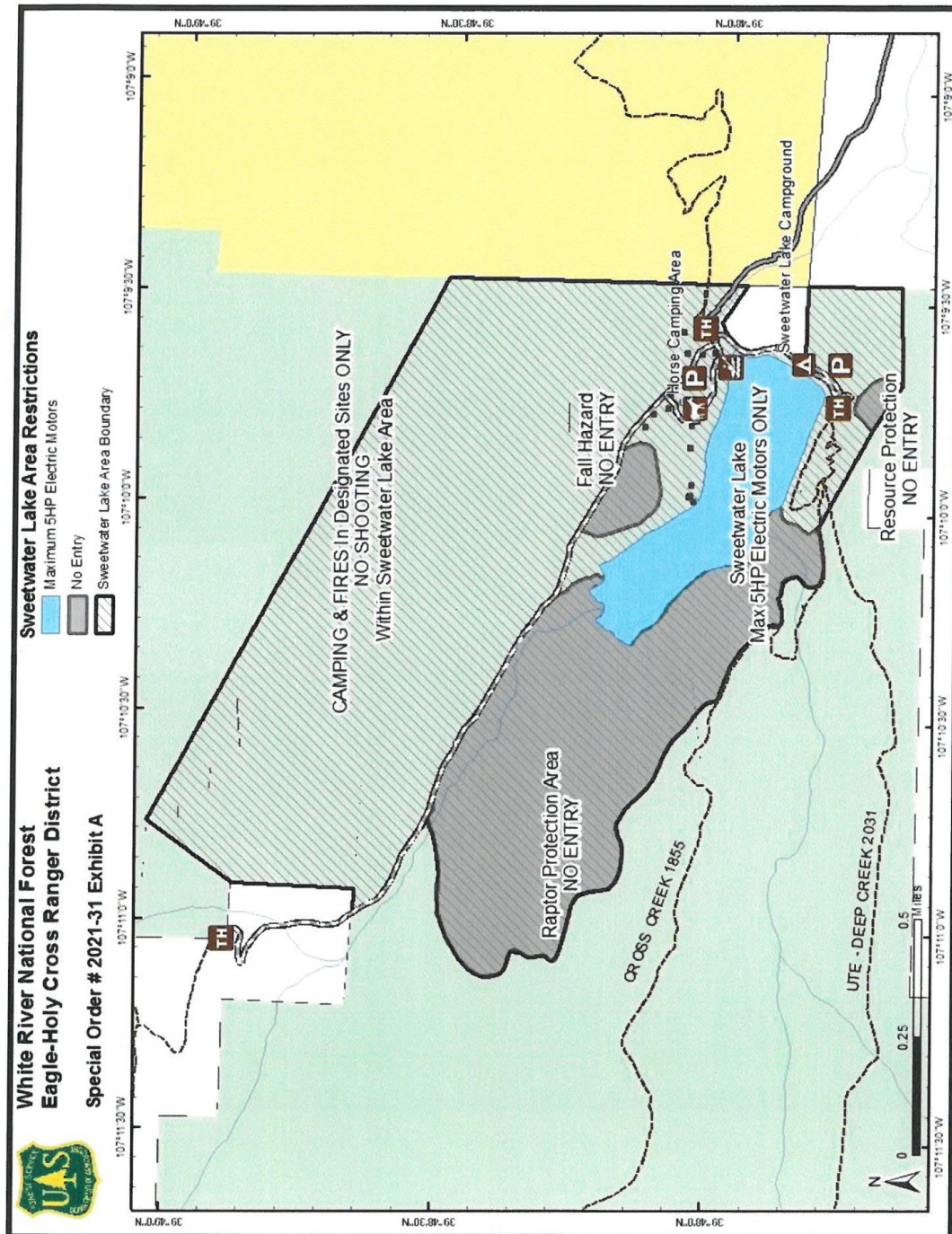


EXHIBIT 7

**US Forest Service-National Forest System
FY2021 Land and Water Conservation Fund
Criteria and Guidance for the Evaluation and Scoring of Proposals for Land Purchase**

LWCF Land Acquisition projects are evaluated according to a set of criteria derived from USDA and Forest Service goals and objectives, as well as the enabling legislation for the Land and Water Conservation Fund, and the Endangered Species Act. Proposals are evaluated against the National Criteria in a two-stage process which is competitive and merit based. Land purchase proposals are first evaluated at the Regional level, then Regions send top ranked projects to the Washington Office (WO) for review by a national panel comprised of an inter-disciplinary team of 8-10 subject matter experts from realty and other staffs with expertise in the criteria. The panelists review and score the proposals, then the scores are averaged to determine a final score. The National Panel finalizes a draft prioritized list of land purchase projects to recommend for funding. If requested, this project list is reviewed by Agency leadership and then forwarded to the Office of Management and Budget through the Department of Agriculture.

The criteria used to evaluate proposed land purchase projects funded by the Land and Water Conservation Fund appropriations are derived from the following laws and Departmental and Agency Goals:

- Section 7 of the Land and Water Conservation Fund Act of 1966, as amended;
- Section 5 of the Endangered Species Act of 1973, as amended;
- The Secretary of Agriculture's 7 Strategic Goals for OneUSDA;
- The Forest Service Chief's Five Priorities; and
- Forest Service Strategic Goals as stated in the Forest Service's Strategic Plan 2015-2020.

United States Department of Agriculture 7 Strategic Goals for OneUSDA:

STRATEGIC GOAL #1: Ensure USDA programs are Delivered Efficiently, Effectively, and with Integrity and a Focus on Customer Service.

STRATEGIC GOAL #2: Maximize the ability of American agricultural producers to prosper by feeding and clothing the world.

STRATEGIC GOAL #3: Promote American agricultural products and exports.

STRATEGIC GOAL #4: Facilitate rural prosperity and economic development.

STRATEGIC GOAL #5: Strengthen the stewardship of private lands through technology and research.

STRATEGIC GOAL #6: Foster productive and sustainable use of our National Forest System lands.

STRATEGIC GOAL #7: Provide all Americans access to a safe, nutritious, and secure food supply.

Forest Service Chief's Five Priorities for Our Work

These five national priorities do three things: They give urgency and focus to critical needs; help foster the work environment we want for our employees; and set expectations for the manner in which we accomplish our work with citizens, partners, volunteers, and each other.

- 1. Uplifting and empowering our employees through a respectful, safe working environment.**
- 2. Being good neighbors and providing excellent customer service.**
- 3. Promoting shared stewardship by increasing partnerships and volunteerism.**
- 4. Improving the condition of forests and grasslands.**
- 5. Enhancing recreation opportunities, improving access, and sustaining infrastructure.**

Forest Service Strategic Goals and Core Values

STRATEGIC GOAL: Sustain Our Nation's Forests and Grasslands

- Foster resilient ecosystems
- Mitigate wildfire risk
- Conserve open space

STRATEGIC GOAL: Deliver Benefits to the Public

- Provide abundant clean water
- Strengthen communities
- Connect people to the outdoors

CORE VALUES: Excel as a High-Performing Agency

- Support effective, efficient and transparent business practices
- Leverage strengths and partnerships

Land and Water Conservation Fund (LWCF) Purposes

Title 1, Section 7 of the Land and Water Conservation Fund Act provides authority for the "acquisition of land, waters, or interests in land or waters" and directs the National Forest System (NFS) to use LWCF funds to acquire "Inholdings within (a) Wilderness areas of the NFS, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act, or purchase units..., all of which other areas are primarily of value for outdoor recreation purposes."

Endangered Species Act invocation of LWCF

Section 5(a) and (b) of the Endangered Species Act, state: (b) "Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein" to (a) "establish and implement a program to conserve fish, wildlife and plants, including those which are listed as endangered species or threatened species pursuant to section 4 of this Act."

Scoring Criteria, Points, Weighting and Other Required Information

There are 6 scored criteria worth 110 points total, and 1 unscored section

Total possible score: 113 points.

- 1. Recreation and Recreational Access: 25 total possible points**
 - 2. Watershed Protection/Climate Resilience: 15 total possible points**
 - 3. Threatened and Endangered Species: 15 total possible points**
 - 4. Tract Location: 15 total possible points**
 - 5. Connecting Communities/Partner Support: 15 total possible points**
 - 6. Regional Ranking: 25 total possible points**
 - 7. Operation and Maintenance (not scored)**
- The Regional Ranking criterion is determined at the Regional evaluation**
 - 3 “extra” points possible added to the national panel average score to complete “final phases”**
 - Operation and Maintenance Section is required but not scored**
-

Proposals support OneUSDA and Forest Service goals

For each criterion that requires a written narrative, #s 1, 2, 5 and 6, information should include how the tract(s) proposed for acquisition reflect OneUSDA strategic goals, the Forest Service Chief’s Priorities, and the Forest Service Strategic Plan. Of particular importance for the 2020 fiscal year is demonstrating that land acquisition can support local economies, contribute to effective and efficient stewardship of national forests, support shared stewardship through partnerships, and help deliver excellent customer service. Criteria #s 3 and 4 have forced rankings and do not require a narrative in their proposal sections to provide the required information, however we do recommend a discussion of how these criteria support the aforementioned goals, in the “Additional Information” section.

1.) 25 Total Possible Points: Recreation and Recreational Access

This criterion evaluates the degree to which the acquisition creates or enhances opportunities for recreation, and access to recreation on National Forests and Grasslands. More points will be awarded to acquisitions that provide significantly new or improved recreational opportunities in support of Administration and Forest Service goals and objectives. Please describe the recreational opportunities provided, who the users will be and the degree of added capacity for increased visitor use.

2.) 15 Total Possible Points: Watershed Protection/Climate Resilience

The Forest Service’s Watershed Condition Framework provides a nationally consistent, science-based approach to evaluate watershed conditions and apply integrated improvement and restoration techniques based on local characteristics. This criterion can be quantified in terms of

degree of importance a specific tract will contribute to larger stated watershed protection and restoration goals. Acquisitions can protect high functioning watersheds, or, provide needed opportunities to restore impaired watersheds. Support for acquisitions should be described in terms of how a particular tract fits in with Forest Service watershed management goals once the tract is acquired, and not the condition of the parcel while in private, State or other ownership.

- Award points based on the degree to which acquisitions contribute to watershed improvement, protection or restoration. More points could be given to parcels complementing or integrated with Agency watershed restoration projects such as CFLRP.

Connecting and restoring watersheds and protecting diverse habitats supports climate resilience. What other data or information supports this acquisition as one that is important to meet Forest Service goals with respect to building resilient ecosystems that can more readily adapt and mitigate conditions brought on by climate change?

- More points will be awarded to tracts that support Administration and Forest Service objectives regarding climate change mitigation and adaptation, ecological restoration and resiliency.

3.) 15 Total Possible Points: Threatened and Endangered Species and Habitat (Forced Ranking)

Land acquisition provides an opportunity to protect or restore habitats for fish, wildlife and plants at risk. Proposals are scored based on the tract or tracts capacity to protect or restore habitats for endangered, threatened, or candidate species as classified under the Endangered Species Act (ESA) and/or designated Forest Service Species of Conservation Concern in Forest Plans. A score is assigned according to the level of protection afforded to a species on a specific tract. If there is more than one tract proposed, the score will be assigned according to the tract with the **lowest** level of species designation or protection represented. This is to prevent one tract with high T&E values from artificially elevating tracts with no T&E protection. With this scoring mechanism, the incentive is to nominate tracts with the highest possible T&E values. However, points may be awarded to a tract that itself has no species of special designation but supports vital ecosystem function for a species with special designation in proximity. Recognizing the importance of landscape level context to protect species at risk, ecosystem function includes things like ensuring the health of upstream waters or proximate waters, protecting adjacent and proximate tracts whereby residential or commercial development could disrupt nesting, feeding or other behavior, migration or dispersal of the species. An explanation of the importance of this kind of tract should be included in the "Additional Information" section.

Scoring:

- Threatened or Endangered Species: 15 points
- Candidate Species or Forest Service Species of Conservation Concern: 10 points
- No special species designation on the tract itself but the tract supports a direct vital ecosystem function for a designated species: 5 points
- No special species designation: 0 points

Example:

- 1.) Green Acres Tract protects Endangered Kirtland's Warbler = 15 points
- 2.) Red Acres Tract protects the Species of Conservation Concern Northern Short-Tailed Shrew=10 points
- 3.) Blue Acres contains no species with special designation=0 points
- 4.) Purple Acres contains no species with special designation but protects some ecosystem function vital to the support of the Kirtland's Warbler on adjacent Green Acres Tract=5 points

If Green Acres tract is submitted alone the points awarded in this criterion are 15.

If Green Acres tract and Red Acres tract are submitted together the points awarded are 10.

If Green, Red and Blue Acres tracts are submitted together the points are 0.

If Green, Red, Blue and Purple Acres tracts are submitted together the points are 5.

If Purple Acres tract is submitted alone the points are 5.

4.) 15 Total Possible Points: Proposal Tract Location (forced ranking)

This Criterion supports the specific language in the LWCF authority for the Forest Service that directs the Agency to acquire lands with higher levels of protection like Congressionally Designated Areas (CDA) such as Wilderness. It also recognizes that Forest Plans designate areas for specific uses or needs such as an inventoried Roadless areas, proposed Wilderness and Wild and Scenic Rivers areas, and Wilderness Study Areas. Please ask the WO if there are any questions about which designations are eligible. Points are awarded by a forced ranking.

Forced scoring by tract:

15 points: Inside Congressionally or Presidentially Designated Area. Acquisitions within a Congressionally or Presidentially Designated Area such Wilderness, Wild and Scenic River Corridors, National Scenic Areas, National Recreation Areas, National Historic and Scenic Trail Corridors, National Monuments or other special management or emphasis areas designated by Congress or the President of the United States.

10 points: Area with special designation by NFS Plan. Acquisitions that are within an Inventoried Roadless Area, Wildlife Management Area, proposed Wilderness, Wilderness Study Area, or Wild and Scenic River Corridor, research natural areas or other special designation per NFS planning goals within National Forest or Grassland boundaries. If you are not sure if a tract is in or out of a NFS designation please contact Nancy Parachini at 202-570-9009.

5 points: Inside NFS boundaries. Proposed acquisitions that are within NFS boundaries but not included in a special designation.

5 points: Tracts have no special designation but are vital to the integrity of an area with a special designation. Tract can be in or out of NFS boundary. The tract warrants acquisition in order to protect some vital function or feature of an adjacent tract with a special designation. An explanation of the

importance of the tract should be included in the “Additional Information” section. And example would be acquisition of a tract to prevent incompatible development directly adjacent to a Wilderness.

0 Points. Outside NFS boundaries-excludes National Historic and Scenic Trails

The score assigned will be based on the location of the tract proposed. If there is more than one tract proposed, the score for the criterion will be assigned according to the **lowest** scoring tract. This is to prevent one tract that occurs within a Congressionally or Presidentially Designated Area from artificially elevating tracts with no special designation. With this scoring mechanism, the incentive is to nominate the highest priority tracts with respect to Congressional and Presidential direction, Forest Planning and resource management.

Example:

- 1.) Green Acres Tract occurs in a CDA or National Monument or contains National Historic or Scenic Trail = 15 points
- 2.) Red Acres Tract occurs in Wilderness Study Area or Inventoried Roadless Area=10 points
- 3.) Blue Acres occurs on NFS lands with no special designation=5 points
- 4.) White Acres occurs outside of NFS boundaries = 0 points
- 5.) Purple Acres occurs adjacent to a tract with a special designation and its protection is vital to the integrity of the benefits conferred by the specially designated tract =5 points

If Green Acres tract is submitted alone the points awarded in this criterion are 15.

If Green Acres tract and Red Acres tract are submitted together the points awarded are 10.

If Green, Red and Blue Acres tracts are submitted together the points are 5

If Green, Red, Blue and Purple Acres tracts are submitted together the points are 5

5.) 15 Points: Connecting Communities/Partner Support

This criterion evaluates a project based on the degree of public support for the acquisition. The focus is on partnerships and community support and involvement. Does the acquisition help the Forest Service work in partnership with the local community and provide a benefit? Example: acquisitions that support gateway community planning, locally used trail systems, youth education. How is the acquisition part of an effort by the Forest Service to add value to the community? Who are the partners and supporters? Why is this support important? If the proposal is forwarded to the National Panel, proponents are strongly encouraged to submit letters of support to supplement the nomination, particularly support from locally elected officials, members of Congress, adjoining landowners and community members. **Are there current support letters from local groups and elected officials? Provide updated copies of the support letters with the proposal, as they will not be accepted after the submission deadline.**

- More points will be awarded to projects that clearly demonstrate that the acquisition provides an economic benefit for the local community, or helps deliver a needed service to the community.

6.) 25 Points: Regional Ranking

Regional Ranking: This criterion is scored at the Regional evaluation. The Region can apply 25 points based on Regional factors and goals. The National Panel will not rescore this criterion. It will import the Regional Score into the National evaluation. Regions may choose to award points based on specific Regional goals and circumstances. For example, tracts that may require more points could be those with important cultural features, or are extremely threatened, or for whatever reason may be important and warrant more points to be competitive. **Project fact sheets require Regions to explain the rationale for how Regional Ranking points were awarded.**

The points may be allocated in any configuration but in total cannot exceed 25 points. Example point allocations:

Project 1-20 points

Project 2-5

Project 3-0

Project 4-0

Project 5-0

Project 6-0

Project 7-0

Project 1-5 points

Project 2-5

Project 3-5

Project 4-5

Project 5-5

Project 6-0

Project 7-0

Project 1-10 points

Project 2-5

Project 3-3

Project 4-2

Project 5-5

7.) Operation and Maintenance-not scored

This criterion is not scored but the information is important and required by Congress. How does the acquisition improve the ability of the acquiring unit to perform its work and deliver benefits to the public with greater efficiency and lower costs? Or does the acquisition incur costs? Is the cost outweighed by a longer term benefit? Please try to describe how the acquisition makes a net positive contribution to operation and maintenance measured in terms of verifiable cost savings or other quantifiable efficiencies.

Additional Information, Attachments and Panel Considerations

Additional Information Page

Page four of the fact sheet can be used to include any additional information for any of the criteria.

Photos and other attachments

One page of photos is allowed. No additional attachments are allowed other than support letters

Maps

Maps must be submitted in the legislative map standard outlined in interim directive 1510-2011-1. Proposals may include as many maps as necessary, within reason. Please try to provide a “vicinity map” that shows where the tract(s) are located in a landscape context relative to NFS boundaries, roads, cities, and other protected lands. Individual maps for each tract should be included. Please use green to represent National Forest and Grassland areas and Red to indicate tracts proposed for acquisition. Map

features need to correspond to locations, features and other elements described in the narrative. For instance, if the narrative describes a trail, but sure to show the trail on the map.

Extra Points-National Panel

Project Completion. In order to try to ensure that partially completed projects or tracts reach completion, a project before the National Panel review will receive an extra three points to the average score of a project ONLY if the request is for the final phase or tract(s) and is \$3.0 million or less. **3 points**

Unobligated Balances and Readiness

The panel will use the following information to inform decisions about project funding.

- **Unobligated Balances.** Unspent funds from prior years' appropriations. Projects with unobligated balances two (2) years old or older. Also, the Region's ability to obligate funds awarded in prior fiscal years can be considered.
- **Readiness.** Per Congressional Direction the following due diligence must be addressed in the fact sheet:
 - 1.) Whether or not the landowner has signed an option;
 - 2.) Whether or not an appraisal is finished if the proposed value is based on an approved appraisal to Federal standards, or a market analysis.
- **Budget Considerations:** The Panel's recommendations will take account of anticipated appropriation levels.

Project Definitions:

Phased acquisition: One large tract with one owner, divided into 2 or more smaller parts ("phases") in order to be acquired over more than one year..

- **On-going project acquisitions:** Multiple discrete tracts, often under different ownerships, in the same landscape that are grouped under a general heading that is often repeated for several years. Tracts that make up the project are often prioritized for acquisition until the project is complete.
- **Single acquisition:** A single acquisition that can be completed in one purchase.

EXHIBIT 8



File Code: 5420
Route To:

Date: November 8, 2019

Subject: FY21 LWCF Project Submission – Sweetwater Lake Parcels

To: Jennifer Eberlein - Regional Forester (Acting)

Attached is the White River's FY21 LWCF proposal for funding the acquisition of the Sweetwater Lake parcel on the Eagle-Holy Cross Ranger District of the White River National Forest. The lands proposed for acquisition consist of a 488-acre inholding with numerous conservation and recreation values, including a 77-acre natural lake.

Successful acquisition of this property would expand public recreational opportunities such as access for camping, hiking, fishing and hunting, conserve water resources for listed aquatic species and habitat for sensitive avian species, and protect cultural resources such as a cave containing native pictographs. This proposed acquisition has received significant community support, including from the Congressional delegation for this area [Senator Michael Bennet (D), Senator Cory Gardner (R), and Representative Scott Tipton (R)], who together have signed a bipartisan letter of support for this proposal.

The Conservation Fund has a purchase agreement to acquire the Sweetwater Lake property and is willing to buy and hold the property for eventual conveyance to the USFS, depending on the ultimate outcome of the ranking process.

Project materials can be found on Pinyon drive at

<https://usfs.app.box.com/folder/86835292786>

<https://usfs.app.box.com/folder/92504919664>

If additional information is needed regarding this proposal, please contact Carole Huey, WRNF Lands Program Manager at (970) 945-3219 or carole.l.huey@usda.gov.

SCOTT G. FITZWILLIAMS
Forest Supervisor

Enclosure

cc: E Lynn Burkett, Patricia Hesch



EXHIBIT 9

USDA Forest Service Land Acquisition Proposal

Agency: U.S. Forest Service

Fiscal Year Budget 2021

Project/Unit: Sweetwater Lake/White River National Forest

Priority: _____

State(s) and Congressional District: Colorado
Congressional District #3

Location: Sweetwater Lake is located along Garfield County Road 150, approximately 10 miles upstream of the Colorado River and 17 miles northwest of Interstate 70, Dotsero, Colorado. It is a private inholding in the WRNF and has year-round access. The property is a gateway to the 235,214-acre Flat Tops Wilderness.

Type of Project:

Single phase, fee-simple acquisition. The Conservation Fund has a purchase agreement to acquire the Sweetwater Lake property and is willing to buy and hold the property for eventual conveyance to the USFS, depending on the ultimate outcome of the ranking process. The offered property includes certain water rights dependent on the Forest's ability to put those to beneficial use. TCF procured a new appraisal that concluded the fair market value of \$9,050,000.

Proposed for FY 2021		
Interest	Acres	Cost
Fee	488	\$9,000,000
Easement		
Other	Water Rights	
Acquired to Date		
Protected		
In Process		
In Process		
Remaining		
Remaining		

Scoring Criteria

1.) Recreation and Recreational Access:

FISHING: The acquisition will 1) provide new and improved access to over 4 miles of shoreline and .5 mile of Sweetwater Creek; 2) support the continued health of the Sweetwater Creek tributary and the Colorado River recreation corridor and fishery; 3) protect habitat for the native cutthroat and brown trout; and 4) improve access for ice fishing. Colorado Parks and Wildlife stocks the lake with Kokanee salmon, rainbow trout, and brook trout.

HUNTING: This acquisition will provide new hunting access and importantly, improved access to the Flat Tops Wilderness located approximately one mile north of Sweetwater Lake. Garfield County is in the top three counties in Colorado for the number of big game hunter days, having 100,116 hunter days annually. Sweetwater Lake is located in northwest Colorado, which accounts for over \$14 billion in total economic contribution from outdoor recreation including hunting. Outdoor recreation in this region supports over 133,000 jobs.

CULTURAL: Acquiring this property will allow the USFS to partner with the Southern Ute Indian Tribe of Colorado, Ute Mountain Ute Tribe of Colorado, and Ute Indian Tribe of the Uintah and Ouray Reservation on several unique interpretive opportunities to include: the history of the Nuche (Ute people) and their use of the area, as well as providing input on the future restoration and management of the well-known Sweetwater Cave. Acquiring the property will allow interpretation of the unique history of Sweetwater such as the early Forest Service Outpost, tales of former resident Chicago Mobster -Diamond Jack, and the history of backcountry guides such as AJ Brink Outfitters.

EXPANDED PUBLIC RECREATION OPPPORTUNITIES: The project will preserve the scenic integrity of the Sweetwater Lake area. Currently, the Forest Service owns a small portion of the lake and shoreline with a nine-unit campground. This purchase will allow for updating and expanding to accommodate more visitors. Six trails are accessible from or near the property including the Ute Trail #2031, #2032, Cross Creek Trail #1855, Turret Creek Trail #1832, Sweetwater Trail #1854, and Shingle Peak Trail #2042. It will provide new access for variety of boating, fishing, hunting, watching wildlife, picnicking, camping, biking, hiking, horseback riding, and snowmobiling. Motorized access to and through the property will be maintained along the County Road 150.

2.) Watershed Protection/Climate Change:

CONTRIBUTES TO THE LARGER COLORADO RIVER WATERSHED: Parcel lies in the Upper Sweetwater Creek Watershed, which has its headwaters on the White River Plateau, where an abundance of high-elevation ponds, wetlands, fens and small streams provide a source of cold, clean water that drains through the parcel and on to the Colorado River. Sweetwater Creek is considered to be functioning properly according to the USFS Watershed Condition Framework. By removing the threat of development and diversion of water for consumptive uses, this project will also conserve downstream habitat for Federally endangered fish. The parcel itself includes approximately 10,000 linear feet of lake shore, four perennial streams, springs and over five acres of mapped wetlands. Sweetwater Lake is unique in that there are few lakes of its size at such relatively low elevation in Colorado. Acquisition of this parcel would bring these valuable and unique water resources under management direction that seeks to maintain the natural character, quality, quantity and health of these resources into perpetuity.

COLORADO NATURAL HERITAGE PROGRAM: According to the CNHP, the property is within the Sweetwater Lake Potential Conservation Area. This area is rated high for biodiversity significance because of the globally vulnerable mountain willow / beaked sedge montane riparian willow carr, and globally vulnerable aspen/thinleaf alder/montane riparian forest. There is also a probable breeding record of the White-faced Ibis.

RESILIENCY NOT FRAGMENTATION. Keeping these lands in open space will contribute to climate change resiliency by preventing fragmentation and potential development. Consolidating ownership of these lands will facilitate animal movement and secure migration patterns, improving the ability of wildlife to adapt to climate change.

The current owners had plans for a large-scale housing development, golf course, and water bottling facility. If not acquired by the United States, future owners could propose similar developments. This project will protect significant aquatic habitat, including the 77-acre lake and approximately 49 acres of wetlands and streams. Protection of this property allows for connected habitat across the Forest and the nearby Flat Tops Wilderness.

3.) Threatened and Endangered Species and Habitat (Forced Ranking):

T & E SPECIES HABITAT: Protection of water resources at Sweetwater Lake protects downstream habitat for pikeminnow, Colorado humpback chub, razorback sucker, and bonytail chub.

CONSERVES WILDLIFE HABITAT: With its mix of aquatic and plant community types, Sweetwater is valued as a place of high avian (bird) diversity, where there is ample cover, water, and food resources to support birds during the breeding season, as well as to provide a stopover site for migrants, such as the white-faced ibis. As a result, Upper Sweetwater Creek and Lake is mapped as a Cornell eBird hotspot for Garfield County. This is important, as a recent report indicated that North America has lost three billion birds, more than one in four birds, in the past 50 years, so hotspots like Sweetwater are key to maintaining potential refugia in the face of habitat loss, one of the primary reasons for avian decline.

Raptors: There is ample cliff side habitat that provides nesting opportunities for the American peregrine falcon and golden eagle, both of which have confirmed nests. Coniferous trees adjacent to the lake provide nesting sites for bald eagles and osprey. Abundant fish provide a prey base for bald eagles and ospreys to support adults and young through the summer season.

Colorado species of concern include the bald eagle, osprey (longest continuously inhabited nest in Colorado relies on the lake), a rare summer tanager, and important winter range for elk and mule deer. Mountain lion, black bear, bobcat, otter, and other species will benefit from the project.

4.) Proposal/Tract Location (Forced Ranking):

The tract is a private inholding within the White River National Forest. The Forest Plan management areas for this property include deer and elk winter range, forested flora and fauna, and is within one mile of the boundary of the Flat Tops Primitive Wilderness Area. The property is located within a network of Colorado Inventoried Roadless Areas and is surrounded by the "Sweetwater A" Colorado Inventoried Roadless Area.

5.) Connecting Communities/Partner Support:

The Colorado Congressional Delegation (Senator Michael Bennet (D), Senator Cory Gardner (R) and Representative Scott Tipton (R)) signed a bipartisan letter of support. State Representative Perry Will (R) has provided a letter of support. Garfield and Eagle County Commissioners voted in favor of the project. Eagle County has committed \$___million to help leverage anticipated LWCF monies to acquire this property. The elected officials of Eagle, Glenwood Springs and Gypsum have written letters of support. There is a vibrant community fundraising campaign being led by the Eagle Valley Land Trust to support the due diligence of the purchase process.

Many local outdoor education programs rely on the Sweetwater Lake property including Walking Mountains, Small Champions, Vail Recreation District, Scouts, 4H, Fishing is Fun Programs, Valley View Hospital Youth Recovery Center, Beaver Creek Kids Camps, Anderson Camps, and Eagle County Schools. Acquisition of this property will ensure these programs continue, providing children with a priceless connection to nature, recreation, and western heritage.

BUSINESSES: Brink Outfitters, Outdoor Industry Association, Vail Resorts, Aspen Skiing Company

PARTNERS/CONSERVATION ORGANIZATIONS: Colorado Parks and Wildlife, Backcountry Hunters & Anglers, Eagle Valley Land Trust, Walking Mountains Science Center, American Rivers, Rocky Mountain Elk Foundation, Trout Unlimited, Mountain Valley Horse Rescue, Aspen Valley Land Trust, Roundup Riders of the Rockies, The Conservation Fund, Eagle County Historical Society, BLM-Colorado River Valley Field Office, and Sweetwater Community Club.

INDIVIDUALS: Liz Mooney, Adrienne Brink, Joe Macy, Hope Kapsner, Paul Testwuide, Mike and Fran Shields, Kathleen Hollingsworth, Tom Edwards, Adriana Sulak Bombard, Larry Agneberg, Hatsie Hinmon, and more are expected.

6.) Regional Ranking:

7.) Operation and Maintenance:

Acquisition results in a net loss of ___miles of property lines, a savings of \$___in ongoing boundary marking and maintenance. Consolidation of the public lands increases management efficiencies in fire fighting and overall forest health. (Hesch)

Redeveloping and updating the recreation facilities in concert with private partners will reduce the current costs the Forest incurs keeping the existing campground and trailheads maintained. This partnership will further allow for greatly expanded, and financially sustainable, public opportunities to camp, hike, boat, fish, horseback ride and hunt at the Lake and in the surrounding area on NFS lands while still protecting the resources and retaining the experiences the public values in this area.

Additional Information: Optional

After the latest development effort to build over 240 homes and an 80-room hotel and golf course failed, the original investors took over ownership and shut down access to the lake and cabins and list the property for sale. The Conservation Fund (TCF), a national non-profit land conservation organization, secured a contract to purchase the property from the sellers amidst competing bids from private developers.

The lake and surrounding property has been the heart of the Sweetwater Community for over a century. It has been a gathering place for ranchers, retirees, young families and workers. Their homes are located far apart on the Sweetwater Creek, on a nearby county road, and along the Colorado River. It has been an opportunity for connection and interaction.

The White River National Forest proposes irrigation of approximately 100 acres of the Sweetwater Lake Ranch property and expansion of the recreation opportunities at Sweetwater Lake.

The absolute water rights associated with the subject parcel include 14.66 cubic feet per second for irrigation purposes and 3.5 cubic feet per second for domestic purposes. The existing irrigation water rights are more than sufficient to supply the proposed irrigation needs. Domestic water supply for expanded recreation are pending evaluation by the Forest.

In addition to the water rights associated with the subject parcel, the United States holds two absolute water rights on the National Forest System lands immediately adjacent to the Sweetwater Lake Ranch property. The Forest has expressed some interest in potentially using these rights to protect the aesthetic and recreation values associated with the natural lake.

EXHIBIT 10

FY2021 Evaluation and Scoring Criteria for Land Purchase Rocky Mountain Region														
Evaluation Criteria	Reg	Forest	State	CD	Acres	Funding Request	Recreation and Recreational Access	Watershed Protection/Climate Change	Threatened & Endangered Species and Habitat: Forced Ranking	Location: Forced Ranking	Connecting Communities & Partner Support	Regional Points	Regional Score	Regional Rank
Project Name							0-25	0-15	15; 10; 5; 0	15; 10; 5; 0	0-15	25 total for all proposals	0-110	1-5 or 1-7
Sweetwater Lake	2	White River	CO	3	488	\$8,500,000	25	15	10	10	15	10	85	1
Sand Creek	2	Nebraska/Oglala	NE	3	520	\$895,000	20	10	10	10	10	7	67	2
Littlerock Creek	2	Shoshone	WY	at large	101	\$1,400,000	15	10	15	5	10	5	60	3
Slicker-Wabash Springs	2	Black Hills	SD	at large	280	\$1,235,000	15	10	15	5	10	3	58	4