



February 22, 2022

Scott Fitzwilliams, Forest Supervisor
c/o Shelly Grail, Recreation Manager
White River National Forest
P.O. Box 309
Carbondale, CO 81623

Re: Comments on the Draft Environmental Assessment for the Redstone to McClure Pass Trail

Dear Ms. Grail,

Thank you for the opportunity to provide comments on the Draft Environmental Assessment (Draft EA) for the Redstone to McClure Pass Trail (Proposed Action). Wilderness Workshop (WW) is a non-profit, member-based organization dedicated to the protection and conservation of the wilderness and natural landscapes of the Roaring Fork Watershed, White River National Forest, and adjacent public lands. Our staff and members live, work, recreate and otherwise use and enjoy lands managed by the White River National Forest including the Crystal Valley.

WW previously provided scoping comments and attached numerous scientific studies on the Proposed Action on March 23, 2020. These scoping comments and attached scientific studies are hereby incorporated by reference. While we appreciate that the Forest Service reviewed our scoping letter and addressed some of our comments in the Draft EA, the Draft EA falls short for several reasons. First, WW recognizes the herculean task presented to the Forest Service to manage recreation on the most heavily used national forest in the United States; however, the Proposed Action cannot be separately analyzed from the entire Carbondale to Crested Butte Trail (CCB trail) because the National Environmental Policy Act (NEPA) requires these intimately connected actions to be objectively evaluated and rigorously explored in a single environmental impact statement (EIS). In addition to its unlawful segmentation of the CCB trail, analyzing only this portion of the trail from Redstone to McClure Pass completely undermines the Draft EA's cumulative impacts analysis. Second, the Draft EA fails to analyze a reasonable range of alternatives as required by NEPA, nor does the Draft EA take a hard look at impacted resources. Lastly, based on the proposed location of the Redstone to McClure Pass trail, the Proposed Action is not consistent with the 2002 White River National Forest Plan (Forest Plan) as required by the National Forest Management Act (NFMA). Moving forward, the Forest Service should pause this project and initiate a full EIS for the entire CCB trail to meet its environmental review requirements under NEPA.

I. The Forest Service Has Failed to Articulate a Clear Purpose and Need for the Proposed Action.

During scoping for the Redstone to McClure Pass trail, the Forest Service articulated a purpose and need to “improve trail connectivity between Redstone, nearby subdivisions, and McClure Pass and to improve access of recreational use along Highway 133.”¹ At some point between scoping and public release of the Draft EA, the Forest Service determined that the Proposed Action is also needed to “Address the existing unmanaged recreational use along the historic roads in the project area including the Rock Creek Wagon Road and Old McClure Pass Road.” Draft EA at 3. The addition of this purported need is problematic for this NEPA process because it precludes meaningful public engagement in the process; it is not adequately incorporated into the range of alternatives; and it undermines the Forest Service’s obligation to manage public lands and resources under applicable statutes and regulations.

First of all, by making the purpose and need for the project a moving target, the Forest Service is disenfranchising the public from participating in the process in a meaningful way. The public did not have an opportunity to produce scoping comments addressing this supposed purpose and need for the project. It further confounds public engagement to claim that the Forest Service is establishing a purpose and need for this project that the agency has ample authority to address outside of this project, as discussed below. The Forest Service has also failed to demonstrate that existing use on Rock Creek Wagon Road and Old McClure Pass Road is creating a problem that must be addressed, instead disingenuously stating repeatedly that “unauthorized” recreational use is occurring along the Rock Creek Wagon Road and Old McClure Pass Road, when the Draft EA finds that most use in this area is foot traffic. Foot traffic is not “unauthorized” on national forest lands where specific restrictions are not in place. The Forest Service must do a better job to authentically engage the public in this process by providing credible information about the existing conditions and purpose for the Proposed Action.

Secondly, the range of alternatives in the Draft EA does not support the identified need to “address unmanaged recreational use” along the proposed trail. A statement of purpose and need must “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13 (2012). The one action alternative (the Proposed Action) may be one way to address this need; however, there are other ways to address this need such as implementing area closures. If this project is intended to address recreation use on decommissioned routes, then the Forest Service has failed to analyze a reasonable range of alternatives that meet that stated purpose and need. Reasonableness is judged with reference to an agency’s objectives for a particular project. *See Colo. Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1174–75 (10th Cir. 1999); *Simmons v. U.S. Army Corps of Eng’rs*, 120 F.3d 664, 668–69 (7th Cir. 1997); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992).

¹ This purpose and need statement is explicitly defined in the January 20, 2020 Forest Service scoping letter, available at https://www.fs.usda.gov/nfs/11558/www/nepa/112357_FSPLT3_5222465.pdf. The exact same language is repeated to articulate what the project is “aimed at” in the January 21, 2020 Forest Service news release, available at https://www.fs.usda.gov/nfs/11558/www/nepa/112357_FSPLT3_5228018.pdf. Both documents last accessed 2/21/22.

Lastly, the argument that designating a new recreation trail is necessary and beneficial for wildlife grossly distorts the Forest Service’s obligation to manage wildlife habitat and other public lands resources. The Forest Service has ample authority to implement closures and otherwise address management issues without designating recreation trails. In fact, the Forest Service implements an area closure across the highway in Avalanche Creek for the purpose of protecting bighorn sheep. If there is a management issue in which recreation use on Rock Creek Wagon Road and Old McClure Pass Road is negatively impacting wildlife, then the Forest Service must address that issue using the laws and regulations at the agency’s disposal – not exacerbate the problem by designating a trail that will draw increased use to the area which would then need to be managed through a trail closure which must be enforced.

The shift in purpose and need appears intended to justify the Proposed Action rather than to genuinely articulate a purpose for this project. A purpose and need statement will fail if it unreasonably narrows the agency's consideration of alternatives so that the outcome is preordained. *Nat'l Parks & Conservation Ass'n v. BLM*, 606 F.3d 1058, 1070 (9th Cir. 2010). An agency must look hard at the factors relevant to definition of purpose, which can include private goals, especially when the agency is determining whether to issue a permit or license, as is the case here with the decision to issue a special use authorization. *See id.* (“Requiring agencies to consider private objectives, however, is a far cry from mandating that those private interests define the scope of the proposed project.”). The proposed trail has always been for the purpose of facilitating recreation use along the Highway 133 corridor, as Pitkin County has been advocating throughout its 20-year campaign for the CCB trail. The Forest Service should take a hard look at the purpose and need for this trail; ensure that it reflects the information that has been presented to the public; and ensure that the range of alternatives considered in the EA adequately supports that purpose and need.

II. The Draft EA Violates the National Environmental Policy Act.

A. The Proposed Action Unlawfully Segments the Redstone to McClure Pass Section of the Carbondale to Crested Butte Trail.

The overarching issue with the Draft EA’s analysis of the McClure to Redstone segment of the Carbondale to Crested Butte Trail is that the Forest Service is unlawfully segmenting an 83-mile proposed trail into smaller actions. The Draft EA states that the Proposed Action’s cumulative impacts are limited to the existing proposed trail segment, e.g. Redstone to McClure Pass, even though the CCB trail proponents long ago established the location of the trail from Carbondale to Crested Butte. Specifically, the Draft EA states: “[t]he Proposed Action would increase human use and potential disturbance to wildlife, primarily adjacent to the highway corridor. Overall, the potential route of the CCB Crystal River Trail is *unknown* and its impacts are not certain; therefore, cumulative impacts are unknown.” Draft EA at 43 (emphasis added). In fact, the potential route of the CCB trail is very much known; Pitkin County has produced an entire Trail Plan, which was adopted by the Pitkin County Board of County Commissioners in 2018, and which “sets out a vision for a trail running the length of the Crystal River Valley, between Carbondale at the McClure Pass summit, connecting with a trail system in Gunnison

County between the pass and Crested Butte.”² This detailed Trail Plan includes maps, environmental impact analysis, and a phasing schedule which is reiterated in the Draft EA that estimates the entire Crystal Valley trail will be completed by 2040. The Proposed Action almost identically lines up with the Pitkin County’s maps of its preferred trail alignment. Draft EA at 19. There is no doubt that there is a single proposal governing this segment and other segments of the trail, which means that to comply with well-settled federal law, a single NEPA review document is required.

1. The Forest Service cannot segment the trail and ignore the wider cumulative impacts from the entire 83-mile trail.

Among the environmental impacts the EA must evaluate are "the cumulative impacts of a project." *WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 784 F.3d 677, 690 (10th Cir. 2015) (quoting *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002)). Cumulative impacts are "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." 40 C.F.R. § 1508.7. Cumulative impacts can result from "individually minor but collectively significant actions taking place over a long period of time." *Id.* As a part of its cumulative impacts analysis, the Forest Service must include the connected actions associated with its Proposed Action. NEPA's implementing regulations define "connected actions" as actions that "are closely related" to the action under review because the actions: "(i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1). Where there are connected actions, then federal courts have concluded "[a] single NEPA review document is required for distinct projects *when there is a single proposal governing the projects* or when the projects are connected, cumulative, or similar actions under the regulations implementing NEPA." *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 893-94 (9th Cir. 2002) (emphasis added); *see City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990) (“NEPA requires that where several actions have a cumulative or synergistic environmental effect, this consequence must be considered in an EIS”).

Federal courts require the Forest Service to analyze the cumulative effects of the entire trail system where a trail segment will connect to other trails. *Sierra Club v. United States Forest Serv.*, 857 F. Supp. 2d 1167, 1181 (D. Utah 2012) (citing *N. Cascade Conservation Council v. U.S. Forest Serv.*, 98 F. Supp. 2d 1193, 1199 (W.D. Wash. 1999) and *Wash. Trails Ass'n v. U.S. Forest Service*, 935 F. Supp. 1117, 1123 (W.D. Wash. 1996)). This is because the "proper reference point for a cumulative impacts inquiry is the entire trail system." *N. Cascade Conservation Council*, 98 F. Supp. 2d at 1198. Indeed, the "environmental significance of [a trail] cannot be accurately assessed unless the potential for increased use resulting from the cumulative impact of the projected network of trails . . . is carefully considered." *Wash. Trails Ass'n*, 935 F. Supp. at 1123.

2. The location of the CCB trail is reasonably foreseeable.

² Quote and Trail Plan online at <https://pitkincounty.com/1132/Carbondale-to-Crested-Butte-Trail-Plan>. Last accessed 2/21/22.

The location of the CCB trail is reasonably foreseeable because the route follows well-established corridors identified by Pitkin County nearly twenty years ago. First, the Draft EA itself cites to the map of the entire 83-mile trail that Pitkin County created in 2004 with the various stages of planning for each segment. *See* Draft EA at 6. In addition to including a map, the Draft EA also cites to the 2018 Pitkin County Carbondale to Crested Butte Master Trail Plan. Draft EA at 78. This trail plan has extensive mapping of the proposed trail corridor.³

Not only has Pitkin County acknowledged the location of the entire CCB trail, but so has the Forest Service in another ranger district. Ten years ago the Gunnison National Forest Travel Plan recognized the Carbondale to Crested Butte trail going over Kebler Pass.⁴ In the Final EIS, the Forest Service discussed the CCB trail following the old Kebler Wagon Trail for 23 miles. Specifically, the FEIS stated:

Under the DEIS Proposed Action, mountain-bike-specific trails on NFS lands would increase from 87 miles to 142 miles. In the Kebler Pass area, a new trail (approximately 23 miles) is being proposed to link the Kebler Wagon Trail to the Erickson Springs Campground on the Paonia Ranger District parallel to the Kebler Pass Road. This proposal is to help realize the long-envisioned biking trail between Crested Butte and Carbondale via Kebler Pass. A mountain bike trail connection would also be provided between Gunsight Pass and down to the Kebler Pass Road.

2010 Gunnison National Forest Travel Plan FEIS at 174. The location of the Kebler Wagon Trail is far from unknown to the Forest Service, as the Draft EA claims, but actually is well-known and analyzed by the Forest Service as a portion of the CCB trail.

3. The Forest Service must prepare an EIS to analyze the entire CCB trail because the Draft EA clearly demonstrates the Proposed Action and the entire trail are connected actions.

As discussed above, the Draft EA confirms that the Proposed Action is a connected action to the larger CCB trail, and therefore the Forest Service must describe these connected actions in a single environmental review. *See* 40 C.F.R. § 1508.25(a); *see also Klamath-Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 387 F.3d 999 (9th Cir. 2004). The Draft EA even goes so far as to assert that “If [other] segments are proposed for implementation, the Forest Service will, as appropriate, conduct the necessary NEPA analysis to analyze and disclose the environmental effects of those actions.” Draft EA at 5. This statement acknowledges that the Forest Service is dividing a single project into multiple actions that will proceed under separate environmental review processes, ensuring comprehensive environmental impact analysis never occurs.

The requirement for federal agencies to analyze connected actions in a single environmental review is “to prevent an agency from dividing a project into multiple ‘actions,’

³ <https://pitkincounty.com/DocumentCenter/View/17874/Carbondale-to-Crested-Butte-Trail-Plan---Final>. Last accessed 2/21/22.

⁴ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5182985.pdf. Last accessed 2/21/22.

each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006) (internal quotation marks omitted). That appears to be exactly what is occurring in this Draft EA, where the Forest Service is finding minimal impacts on wildlife, habitat fragmentation, recreation use, and many other resources that would be significantly impacted by an 83-mile trail but may be less impacted by a 7-mile trail. If the Forest Service proceeds with a piecemeal approach to evaluating the CCB trail, the agency will never comprehensively analyze the impacts of a major recreation development, frustrating the NEPA process and precluding meaningful public engagement by evading disclosure of real impacts.

While we understand that no other actions are currently being considered by the Forest Service to develop additional portions of the CCB trail, the Proposed Action is an “interdependent part[] of a larger action and depend[s] on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1). The Draft EA recognizes that the Proposed Action is an interdependent part of the CCB trail when it documents Pitkin County’s expectation to complete the entire trail by 2040; when the Draft EA specifically outlines where the Proposed Action fits within the greater trail; and when the Forest Service itself recognizes through its travel planning that this trail is proposed not just for Redstone to McClure Pass, but for 83 miles from Carbondale to Crested Butte. Therefore, the Forest Service must abandon this EA and instead complete an EIS for the entire CCB trail.

B. The Draft EA Has Not Considered A Reasonable Range of Alternatives.

NEPA requires the Forest Service to consider and analyze a reasonable range of alternatives in its EA, including alternatives to the project proponents’ proposal. NEPA regulations specify that an agency must “rigorously explore and objectively evaluate all reasonable alternatives” including those “reasonable alternatives not within the jurisdiction of the lead agency,” so as to “provid[e] a clear basis for choice among the option.” 40 C.F.R. § 1502.14. This requirement applies equally to EAs and EISs. *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988). An EA offering a choice between the proposed action and no action does not present a reasonable range of alternatives. *See TWS v. Wisely*, 524 F. Supp. 2d 1285, 1312 (D. Colo. 2007).

The range of alternatives is the heart of a NEPA document because “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” *New Mexico v. BLM*, 565 F.3d 683, 708 (10th Cir. 2009). Informed and meaningful consideration of alternatives -- including the no action alternative -- is thus an integral part of the statutory scheme.” *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). The existence of a viable but unexamined alternative renders an analysis inadequate. *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008). As discussed below, the agency failed to provide necessary justification for dismissing proposed alternatives. Because of the importance of NEPA's procedural and informational aspects, if the agency fails to properly circulate the required issues for review by interested

parties, then the analysis is insufficient even if the agency's actual decision was informed and well-reasoned.

Here, the Forest Service has failed to evaluate a reasonable range of alternatives in contravention of NEPA by dismissing out of hand all alternatives other than the project proponent's proposed action. As described above, the purpose of alternatives analysis is to facilitate informed public engagement and agency decision-making. Courts have interpreted NEPA to preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative. *See, e.g., Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195-96 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 994 (1991). Agencies must step back from the applicant's proposal and address "reasonable alternatives" that achieve the general goal of the proposal. *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986) (remanding EA because agency failed to consider reasonable alternatives and criticizing agency's dismissal of alternatives it deemed infeasible). These authorities require agencies to define the objectives of an action and then provide legitimate consideration to alternatives that fall between the obvious extremes. *Colo. Envtl. Coalition v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999). The Forest Service must give meaningful consideration to alternatives that have been proposed by the public, as well as any alternatives the agency identifies, to conduct a legitimate NEPA process.

Specifically, the revised EA must evaluate at least the following two alternatives, which the Forest Service dismissed in the Draft EA:

1. The Forest Service must consider an alternative that would keep the Redstone to McClure Pass trail in the Highway 133 corridor.

This alternative would be consistent with the Forest Service's purpose and need, which is to respond for growing demand for regional trail connectivity while improving safety for cyclists and pedestrians. *See* Draft EA at 3. The Draft EA's need to address existing unmanaged recreational use is impermissibly narrow in scope based on the extent of this project. *See High Country Conservation Advocates v. United States Forest Serv.*, 951 F.3d 1217, 1223 (10th Cir. 2020) (stating that agencies may not "define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives."). By analyzing an alternative that follows Highway 133, the Forest Service would limit new impacts to sensitive species like elk, bighorn sheep, and Canada lynx, while also ensuring safety and connectivity for pedestrians and bicyclists. This alternative falls squarely within the purpose and need of the project. While the agency's Proposed Action aims to manage existing use on currently decommissioned roads, this alternative could achieve the same result using closures on these old roads to pedestrians and bicycles during times of the year where humans will most seriously impact wildlife.

The Forest Service prematurely dismisses this alternative by claiming that it does not provide a desirable trail experience, it may be difficult for CDOT to manage, a wide gravel shoulder is essentially the same thing as a managed trail, and it wouldn't impact existing use along the Rock Creek Wagon Road and Old McClure Pass Road. Draft EA at 14. These are substantial assumptions for the Forest Service to make without any analysis or public comment whatsoever. We note that the existing trail from Carbondale is entirely within the CDOT right-

of-way, and so we are unable to understand why the management challenges are different in different parts of the valley without analysis of this alternative. The purpose of NEPA analysis is for the agency to identify supporting evidence for assumptions such as this and to give the public an opportunity to truly understand different impacts associated with different courses of action in order to facilitate informed participation. The Forest Service must analyze the Highway 133 corridor alternative to inform agency deliberation and facilitate public involvement as required by NEPA.

2. The Forest Service must consider an alternative that would only designate the trail from Redstone to Hayes Falls.

The Forest Service also prematurely dismisses this alternative by asserting that it would not provide trail connectivity or address existing use along Rock Creek Wagon Road and Old McClure Pass Road. Draft EA at 15. First, this alternative would provide trail connectivity by providing a safe and improved experience for people to visit Hayes Falls from Redstone. This would benefit tourism for Redstone and would also minimize impacts to public lands resources. Secondly, as discussed previously in these comments, the need to address existing use along Rock Creek Wagon Road and Old McClure Pass Road was not initially a purpose for development of this trail, and the Forest Service has ample opportunities to address that use without designating a new trail. Therefore, the agency should not dismiss out of hand a reasonable alternative that would benefit from analysis by providing distinguishable impacts for the public and the agency to consider.

The lack of alternatives analysis in the Draft EA seems to indicate that the Forest Service is using the NEPA process to justify a predetermined outcome. As currently drafted, the range of alternatives presented in the Draft EA conveys that approval of the Proposed Action and the preferred alternative is a predetermined outcome. NEPA prohibits the Forest Service from post hoc rationalizing its decision through a predetermined NEPA process. Specifically, NEPA requires that the agency's analysis "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 and Wildlife*, 611 F.3d 692, 702 (10th Cir. 2010) (quoting *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000); see also 40 C.F.R. § 1502.2(g) ("Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."); *id.* § 1502.5 ("The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made.")).

Here, Pitkin County designed and studied the location of the CCB trail over the last twenty years and the Draft EA's lone alternative solely reflects the county's preferred location of the trail. But the Forest Service should not only consider the county's preferred alternative because unlike the county, the Forest Service must comply with federal laws. Therefore, now that the NEPA process is in motion, the agency needs to consider the range of reasonable alternatives and analyze them thoroughly.

C. The Forest Service Failed to Provide the Public the Opportunity to Comment on its Biological Assessment.

The Forest Service incorporated its biological assessment (BA) into the Draft EA; however, when asked to provide the BA, which justified the Forest Service’s “may affect, not likely to adversely affect” determination, the agency failed to provide the BA to the public. NEPA regulations make clear that “Agencies may not incorporate material by reference *unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.*” 40 C.F.R. § 1501.12 (emphasis added). Federal courts have recognized the importance of an agency providing the public with documents incorporated by reference. *See Pac. Rivers Council v. United States Forest Serv.*, 689 F.3d 1012, 1031-32 (9th Cir. 2012) (requiring the Forest Service to include the BA in the appendix if relying on it to demonstrate analysis); *see also Town of Superior v. United States Fish & Wildlife Serv.*, 913 F. Supp. 2d 1087, 1123 (D. Colo. 2012) (stating that “[t]he only restriction on [incorporating by reference] is that the material be available for public review within the time frame for commenting.”).

Here, the Draft EA incorporates the Forest Service’s BA for the Proposed Action by reference. *See* Draft EA at 40 (stating: “Analysis of effects on Canada lynx are provided in the BA (ERO 2022a) and are hereby incorporated by reference.”). On January 20, 2022, staff for WW contacted the Forest Service by email to request a copy of the BA. One week later, the Forest Service District Ranger spoke on the phone with WW staff to explain that the BA was in draft form, and he therefore could not share it with the public. Because the Draft EA explicitly incorporates the BA by reference, the Forest Service must—at some point—give the public the opportunity to comment on its contents. At a minimum to comply with NEPA, the Forest Service must reopen the project for public comment so the public can view and comment on the Forest Service’s BA that concludes that the Proposed Action “may affect, not likely to adversely affect” the Canada lynx.

D. The Forest Service Failed to Take a Hard Look at the Direct, Indirect, and Cumulative Impacts of the Proposed Action.

NEPA imposes “action-forcing procedures ... requir[ing] that agencies take a hard look at environmental consequences.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). The purpose of the “hard look” requirement is to ensure that the “agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.” *Baltimore Gas & Elec. v. NRDC*, 462 U.S. 87, 97 (1983). These “environmental consequences” may be direct, indirect, or cumulative. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. Direct effects “are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b). “Indirect effects may include ... effects on air and water and other natural systems, including ecosystems.” *Id.* A 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7; *see also id.* § 1508.25. An environmental effect is

“reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.” *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir.1992). An agency’s hard look examination “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 692, 712 (10th Cir. 2010). “Mere conclusions, unsupported by evidence or analysis, that the proposed action will not have a significant effect on the environment will not suffice to comply with NEPA.” *Friends of Congaree Swamp v. Fed. Highway Admin.*, 786 F. Supp. 2d 1054, 1062-63 (D.S.C. 2011).

Overall, the Forest Service has failed to take a hard look at the impacts the Proposed Action will have on wildlife and other resources through increased use and human presence. Increasing recreation in the Crystal Valley will have impacts on wildlife, as demonstrated in the studies we cited in our scoping comments that the Draft EA failed to consider. Reviewing these studies would aid the Forest Service in analyzing impacts to wildlife, especially around mountain biking and other recreation impacts to species like elk, bighorn sheep, peregrine falcon, and Canada lynx. The relevant studies that we cited in our scoping comments are hereby incorporated by reference.

We further note that the Watershed Biodiversity Initiative has completed the Roaring Fork Watershed Biodiversity and Connectivity Study, and it should be released in March of this year. The study can provide valuable data and resources to inform this project, and we urge the Forest Service to request relevant data from the Watershed Biodiversity Initiative now, as well as use the study when it is released to inform the environmental analysis and decision-making for the proposed trail.

1. The Draft EA fails to take a hard look at the impact from increased recreation.

The Draft EA does not include any analysis of the forecasted use from the Redstone to McClure Pass trail, instead documenting existing use and seemingly assuming that level of use would continue. Without forecasting expected use, it is impossible for the Forest Service to analyze impacts resulting from the Proposed Action. While the Draft EA does mention that “[d]uring the summer and fall seasons, recreational use and disturbance would be expected to increase compared to existing conditions[,]” the Forest Service does not indicate or forecast how that use will increase. Furthermore, the type of use will shift, with a serious increase in mountain bike use. *See* Draft EA at 57 (stating: “These connections would substantially improve trail-based recreation options in the Redstone area for all types of visitors, but especially for mountain bikers who would gain a new route option (an approximately 15-mile round-trip ride) in an area that currently has few trails that are open to or are appropriate for bike use[.]”). This pressure from more mountain biking will result in impacts to wildlife populations. Studies have found that

This temporal avoidance by wildlife was highest for motorized vehicles and mountain biking, results that are consistent with studies documenting greater levels of wildlife disturbance associated with the noise and speed of motorized vehicles (Ladle et al., 2018). They also suggest that wildlife in the study area may perceive mountain bikers more similarly to motorized vehicles than to nonmotorized

recreation. The velocity at which mountain bikes travel along trails, as well as the tremendous growth of the activity, has led to concerns on their impact on wildlife (e.g., Scholten, Moe, & Hegland, 2018)[.]

Naidoo, Robin, and A. Cole Burton, 2020. Relative Effects Of Recreational Activities On A Temperate Terrestrial Wildlife Assemblage. *Conservation Science and Practice*, *Conservation Science and Practice*. 2020; 2:e271. Available at <https://doi.org/10.1111/csp2.271> at pg. 7.

The Draft EA also fails to analyze how increased use resulting from a designated trail that has associated infrastructure and promotion would impact the Recreation Opportunity Spectrum (ROS) class for this area. Instead, the Draft EA references the ROS class set forth in the Fores Plan and then vaguely asserts the Proposed Action is consistent with the Forest Plan. Draft EA at B-5. The Forest Service must analyze within the EA whether this project will allow the area to meet ROS standards by specifically analyzing the ROS class characteristics. This requires quantifying expected increases in recreation use.

The entire purpose of the trail is to increase use, and the Forest Service must take this into account in its analysis. The Pitkin County Carbondale to Crested Butte Trail Plan recognizes that the increased use will bring dollars to the community:

The economic benefit from potential out-of-region tourism, assuming that the 81-mile trail to Crested Butte would attract overnight cyclists, could be substantial. Pitkin and Gunnison counties are mountain- and road-biking destinations. A Colorado Office of Economic Development and International Trade study found that out-of-state visitors spend \$93.92 per day per person at local businesses.

Pitkin County Carbondale to Crested Butte Trail Plan at 39. The State of Colorado has recognized the CCB trail as a priority for tourism, which will surely increase recreational use. *See id.* at 6 (stating: “the trail is a component of an envisioned recreational trail network across Colorado that promotes multi-modal transportation and recreation-based tourism, as well as regional connections between communities.”). In 2016, Colorado established the “Colorado 16” initiative to promote bicycle use in the state. The CCB trail is on that list of priority bike paths.⁵ Even the Draft EA’s ‘need’ reflects the purpose of the trail, which is to “Meet the growing demand for local and regional trail connectivity within the upper Crystal River Valley, including Redstone, nearby subdivisions, McClure Pass, and other system trails.” Draft EA at 3. Thus, because the purpose of the trail is to increase use in the Crystal Valley, the Forest Service must take a hard look at the direct, indirect, and cumulative impacts from both the existing use and the forecasted use.

2. The Draft EA fails to analyze or mitigate e-bike use.

The Forest Service erroneously claims that the Redstone to McClure Pass trail is a non-motorized trail. *See, e.g.*, Draft EA at 1, 3, 8; January 19, 2022 Interested Party letter;⁶ Forest

⁵ https://cpw.state.co.us/Documents/Trails/Trails-Strategic-Plan-B_Colorado-The-Beautiful-and-Components.pdf.

⁶ Available at https://www.fs.usda.gov/nfs/11558/www/nepa/112357_FSPLT3_5839765.pdf. Last accessed 2/21/22.

Service Project Webpage.⁷ In fact, motorized e-bikes would be permitted on the section of the trail from Redstone to Hayes Falls. Draft EA at 13. Remarkably, this fact only appears once in the entire EA, and no pertinent details are included such as the length of trail open to e-bikes, the specific regulations that provide for e-bikes to be permitted in this section, the land ownership of this section, or what class(es) of e-bikes are permitted.

Even more problematic, the Draft EA contains no analysis whatsoever of environmental impacts associated with motorized e-bike use on a portion of the trail. The complete failure to address impacts of this proposed use violates NEPA's hard look requirement, in context of direct impacts of e-bike use on the segment of trail they would be permitted, indirect impacts of unauthorized e-bike use on the other segment of trail, and cumulative impacts of increasing e-bike use on the trail system in the Crystal Valley and potential implications for social trails in the area. Furthermore, the Project Design Criteria outlined in Appendix A include no measures to prevent unauthorized e-bike use on the trail south of Hayes Falls, including signage and education at the point where e-bike permissions change or enforcement measures on the segment of trail that e-bikes are not permitted. Changing authorized uses in the middle of a designated trail seems clearly to be an untenable management situation, and yet there is no discussion in the Draft EA of how Pitkin County or the Forest Service will manage this situation or what about the conditions on the ground might enable this approach to succeed.

The fact that this proposed management approach is highly likely to result in e-bike use on national forest land puts the Forest Service in a legal gray area with respect to this EA. In order to analyze e-bike use on national forest land, the agency must conduct a NEPA process that complies with all regulations governing motorized use on national forests, including specifically the "minimization criteria." *See* Exec. Order No. 11,644, §§ 1 & 3 (Feb. 8, 1972), *as amended by* Exec. Order No. 11989 (May 24, 1977). Federal courts have repeatedly sent Forest Service, BLM and National Park Service travel management plans back to the agencies for failure to satisfy their obligation to minimize resource damage and conflicts between recreational uses.⁸

⁷ <https://www.fs.usda.gov/project/?project=56913>. Last accessed 2/21/22.

⁸ *See WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920, 929-32 (9th Cir. 2015) (Forest Service failed to "apply the minimization criteria to *each area* it designated for snowmobile use" and to provide the "granular analysis [necessary] to fulfill the objectives of Executive Order 11644"); *Friends of the Clearwater v. U.S. Forest Service*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *37-52 (D. Idaho Mar. 11, 2015) (Forest Service's conclusory statements failed to show how it selected motorized routes with the objective of minimizing their impacts); *SUWA v. Burke (SUWA)*, 981 F. Supp. 2d 1099, 1104-06 (D. Utah 2013) (BLM acknowledgment of minimization criteria insufficient where record showed no analysis of specific impacts of designated OHV routes); *The Wilderness Society v. U.S. Forest Service*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at *22-32 (D. Idaho Oct. 22, 2013) (remanding travel plan where Forest Service relied on unsupported conclusion that route closures and elimination of cross-country travel minimized impacts); *Defenders of Wildlife v. Salazar*, 877 F. Supp. 2d 1271, 1304 (M.D. Fla. 2012) (record failed to demonstrate how Park Service decision to reopen trails was made with the objective of minimizing impacts); *Central Sierra Environmental Resource Center v. U.S. Forest Service*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2012) (Forest Service failed to show that it actually aimed to minimize environmental damage when designating motorized routes); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011) (record did not reflect whether or how the Forest Service applied the minimization criteria); *Center for Biological Diversity v. BLM*, 746 F. Supp. 2d 1055, 1071-81 (N.D. Cal. 2009) (record provided no indication that BLM considered or applied minimization criteria).

The Forest Service’s Travel Management Rule (TMR) affirms the minimization criteria and restricts “motor vehicle use” to the designated system identified through travel management planning, and the associated public process and NEPA review, and depicted on the forest’s Motor Vehicle Use Map (MVUM). *See* 36 C.F.R. § 212 (B) *et seq.* The TMR defines “motor vehicle” broadly as “[a]ny vehicle which is self-propelled,” excluding vehicles operated on rails and battery-powered mobility devices. 36 C.F.R. § 212.1; *see also* Exec. Order No. 11,644, § 2 (defining “off-road vehicle” subject to travel management restrictions as “any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain,” while excluding emergency, authorized, and official uses). On numerous occasions, the Forest Service has explicitly and correctly recognized that e-bikes – which by definition have a motor – are motor vehicles subject to the TMR. For instance, the response to comments on the agency’s 2015 winter travel management rule, *See* 36 C.F.R. § 212 (C), stated that “[n]ew technologies that merge bicycles and motors, such as e-bikes, are considered motor vehicles under § 212.1 of the TMR.” 80 Fed. Reg. 4500, 4503 (Jan. 28, 2015).

The Forest Service must take one of three possible paths to satisfy its legal obligations regarding management of motorized e-bikes: 1) Revise the Proposed Action to not authorize e-bikes on any segment of the Redstone to McClure Pass trail; 2) Limit the trail to the Redstone to Hayes Falls segment and allow e-bike users to use that trail for recreation and tourism from Redstone to Hayes Falls; or 3) Comply with the TMR and minimization criteria and revise the EA to analyze the potential for motorized e-bike use on national forest lands resulting from this proposed trail. If the Forest Service moves forward with allowing e-bike use on any portion of the trail, the Forest Service must update the EA to analyze impacts from e-bike use on wildlife, recreation users and other resources in accordance with NEPA’s hard look requirement, and must include enforcement measures to minimize and mitigate unauthorized e-bike use.

3. The Draft EA fails to take a hard look at impacts to elk.

Embedded in the Draft EA is the assumption that elk are only harmed when the disturbance occurs in the winter. The literature provided to the Forest Service in our scoping comments rebuts this assumption; however, the Draft EA fails to take a hard look at the direct impacts the Proposed Action will have on summer elk habitat. “During the summer and fall seasons, recreational use and disturbance would be expected to increase compared to existing conditions.” Draft EA at 42. However, the Draft EA makes the claim that increase in use would not harm elk based on the assumption that “With compliance of the seasonal restrictions during the winter and calving period, as needed, the Proposed Action would result in a net reduction in trail use and disturbance during the sensitive winter period when elk are the most vulnerable to disturbance that can affect population survival and recruitment.”

There is increasing data that rebuts the Draft EA’s assumption that elk are most vulnerable in the winter and that winter closures will alleviate any harm to elk. A 1999 study in

Montana confirms that elk disturbance in summer is just as important for their mortality as disturbance in the winter.⁹ Furthermore, as we cited in our scoping comments:

All seasonal habitat classes showed increased fragmentation during the study period, but summer concentration areas and migration corridors displayed the largest changes overall. While the negative effect of winter disturbance of elk population has been stressed historically (see, e.g., Kittams 1953), there is increasing concern over the effect of summer disturbance (Canfield et al. 1999). This study suggests this concern is warranted, as the changes in summer concentration areas and migration corridors evidenced higher correlation with variation in growth rate than did other seasonal habitats.

Millhouser, Paul. Evaluating Landscape Connectivity and Habitat Fragmentation Effects on Elk in the Roaring Fork and Eagle Valleys. Rocky Mountain Wild, 2019 at 20.

Here, the Proposed Action occurs within elk summer range, and with the increased amount of human traffic, the Draft EA fails to analyze how the Redstone to McClure Pass trail would fragment elk habitat—especially at the top of McClure Pass—for elk feasting on the abundant summer forage. In turn, because of the habitat fragmentation, the Forest Service has not given any indication of the impact summer use of the trail will have on elk populations in the area. Although the Proposed Action includes a winter closure, and the Draft EA uses the winter closure to address impacts to winter elk habitat, the Forest Service has not discussed the impacts to elk from summer habitat fragmentation. As described in the studies cited above, the Forest Service must analyze the impacts to elk from habitat fragmentation caused by the trail in their summer habitat, especially with nutritional contributions and the decline of that elk in the project area.

4. The Draft EA fails to take a hard look at impacts to peregrine falcons.

Despite the Draft EA recognizing that there will be impacts to peregrine falcons, the Forest Service refuses to analyze those impacts. Specifically, the Draft EA states:

A peregrine nest and territory overlap the proposed project area. Construction and use of the proposed trail would be consistent with the baseline level of human use that occurs within the nest territory, including Highway 133, a residential subdivision, recreational access, and the Town of Redstone. The Proposed Action would not adversely affect the peregrine falcon. However, if conditions change,

⁹ Joslin, G., and H. Youmans, coordinators. 1999. Effects of recreation on Rocky Mountain wildlife: A Review for Montana. Committee on Effects of Recreation on Wildlife, Montana Chapter of The Wildlife Society. 307pp (concluding “as our knowledge of ungulate physiology and behavior has increased, it has become apparent that weight gains and nutritional contributions of high quality summer range may be of equal or greater importance in determining winter survival and reproductive success.”)

protection measures could be applied at the active nest territory near Hawk Creek or elsewhere if new nests are identified.

Draft EA at 42. NEPA requires that the Forest Service make more than just mere conclusions of no adverse effects, but actually give some rationale for that conclusion. See *Friends of Congaree Swamp v. Fed. Highway Admin.*, 786 F. Supp. 2d 1054, 1062-63 (D.S.C. 2011) (stating "Mere conclusions, unsupported by evidence or analysis, that the proposed action will not have a significant effect on the environment will not suffice to comply with NEPA."). In this case, the Forest Service failed to analyze the reasonably foreseeable, significant increase in use this project will have in peregrine falcon territory and the associated impacts.

5. The Draft EA fails to take a hard look at impacts to Canada lynx.

The Proposed Action will occur in the primary vegetation habitat for federally threatened Canada lynx. Draft EA at 34. Nearly a mile of trail will bisect premier lynx habitat, and the Draft EA fails to discuss the direct impacts, dismissing the impacts to lynx from reducing habitat connectivity by claiming: "The loss of this small amount of vegetation in the McClure Pass Linkage Area is unlikely to affect lynx habitat connectivity because of the proximity to existing human developments (i.e., Highway 133) that acts as a larger barrier to lynx movements[.]" Draft EA at 40.

However, this conclusion by the Forest Service fails to pass muster because the agency relies on its BA to support its determination that the Proposed Action "may affect, but is not likely to affect" the Canada lynx. However, as discussed below, the Forest Service did not make the BA available for public comment in violation of federal case law and NEPA regulations. By not sharing its Canada lynx analysis with the public, the Forest Service's conclusions about the Proposed Action's impact to the Canada lynx are unsubstantiated and not supported by data.

6. The Draft EA fails to take a hard look at impacts to bighorn sheep.

The Proposed Action will occur in key habitat for bighorn sheep. The Draft EA identifies that the trail will pass through bighorn summer range and immediately adjacent to bighorn winter range. Draft EA at 38. However, the Draft EA does not discuss direct, indirect, or cumulative impacts to bighorn because "No bighorn sheep have been observed on the remote cameras that have been in place in the trail corridor since June 2018, or prior to 2018 in the project area." Draft EA at 36 (citing Nyland, P. 2021. Personal Communication between Phil Nyland (Forest Service) and Aimee Way (ERO)).

As we raised in our scoping comments, this area is important for bighorn sheep recovery, particularly with the recent retirement of the only domestic sheep grazing allotment in the Crystal and Roaring Fork River watersheds. Restoration of the local bighorn sheep population is a priority for our community, with Pitkin County investing in restoration efforts as well. The Forest Service should not dismiss potential impacts on bighorn sheep by simply stating that animals haven't been observed; the agency must acknowledge the recovery efforts underway and analyze how the trail could impact recovery efforts and the potential to restore the bighorn sheep population in the Crystal Valley. We reiterate that effective recovery of bighorn sheep requires

identifying, protecting and restoring high quality habitat, and the EA must analyze impacts of the proposed trail to potential bighorn sheep habitat.

The Draft EA also should analyze how recreation and other uses in the area may be impacting bighorn sheep, in addition to the previous domestic sheep grazing. Without analyzing impacts to potential bighorn sheep habitat or cumulative impacts that may be affecting the species, the Forest Service has failed to take a hard look. Furthermore, the Draft EA dismisses its analysis of impacts to bighorn based on personal communications and does not provide the data to support the conclusions from that conversation.

7. The Draft EA fails to take a hard look at direct impacts to wetlands and waters of the U.S.

The Draft EA does not adequately discuss—or even disclose—any of the impacts from the Proposed Action on wetlands. Specifically, the Forest Service states that the “size and extent of these wetland impacts is not currently known, but would be less than 0.044 acre, which is the total size of all three wetlands (and would be the maximum impact if they were completely eliminated).” Draft EA at 32. This contravenes NEPA’s mandate “to provide for informed decision making and foster excellent action” and violates NEPA’s hard look requirement. 40 CFR § 1500.1. The entire point of performing NEPA on the Proposed Action is to make an informed decision regarding the impact of the action. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351(1989)(stating "NEPA merely prohibits uninformed—rather than unwise—agency action."). USFS has stated that it does not know the impacts to wetlands and waters of the US. Therefore, Draft EA fails to take a hard look at impacts to wetlands because the USFS does not know the impacts from the Proposed Action, despite the resource clearly being impacted by the project.

8. The Draft EA fails to take a hard look at impacts from the Proposed Action on climate change.

The Draft EA does not analyze impacts to climate change from the Proposed Action and expressly dismisses the issue without any consideration of the impacts. In our scoping comments, incorporated by reference, we highlighted for the Forest Service that the Draft EA must analyze “both greenhouse gas emissions generated and potential impacts on the adaptive capacity of ecosystems and species.” WW Scoping Comments at 11. The Forest Service has done neither. The Forest Service must estimate and quantify greenhouse gas emissions that would result from people driving to and from the trailhead, as well as whether and to what extent the trail could impair species’ abilities to adapt to a changing climate.

9. The Draft EA fails to take a hard look at cumulative impacts to elk from habitat fragmentation.

The Draft EA does not analyze the full extent of harm from trail to elk habitat in the summer months. The increased summer and fall use in the elk forage habitat will have long-lasting impacts to elk populations that cannot be remedied or minimized by a winter closure. As this trail extends for an entire 83-mile corridor through world-renown elk habitat, the Forest

Service must analyze the cumulative impacts from this trail on the overall health of the elk populations.

Furthermore, the Draft EA fails to analyze the cumulative impacts from all recreational trails in DAU E-15 and the unit to the south. Specifically, the Draft EA states that: “the project would not contribute measurable effects to viability of the elk population or their available habitat within DAU E-15. Elk in this DAU will continue to be limited by factors outside those associated with the activities planned under the Proposed Action.” Draft EA at 42. Because elk do not distinguish between administrative borders, the impact from increased recreation on the greater elk populations in the Thompson Divide area should be analyzed, including DAU-15 and the unit to the south where the CCB trail will go.

10. The Draft EA Fails to take a hard look at cumulative impacts to Canada lynx from habitat fragmentation.

As discussed above, the location of the CCB trail is reasonably foreseeable, and therefore the Forest Service must analyze the cumulative impacts to the federally threatened Canada lynx for the *entire trail*. While the Draft EA discusses where the trail will be in relation to primary versus secondary habitat, the Draft EA fails to discuss impacts on Canada lynx habitat for the entire CCB trail corridor. In particular, the Draft EA states that: “Cumulative impacts on the Canada lynx at the McClure Pass Linkage Area would be minor and unlikely to prevent lynx movement or disrupt habitat connectivity; currently, the Highway 133 corridor acts as a larger barrier to lynx movement than a trail.” Draft EA at 43. However, this conclusion in the Draft EA does not give any rationale for the Forest Service’s determination. Without a properly defined cumulative impacts analysis area, e.g. the entire CCB trail, the Forest Service’s cumulative impacts analysis violates NEPA’s hard look mandate.

E. The Forest Service Has Failed to Document Baseline Conditions.

Federal courts have stressed the importance of federal agencies’ documentation of baseline conditions. “Establishing appropriate baseline conditions is critical to any NEPA analysis. ‘Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA.’” *Great Basin Res. Watch v. Bureau of Land Mgmt.*, 844 F.3d 1095, 1101 (9th Cir. 2016) (quoting *Half Moon Bay Fishermans’ Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)); *see also* 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1508.9(b); 40 C.F.R. § 1502.14(d).

The Draft EA fails to adequately document baseline conditions in the project area. Specifically, the Draft EA does not document unauthorized user-created mountain biking trails in the area. For example, there are user-created trails in Coal Basin and Huntsman Ridge that could see increased use as a result of increasing mountain biking use on the Redstone to McClure Pass trail. The Forest Service needs to thoroughly understand these illegal mountain bike trails in order to adequately analyze baseline conditions and cumulative impacts as required by NEPA.

F. The Forest Service Cannot Issue a FONSI Based on the EA.

Given the flaws in the Draft EA described throughout these comments, the Forest Service's decision to issue a finding of no significant impact (FONSI) would be arbitrary and capricious because there are cumulatively significant impacts that have not been analyzed or even considered. An agency may forgo preparing an EIS and issue a FONSI if it "concludes that the [proposed] action will not have a significant effect on the human environment." *WildEarth Guardians v. Conner*, 920 F.3d 1245, 1257, 1261 (10th Cir. 2019). In determining the significance of proposed action on the environment, an agency considers the action's "context and intensity." 40 C.F.R. § 1508.27. Among the factors affecting "intensity" relevant to this review are effects that are "individually insignificant but cumulatively significant," effects on "unique characteristics" of the project area such as "ecologically critical areas," effects that may be "highly controversial . . . highly uncertain or involve unique and unknown risks," and the degree of effects on "endangered and threatened species." 40 C.F.R. § 1508.27(b).

Here, the Forest Service cannot issue a FONSI based on the cumulatively significant impacts of the CCB trail on wildlife and the Forest Service's unwillingness to study those impacts. The CCB trail will be located through prime habitat for elk, bighorn, Canada lynx and other wildlife species. Canada lynx are threatened species and occur throughout much of the CCB trail corridor. Bighorn sheep and elk populations are in serious decline, and a trail like the CCB trail could further decimate the populations. Without careful analysis or study from the Forest Service of the cumulative impacts from the CCB trail on wildlife and other resources, this trail is highly controversial because there are serious unknown risks. This is yet another reason the Forest Service must pause the NEPA process and prepare an EIS for the Proposed Action encompassing the entire CCB trail from Carbondale to Crested Butte.

III. The Proposed Action Violates the National Forest Management Act.

A. The Proposed Action is not consistent with the White River National Forest Plan.

The National Forest Management Act (NFMA) requires that site-specific projects and activities must be consistent with an approved forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(b). A project is consistent if it conforms to the applicable components of the forest plan, including the standards, guidelines, and desired conditions that are set forth in the forest plan and that collectively establish the details of forest management. 36 C.F.R. § 219.15(d)(1-4). Consistency under agency regulations depends upon the component type. The Forest Service must strictly comply with a forest plan's standards, which are binding limitations, but it may deviate from the forest plan's guidelines, so long as the project is as effective as the forest plan in achieving the purpose of the applicable guidelines. § 219.15(d)(3). When a site-specific project is not consistent with the applicable forest plan components, the Forest Service must either modify or reject the proposed project, or the agency must amend the plan. § 219.15(c).

1. Peregrine Falcon

The Forest Plan specifically prohibits activities like trail construction and designation in areas with peregrine falcon nesting sites. The Forest Plan contains standards that "must be

followed, or a level of attainment that must be reached, to achieve forest goal.” Forest Plan at 2-1. The Forest Plan’s standards require that the Forest Service should: “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.” Forest Plan at 2-16. In addition to siting projects like the Proposed Action away from peregrine falcon habitat, the Forest Plan goes on to state: “Human activities will be restricted within one-half (1/2) 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.” *Id.*

Here, the Draft EA recognizes that the Proposed Action will occur in closer than a half mile of a historic peregrine falcon nest site. Specifically, the Draft EA states that: “One historic peregrine nest site occurs near the project area, about 400 vertical feet above the trail corridor and 750 feet west, along the cliffs north of Hawk Creek. The nest was active in 2020 and produced one chick, which fledged by July.” Draft EA at 37. Therefore, designating a trail corridor immediately next to a peregrine falcon nest site would not be consistent with the forest plan, unless the Forest Service opts to implement trail closures until July 31st every year, or otherwise amend the plan.

2. The Forest Service Must Amend the Forest Plan to Approve the Proposed Action.

While the Draft EA acknowledges that the Forest Service must complete a travel management plan (TMP) amendment, the agency also needs to complete a Forest Plan amendment to comply with NFMA because of peregrine falcon standards consistency issues. In the Draft EA, the Forest Service identifies that the Proposed Action is not compliant with the WRNF travel plan because both the Bears Gulch/Rock Creek Wagon Road and Old McClure Pass Road are categorized as decommissioned in the plan. Specifically, the Forest Service recognizes that the:

Proposed Action would necessitate an amendment to the TMP Record of Decision (Forest Service, WRNF 2012), which requires NEPA compliance. If the Proposed Action is selected for implementation, this EA and subsequent FONSI (if applicable) will be considered appropriate NEPA compliance to support the amendment to the TMP[.]

Draft EA at 9. Based on this language in the Draft EA, the Forest Service proposes to amend the TMP with this EA, which is not something that should be taken lightly. The TMP was a major undertaking with significant public participation, in which the Forest Service intentionally decided to close and decommission these routes. The TMP Record of Decision was signed after a robust consideration of environmental impacts and in light of all routes on the Forest. By amending the travel plan, the Forest Service is proposing to alter a carefully balanced and considered plan that took years of agency and public attention to create. But this is not the only amendment required by NFMA.

The Draft EA makes no discussion of amending the Forest Plan, which the Forest Service is required to do because the Proposed Action is inconsistent with the standards set forth in the Forest Plan related to peregrine falcon nesting habitat. As discussed above, the Forest Service has not followed the appropriate process for a plan amendment or even analyzed impacts to peregrine falcon. NFMA allows the Forest Service to amend Forest Plans, 16 U.S.C. § 1604(f)(4), so long as the amendment complies with both NFMA and NEPA. *Native Ecosystems Council v. United States Forest Serv.*, 418 F.3d 953, 961 (9th Cir. 2005). If a forest plan amendment constitutes a "significant change" in the Forest Plan, the Forest Service must prepare a full environmental impact statement ("EIS") and analyze the amendment with the same procedure as it analyzed the Forest Plan. *Id.*; see also 36 C.F.R. § 219.10(f).

Here, the two necessary amendments—to the TMP and to the Forest Plan—taken in conjunction makes the Proposed Action a significant change in the Forest Plan and therefore the agency must prepare an EIS. The Forest Plan specifically includes standards for seasonal restrictions based on peregrine falcon nests and the travel plan explicitly decommissioned roads the Proposed Action intends to open. Therefore, the Draft EA will need to amend the Forest Plan for both of these consistency issues: first, to locate the CCB trail closer than a half mile from the nest site; and second, to open the decommissioned roads. This timing and geographic scope of a Proposed Action constitutes a significant change in the Forest Plan, and therefore the Forest Service must abandon its EA and perform an EIS to appropriately consider and analyze alternatives using the same methods the Forest Service drafted the original Forest Plan.

IV. The EA Fails to Adequately Address Implementation of the Proposed Action.

A. Monitoring, Enforcement and Adaptive Management

We raised in our scoping comments that the EA must discuss in detail the role of Pitkin County in maintaining and managing the trail and its use over the long term, and what measures the Forest Service will take in the event Pitkin County is no longer able to manage the trail. We recommended the EA outline a plan of action in the event that the County is no longer able to fulfill part or all of its role regarding the trail, including explicitly providing for closure of the trail and revocation of the permit if the County can no longer adequately manage the trail. We also commented that the EA must commit to a specific management, monitoring, and enforcement plan, and adopt an adaptive management framework that would condition future maintenance and use of the trail on acceptable results being consistently produced by a monitoring strategy. The Draft EA entirely fails to incorporate any of these elements.

Without a monitoring and enforcement strategy, adaptive management plan, or assurances from Pitkin County, the Forest Service is assuming management responsibility for this trail that the agency does not have the resources to fulfill. This is an unsupportable course of action given the agency's lack of resources to manage its existing trail system.

For the Forest Service to issue a special use authorization to Pitkin County to develop and manage this trail, the following elements must be incorporated into a revised EA with an opportunity for public comment:

1. The Memorandum of Understanding between Pitkin County and the Forest Service that details Pitkin County's management of the trail should be incorporated directly into the EA. *See* Draft EA at 13.
2. The EA must commit to a specific monitoring and enforcement plan. The Project Design Criteria set forth in Appendix A of the Draft EA are insufficient to constitute a monitoring and enforcement plan. An adequate plan must detail a schedule for monitoring; describe how the agency will know if monitoring results are acceptable; and analyze the likelihood of proposed enforcement measures having their desired effect.
3. The EA must adopt an adaptive management framework that conditions future maintenance and use of the trail on acceptable results being consistently produced by the monitoring strategy. Forest Service regulations require that an adaptive management plan describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect, and clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is causing unintended and undesirable effects. 36 CFR 220.5. The adaptive management framework should also identify and commit to a process for evaluating new science and data as it emerges in the future and applying that information to management of the trail.
4. The Forest Service must close the road up Huntsman Ridge to mechanized use to enable enforcement along the Redstone to McClure Pass trail and prevent increased use of social trails.
5. The EA should explicitly detail the circumstances in which the special use authorization would be revoked, and provide for closure and rehabilitation of the trail if the County can no longer adequately manage the trail and the Forest Service cannot otherwise resource management of the trail.

B. The Forest Service Must Require the County to Put Forth a Performance Bond To Manage the Trail.

The Forest Service must have financial assurances that Pitkin County will not let the trail become unmanaged, especially given the expectation set forth in the Draft EA that the County will fund the maintenance, monitoring, and enforcement of the trail in perpetuity. One method for ensuring continued funding is to have the County give a financial guarantee in the form of a bond. Because the trail would be managed by Pitkin County under a special use authorization (SUA), which requires Pitkin County's performance of maintenance, the Forest Service should require Pitkin County to give a performance bond upon signing the SUA.

Forest Service guidance requires the agency to collect a bond when issuing a special use authorization. Specifically:

Where the Government's interest requires protection from damage to National Forest System lands, or particular circumstances of performance are involved, the authorization holder shall be required to furnish a bond. See FSM 6561.6 for bond requirements. A bond must not be used to enforce general conditions of the permit; rather it applies only to those requirements which are readily identifiable and which are specified in the clause requiring the bond.

FS Manual 2713.3. Further, Forest Service guidance makes clear that “Special-use authorization bonds may be secured with cash as a last resort, but preferably credit/debit cards or electronic check processing, corporate surety, deposited securities, an irrevocable letter of credit, or assignment of savings account. The penal sum of the bond must at least equal the estimated reclamation cost or financial loss.” FS Manual 6561.7. Accordingly, the County must post a performance bond in the event that it cannot perform its duties under the SUA, so that the Forest Service has funding to either close and rehabilitate or take on management responsibilities for the trail. The amount of the bond should be informed by a detailed understanding of Pitkin County’s management responsibilities outlined in the MOU.

V. The Forest Service Should Undertake Programmatic Recreation Analysis for the White River National Forest.

As we discussed in our scoping comments, WW supports sustainable recreation uses on our public lands, including in some cases development of new recreation experiences. However, our organization and our members are concerned about the growing impacts of recreation and other human development on wildlife and public lands in our region. We recognize the need for more comprehensive recreation planning to reduce impacts to wildlife and ecosystems. No single trail can be held responsible for the declines in wildlife populations or other impacts – and yet collectively our trail systems and recreation uses are undeniably impactful. We urge the Forest Service to begin analyzing recreation projects within the context that there is a limit to the amount of recreation our local public lands can sustain, which requires programmatic analysis that truly evaluates cumulative impacts and sets landscape-level standards and guidelines. A holistic and strategic approach starting now and moving forward would benefit our shared lands and resources.

One suggested approach for conducting programmatic analysis across the White River National Forest would be to divide the Forest into Recreation Management Areas, similar to how the Bureau of Land Management (BLM) establishes Travel Management Areas within a field office for travel management planning. Travel Management Areas collectively encompass an entire BLM field office, but individually are an appropriate size to allow for impact analysis and comprehensive route designation across a landscape while ensuring the travel planning process is manageable for the agency and the public. For reference, the Little Snake field office in northwest Colorado is currently conducting travel management planning using this approach. For example, the Forest Service could establish a Recreation Management Area for the greater Crystal Valley, and within that large geographic area analyze habitat fragmentation, adaptive capacity for climate change, wildlife population trends, and other baseline conditions. The Forest Service could then make landscape-level decisions such as setting route density limits, protecting

core habitat areas, developing mitigation strategies, and implementing adaptive management plans.

Such an approach would enable the Forest Service to take advantage of the best available science for specific geographies, such as the Roaring Fork Watershed Biodiversity and Connectivity Study being completed by the Watershed Biodiversity Initiative. The Roaring Fork Watershed Biodiversity and Connectivity Study takes a landscape-scale approach to identify high-quality habitat for bighorn sheep, elk, and deer as proxies for biodiversity generally. There is broad consensus among the Study stakeholders, which include Colorado Parks and Wildlife, Aspen Center for Environmental Studies, and Pitkin County Open Space and Trails, that a landscape-scale approach to biodiversity conservation provides the most useful context for considering land use proposals such as recreation development.

We would be eager to work with the Forest Service on a programmatic approach to recreation management on the White River National Forest, and we're certain our community would participate collaboratively in such a process to identify a path forward for sustainable recreation on our public lands.

We appreciate the opportunity to provide the Forest Service public comment on the proposed Redstone to McClure Pass trail segment of the greater Carbondale to Crested Butte trail. Please let me know if you have any questions or concerns, or if you would like to further discuss any of our comments on the Proposed Action.

Sincerely,

Oliver Wood

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