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Mr. Russ Bacon, Supervisor

Medicine Bow-Routt National Forests

? Brendan Kelly, Project Lead

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Steamboat Springs, Colorado 80487

Dear Supervisor Bacon,

On behalf of the State of Colorado, the Department of Natural Resources (DNR) and Division of Parks and Wildlife (CPW) submit the following objection regarding the Draft Decision Notice and Finding of No Significant Impacts (FONSI) for the Mad Rabbit Trails Project. As acknowledged in our November 2022 Draft EA comment letter, we have truly valued the opportunity to work closely with the Forest Service throughout this decision process in our capacities as Cooperating Agencies. The Forest Service is an essential partner in stewarding wildlife, ecological, economic, cultural, and recreational values in the Routt National Forest (RNF). Some topics of importance to DNR and CPW have not been addressed to our satisfaction in the Final EA.[1]

DNR and CPW appreciate that the Forest Service has taken much of the State's feedback into consideration in the Final EA. The Proposed Action incorporates several meaningful modifications from the 2018 and 2019 preliminary drafts that respond to our recommendations for avoiding and minimizing adverse impacts to sensitive wildlife species and habitats, and to protect Colorado Roadless Areas (CRAs) and associated CRA characteristics. Among these changes are proposals to:

- * Rehabilitate 36 miles of non-system trails and eliminate previously proposed new trails within the Mad Creek/Rocky Peak area, reducing impacts to sensitive big game winter range habitat;
- * Eliminate previously proposed trails between Steamboat Resort and U.S. Highway 40;
- * Cluster trails in proximity to existing disturbance along Highway 40 to minimize habitat and landscape fragmentation within the Long Park CRA;
- * Eliminate several trails in the Ferndale Mountain mountain bike park area (Ferndale) to reduce trail density within elk production/calving habitat; ? Incorporate seasonal closures to protect sensitive wildlife habitats.

DNR and CPW most recently submitted comments for the Draft EA on November 23, 2022. Interested parties should reference this letter for additional context. Our Draft EA comment letter[2] summarized five requests, listed below, in addition to posing numerous questions.

1. Clarify the analytical framework and assumptions applied in the analysis of the effects to improve the transparency of findings;
2. Adopt enforceable monitoring protocols and adaptive decision criteria for maintaining desired attributes and conditions for sensitive wildlife and biological resources, ROS class, and related Roadless characteristic values;
3. Consider opportunities to involve local stakeholders and user groups in a cooperative monitoring and adaptive management plan;

4. In coordination with CPW, evaluate options for off-site mitigation additive to existing management direction to offset unavoidable impacts from new trails in elk production HPH located outside of the recommended 1[fras]2 mile buffer distance or seasonal closure area boundary, or that exceed the recommended 1 mile / square mile density threshold;
5. Coordinate with CDOT to address transportation and safety considerations in trailhead expansion and reconfiguration in a final plan.

DNR and CPW request that the Forest Service revisit the body of the Final Mad Rabbit Trails

Project Environmental Assessment to produce a defensible Finding of No Significant Impact (FONSI). An EA must [ldquo]provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.[rdquo] 40 C.F.R. [sect] 1508.9(a)(1). Without addressing the following issues, DNR and CPW do not believe the Final EA provides sufficient evidence and analysis to support a finding that the proposed action will not have a significant effect on the human environment. See 40 C.F.R. [sect] 1508.13. In past communications, DNR and CPW have requested that the Forest Service conduct an environmental impact statement process; DNR and CPW believe that a defensible FONSI can be produced if the elements of the plan detailed below are comprehensively addressed.

1. Outdated Forest Plan & Analytical Wildlife Habitat Framework
2. Compensatory Mitigation for Adverse Direct, Indirect, and Cumulative Impacts to Wildlife Resources
3. Cumulative Impacts Analysis
4. Adaptive Management Strategies
5. Non-system Trails and the No Action Alternative
6. Colorado Roadless Areas and Mitigation
7. Public Safety Considerations

Outdated Forest Plan & Analytical Wildlife Habitat Framework

The Routt National Forest Land and Resource Management Plan Record of Decision was signed in February of 1998 (the Plan)[3]. The Plan utilizes outdated methodology for analyzing the impacts of the Proposed Action. As DNR and CPW stated in Cooperating Agency meetings and previous comments, the analytical framework for analyzing direct, indirect, and cumulative adverse impacts on wildlife species and their habitats is outdated and not adequately supported by the cited literature. DNR and CPW are available to consult further with the Forest Service on this matter.

The Forest Plan[rsquo]s effective elk habitat model (Lyon 1983) demonstrates a net increase in effective elk habitat over the past 20 years.[4] These numbers are found in Table 6, titled [ldquo]Habitat effectiveness in 1999 and 2021 for the Middle Yampa geographic area[rdquo]. Table 4, titled [ldquo]Determination summary of impacts of the alternatives on wildlife resources,[rdquo] states that the Proposed Action will result in no changes to elk habitat effectiveness. The model utilizes open roads and forest canopy to assess effective elk habitat. As stated in the EA, [ldquo]trails are not part of the calculation for habitat effectiveness and The Mad Rabbit trails project does not propose changes to open roads or vegetation management, and so road densities and hiding cover calculations cannot be adjusted at this time to bring the habitat effectiveness level to 60 percent or greater (Management Area 5.11 is currently 58%) to meet this guideline and the habitat effectiveness for management area 5.41 meets the guideline of 70 percent or greater.[rdquo] This outdated model analyzes road density, which is not an equivalent or substitute for a trail density impact analysis. The most recent and relevant research now considers trail mileage and type of human use when determining habitat effectiveness due to the avoidance behavior of elk from the associated activities (OHV, biking, hiking, equestrian) on trails.

The outdated methodology of wildlife habitat analysis is neither accurate nor comprehensive. The methodology also does not acknowledge the decrease in elk productivity over the past 10 years in the project area, which CPW has documented. The affected elk herd is referred to as E-2 or the Bear[rsquo]s Ears herd. CPW conducts annual monitoring surveys to produce population estimates and collect herd demographic data. Of particular

importance are calf-to-cow ratios, which indicate reproductive success. Our surveys also collect age class information to understand recruitment rates, or the survival of young to join the adult population. High calf-to-cow ratios indicate potential population growth and resiliency; low calf-to-cow ratios indicate potential population declines.

Below is a graph containing calf-to-cow ratios from all elk classified during winter surveys in Game Management Units 14 and 214 (units affected by the proposed action and included in the E-2 Data Analysis Unit) from biological years 2006 - 2022. Although these elk are part of the greater E-2 elk herd, collar data indicates these animals reside year-round in Game Management Units (GMUs) 14 and 214. Collar data shows these elk to be short-distance, elevational migrants utilizing limited winter range in Routt County. CPW generally considers these animals to be "Steamboat Resident Elk". The average observed ratio during this timeframe was 44.7 calves per 100 cows.

In response to declining calf-to-cow ratios, CPW drafted an issue paper in 2021 to reduce antlerless elk hunting opportunities for GMUs 14 and 214 in Data Analysis Unit E-2. These changes were presented to and approved by the CPW commission in November 2021. Additionally, due to the severe winter conditions experienced by this herd in 2022-2023, CPW has taken further protective measures to drastically reduce hunting pressure throughout the entire E-2 Data Analysis Unit. From 2022-2023, CPW made an overall 58% reduction in elk licenses in E-2 for all methods of take and license types, which includes a 95% reduction in limited antlerless licenses.

The post-hunt 2022 population estimate for the E2 herd was 15,360 elk (at the bottom of the population objective range) and is expected to drop below the population objective in 2023 based on winter survival rates. The current population objective range is 15,000-18,000 elk. The winter mortality losses the Bear's Ears herd experienced due to the severe winter conditions were unprecedented. As a result of this winter, measured adult cow body condition was poorer than observed in the previous years (however, measured pregnancy rates were the same or higher than in previous years). There was evidence of fetal abortions that occurred later in winter, though the suspected fetal abortions were unquantifiable. In addition, calf weights appear to be lower than average and the timing of calving appears to be a little later although the distribution of cows during calving was typical of past years. The recovery period for this herd from this winter will take a few years and will be contingent upon future winter conditions and other unknown variables.

CPW has limited regulatory ability to manipulate wildlife populations other than through license allocation prescriptions. We encourage the Forest Service to partner with our agency in managing big game habitat resources in Colorado and ask the Forest Service to revisit the applied methodology and big game protection strategies.

CPW has previously provided citations regarding the impacts of trail development on big game. Additionally, trail impacts on big game and other wildlife populations are detailed in CPW's

Planning Trails with Wildlife in Mind [5] document. While minimization measures are detailed in Analysis Methodology: Trails Planning and Wildlife Conservation, residual adverse impacts to wildlife resources are anticipated, as described in our "Compensatory Mitigation" section below.

Compensatory Mitigation for Adverse Direct, Indirect, and Cumulative Impacts on Wildlife Resources

When CPW consults on proposed actions that intersect with wildlife resources, we utilize the mitigation hierarchy which prescribes avoidance, minimization, and mitigation measures for anticipated adverse direct, indirect, and cumulative impacts to wildlife resources. This is a standard practice in environmental management. Avoidance and minimization techniques have been applied throughout the planning process, for which CPW commends the Forest Service.

Examples of avoidance measures include a reduction in the miles of trail, and examples of minimization

measures include strategies such as seasonal timing limitations in sensitive big game habitats. However, after applying avoidance and minimization strategies, residual adverse impacts to wildlife populations and their habitats are anticipated. Requests for mitigation of adverse impacts to wildlife populations and their habitats were not incorporated into the Final EA. Mitigation is an essential element of adaptive management where resource use may outcompete resource resilience and, therefore, it is crucial for land management agencies to implement mitigation strategies.

Hunting, fishing, and wildlife-watching activities provide economic benefits to Routt County. In addition to supporting jobs, supporting local businesses, and generating tax revenue, wildlife resources have intrinsic value. It is in keeping with CPW's mission to work cooperatively toward mitigation measures that protect these resources for the public's benefit and enjoyment for generations to come.

Cumulative Impacts Analysis

An EA must provide more than a perfunctory analysis of cumulative impacts. See *Kern v. BLM*, 284 F.3d 1062, 1075-76 (9th Cir. 2002). A "meaningful cumulative impact analysis must identify five things: (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, [] proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate." *Wilderness Workshop v. BLM*, 342 F. Supp. 3d 1145, 1157 (D. Colo. 2018). "Cumulative impact" is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." 40 C.F.R. [sect] 1508.7.

CPW does not believe the Final EA adequately assesses the cumulative impacts of the proposed action. The Final EA does not meaningfully discuss the incremental effects of the proposed action when added to the effects of specific past, present, and reasonably foreseeable actions. Instead, it uses "the current condition of the project area . . . as a proxy for the impacts of past actions" and includes an appendix that lists—with no meaningful analysis—past, present, and reasonably foreseeable actions with the "potential to have cumulative effects to resources when combined with the potential direct and indirect [effects] of the proposed action." Especially considering the outdated methodology applied to existing conditions, this conclusory analysis is not sufficient to support a finding that the proposed action will not have a significant effect on the human environment. See *Wyoming Outdoor Council v. USACE*, 351 F. Supp. 2d 1232, 1243 (D. Wyo. 2005) (an agency "must assess cumulative impacts to such a degree as to assure [a reviewing court] that its issuance of a FONSI was not arbitrary and capricious").

Adaptive Management Strategies

DNR and CPW maintain that the most effective way to strengthen assurances for sustainable recreation management outcomes is to establish an adaptive management framework and procedural guidance for tracking, assessing, and responding to changes in resource conditions at appropriate geographic and temporal scales. An adaptive management framework would specify monitoring objectives and criteria for assessing key performance and environmental indicators, tied to specific actions when thresholds are met. These indicators should include desirable attributes for Recreational Opportunity Spectrum class settings, Colorado Roadless Area characteristics, sensitive wildlife habitat objectives, and related biological management objectives to guide future decisions for maintaining desired conditions.

Appendix A: Design Elements: Hydrology and Soils: Wetlands (Item 13) states "If monitoring shows increased impacts associated with trail use to either fen hydrology or vegetation, adaptive actions would be taken to reduce impacts. Actions could include signing, trail re-alignment, elevated trail surfaces, fencing or other control measures, or any combination of these actions." (Final EA) This language does not describe specific monitoring criteria and target thresholds that trigger effective and detailed management actions. This is the only mention of environmental adaptive management throughout the Final EA (all other uses of the word "adaptive" apply to adaptive human recreation opportunities, which CPW supports). CPW's

November 23, 2022 Draft EA comment letter further expands on examples of adaptive management strategies.

For example, a management category such as off-trail use and use of closed routes would have a desired condition of closed routes not being used and mechanized travel only on designated trails. The proactive recommendations would include signage at trailheads, education and information posted on websites, phone numbers to call for individuals to report violations, and the number of patrols that will be conducted to ensure the desired conditions are met. Monitoring protocols need to include a reporting documentation system where the information can be used to help identify areas where violations continue to occur and what actions have been taken to curtail the activity including more frequent patrols. The thresholds for triggering management action need to include actionable measures such as closing trails where repeated, documented violations continue to occur. If chronic illegal off-trail activity (defined by number of incidents per period of time) continued, the entire trail system would be closed. Closures would need to remain in place until a new management plan is developed and implemented to manage off-trail activities.

An adaptive management plan needs to ensure trail use will maintain the undeveloped character of a CRA. This includes protecting semi-primitive and primitive recreational settings and opportunities. The Recreational Opportunity Spectrum (ROS) criteria adopted under the 2012 Planning Rule (36 CFR 291) indicates the [ldquo]low to moderate[rdquo] social settings, described as roughly 6-15 encounters per day in primitive settings.[6] The 1998 Forest Plan describes semi-primitive non-motorized and primitive as having fewer than 2 and 4 encounters per day on 80% of the days during summer and fall seasons. The Final EA does not describe how the Forest Service will respond if these conditions are not met.

Non-system Trails and the No Action Alternative

The Mad Rabbit Trails Project Final Environmental Assessment[rsquo]s [ldquo]Purpose and Need for Action[rdquo] section states that [ldquo]Conversations with Colorado Parks & Wildlife have led to mutual agreement that non-system trails and associated impacts need to be addressed concurrently with adding any proposed trails in more sustainable locations.[rdquo] (Final EA) While CPW agrees with this statement, CPW has also stated in Cooperating Agency meetings that existing non-system trails are inconsistent with the current Forest Plan. The No Action Alternative allows for [ldquo]recreation on approximately 44 miles of unauthorized, non-system routes would continue and could increase, potentially adding to resource impacts over time due to use on trails not built to Forest Service trail standards.[rdquo] DNR and CPW stress that non-system trails should be addressed by the Forest Service regardless of the outcome of the Mad Rabbit Trails Project Final EA decision.

DNR and CPW find it disconcerting for the Forest Service to state in the Final EA under the section of Effects of the No-Action Alternative that the Routt National Forest would not continue to move towards managing sustainable recreation and trails to meet forest goals, standards, and guidelines, direction, and recreation opportunity spectrum class definitions for management areas identified in the Routt Forest Plan and that there would be limited tools for addressing the 44 miles of unauthorized, non-system trails being used by the public. The Forest Service states that under the no-action alternative about 44 miles of non-system user routes would likely continue to be present and potentially expand due to more limited approved methods of addressing non-system trails leading to increasing resource damage that could worsen over time as the population increases. If tools are already limited to address these concerns, how can the Forest Service justify the development of more trails and the associated management of new trails but also existing authorized and non-authorized trails? These statements imply that the Forest Service would do nothing to address existing conditions and ongoing issues if this project was not implemented.

Colorado Roadless Areas & Mitigation

In our November 2022 Draft EA letter, the State asked for a better understanding of the evidence supporting the conclusion that the Proposed Action would result in [ldquo]stable or improving[rdquo] conditions for CRAs and associated characteristics. We remain concerned that the cumulative impacts on CRAs from the proposed trail development would jeopardize wildlife habitats and remote characteristics of the area.

The Final EA states that, under the No Action Alternative, the following impacts would continue:

- * [Idquo]Indirect and cumulative effects through the continued use and potential proliferation of non-system trails would continue.[rdquo]
- * [Idquo]...impacts to wetlands and water resources from existing and any newly developed non-system trails would continue to affect water quality, stream sedimentation, wetlands, and the hydrologic regime.[rdquo]
- * [Idquo]Disturbances to botanical resources from use of non-system trails would be continuous, leaving no opportunity for plants or their habitat to recover.[rdquo] (Final EA)

These are inappropriate conclusions, for the reasons stated above in the [Idquo]Non-system Trails and the No Action Alternative[rdquo] section of this letter. Additionally, the State questions the validity of the following statements regarding CRA Characteristics under the Proposed Action.

Characteristic 1: High quality or undisturbed soil, water, or air resources: [Idquo]There would be minor soil disturbance and possible sediment delivery to streams during project implementation. Trails would be designed to Forest Service standards to protect long-term soil and water resources. It is not anticipated that the project would have long-term impacts on these resources in the Colorado Roadless Areas.[rdquo] (Final EA) Trails disturb and compact soils. An adaptive maintenance plan for the trails has not been described to protect soil and water resources.

Characteristic 3: Diversity of plant and animal communities & Characteristic 4: Habitat for threatened, endangered, and sensitive species, and species dependent on large undisturbed areas of land: Both characteristics contain language that states [Idquo]There were some positive effects identified from restoring non-system routes which are causing resource impacts.[rdquo]

(Final EA) This is problematic for the same reasons stated in the section of this letter titled

[Idquo]Non-system Trails and the No Action Alternative.[rdquo]

Characteristic 5: Primitive and semi-primitive classes of recreation: [Idquo]There may be a benefit of taking pressure off the three popular Wilderness area trails (Mount Zirkel, Flattops, and Sarvis Creek) in proximity to the project area on the Routt National Forest from visitors seeking areas with high scenic value and semi-primitive recreation experiences.[rdquo] (Final EA) This statement appears to be unsupported by data or evidence. Removing pressures on Wilderness Areas does not constitute a benefit to CRAs.

Characteristic 6: Reference landscapes for research study or interpretation & Characteristic 7: Landscape character and integrity: Both characteristics contain language that states [Idquo]There are minor improvements to each Colorado Roadless Area from restoring non-system routes which are causing resource impacts.[rdquo] (Final EA) This is problematic for the same reasons stated in the section of this letter titled [Idquo]Non-system Trails and the No Action Alternative.[rdquo]

DNR and CPW also recommended mitigation by replacing the affected Colorado Roadless Areas project area by adding the affected acreage to other Roadless Areas in Colorado. Although this action may be administratively burdensome, it is what land management agencies need

to consider when proposing development where the characteristics of a Roadless Area may be permanently altered.

Public Safety Considerations

The Final EA states that [Idquo]there are small increases in traffic along US Highway 40 expected, specifically during busy times and near trailheads, with the implementation of the trails and trailheads in this proposal compared to overall traffic volumes along US Highway 40 identified in the East Steamboat Springs US Highway

40 Access Study and in coordination with Colorado Department of Transportation (CDOT) but there would be no substantial changes in overall traffic volume. The Forest Service would continue to work with CDOT based on vehicle use patterns at access points associated with this project along US Highway 40 to manage for vehicle flow, safety concerns, and other concerns related to Forest Service road and trailhead traffic.[rdquo] DNR and CPW continue to encourage the Forest Service to work closely with CDOT to ensure that plans for expanded points of access and trailhead configuration comply with public safety and transportation management guidelines and recommendations. Additionally, DNR and CPW continue to request that any documentation relevant to transportation or public safety considerations be made publicly available as part of the public record. DNR and CPW have not seen any design elements indicating that safe egress and ingress of the highway would be ensured. The mission of DNR and CPW is to develop, preserve, and enhance the natural resources of Colorado for the benefit and enjoyment of our citizens. This includes safe access to these resources and for our guests.

While we are regretfully compelled to submit this objection, the Colorado Department of

Natural Resources and Division of Parks and Wildlife remains committed to partnering with the Forest Service in developing robust, practicable, and defensible plans for modern forest management[mdash]including meeting recreation needs[mdash]while ensuring the conservation of wildlife and their habitats. The Colorado Department of Natural Resources welcomes further discussion on any elements of this letter. The Colorado Department of Natural Resources remains open to discussing alternative options for facilitating trail development in the area balanced with conserving wildlife habitat and wildland characteristics.

Sincerely,

Dan Gibbs, Executive Director

[1] United States Forest Service, Mad Rabbit Proposed Action Final EA (2023).

[2] Colorado Department of Natural Resources Re: Mad Rabbit Trails Project Draft Environmental Assessment. (2022, November 23).

[3] U.S. Dept. of Agriculture, Forest Service, Routt National Forest, Land and Resource Management Plan (1983). Steamboat Springs, CO.

[4] Lyon, L.J. 1983. "Road Density Model Describing Habitat Effectiveness for Elk." Journal of Forestry. Vol. 81(9): 592-594, 613.

[5] Colorado Parks & Wildlife, Colorado's Guide to Planning Trails with Wildlife in Mind (2021).

[6] USDA ROS Primer and Field Guide,
https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5335339.pdf