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Via electronic web submission:

<https://cara.ecosystem-management.org/Public//CommentInput?Project=47937>

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Dear Scott and Max,

The following are the comments of Wilderness Workshop, Rocky Smith, Wendi LoSasso, Jonathan Staufer, Josef Staufer, and Anne Staufer on the Draft Environmental Impact Statement (DEIS) for the Vail Mountain Resort Golden Peak Improvements Project at the Vail Ski Area. The DEIS analyzes two alternatives, a No Action Alternative (Alt. 1) and the Proposed Action (Alt. 2). Under Alt. 1 the U.S. Forest Service (USFS) would deny the proposed project. Under the Proposed Action the agency would approve the following elements: lift and terrain construction including 42 acres of new trails, a new access road, and a new surface lift; new facilities including lift operating buildings, race start buildings, equipment storage, fuel storage, and a maintenance building; snowmaking for the new terrain; construction and maintenance access to the proposed infrastructure; and logging, grading, and surfacing for the proposed trails, and the long-term maintenance of the new developments.

The proposed expansion targets National Forest lands that provide habitat for important wildlife and watersheds that have been degraded by prior development. The project will contribute to the additional loss of habitat and the further degradation of watersheds. The DEIS fails to consider alternatives that minimize impacts to these important resources. The DEIS also fails to adequately analyze and disclose potential impacts of new snowmaking associated with this project and other similar projects on Federally listed fish and other important aquatic resources. Finally, the DEIS provides no evidence to support its conclusion that Project Design Criteria (PDC) or other proposed mitigation will effectively minimize potential impacts.

1. The DEIS fails to consider all reasonable alternatives.

The Forest Service has an obligation to consider all reasonable alternatives. See 40 CFR 1502.14(a) ("agencies shall...[r]igorously explore and objectively evaluate all reasonable

alternatives”). Here the agency failed to do so. The DEIS only includes two alternatives, a no action and the proposed action. The proposed action will result in the destruction of habitat for important wildlife and further degradation of already degraded watersheds. Snowmaking associated with the proposed action will also result in depletions that, when considered with other similar actions in the area, may result in impacts that haven’t been adequately considered (see Section 2 *infra*).

The Forest Service must consider alternatives that reduce these potential impacts. Some reasonable alternatives that could reduce impacts, but that were not considered in the DEIS include: 1) an alternative permitting the proposed expansion only with a firm agreement from Vail Resorts to protect an equivalent amount of similar wildlife habitat within the Company’s ski area permit from future disturbance and development¹; 2) an alternative conditioning approval of this expansion on the proponent’s execution of specific actions that would improve water quality in the impacted watersheds (e.g., eliminating barriers that isolate populations of aquatic species, increasing vegetation in water influence zones, etc.)²; 3) an alternative requiring the project proponent to undertake mandatory weed eradication measures to ensure that any new development is accompanied by a net decrease in the amount of weeds within the ski area permit; 4) upgrading existing race courses on the International, Giant Steps, and Hunky Dory runs, for the intended use; and 5) an alternative that does not include additional snowmaking to avoid new stream depletions and problems with increased spring run-off—the impacts of which, along with impacts of all the proposed and foreseeable snowmaking proposals on nearby ski areas, have not been considered (see Section 2 *infra*).

These are all reasonable alternatives that would improve the health of public land values while also allowing for additional development within the ski area boundary. None of them were considered by the USFS in this DEIS.

2. The USFS failed to take a hard look at potential impacts of additional snowmaking associated with this project and other similar projects on Federally listed fish.

The DEIS makes it clear that water depletions associated with snowmaking for the proposed action are likely to adversely affect Colorado River fish and their critical habitat. See e.g., DEIS Table 2-3, at 26, 92. Based on a dated Biological Opinion (BO) from the U.S. Fish and Wildlife Service (USFWS, 2009), however, the Forest Service concludes that the affects of this project

¹ Vail Resorts has other expansion projects in the pipeline that will impact important wildlife habitat. See e.g., Beaver Creek Resort - McCoy Park Terrain Development, Notice of Proposed Action Legal Notice (Apr. 27, 2018) available at <https://www.fs.usda.gov/project/?project=52650>.

² Degraded water quality in Mill Creek is likely a result of ski resort development, and the water quality may be declining rather than improving. DEIS at 86, 89.

won't jeopardize the continued existence of the fish or destroy critical habitat. DEIS at 92. That conclusion is not supported by the requisite hard look.

USFS reliance on the BO is misplaced because that opinion was completed years ago, and it fails to consider important new information and changed circumstances. The BO was completed before most of the best science on climate change was available. The Forest Service considered some of this science in the DEIS. For example, the agency cites several recent climate-related studies in its air quality discussion. See e.g., DEIS at 61-62 (discussing several important studies related to climate change and its impacts on the project area—all of which were published after 2011). But the agency fails to discuss any of these new climate-related studies in its analysis of snowmaking, water depletions, and Colorado River fish.

The studies highlighted by the USFS in its air quality analysis indicate that temperatures are on the rise, timing of snowmelt and peak runoff have changed, and soil moisture drought is more frequent. Studies also predict “[a] decrease in annual streamflow for rivers..., due to the loss of moisture from warmer snowpack, soils, and vegetation.” DEIS at 62. Dust-on-snow events will result in earlier peak snowmelt, runoff and return to base flows will occur earlier, and late summer streamflows (base flows) will be lower. *Id.* All of this information is relevant to the long-term health and viability of Federally listed fish species that will be impacted by stream withdrawals for snowmaking in the proposed action. Nonetheless, the USFS failed to consider any of this new information in its analysis of potential impacts to listed Colorado River fish.

In addition to the wealth of new science that the USFS failed to consider in its analysis of snowmaking-related impacts, the agency also failed to take a hard look at the numerous other similar proposals that include new or increased snowmaking operations on other ski areas nearby. Largely due to the dry winter we've just endured and the dire predictions about future snowfall in the age of climate change, nearly every major ski area on the White River National Forest and in the Colorado River Basin has asked or plans to ask for additional snowmaking capacity.³ These new snowmaking proposals are similar actions that must be considered together by the USFS in its analysis. The DEIS suggests that as much as 25% of the water used for snowmaking doesn't make it back into the stream. DEIS at 102. Adding the potential stream depletions from this project to depletions likely to result from other similar projects may be significant. For example, all together those depletions may have significant cumulative impacts on sensitive fish and aquatic species. Each of these snowmaking proposals will result in

³ See e.g., Aspen Mountain Pandora Development and Summit Snowmaking Projects (see project website here: <https://www.fs.usda.gov/project/?project=53847>); Beaver Creek Resort – McCoy Park Terrain Development (see project website here: <https://www.fs.usda.gov/project/?project=52650>); Keystone Resort – 2018 Improvements Project (see project website here: <https://www.fs.usda.gov/project/?project=53800>); and the Steamboat Ski Area FY18 Projects (see project website here: <https://www.fs.usda.gov/project/?project=52845>).

additional stream depletions. And cumulatively they may result in more significant impacts on Colorado River fish and the fishes' habitat than the USFS has analyzed or disclosed in the DEIS.

To comply with the "hard look" obligations of NEPA, the USFS must initiate a new consultation with USFWS for an updated BO and consider any new proposal for snowmaking along with all of the other snowmaking proposals that are being considered or that are reasonably foreseeable.

3. The DEIS shows unacceptable impacts will result from the proposed action despite Project Design Criteria and other proposed mitigation measures.

The Gold Peak expansion project was first proposed years ago, but it was not approved because of resource concerns. The new proposed action purports to resolve resource issues with a revised Drainage Management Plan and incorporation of new Project Design Criteria (PDC). These proposed measures, however, will not effectively minimize or eliminate adverse impacts.

The most striking of these inadequate PDCs relates to weeds. The DEIS confirms that weeds are present in the project area, mostly within and adjacent to developed ski trails. DEIS at 76. The agency discusses weeds as "one of four substantial threats to NFS lands," and outlines the Orders, laws, and regulations requiring it to combat this substantial threat. DEIS at 77. The agency then proposes PDCs that would allow an increase in "non-native plant" cover to near 10 percent of the project area. See e.g., DEIS Table 2-1, at 21. The DEIS makes it clear that "[u]nder the Proposed Action, existing populations of noxious and invasive weeds may spread into currently uninfested regions of the Analysis Area. Undesirable species could spread via wind, clearing, construction vehicles, and reclamation seed mixes or mulches." DEIS Table 2-3, at 26, 79. The very best that the USFS can promise is that: "Proper implementation of PDC would minimize the spread of noxious weeds." *Id.* Allowing the continued spread of invasive weeds across the planning area fails to minimize impacts and fails to achieve the goals outlined in relevant Orders, laws, and regulations cited in the DEIS.

We understand that weeds are hard to control. But considering the threat they pose to the health of the native ecosystems on our public lands and the prevalence of weeds within portions of the ski area that have already been developed, the USFS must do more than simply asking the proponent not to increase the problem by more than a specified percentage. If weeds in the project area cannot be eradicated after completion of the project, the USFS should condition approval of this project on eradication of weeds from other lands within the ski area permit.

Another PDC that shows all signs of inadequacy is the Erosion Control and Drainage Management Plan. See DEIS Table 2-1, at 18; *Id.*, at App. B. The DEIS is full of detail about how the existing developed ski area contributes to erosion, sedimentation, and watershed degradation. The Erosion Control Plan, however, simply includes a list of measures that Vail Resorts and other companies have long used to develop ski areas. History shows that these tried measures aren't enough to prevent significant resource degradation. Indeed, the Water Resources report states that even with application of the BMPs and Drainage Management Plan, stream health could still decrease as a result of the proposed action. If it does, it would violate the Watershed Conservation Practices Handbook (WCPH, FSH 2509.25). Water Resources Report (WRR) at 35. We believe the proposed action, even with the proposed mitigation, would violate the WCPH, as we discuss further below.

Specifically,

Mill Creek currently exhibits diminished stream health class. The Proposed Action would result in increased flow rates and volumes and alteration in peak flow timing that could result in a decreasing trend in stream health, even with the installation of BMPs and other features (e.g., infiltration areas, water bars, channels) proposed in the Drainage Management Plan...

Ibid.

Streams in the Mill Creek drainage just downstream of the proposed project area already “exhibit[] multiple indications of peak flow rates beyond what Mill Creek’s inherent stability can tolerate”. WRR at 21. Under the proposed project, annual runoff would increase between 9 and 11 percent, and peak flow would increase 11 percent in an average year. WRR at 29, Table 14. Two segments of Mill Creek are well over the threshold for unstable banks, pushing these segments into the “diminished” stream health category. WRR Table 8 at 22. As the WRR states:

It has been demonstrated that increases in peak discharge and annual volume of runoff can negatively impact the stability of streambanks.

Id. at 22.

We also question how infiltration areas would help reduce the flow into Mill Creek. We find no explanation of how such areas would be effective in reducing stream health impacts from the project. If the proposed infiltration areas already absorbed water, they would be wetlands. But they are not. Compare Aquatic Wetland Report Figure 5 (p. 25) with WRR Attachment F, Figure

4. Note that only one infiltration area, INF-1, appears to be in or near a wetland. Thus it seems unlikely that the proposed infiltration areas would significantly reduce the runoff into Mill Creek.

Mill Creek drains into Gore Creek. The segment of Gore Creek from Black Gore Creek to the confluence with the Eagle River, where Mill Creek would drain, is already impaired, and is on Colorado's 303(d) list for chronic failure to meet water quality standards and/or designated uses. WRR at 14. Sending more sediment-laden water into this creek will, at a minimum, not help it recover, and would likely exacerbate the failure to meet water quality standards and uses.

The proposed action would violate the WCPH, specifically, management measure 1:

Manage land treatments to conserve site moisture and to protect long-term stream health from damage by increased runoff.

WCPH, section 11.1. One design criterion under this management measure states in part:

In watersheds that contain stream reaches in diminished stream health class, allow only those actions that will maintain or reduce watershed-scale Connected Disturbed Area.

Ibid. In other words, no increase in connected disturbed area (CDA) is allowed in streams with diminished health, as Mill Creek is. However, under the proposed action, CDA would increase by 53.14 acres, more than triple the existing CDA. WRR Table 17 at 33. The proposed action would clearly not comply with the WCPH.

The DEIS states that: "The proposed mitigation activities on the Mill Creek Trail ... would offset a substantial portion of these adverse cumulative impacts. Id. at 114. How "substantial" would the portion of impacts offset be? And would it be enough to prevent a further decrease in stream health for an already impaired stream? Very likely not. Therefore, the proposed action is not acceptable and must not be implemented. No project with the potential to adversely affect stream health can be approved in the Golden Peak area until the existing watershed problems area addressed.

This is why the agency must consider alternatives that condition any new approval on completion of activities that actually rectify the historic and ongoing impacts that this ski area has on public lands and important public land values. See Section 1 *supra*.

4. Additional issues.

- Due to uncertainty surrounding the status of green and blue lineages of Colorado Cutthroat Trout, the USFWS is managing all Colorado Cutthroat populations as protected species under the ESA until further review has taken place. The DEIS makes clear that there are Colorado Cutthroat in the project area. See DEIS Table 3.8-2, at 84. The DEIS, however, makes no mention of FWS consultation or potential ESA protections for these fish. The USFS must consult with USFWS on the potential impacts to Colorado Cutthroat prior to approving this project.
- It is not clear that the USFS has taken a hard look at emissions from increased traffic. While admitting that the ski mountain is a local driver of tourism and vehicle emissions (DEIS, at 61), the agency suggests that the project “is not expected to drive additional visitation and would not increase emissions related to traffic congestion.” DEIS Table 2-3, at 25. That, of course, calls into question the purpose of the whole project. Vail Resorts and Ski Club Vail want this expansion to ensure a better training facility for athletes and a better venue for World Cup competition. Is it really true that they don’t intend to lure more visitors with these improved facilities? Having additional races would likely draw more spectators.
- The snowmaking strategy outlined on p. 32 highlights impacts that the DEIS fails to adequately consider. This project aims to maintain and enhance activities that it will simultaneously undermine. Using pumper stations to lift water uphill for snowmaking and using fossil fuels to drive snowcats for grooming and snow shaping will contribute to climate change and exacerbate the unreliable snow conditions that are increasingly the norm. The closest the USFS gets to a meaningful discussion of this issue is on p. 64 of the DEIS: “Watershed resource impacts from climate change on natural hydrologic cycles may also affect the resort’s ability to store water and make artificial snow in the long term.” The agency stops with that brief acknowledgement that snowmaking may not even be possible in the future, rather than taking a hard look at whether it makes sense to permit the activity at all given the impacts and the future outlook. NEPA requires more. In fact, given the numerous and growing number of new snowmaking proposals on ski resorts in the area, the USFS should undertake a programmatic analysis that considers the broader impacts of these proposals altogether, and that provides a rational explanation for any agency decision with those impacts in mind.
- It would be good to have threshold compliance targets for reclamation activities and consequences for not reaching those targets. There are places on Vail Mountain that have not been adequately reclaimed from ski area development that occurred years ago, and yet the USFS still considers and approves more ground disturbing

development. The agency should say: “Nope, we’re not approving more until you’ve cleaned up what you’ve got.”

- Some of the assumptions in the soil analysis do not track with the history. For example, the DEIS says “soil losses and sedimentation due to erosion would be long term, but would return to natural rates once vegetation is re-established in about two to five years after reclamation.” DEIS, at 72. But reclamation on the Vail Ski Area has often failed and often taken substantially more than 2-5 years to achieve success when it has worked.
- Are the applicable noxious weed management guidelines really getting the job done? It doesn’t seem like it. The DEIS makes it clear that weeds are a serious issue on developed portions of the ski area. This is a discretionary decision the agency could use to get the weed problem under control. See e.g., Section 1 *supra* (discussing alternatives that would require Vail Resorts to rectify existing weed problems before causing more). The DEIS discusses PDC to reduce future spread of weeds (DEIS at 79), but why not condition approval of this project on cleaning up the existing weed problems?
- We commend the USFS and Vail Resorts for the proposal to decommission 7 miles of road in the upper Mill Creek Watershed, but question whether it is appropriate to consider the decommissioning of a closed road as an offset. See DEIS at 81.
- USFS must analyze and disclose potential impacts of decommissioning the Mill Creek Road and creating a single-track trail in its place. The single-track trail will still have some impacts on the watershed. There will still be some sedimentation caused by the trail. Further, it is likely that usage of any new trail will increase when it is transformed from a closed road to a new trail. And increased usage of the area should be disclosed and analyzed in this DEIS. The DEIS fails to discuss these potential impacts.
- The DEIS suggests that lynx may utilize the project area at night. DEIS at 83. The analysis, however, fails to acknowledge or address the fact that this particular project will require an unusually high amount of nighttime grooming and snowmaking due to the nature of the proposed use. If lynx really do use this area at night, the proposed activities will have an impact that deserves more discussion in the DEIS.
- The DEIS’s discussion of aquatic macroinvertebrates makes it clear that the proposed action could result in increased streamflow and sedimentation. DEIS at 96. The DEIS also indicates that the Drainage Management Plan would minimize those impacts. Does the drainage management plan require Vail Resorts to resolve existing problems with water quality resulting from management of existing facilities prior to approval of new activity that will result in additional impacts? Shouldn’t the company be required to clean up existing problems before expanding?
- The DEIS suggests discusses in several places that the depletions associated with new snowmaking for this project are well below the amount of depletions covered by the

previous Section 7 consultations (see e.g., DEIS at 112), but the DEIS fails to quantify and disclose the total extent of depletions Vail Resorts is currently responsible for. WRR at 30 lists the stream depletions associated with snowmaking, but it fails to mention depletions for other purposes. Total depletions are an important consideration that cannot be omitted from this analysis.

CONCLUSION. For the reasons stated above, this DEIS is inadequate.

Please keep us informed on progress of this project.

Sincerely,

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