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March 13, 2023

USDA Forest Service
Rocky Mountain Region
Attn: Reviewing Officer
1617 Cole Blvd., Bldg. 17
Lakewood, CO, 80401

Submitted online via: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=56913>

RE: OBJECTION: Redstone to McClure Pass Trail Project

Dear Reviewing Officer:

Wilderness Workshop (WW) submits this 25-page objection, under 36 C.F.R. § 218, to the Forest Service's Redstone to McClure Pass Trail (the RMP Trail) Project Environmental Assessment (EA) and Draft Decision Notice and Finding of No Significant Impact (DDN/FONSI). WW and WW members previously submitted written comments regarding this project during public-comment periods.¹

Wilderness Workshop is the lead objector for the purposes of this objection and contact should be with WW's Legal Director, Peter Hart, at 303-475-4915 or peter@wildernessworkshop.org. WW's physical address is PO Box 1442, Carbondale, Colorado 81623. The written comments and the comments of WW members are incorporated herein by reference. See 36 C.F.R. § 218.8(b).

Public notice of the EA and DDN/FONSI was published on January 27, 2023.² Therefore, under 36 C.F.R. §§ 218.6, 218.7, this objection is timely filed by the end of the next Federal working day after expiration of the 45-day objection period on a weekend.

Wilderness Workshop respectfully requests an objection-resolution meeting pursuant to 36 CFR § 218.11 to address the concerns **raised below**.

¹ See *e.g.*, comment submissions from WW dated March 20 and 23, 2020, and February 22, 2022 on file with the Forest Service and available at:

<https://cara.fs2c.usda.gov/Public/ReadingRoom?Project=56913&SearchResultsPerPage=25> (last accessed 2/9/23).

² See Legal Notice of Opportunity to Object, USDA Forest Service, White River National Forest, Aspen-Sopris Ranger District, Redstone to McClure Pass Trail Project, Glenwood Springs Post Independent (Jan. 27, 2023).

Introduction:

The proposed Redstone to McClure Pass Trail is located within the Crystal River Valley, south of Carbondale, in Pitkin County, Colorado. The RMP Trail is a segment of a much longer trail proposal stretching over 83 miles from Carbondale to Crested Butte (hereafter, the CCB Trail). The CCB Trail Plan was adopted by the Pitkin County Board of County Commissioners on Dec. 19, 2018.³ Hundreds of thousands of dollars have been allocated by and granted to Pitkin County and its partners to study, plan, and develop the CCB Trail.⁴ Pitkin and Gunnison Counties have a goal of completing construction of the entire trail by 2040.⁵

The setting for the RMP Trail, is a quiet, narrow mountain valley bounded by steep cliffs and towering peaks. The valley is unique in its diversity of wildlife habitats. It provides specialized habitat for some wildlife species and seasonal habitat or movement corridors for other broad-ranging wildlife. Significant populations of deer, elk, and bighorn sheep rely on the area. However, these species populations have been in decline—squeezed by increasing private land development in the valley bottom, and human use in the area.⁶ As biologist, John Seidel recognized in the preface to the Crystal River Caucus Wildlife and Habitat Report: “Public lands are crucial to the survival of wildlife in its current state.”⁷

The Crystal River is a significant water source flowing from the headwaters in the Elk Mountains to its confluence with the Roaring Fork River near Carbondale. A 39-mile portion of the Crystal River that overlaps the project area is eligible for designation under the Wild and Scenic Rivers Act due to its stunning beauty. The project area has experienced some development and growth in recent decades, but it remains less developed and more pristine as compared with the Roaring Fork Valley, which is now an urbanized and busy destination for high-end recreation-based tourism. The other end of the CCB Trail, Crested Butte, is also experiencing consistent growth as a destination for tourists and outdoor recreation enthusiasts.

As the Roaring Fork Valley and Crested Butte continue to grow in popularity and population, the Crystal River Valley is poised to change too. Pressure from industrial tourism and intensive recreation within the Roaring Fork Valley and Crested Butte is overflowing and infiltrating the

³ See Pitkin County’s “Carbondale to Crested Butte Trail Plan” website: <https://pitkincounty.com/1132/Carbondale-to-Crested-Butte-Trail-Plan> (last accessed 3/1/23).

⁴ See e.g., Pitkin County Open Space and Trails Dept., “Carbondale to Crested Butte Trail Plan” (Dec. 2018), at 9, available at <https://pitkincounty.com/DocumentCenter/View/17874/Carbondale-to-Crested-Butte-Trail-Plan---Final> (last accessed 3/11/23). Also available in the project record. See RMP Trail EA at 78.

⁵ See *id.* at 204, 262, 263, 264, 266, 267, and 269.

⁶ See RMP Trail EA at 33 (“Historically, elk populations were larger and habitat conditions were better in the Crystal River Valley. Elk and other big game were likely present in low-elevation areas in addition to high-elevation summer range, while human disturbance from recreation and development was less frequent and less intense.”).

⁷ Crystal River Caucus, “Wildlife and Habitat Report” (2007) at iii (Preface by John Seidel, Former Wildlife Manager with the Colorado Division of Wildlife), available at <https://www.pitkincounty.com/DocumentCenter/View/9277/Inventory-Assessment-Wildlife-Habitat-reduced?bidId=> (last accessed 3/11/23). Also available in the project record.

Crystal River Valley. It is that increasing recreational demand, combined with the need to ensure safe and effective recreation management that is driving the purpose and need for this project.

Dealing with the pressure of growing recreation is one of the greatest challenges facing local land managers on the White River National Forest (WRNF). A recently published economic analysis shows the Forest is the most trafficked national forest in the country and that recreational use on the WRNF generates more economic activity than on any other forest in the National Forest System. Despite potential economic benefits, this is not all good and cannot become the tail that wags the dog.

In a story about the CCB Trail, newsman Jason Blevins, compared the rabid demand for more recreational infrastructure to a mining boom:

The border-to-border rush to mine Colorado for recreation is built on a lattice of paths promising a future of fortune. Trails are pitched as the fuel for rural economies, fostering an appreciation of Colorado's public lands and luring employees seeking an outdoor lifestyle.⁸

Blevins continued the comparison to expose potential costs:

But recreation, like the hard-rock mining that sparked Colorado's economy for decades, comes at a cost to local residents and ecologies. And nowhere in Colorado is the struggle over the impacts of a new trail more evident than in the narrow Crystal River Valley between Redstone and Carbondale.⁹

The article also quotes residents asking: "...what are the real cost benefits from a holistic perspective?"¹⁰

Forest managers on the WRNF see "alarm bells in the soaring visitation and economic numbers."¹¹ They say it is time to "build a new plan that weighs record traffic and economic contributions alongside the ecological capacity of a stressed forest."¹² The Forest Supervisor was quoted saying: "We can't say 'Let's keep going and we want all the same stuff,' ... We've reached the point where that is impossible. We can't get to our desired future staying on the exact same path without taking some different steps."¹³ Other WRNF officials confirmed that they've always

⁸ Jason Blevins, *Carbondale to Crested Butte Trail Stirs Passions*, The Colorado Sun, Dec. 19, 2018, <https://aspenjournalism.org/carbondale-to-crested-butte-trail-stirs-passions-as-final-vote-looms/> (last accessed 3/11/23).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Jason Blevins, *Colorado's White River is the country's busiest national forest, with \$1.6B impact*, Grand Junction Daily Sentinel, Dec. 27, 2022, https://www.gisentinel.com/news/western_colorado/colorado-s-white-river-is-the-country-s-busiest-national-forest-with-a-1-6b/article_f205b8c2-8167-11ed-b2df-63a8f45e818d.html (last accessed 3/11/23).

¹² *Id.*

¹³ *Id.*

welcomed growth, “[b]ut at some point we do hit a ceiling.”¹⁴ In floating the idea that more restrictive management may be necessary, Supervisor Fitzwilliams said: “We are squeezing this lemon pretty hard and we are getting a lot out of it but we are beginning to see the impacts of that. So what do we do? I don’t think people want us to say ‘Let’s just keep this train rolling and see what happens.’”¹⁵

Unfortunately, this project just keeps the train rolling down the same track it has been on for decades. While the trail project under consideration is part of the much longer trail 83-mile CCB Trail, the Forest Service is ignoring that broader plan and its foreseeable impacts. The CCB Trail proposal is a perfect opportunity for the Forest Service to tap the brakes on this train. Now is the time to holistically consider and plan for the likely continued growth and expansion of recreation throughout the Crystal River Valley and the length of the CCB Trail. Instead, though, the agency is considering just one segment of trail by itself and without a comprehensive plan that weighs recreational proposals alongside the ecological capacity of a stressed forest.

This project is a significant step toward developing and promoting recreational opportunities in an area that has heretofore remained quiet and relatively undeveloped.¹⁶ The trail proposal reflects the fact that recreational demand in the area is growing, probably at an explosive rate based on what has happened in the Roaring Fork Valley and Crested Butte. Given the foreseeable changes on the horizon, the Forest Service should take this opportunity to consider how best to protect natural resources including wildlife by managing that demand, controlling unauthorized use, and ensuring safety. This is the time for a broader recreation plan. However, as discussed below, the RMP Trail EA and DDN/FONSI fail to do that.

To manage the coming storm of increased recreation effectively, the Forest Service must broaden the purpose and need for this project so that it achieves the agency’s own, not just Pitkin County’s, goals. The agency should consider a broader plan to manage recreation within the Crystal River Valley and along the entire CCB Trail corridor. Given the scope of the proposal and the potential impacts, the agency should undertake a full EIS to ensure adequate analysis and to provide for maximal public engagement. A revised analysis must consider reasonable alternatives and take a hard look at potential impacts to the sensitive values in the Crystal River Valley and beyond, especially impacts to wildlife and sensitive wildlife habitat. The Forest Service must consider alternatives that proactively guide future recreational use and avoid conflicts caused by more unmanaged recreation. Finally, the agency’s cumulative impact analysis must

¹⁴ Jason Blevins, *Colorado’s White River is the country’s busiest national forest, with a \$1.6B impact, But can it keep it up?*, The Colorado Sun, Dec. 20, 2022, <https://coloradosun.com/2022/12/20/white-river-national-forest-recreation-economy/> (last accessed 3/11/23) (“The answer here is not another lane on 70,” forest chief Scott Fitzwilliams says as he plans robust community discussions on the future of White River).

¹⁵ *Id.*

¹⁶ See N.8 *supra* (“Blevins, *Carbondale to Crested Butte Trail Stirs Passions*) (quoting Nathan Helfenbein, son of a Carbondale coal miner who is raising his family in the Crystal River Valley. “Like me, I think a lot of people moved to this valley to get away from the hustle and bustle in the I-70 corridor and the Roaring Fork Valley. We want to keep this place scenic and wild and preserve the reasons we moved here.”).

acknowledge the extent to which the greater CCB Trail proposal and other foreseeable recreation increases will transform the Crystal River Valley and the broader trail corridor.

Ojection issues:

- I. An improperly narrow Purpose and Need undermined the National Environmental Policy Act (NEPA) process.

WW raised concerns about the Purpose and Need in prior comments on this project.¹⁷ The Final EA is undermined by a purpose and need too narrowly contrived for the sole objective of achieving Pitkin County's goals. As discussed below, the Forest Service used this narrow purpose and need to exclude consideration of reasonable alternatives in its analysis.

When evaluating alternatives to a proposed action, an agency must answer three questions in order. "First, what is the purpose of the proposed project? Second, given that purpose, what are the reasonable alternatives to the project? And third, to what extent should the agency explore each particular alternative?" *Habitat Educ. Ctr., Inc. v. U.S. Forest Serv.*, 603 F. Supp. 2d 1176, 1184 (E.D. Wis. 2009) (citing *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 668 (7th Cir. 1997)); see also *Colorado Env'tl. Coalition v. Dombeck*, 185 F.3d 1162, 1174-1175 (10th Cir. 1999); *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir.).

While purpose and need statements are meant to narrow the number of reasonable alternatives analyzed to some manageable number, "[o]ne obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration." *Simmons*, 120 F.3d at 666; see also *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002); *Nat'l Wildlife Refuge Ass'n v. Rural Utils. Serv.*, 580 F. Supp. 3d 588, 611 (W.D. Wis. 2021). Agencies may not give a purpose and need statement "so unreasonably narrow that [alternatives would be eliminated and] the [NEPA documentation] would become a foreordained formality." *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2009) (quoting *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998)). See also *Backcountry Against Dumps v. Chu*, 215 F. Supp. 3d 966, 978 (S.D. Cal. 2015).

Thus, while "[t]he 'purpose' of a project is a slippery concept, susceptible of no hard-and-fast definition," the purpose statement should look at the general goal of an action and not specific means to achieve that goal. *Simmons*, 120 F.3d at 666 (citing *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986)). Additionally, "[i]f NEPA mandates anything, it mandates this: a federal agency cannot ram through a project before first weighing the pros and cons of the alternatives." *Id.* at 670; see also *Nat'l Wildlife Refuge Ass'n v. Rural Utils. Serv.*, 580 F. Supp. 3d 588, 611 (W.D. Wis. 2021).

¹⁷ See WW's Feb. 22, 2022 comments at 2-3, 11. See also WW's March 23, 2020 comments at 2.

In summarizing the “Need for the Proposed Action,” the Forest Service indicated this segment of the Carbondale to Crested Butte Trail is needed for three reasons:

- 1) 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.
- 2) 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.
- 3) Improve safety for pedestrians and cyclists along Highway 133, including local residents and families seeking nonmotorized access between Redstone, subdivisions, and national forest amenities.¹⁸

The first purpose acknowledges growing demand for local and regional trail connectivity, but it ignores the fact that this is a factor in the lower Crystal River Valley as well as the upper portions of the valley. Rather than acknowledging the broader problem and considering reasonable alternatives to address it, the Forest Service adopted a purpose narrowly tailored to achieve Pitkin County’s goal of building this one segment of CCB Trail while avoiding more logical but challenging and controversial segments in the lower Crystal River Valley.

Pitkin County’s goals in pursuing this one segment are obvious. This segment proposed in the upper Crystal is less controversial than segments closer to Carbondale.¹⁹ Also, once the Redstone to McClure Pass segment is built, the County will have a more compelling case to connect the trail with the already existing trail heading south from Carbondale.²⁰ This approach also conveniently avoids the fuller NEPA review that would be necessary if the trail actually connected with the greater Roaring Fork Valley trail network.²¹ See *Town of Superior v. United States Fish & Wildlife Serv.*, 2021 U.S. Dist. LEXIS 176149, *17-18 (directing agency to conduct analysis of increased trail use impacts on a standalone segment once it is connected to a larger network).

By so narrowly constraining this need to the “upper Crystal River Valley,” the Forest Service has ignored the broader issue of “growing demand for local and regional trail connectivity” and reasonable alternatives to address that demand. Indeed, the agency has turned a blind eye to the fact that demand for trail connectivity is higher in the lower Crystal River Valley, closer to more people and the more populous community of Carbondale. If the agency really needs to

¹⁸ RMP Trail EA at 3.

¹⁹ See Heather Sackett, *Opposition surfaces to Crystal Valley Trail*, The Aspen Times, Aug. 15, 2018, <https://www.aspentimes.com/news/opposition-surfaces-to-crystal-valley-trail/> (last accessed 3/11/23).

²⁰ Below, we discuss the fact that building this isolated section from Redstone to the top of McClure Pass will put more cars and recreationists on highway 133 between the end of the existing trail at the KOA campground and Redstone. The increased risk posed by more people and vehicles on this narrow canyon highway will, no doubt, drive the County’s desire to push forward with the next segment north of Redstone. Nonetheless, the County and the Forest Service have strategically narrowed the purpose and need to avoid consideration of that segment or the whole foreseeable CCB Trail.

²¹ See Roaring Fork Transportation Authority, *Rio Grande Trail Map*, available at <https://www.rfta.com/wp-content/uploads/2015/11/trailmap.pdf> (last accessed 3/11/23).

address growing demand for trail connectivity, it should look at the whole valley and prioritize action to address demand where it is greatest.

Further, if connectivity is the goal, Pitkin County and the Forest Service should be considering how to connect this proposed trail to existing trails. For example, they should connect to the existing trail from Carbondale to the KOA campground—thereby connecting Carbondale to Redstone. Here, though, they have made a strategic decision not to do that and instead to build an isolated segment of trail that does not connect to other local and regional trails, or surrounding communities. Consequently, by analyzing only this segment of trail and ignoring the more logical and needed section that would connect Carbondale and Redstone the Forest Service unlawfully narrowed purpose and need to meet only the applicant’s objective and to avoid a more searching review as required by NEPA.

The second stated purpose proposes to authorize more recreational infrastructure to address the existing unmanaged and unauthorized recreational use along the historic roads in the project area including the Rock Creek Wagon Road and Old McClure Pass Road.²² Here again, unmanaged recreation is an issue throughout the Crystal River Valley, but the project proponent’s narrow focus on the Rock Creek Wagon Road and the Old McClure Pass Road improperly constrained the agency’s analysis to advance only the applicant’s goals.

If the Forest Service really intends to tackle unmanaged recreational use on historic roads in the area, building a new recreational trail may not be the best way to do it. Granting increased access to an area the agency already has a hard time managing defies logic. That is especially true because this trail will result in improved access to portions of the Crystal River Valley that see relatively little use today²³, and improved access will result in more unmanaged recreational use of historic roads and trails in the area, including roads and trails in Coal Basin and atop Huntsman Ridge.²⁴

For example, the proposed trail will increase recreational use from Redstone to the top of McClure Pass. The trail invites users to close the loop by traveling up Huntsman Ridge from the top of McClure Pass and returning to the RMP Trail or to Redstone via Coal Basin, Bear Creek, or

²² While decommissioned roads are closed to motorized use, they are not otherwise closed to foot traffic.

²³ See e.g., RMP Trail EA at 54 (“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 appropriate for bike use.”), *Id.* (“increased visitation along the trail may degrade hunting opportunity and experience in close proximity to the trail.”).

²⁴ Public comments clearly reflect demand for additional trail connections: “Several members of the public suggested that, in addition to the proposed project, additional spur trails be developed from the Placita/McClure Pass to Marble, Schofield Pass, Huntsman Ridge Trail, and other nearby system trails.” RMP Trail EA at 15. However, the Forest Service refused to consider additional trails or a broader plan to manage recreation due to its narrowly contrived purpose and need. See also *id.* at C-8 (in response to a public comment requesting a broader analysis of recreation on the WRNF, the agency said “A forest-wide recreation analysis is outside the scope of this EA.”).

Hayes Creek on decommissioned roads, game trails, or bandit trails that the Forest Service does not manage.²⁵

In other words, the project is likely to exacerbate a problem it seeks to address. Building this trail will simply expand unmanaged recreational use further into the backcountry. A more reasonable way to address unmanaged recreation would be to come up with a valley-wide recreation plan, but the Forest Service refused to do that. Relying on its narrow purpose and need, the agency claimed a broader recreation plan is outside the scope of this project.

The third narrowly stated purpose likewise fails to support the proposed action because it may actually create safety problems and does not provide connectivity to the major population center in the Crystal River Valley.

As previously noted, the County decided not to pursue a more controversial, but also more logical, segment of trail that would extend the existing bike path currently running from Carbondale to the KOA campground. An extension of the existing trail would likely see high use by residents of Carbondale, a town of more than 6,000 – the largest in the Crystal River Valley on an order of magnitude. And it would certainly accomplish the stated purpose of providing national forest access to those residents. But instead, the proposed action will facilitate construction of an illogical segment that will require vehicle assistance by the vast majority of users to safely access the trailhead. Still, some users may choose nonmotorized access to the trail from Carbondale, which will require transiting the shoulder of SH 133 for approximately 10 miles before reaching Redstone. This resulting increase in use of the highway for recreational use undermines the stated purpose to “improve safety for pedestrians and cyclists.”

Further, the Forest Service provides no evidence supporting the third stated purpose. Nowhere in the EA is there discussion of conflicts between cyclists, pedestrians, and vehicles on SH 133. And likewise, there is no evidence provided that Redstone community residents will use the trail in the fashion proposed.

Here, the Forest Service is trying to ram a project through the NEPA process by relying on a purpose designed to narrowly and exclusively achieve the project proponent’s goals. This unreasonably narrow purpose and need improperly constrained the alternatives, as discussed below, and made the EA a “foreordained formality.” *Nat’l Parks & Conservation Ass’n*, 606 F.3d at 1070.

Suggested Remedy: The purpose and need must be reframed to ensure that broader recreational impacts are considered, and a reasonable range of alternatives are considered in the NEPA process.

²⁵ While the Forest Service acknowledges that the trail may increase recreation, it does not acknowledge that much of that recreation may be the same type of unmanaged recreational use the agency is trying to manage by creating the trail. See e.g., RMP Trail EA at 39 (“While increased recreational use along the trail corridor may locally affect wildlife activity, the Proposed Action would not result in new fragmentation of large areas of undisturbed habitat.”).

II. The EA failed to consider a reasonable range of alternatives.

As discussed above, the purpose and need for this EA was narrowed in an effort to ram one segment of Pitkin County's CCB Trail through a foreordained NEPA process. The Forest Service relied on the improperly narrow purpose and need to justify its refusal to consider reasonable alternatives that would have more effectively achieved the agency's own goals. Instead the Forest Service only analyzed two alternatives, the applicant's proposal and the "no action" alternative. The Forest Service's failure to consider other reasonable alternatives renders this EA inadequate. WW discussed reasonable alternatives in prior comments on this project.²⁶

NEPA requires the Forest Service to consider and analyze a reasonable range of alternatives in its EA, including alternatives to the project proponent's 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 options." 40 C.F.R. § 1502.14. This requirement applies equally to EAs and EISs. *Davis*, 302 F.3d at 1120; *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988). An EA offering only 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). And while the reviewing agency is not required to analyze every conceivable alternative, it "must, however, explain its reasoning for eliminating an alternative." *Id* at 1309 (citing 40 CFR § 1502.14(a); *N. Alaska Env'tl. Ctr. v. Kempthorne*, 457 F.3d 969, 978 (9th Cir. 2006)).

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).

If one eliminates the improper narrowing criteria from the purpose and need (e.g., the "upper Crystal River Valley," "the Rock Creek Wagon Road," and "Old McClure Pass Road"), the Forest Service has three legitimate goals with this project: 1) Meet the growing demand for local and regional trail connectivity in the Crystal River Valley; 2) Address the existing unmanaged recreational use along the historic routes in the area; and 3) Improve safety for pedestrians and cyclists along SH 133. These goals scream for reasonable alternatives that the Forest Service refused to consider.

²⁶ See WW's Feb. 22, 2022 comments at 2-3, 6-8, 20, 22-23. See also WW's March 23, 2020 comments at 2-5, 8, 9, 10.

For example, instead of analyzing only Pitkin County’s proposal and a no action alternative, the Forest Service should have considered a broader plan to manage recreation and competing public land values in the area. WW previously suggested that the agency consider a broader plan for recreation and wildlife.²⁷ Our scoping comments specifically asked land managers to “begin scrutinizing and prioritizing recreation projects within the context that there is a limit to the amount of recreation our local public lands can sustain,” and recommended “that a holistic and strategic approach” to recreation management would benefit our shared lands and resources.²⁸ Other commenters similarly highlighted the need for a broader, more holistic plan.²⁹ Such a plan could enable the agency to proactively meet growing recreational demand throughout the valley, address unmanaged recreational use, and improve safety for forest users.

By focusing only on Pitkin County’s strategically narrow proposal, the Forest Service will exacerbate some of the problems it is attempting to resolve. For example, as discussed above, building this segment of trail from Redstone to the top of McClure Pass fails to improve connectivity between Carbondale and Redstone, has the potential to increase unmanaged recreation in the Crystal River Valley without a broader plan (including closures) to address impacts, and is likely to put more people on the road between the KOA and Redstone—contributing to additional safety concerns rather than ameliorating those concerns.

Our comments also asked the Forest Service to consider broader area closures³⁰, and highlighted Forest Service authority to implement closures without designation of a recreation trail.³¹ Broader closures would be a reasonable way to protect sensitive wildlife and habitat from the impacts of anticipated increases in recreation that this proposed trail will cause. The Forest Service has authority to implement broader closures with or without the trail. Closures could be along the trail corridor or further afield. Nonetheless, the Forest Service failed to consider these reasonable alternatives in violation of the agency’s NEPA obligations.³² The EA failed to even consider and explain why an area closure alternative was discarded.³³ Such an oversight can be fatal to a NEPA document. *TWS*, 524 F. Supp. 2d at 1312.

Given driving concerns to meet recreational demand, manage use, and do it safely, it would be reasonable for the Forest Service to back up and consider alternatives that meet these goals in the Crystal River Valley broadly rather than just within the project proponent’s narrowly scripted boundaries.

²⁷ See WW’s March 23, 2020 comments at 8. See also WW’s Feb. 22, 2022 comments at 22-23.

²⁸ See WW’s March 23, 2020 comments at 1.

²⁹ See e.g., RMP Trail EA at C-10 (Summarizing public comments asking the USFS for a plan to deal with dispersed camping in the area), C-12 (Summarizing public comments asking for a management plan that restricts recreation to designated routes for the benefit of wildlife).

³⁰ See WW’s Feb. 22, 2022 comments at 2 (specifically asking for consideration of “area closures” in alternatives). See also WW’s March 23, 2020 comments at 3, 9.

³¹ See WW’s Feb. 22, 2022 comments at 9.

³² WW’s scoping comments did not include this specific alternative suggestion because the purpose and need changed between scoping and draft comment periods to include addressing the existing unmanaged recreational use along the decommissioned roads. See USFS Scoping Letter dated January 20, 2020.

³³ See RMP Trail EA at 15.

Suggested Remedy: The Forest Service should broaden its alternatives analysis to include consideration of recreational management throughout the Crystal River Valley and along the broader CCB Trail corridor. Reasonable alternatives should consider and include area closures to better manage recreational impacts on sensitive wildlife and habitat. This is critically important now due to the foreseeability of so much more recreational development in the area, as discussed throughout this objection.

- III. The Forest Service improperly segmented its analysis by considering only one section of the Carbondale to Crested Butte Trail.

WW raised issues related to segmentation in comments.³⁴ The concern here is that by only considering one piece of the greater CCB Trail, the Forest Service improperly avoids a more thorough NEPA analysis that the entire proposed CCB Trail would require. If Pitkin County were proposing the entire CCB Trail now, it seems inevitable that Forest Service would require an EIS. But through the present approach, the County could conceivably get the entire 83-mile proposed trail approved over time through a series of EAs. NEPA, its regulations, and the caselaw all guard against this gamesmanship.

An agency may not "segment" its NEPA analysis so as to conceal the environmental significance of the project or projects. *Coalition on Sensible Transportation v. Dole*, 263 U.S. App. D.C. 426, 826 F.2d 60, 68 (D.C. Cir. 1987). "The purpose of this requirement is to prevent agencies from dividing one project into multiple individual actions 'each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.'" *NRDC v. Hodel*, 865 F.2d at 297-98 (quoting *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985)); see also *Taxpayers Watchdog v. Stanley*, 819 F.2d at 298 ("Piecemealing' or 'Segmentation' allows an agency to avoid the NEPA requirement that an EIS be prepared for all major federal actions with significant environmental impacts by dividing an overall plan into component parts, each involving action with less significant environmental effects."). An agency's decision not to prepare a comprehensive analysis, like other asserted violations of NEPA, is reviewed under the "arbitrary and capricious" standard. *Environmental Defense Fund v. Higginson*, 211 U.S. App. D.C. 14, 655 F.2d 1244, 1247 & n. 8 (D.C. Cir. 1981) (citing *Kleppe v. Sierra Club*, 427 U.S. at 412 and *National Wildlife Federation v. Appalachian Regional Com.*, 219 U.S. App. D.C. 295, 677 F.2d 883, 891 (D.C. Cir. 1981)); see also *Hammond v. Norton*, 370 F. Supp. 2d 226, 244-5 (D.D.C. 2005) (BLM's decision not to analyze two projects as connected actions was arbitrary).

As discussed above, the RMP Trail is a segment of the longer CCB Trail. The CCB Trail is proposed to address recreational demand, regional trail connectivity, and safety concerns. It will implicate public lands and sensitive public land values stretching from Carbondale to Crested Butte. The CCB Trail has long been a priority of local governments, and the Pitkin and Gunnison County governments have made clear their goal of having the full trail built within the next two

³⁴ See WW's March 23, 2020 comments at 2. See also WW's Feb. 22, 2022 comments at 1, 3-6.

decades.³⁵ The Forest Service acknowledges the broader proposal is reasonably foreseeable. It even expanded its analysis of some of the impacts to include a bigger area.³⁶ But that partially expanded analysis is window dressing on the problem for at least two reasons.

First, the Forest Service arbitrarily ignored consideration of existing CCB Trail segments outside of the Crystal River Valley.³⁷ The impacts of those existing trails were previously considered by agency officials on the Grand Mesa Uncompahgre and Gunnison National Forest, but project managers here refused to consider, incorporate, or update existing impact analyses. That's a significant oversight since these segments are all part of the same trail and they'll have synergistic impacts on resources and values including wildlife, wildlife habitat, fragmentation, and recreation.

For example, mountain bikers like to connect trails and create loops. The Forest Service's analysis completely overlooks the fact that mountain bikers are likely utilize the proposed RMP Trail segment of the CCB Trail to connect with other segments of the CCB Trail. That use will have impacts on existing trail segments such as the Raggeds Trail which begins at the top of McClure Pass, along with the resources and values along those segments, and the resources and values in between. But none of that was considered by the Forests Service in this EA.³⁸

Second, the Forest Service refused to analyze proposed segments that have not yet been built.³⁹ The agency rationalized this omission by claiming that there are unanswered questions about

³⁵ See N.5, N.4 *supra*. Numerous plans, studies, and communications demonstrate that Pitkin and Gunnison Counties have been at work on the CCB Trail for many years and they intend to complete the Trail by 2040. Beginning in the 1990s, Pitkin County completed its Open Space and Trails Board's Crystal River Valley Bicycle Trail Feasibility Study (1994), followed by Club 20's Missing Links Report (1996), the West Elk Historic and Scenic Byway Strategic Plan (2000), the Crested Butte to Carbondale Trail Feasibility Study (2004), Carbondale's Recreation Master Plan (2003), and Pitkin County's Crystal River Master Plan (2003) (2016). Carbondale and Pitkin County partnered with GOCO and Garfield County to extend the Town's existing trail 5.3 miles upriver, reaching the BRB Campground (now KOA) in 2009. Then in 2018, Pitkin County completed its Carbondale to Crested Butte Trail Master Plan (December 2018). In sum, these studies and plans indicate the trail alignment is relatively clear. See also Gunnison National Forest Travel Plan (highlighting Kebler Pass Wagon Trail as the logical CCB Trail alignment over Kebler Pass). Local governments on both sides of McClure Pass support the entire trail. See e.g., "A Resolution of the Board of County Commissioners of Pitkin County, Colorado Approving An Intergovernmental Agreement with Gunnison County Supporting the Crested Butte to Carbondale Trail (May 14, 2006), available in the project record.

³⁶ See RMP Trail EA at 67 ("The adopted CCB Trail Plan (Pitkin County 2018) identifies potential trail corridors and bridge locations through the length of the Crystal River Valley. While the alignment and timing of implementation are uncertain, and no funding is currently allocated for such implementation, the Forest Service considers the CCB Trail concept to be a reasonably foreseeable future action that should be analyzed for potential cumulative effects. This determination is based on the presence of an adopted plan for the corridor (Pitkin County 2018).").

³⁷ *Id.*

³⁸ Forest Service apparently does not believe that these existing trails, including the Raggeds Trail #820, have "known viable trail alignments" and therefore eliminated their consideration from the EA. RMP Trail EA at C-3. Pitkin County's own plan specifically identifies existing dirt road and singletrack trail as the next segment from the top of McClure Pass. See Pitkin County Plan (2018) at 274.

³⁹ The Forest Service did broaden analysis to include consideration of cumulative impacts to some select resources within the Crystal River Valley that may accrue from future development of a trail from the KOA to Redstone. However, that analysis only applied to limited values and only within the Crystal River Valley.

the CCB Trail's alignment, timing, and funding.⁴⁰ In fact, as discussed above, the alignment is mapped, preliminary engineering review completed, the Counties are shooting for construction by 2040, and hundreds of thousands of dollars have been allocated for development of this trail. The CCB Trail is reasonably foreseeable under any measure of the concept. *Sierra Club v. United States Forest Serv.*, 857 F. Supp. 2d 1167, 1174 (D. Utah 2012) ("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.'" (quoting *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003))). But for the Forest Service's stubborn refusal to acknowledge the existence of connecting trails that are part of the CCB Trail proposal, ordinary prudence would require their consideration.

To the extent that the alignment is still subject to modification, now is the time for the Forest Service to consider the broader impacts that the CCB Trail will have on other resources and values, and to play a proactive role in dictating where, when, and how the trail is built across public lands. Here, the improper segmentation of analysis for the CCB Trail is concealing broader impacts and abrogating agency authority to proactively mitigate those impacts.

Further, the segmented approach here may leave a significant data gap in future proposed actions relating to the CCB Trail that must be considered. When the reasonably foreseeable KOA to Redstone segment is constructed it will undoubtedly increase usage on the Redstone to McClure segment, probably exponentially based on the connection providing access not only to the Crystal River Valley's population of more than 6,000 in Carbondale, but also via the Rio Grande Trail to the greater Roaring Fork Valley's population of more than 30,000 residents and hundreds of thousands of tourists. This inevitable increase in use on the proposed segment and accompanying impacts must be disclosed. See *Town of Superior*, 2021 U.S. Dist. LEXIS 176149, *17-18. The Forest Service and Pitkin County must commit to ongoing monitoring and data collection along the proposed segment to inform such an analysis. A larger-scale planning effort for the Upper Crystal River Valley could also meaningfully address such concerns.

By segmenting the proposal, the Forest Service has not only avoided meaningful analysis of impacts from the full and foreseeable CCB Trail, but the agency has also proposed a plan that fails to effectively achieve its stated goals for this project. What the Forest Service needs to do here is three-fold: 1) Meet the growing demand for local and regional trail connectivity; 2) Address existing unmanaged recreational use; and 3) Improve safety for pedestrians and cyclists along SH 133.

Instead, though, the Forest Service is proposing to approve one isolated section of trail in the upper Crystal River Valley that does not connect to the existing trail along the Crystal—increasing fragmentation rather than promoting regional connectivity. This new segment will also increase unmanaged recreational use by improving access to backcountry areas between Redstone and Huntsman Ridge. And, finally, the proposal does nothing to improve safety for pedestrians and cyclists between the more populated portions of the Crystal River Valley (near Carbondale) and

⁴⁰ RMP Trail EA at 67.

Redstone. In fact, by starting this trail in Redstone rather than continuing the existing trail south from the KOA, the proposed action may invite more recreational use of the highway between Carbondale and the trailhead. Putting more people on that stretch of highway may increase risk, rather than improving safety.

A broader plan for the Crystal River Valley and the CCB Trail corridor would be the most effective way to achieve the Forest Service's purpose and need. But rather than taking the problem head on and working to design a proposal that broadly and effectively achieves the agency's needs along with the proponent's goals, the EA examines only a small part of a potential solution. By narrowing the purpose and need, and by limiting its consideration to one specific section of a larger trail, the agency has concealed potential impacts, abrogated its own authority to proactively guide development of the CCB Trail and other recreational development moving forward, shortchanged the process and the public, and violated the law.

Suggested Remedy: The Forest Service should take a step back and restart this process. A new analysis should include a broader plan for the Crystal River Valley and the whole 83-mile CCB Trail corridor, that actually manages recreational demand, promotes regional connectivity, and improves safety. Any plan should include a commitment to ongoing monitoring and data collection along the trail to inform future management decisions.

IV. The Forest Service failed to take a hard look at direct, indirect, and cumulative impacts.

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).

Environmental consequences may be direct, indirect, or cumulative. 40 C.F.R. §§ 1502.16, 1508.1. Direct effects "are caused by the action and occur at the same time and place." *Id.* § 1508.1(g)(1). Indirect effects "are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.1(g)(2). "Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, ... and related effects on air and water and other natural systems, including ecosystems." *Id.* Cumulative effects "result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time." *Id.* § 1508.1(g)(3).

Environmental effects that must be considered "include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health..." and include effects that are "both

beneficial and detrimental.” *Id.* § 1508.1(g)(4). 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).

Cumulative effects analysis, in particular, is critical in analyzing this trail proposal, since it will invite additional recreational use in the Crystal River Valley and it is intended to manage growing demand. NEPA requires the Forest Service to consider the effects of the proposed action when seen in concert with other actions over long temporal and broad spatial scales. The agency must look beyond the incremental impacts of a single decision, which may not be significant individually but may cumulatively contribute to significant environmental change. An adequate cumulative impact analysis helps to prevent what has been called the “tyranny of small decisions.” *Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 83 (D.D.C. 2019).

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).

Here, as discussed below, the Forest Service failed to take a hard look at potential impacts to various resources and values. In summary, the agency failed to consider foreseeable impacts of increased recreation on sensitive values including wildlife, habitat and habitat connectivity due to the narrow scope of the analysis. The EA does not include an adequate characterization of baseline conditions in the area. The agency has also failed to consider potential impacts and challenges of its proposed management of e-bikes. The agency must back-up and take a hard look at the foreseeable impacts of increased recreation within the Crystal River Valley. The best way to do this would likely be through a valley-wide recreation plan.

a. Recreation

The RMP Trail EA purports to analyze recreation at a broader, valley-wide scale “based on the regional scope of recreation opportunities, trail connectivity, and community dynamics.”⁴¹ Ultimately, though, the EA lacks meaningful analysis of important foreseeable impacts on an appropriate scale and provides unsupported conclusions that fail to satisfy the requirements of NEPA.

As discussed above, the Forest Service refused to evaluate impacts associated with the full CCB Trail. The agency did not consider the past and present impacts of segments of that trail that have already been constructed outside of the Crystal River Valley. And the agency failed to look at yet to be built segments which are reasonably foreseeable future actions given the detailed

⁴¹ RMP Trail EA at 69.

proposals that exist. A failure to include a cumulative impact analysis of additional trail development that is already planned in the region renders a NEPA analysis inadequate. *See, e.g., Kern*, 284 F.3d at 1078 (9th Cir. 2002) (holding that an EA for a timber sale must analyze the reasonably foreseeable future timber sales within the area).

Additionally, the EA fails to adequately consider unmanaged recreation. The Forest Service acknowledges that unmanaged recreation is a problem in the area.⁴² The Forest Service proposes to address the problem with a seasonal closure along portions of the proposed trail. But there is no meaningful discussion of the fact that developing the new trail will invite more unmanaged recreation throughout the Crystal River Valley and throughout the CCB Trail corridor, nor is there adequate analysis of the potential impacts such recreation will have.

For example, while the EA acknowledges increased mountain bike use on the proposed trail itself, there is only brief mention of increased mountain bike use off the trail.⁴³ References in the EA fail to acknowledge that the proposed trail is basically a gateway drug that will increase recreational use and demand—even where it may not be authorized or appropriate.⁴⁴

It is foreseeable that mountain bikers will quickly identify opportunities to use the proposed trail to develop loops from Redstone to the top of McClure Pass and then out along Huntsman Ridge and back to existing trails in Coal Basin. This will put mountain bikers in areas that currently see very little mountain bike use. New bandit trail development will facilitate trail connections that do not currently exist. There are also decommissioned routes that would become more accessible with construction of the proposed trail.⁴⁵ Increased use of those routes is foreseeable, but the Forest Service has not considered it or proposed to manage it.⁴⁶

Similarly, while the Forest Service claims a need to manage “unauthorized use” of decommissioned roads in the project area, the agency fails to analyze impacts that current users

⁴² *Id.* at 3 (project is needed to address existing unmanaged recreational use), B-2 (under Alternative 1 “...unmanaged year-round recreation along non-system routes would continue to result in disturbance to wildlife.”).

⁴³ *See e.g.,* RMP Trail EA at 52 (“more visitors in general, and mountain bikers in particular, are likely to use these routes as a recreational outing or connection to other regional trails.”).

⁴⁴ *See id.*, at 54 (“[mountain bikers] 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 appropriate for bike use.”).

⁴⁵ *See* WW comments from March 23, 2020 at 9-10 (“The EA must also analyze the potential for “social” trail development and use that may result from this trail being officially designated and constructed. The Forest Service should identify and analyze measures to mitigate potential development of unauthorized trails, including site specific analysis where likely spurs or branches could occur. As one example there are two decommissioned routes that would become accessible from the proposed trail and could lead to much greater habitat fragmentation of larger wildlands: Spring Creek to Bear Creek (FS1955W.1) that connects all the way to Coal Basin and Hayes Creek (FS1955W.1H) which gives access to much of Hayes Creek. Creating the RMP Trail would be likely to increase the amount of foot and horse traffic on these routes and might lead to illegal user development of these routes for mechanized use.”).

⁴⁶ If the proposed action will result in more recreational use throughout the broader area that will impact other important values (e.g., wildlife and wildlife habitat), it would be reasonable for the Forest Service to consider broader seasonal closures throughout the Crystal River Valley. However, the Forest Service neither analyzed these potential impacts or considered reasonable measures to reduce or mitigate these potential impacts.

displaced by new seasonal closures may have.⁴⁷ Current users will seek out new opportunities to recreate in the Crystal River Valley at times when the trails they presently use are closed. For example, dog walkers who rely upon the decommissioned roads where the trail will be built to exercise their dogs during winter months, will seek out new places to walk their dogs when the trail is closed seasonally. In other words, the closures will push current users further afield and into areas that the Forest Service is not currently managing and has no plans to protect with seasonal closures. The EA includes no meaningful analysis of this foreseeable impact, nor does the Forest Service consider any meaningful solution for this foreseeable problem.

This is the tyranny of small decisions that NEPA's cumulative impacts analysis is intended to avoid. An adequate analysis involves a more holistic hard look at the potential impacts development of this trail will have in order to ensure the additive impacts of many small segments and foreseeable offshoots don't result in death by a thousand cuts.

Even if the agency cannot identify exactly where increased recreation will occur, increases are clearly foreseeable. And, if there are resources that may be impacted by foreseeable increases in recreation (e.g., severe winter range and production areas), the Forest Service must explicitly consider those impacts as well as measures to protect sensitive resources (e.g., closures that are broader than just the proposed trail segment) before approving development of the RMP Trail.

Importantly, to the extent that the Forest Service is relying on project design criteria (PDCs) to ensure potential impacts are mitigated and do not become significant, the agency needs to provide some analysis of the effectiveness of proposed mitigation.⁴⁸ Here, even if analysis were to show PDCs are effective at protecting sensitive habitat from increasing recreation—which it has not, the Forest Service has not proposed any broader closures to offset the impacts of foreseeable increases in unmanaged recreation off the trail.

Suggested Remedy: The Forest Service must reconsider potential impacts of increased recreation in the Crystal River Valley and along the CCB Trail corridor that will result from development of this plan. The agency must also consider reasonable measures to mitigate foreseeable impacts. Broader seasonal closures throughout may be necessary to ensure increased recreation does not significantly impact sensitive wildlife habitat and other important values.

b. E-Bikes

⁴⁷ The EA simply acknowledges this with no analysis at all: "...changes in management and use of the existing non-system trail segments may adversely impact and displace some current trail users." RMP Trail EA at 54.

⁴⁸ NEPA and associated CEQ regulations require federal agencies to analyze potential impacts and consider ways to avoid, minimize and mitigate impacts – in accordance with the mitigation hierarchy. 40 C.F.R. §§ 1508.1(s), 1502.14, 1502.16. The mitigation hierarchy aims to minimize environmental harms associated with agency actions. First and foremost, the Forest Service must seek to avoid impacts; then minimize impacts (e.g., through project modifications, permit conditions, interim and final reclamation, etc.); and, generally, only if those approaches are insufficient to fully mitigate the impacts, seek to require compensation for some or all of the remaining impacts (i.e., residual effects).

As noted in WW’s comments, the Forest Service fails repeatedly to disclose or analyze the issue of unauthorized e-bike use on the Hayes Creek Falls to McClure Pass segment of the proposed trail.⁴⁹ As it stands, the segment from Redstone to Hayes Creek Falls, located within CDOT right-of-way and Pitkin County property, will apparently be open to e-bikes while the remainder of the trail located on federal land will be closed to e-bike use.⁵⁰ This creates an obvious management and enforcement conundrum that Forest Service refuses to address in the EA. While the Forest Service admits that it cannot quantify current or future illegal e-bike use on the existing decommissioned roads or proposed trail, it fails to offer any mitigation of this inevitable outcome.⁵¹ Increased enforcement patrols, signage, and other educational efforts by Forest Service, Pitkin County, or volunteers are obvious steps to take, but one that Forest Service refused to include in the PDC, where enforcement of seasonal closures receives extensive treatment.

Substantively, the Forest Service refuses to grapple with the required “minimization criteria” for motorized uses.⁵² As discussed in WW’s comment letter and confirmed in subsequent Forest Service internal guidance, e-bikes are motorized vehicles and are managed as a motorized use.⁵³ As the foregoing paragraph concludes, illegal e-bike use is very likely going to occur on the sections of trail south of Hayes Creek Falls. The Forest Service is obligated as it relates to motorized uses subject to the “minimization criteria”, to protect resources, ensure safety, and minimize conflicts. Given that the EA does not disclose what class(es) of e-bikes may be allowed on the segment of trail north of Hayes Creek Falls, it is hard to say what types of resource impacts, safety concerns, and likely conflicts will arise – but arise they will, and the Forest Service must grapple with this before approving the Proposed Action.⁵⁴

Suggested Remedy: The Forest Service must disclose the existence of likely illegal e-bike use on the trail segments south of Hayes Creek Falls, understand the type of illegal use by e-bike class, and propose mitigation similar to the seasonal closure.

c. Wildlife

⁴⁹ See WW’s Feb. 22, 2022 comments at 11-13.

⁵⁰ It is not disclosed in the EA whether CDOT has made a determination regarding e-bike use at this time, including whether allowed e-bike use will be Class I (pedal assist), II (pedal and throttle), or III (throttle).

⁵¹ In response to comments on this issue, Forest Service states “The Proposed Action specifies that, per Forest Service and Pitkin County regulations, e-bike use would be prohibited on sections of the trail south of Hayes Falls. The extent of existing or future illegal e-bike use is not known, and was not analyzed in the EA.” RMP Trail EA at C-3.

⁵² See Exec. Order No. 11,644, §§ 1 & 3 (Feb. 8, 1972), as amended by Exec. Order No. 11989 (May 24, 1977).

⁵³ Press Release, USDA Forest Service, USDA Forest Service Issues Guidance to Manage Future E-Bike Use on National Forests and Grasslands (Mar. 31, 2022) available at <https://www.fs.usda.gov/news/releases/usda-forest-service-issues-guidance-manage-future-e-bike-use-national-forests-and> (last accessed 3/11/23).

⁵⁴ For an example of an agency grappling with this issue, the Utah Division of Wildlife Resources recently banned class II and III e-bikes from all of its wildlife management areas because “[i]n areas where there is a lot of e-bike use, notable habitat damage is occurring.” Carter Williams, *Some e-bikes now banned from off-road sections at Utah wildlife management areas*, KSL News, Nov. 12, 2022, <https://www.ksl.com/article/50514561/some-e-bikes-now-banned-from-off-road-sections-at-utah-wildlife-management-areas> (last accessed 3/13/23).

As a primary matter, the EA ignored relevant scientific literature documenting the impacts that recreation has on wildlife. We provided studies for the Forest Service and asked officials to consider relevant findings.⁵⁵ One study even quantified impacts to wildlife from the proposed trail.⁵⁶ Nonetheless, the agency did not consider it. Nor does the Forest Service EA include any similar analysis. Instead, it simply concludes impacts will not be significant.

There is also a new study relevant to the project and the project area that was not considered in the Forest Service's RMP Trail EA: the "Roaring Fork Watershed Biodiversity & Connectivity Study."⁵⁷ The study includes general recommendations, including this one:

Big Idea # 2 – Guide development and land conservation decisions to avoid additional fragmentation and maintain connectivity amongst swaths of large intact landscapes. Any introduction of additional infrastructure or disturbance (including roads and trails) will affect habitat quality. Careful consideration of potential impacts are especially needed for areas associated with ungulate winter concentration areas and severe winter range, areas that serve as movement corridors through or between high or moderate quality habitats, areas where restoration could raise habitat quality scores and/or improve connectivity, and wetlands and wet meadows in the ecotone between subalpine forests and the alpine. Public/private partnerships will be key to success in many of these places.⁵⁸

The study underscores the harm caused by fragmentation and urges land managers and decisionmakers avoid actions that contribute to more of it. Of course, the RMP Trail and the larger CCB Trail will contribute to additional fragmentation. Study authors recommend protecting "high quality habitat and connectivity where possible, and improving habitat quality and connectivity..." and suggest that doing so may be necessary to ensure the continued viability of wildlife in the Roaring Fork watershed.⁵⁹

⁵⁵ Studies provided include, but were not limited to: Thompson, Richard W. Crystal River Trail Preliminary Wildlife Analysis, Pitkin County, Colorado. Western Ecosystems, Inc., 2017; Millhouser, Paul. Evaluating Landscape Connectivity and Habitat Fragmentation Effects on Elk in the Roaring Fork and Eagle Valleys. Rocky Mountain Wild, 2019; Naylor, Leslie M., Michael J. Wisdom, and Robert G. Anthony. "Behavioral Responses of North American Elk to Recreational Activity." *Journal of Wildlife Management* 73, no. 3 (April 2009): 328–38; and Ciuti, Simone, Joseph M. Northrup, Tyler B. Muhly, Silvia Simi, Marco Musiani, Justin A. Pitt, and Mark S. Boyce. "Effects of Humans on Behaviour of Wildlife Exceed Those of Natural Predators in a Landscape of Fear." Edited by Nei Moreira. *PLoS ONE* 7, no. 11 (November 28, 2012): e50611; and Rocky Mountain Wild, "Trail Impacts on Wildlife Habitat." 2018 Annotated Bibliography.

⁵⁶ Thompson (2017) ("Crystal River Trail Preliminary Wildlife Analysis, Pitkin County, Colorado") at 51 ("Improving and increasing use of the old McClure Pass Road switchbacks through largely effective habitat would negatively affect a moderate number of important wildlife species in an area of approximately 223 ac. (0.35 mi.²).").

⁵⁷ Renée Rondeau, Michelle Fink, Andrea Schuhmann, and Lee Grunau. 2022. Roaring Fork Watershed Biodiversity and Connectivity Study. Colorado Natural Heritage Program, Colorado State University, Fort Collins, CO and Watershed Biodiversity Initiative, Basalt, CO. Available at https://cnhp.colostate.edu/download/documents/2022/RoaringForkBiodiversityConnectivityStudy_FinalReport_SEP_TEMBER2022.pdf (last accessed 3/11/23).

⁵⁸ *Id.* at 68.

⁵⁹ *Id.*

We also asked the Forest Service to consider the results of an ongoing Colorado Parks and Wildlife (CPW) study on elk in the Roaring Fork Valley. CPW is trying to determine why the calf-cow ratio in the valley has been persistently below the ratio needed to grow. CPW officials have confirmed this concern is applicable to the proposed RMP and CCB Trails.⁶⁰ Researchers are investigating whether and to what extent recreation is affecting elk recruitment. Again, though the EA provides no indication that Forest Service officials considered the study or new information related to the impacts of recreation and recreation-related fragmentation on elk recruitment.

We asked the Forest Service to consider the science above and to assess whether we may be approaching a recreation carrying capacity in the area.⁶¹ No such analysis was undertaken. The phrase “carrying capacity” does not appear in the EA though the Forest Supervisor seems to comprehend and share concerns about the concept.⁶²

The EA purports to examine cumulative impacts to some wildlife species at a broader scale.⁶³ Again, though, that claim is mostly lip service as the EA provides little actual analysis of potential impacts and relies on unsupported and vague conclusions related to significance.

For example, the EA admits that “The Proposed Action may result in cumulative effects on wildlife habitat due to increased human disturbance, when combined with the potential long-term effects of some of the CCB Trail segment options.”⁶⁴ It says that:

Such cumulative effects would most likely apply to elk and other broad-ranging species that rely on habitats throughout the Crystal River Valley. However, the magnitude of those potential effects is unknown, since the specific CCB Trail alignment (and its impacts) has not been identified.⁶⁵

This, of course, overlooks existing segments of the CCB Trail outside of the Crystal River Valley and any new trail development other than future CCB segments, including foreseeable bandit

⁶⁰ Ryan Summerlin, *Wildlife impacts top list of Crystal River Trail doubts*, Glenwood Spring Post Independent, Oct. 18, 2017 (quoting CPW Wildlife Manager, Kevin Wright: “the most significant change in the last five to 10 years is the dramatic increase in recreational pressure.” And highlighting “struggling mule deer and elk populations, as evidenced by falling fawn-to-doe and calf-to-cow ratios.” Wright is also quoted saying: “We are continually building more and more trails, placing these trails where there has never been trails and fragmenting the habitat, and placing more and more people where there were few before ... Wildlife has little places they can go to escape the pressures.”), available at <https://www.aspentimes.com/news/wildlife-impacts-top-list-of-crystal-river-trail-doubts/> (last accessed 3/11/23).

⁶¹ See WW comments from March 23, 2020 at 8.

⁶² See N.8 and N.14 *supra*.

⁶³ See RMP Trail EA at 69 (describing a broader geographic analysis for wildlife including the “Crystal River Valley, based on regional habitat use for key species of interest, including elk, bighorn sheep, and Canada lynx”).

⁶⁴ *Id.* Table 13, at 70.

⁶⁵ *Id.*

trails discussed above. It also ignores foreseeable increased use of other sensitive habitat during periods when the proposed trail segment is closed.

Despite limiting its consideration only to future segments of the CCB Trail and not even making a guess at the magnitude of potential effects, the Forest Service concludes that cumulative impacts would be “insignificant due to their dispersed nature and PDC to reduce direct effects on wildlife.”⁶⁶ There is no analysis in the EA to support this conclusion, and these conclusions do not suffice to comply with NEPA.

Furthermore, as discussed above, the PDC do not provide any protection for areas other than the proposed trail segment. There is no guarantee that PDC would be attached to future segments of the CCB Trail, and there are no closures proposed for other sensitive wildlife habitat in the Crystal River Valley or along other sections of the CCB Trail route even though this trail will lead to increased recreational use of those areas.

The Biological Evaluation (BE) suggests that “monitoring would identify for closure any non-system trails created in the future in attempts to expand beyond the proposed trail.”⁶⁷ But that commitment is absent from the EA and the DDN/FONSI, and there is no discussion about how such a commitment would be upheld moving forward. Indeed, federal land managers have a poor track record when it comes to closing user created trails. This very project shows that use of nonsystem trails often results in those trails being brought into the system. There are many local examples where unauthorized use resulted in bandit trails being brought into the system rather than closed (e.g., the Lorax Trail, trails on the Crown). Not only is the BE’s commitment to close new nonsystem trails absent from the agency’s analysis and decision, it also rings hollow given the local history of trail use and development.

If the Forest Service committed to proactively close sensitive wildlife habitat throughout the Crystal River Valley to trail development in its decision, then the agency’s conclusion regarding “insignificant impacts” would not ring so hollow. Similarly, such an analysis and mitigation discussion would necessarily occur in a valley-wide recreation plan. But here, the agency has made no such analysis or commitment and instead is proposing a project that will increase use in sensitive habitat where the Forest Service is not actively managing recreation by its own admission.

Neither the EA nor the proposed decision provide adequate analysis or guidelines to support the agency’s conclusion that the cumulative impacts to wildlife resulting from development this trail will be insignificant. The agency’s own analysis confirms that recreational demand is rising and that this trail will increase recreational usage throughout the area. The EA also makes clear that unmanaged recreation is a problem. Developing this trail as proposed will lead to more of the same.

⁶⁶ *Id.* Table 13, at 71.

⁶⁷ ERO Consultants, Biological Evaluation: Redstone to McClure Pass Trail Project (Nov. 15, 2022) at 47. Available in the project record.

Rather than turning a blind eye to the cumulative impacts this project will have on wildlife, the agency should take a hard look at those foreseeable impacts and prepare a plan that proactively protects sensitive wildlife habitat throughout the Crystal River Valley and along the CCB Trail corridor while it still exists and before there are established competing uses that the Forest Service may have a hard time shutting down.

Suggested Remedy: The Forest Service must reconsider potential impacts to wildlife from this proposed trail and the foreseeable increases in recreation within the Crystal River Valley and along the CCB Trail route that will result from development of the trail. The agency must also consider reasonable measures to mitigate foreseeable impacts. Broader seasonal closures may be necessary to ensure increased recreation does not significantly impact sensitive wildlife habitat and other important values. Alternatively, the agency could designate specific corridors outside of sensitive wildlife habitat where new trail development may be permitted while making it clear that trail development will only be permitted within designated corridors. A broader recreation plan would be a logical place to consider these issues.

d. Habitat fragmentation

The EA contains some analysis of habitat fragmentation for lynx, but none for deer and elk and other wide-ranging wildlife. That error is made worse by the fact that the analysis fails to consider existing and foreseeable trail development, as well as increased unmanaged recreation resulting from development of this trail (e.g., existing CCB Trail segments outside the Crystal River Valley, foreseeable new bandit trails, and current trail users displaced by seasonal closures).

Habitat fragmentation consists of two different processes that simultaneously and negatively affect wildlife species: (1) a reduction in the overall habitat available to wildlife species – habitat loss; and (2) the creation of isolated patches of habitat separated from what was once the contiguous landscape.⁶⁸

There are many ways to measure habitat fragmentation; three of the most useful metrics, due to their ease of calculation and direct connection to biological field research, are road or route density, number and size of core areas, and distance to a road or route. Conducting spatial analysis is critical to quantify these metrics and understand impacts to species and populations, and to ultimately make decisions that avoid, minimize or mitigate those impacts.⁶⁹

Here, the Forest Service did not even attempt to measure fragmentation of deer and elk habitat from the proposed trail and the other foreseeable development effects. Consequently, the

⁶⁸ See WW comment letter from March 23, 2020 at 8.

⁶⁹ The “Roaring Fork Watershed Biodiversity and Connectivity Study” provides additional and valuable insight on fragmentation in the area that must be considered by the Forest Service. See N.57 *supra*.

agency's conclusion in Table 14 that habitat fragmentation resulting from development of the proposed trail would be insignificant is unsupported and inadequate.

Suggested Remedy: The Forest Service must undertake a revised analysis that adequately examines the habitat fragmentation likely to result from the proposed trail and the other foreseeable impacts of development. As stated above, the most effective way to do this may be through a broader recreation plan.

d. 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 EA fails to adequately document baseline conditions in the area that are relevant to project impacts. For example, the EA does not consider existing segments of the CCB Trail outside of the Crystal River Valley. The EA also fails to consider user-created trails in Coal Basin and Huntsman Ridge that will see increased use based on improved recreational access from the RMP Trail. The agency's failure to consider existing trails underscores the fact that the Forest Service provide no information or data on current habitat fragmentation, and no basis to compare existing conditions with foreseeable impacts. The Forest Service needs to acknowledge and document these baseline conditions in order to adequately assess indirect and cumulative effects of the proposed action as required by NEPA.

Suggested Remedy: The Forest Service must undertake a thorough inventory of existing trails, including user created trails and frequently used decommissioned roads to inform its NEPA analysis for this project. The most effective way to do gather this baseline data may be through a broader recreation plan.

V. The Forest Service should undertake an EIS analyzing the entire trail.

As discussed above, the EA confirms that the Proposed Action is part of the larger CCB Trail that promises broader impacts than the proposed action. Analyzing just one segment of the CCB Trail, rather than the whole thing together, is improper and therefore the Forest Service must consider 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 EA even confirms that other segments of the trail are foreseeable.⁷⁰ Rather than

⁷⁰ RMP Trail EA at 67.

taking the opportunity to consider all the potential impacts at the same time in the same document and to ensure that the broader plan adequately protects the area's other values, however, the Forest Service has improperly confined its analysis and consideration to just one small segment of the trail and a narrow range of impacts.

The EA goes so far as to assert that "If other trail segments are proposed for future implementation, the Forest Service will, as appropriate, conduct the necessary NEPA analysis of those actions."⁷¹ 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,' each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Great Basin Mine Watch*, 456 F.3d at 969 (9th Cir. 2006) (internal quotation marks omitted). That is exactly what is occurring in this EA. The Forest Service is finding minimal impacts on wildlife, habitat fragmentation, recreation use, and many other resources for a 7-mile trail, even though those resources and values may be significantly impacted by the broader 83-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 this major recreation development. This frustrates the intent of NEPA, undermines the analytical process, and precludes 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 RMP Trail 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 RMP Trail 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.

Suggested Remedy: Rather than segmenting the foreseeable CCB Trail into pieces, the Forest Service should consider the whole project together in one EIS. In addition to considering the entire project, the Forest Service should take the opportunity to consider, analyze, and adopt guidelines for recreation management for the broader area that will be impacted by the trail to ensure that other sensitive values and resources (e.g., sensitive wildlife habitat) are adequately protected from the impacts of foreseeable increases in recreation that the trail will bring.

⁷¹ RMP Trail EA at C-2.

Conclusion

To manage the coming storm of increased recreation effectively, the Forest Service must broaden the purpose and need for this project so that it achieves the agency's own, not just Pitkin County's, goals. The agency should consider a broader plan to manage recreation within the Crystal River Valley and along the entire CCB Trail corridor. Given the scope of the proposal and the potential impacts, the agency should undertake a full EIS to ensure adequate analysis and to provide for maximal public engagement. A revised analysis must consider reasonable alternatives and take a hard look at potential impacts to the sensitive values in the Crystal River Valley and beyond, especially impacts to wildlife and sensitive wildlife habitat. The Forest Service must consider alternatives that proactively guide future recreational use and avoid conflicts caused by more unmanaged recreation. Finally, the agency's cumulative impact analysis must acknowledge the extent to which the greater CCB Trail proposal and other foreseeable recreation increases will transform the Crystal River Valley and the broader trail corridor.

Sincerely,



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