

---

**From:** Klein, Matthew - FS  
**Sent:** Thursday, May 16, 2019 12:16 PM  
**To:** Capps, Kenneth - OGC  
**Cc:** Paur, Kenneth - OGC, Lakewood, CO; Fitzwilliams, Scott -FS; Mayville, Aaron W -FS  
**Subject:** RE: Berlaimont Meeting w/ Tammy @ 3:30 Thursday  
**Attachments:** Berlaimont Estates\_draft RTC\_190418.docx; working draft FEIS.DOCX

Ken C.:

Per your request, please find attached the latest draft of the Response To Comments and the latest draft of the FEIS.

Please be advised that, at this time, our third-party NEPA contractor is still in the process of editing/updating both of these documents.

Regards,  
Matt

**Matt Klein**  
**Realty Specialist**  
**Eagle/Holy Cross Ranger District, White River National Forest**  
970-827-5182

---

**From:** Capps, Kenneth - OGC  
**Sent:** Wednesday, May 15, 2019 7:38 PM  
**To:** Mayville, Aaron W -FS <aaron.w.mayville@usda.gov>; Klein, Matthew - FS <matthew.klein@usda.gov>  
**Cc:** Paur, Kenneth - OGC, Lakewood, CO <kenneth.paur@usda.gov>; Fitzwilliams, Scott -FS <scott.fitzwilliams@usda.gov>  
**Subject:** RE: Berlaimont Meeting w/ Tammy @ 3:30 Thursday

OK, thanks Aaron!



Kenneth S. Capps  
**Senior Counsel**  
Mountain Region  
***Office of the General Counsel***  
**U.S. Department of Agriculture**  
**1617 Cole Blvd., Ste. 385E**  
**Lakewood, CO 80401-3305**  
 **303-275-5538 (Voice)**  
 **844-282-1195 (Fax)**  
 **[Kenneth.Capps@ogc.usda.gov](mailto:Kenneth.Capps@ogc.usda.gov)**

---

**From:** Mayville, Aaron W -FS  
**Sent:** Wednesday, May 15, 2019 6:47 PM

**To:** Capps, Kenneth - OGC <[kenneth.capps@usda.gov](mailto:kenneth.capps@usda.gov)>; Klein, Matthew - FS <[matthew.klein@usda.gov](mailto:matthew.klein@usda.gov)>

**Cc:** Paur, Kenneth - OGC, Lakewood, CO <[kenneth.paur@usda.gov](mailto:kenneth.paur@usda.gov)>; Fitzwilliams, Scott -FS <[scott.fitzwilliams@usda.gov](mailto:scott.fitzwilliams@usda.gov)>

**Subject:** RE: Berlaimont Meeting w/ Tammy @ 3:30 Thursday

We'll just be on the phone, Ken – I asked Tammy if we could schedule an in-person meeting with you guys sometime in the next couple weeks. Scott, Matt, and I will be happy to come down to Denver. I really think that would be the best use of our time in discussing some of these specifics – it can get tough over the phone.

We'll get the latest DEIS to you tomorrow morning when Matt is back in the office, and hopefully we can use the time on the call to open our calendars and get something scheduled.

Thanks to you and Ken P, for your help and attention to this one.

All the best,  
Aaron

**Aaron Mayville**  
**District Ranger**

**Eagle-Holy Cross Ranger District, White River National Forest**

p: 970-827-5150  
c: 970-309-2759

---

**From:** Capps, Kenneth - OGC

**Sent:** Wednesday, May 15, 2019 6:26 PM

**To:** Mayville, Aaron W -FS <[aaron.w.mayville@usda.gov](mailto:aaron.w.mayville@usda.gov)>; Klein, Matthew - FS <[matthew.klein@usda.gov](mailto:matthew.klein@usda.gov)>

**Cc:** Paur, Kenneth - OGC, Lakewood, CO <[kenneth.paur@usda.gov](mailto:kenneth.paur@usda.gov)>

**Subject:** Berlaimont Meeting w/ Tammy @ 3:30 Thursday

Hey Aaron/Matt:

Are you guys going to be here live and in person tomorrow at 3:30, or just on the phone?

It has been a long time since I skimmed through your DEIS and I was wondering if you have an updated *draft* FEIS – including the response to comments – that you could send for me to look at before the meeting.

Also, it would help if you could address those questions that Ken Paur asked:

- Did you eliminate any alternatives based on your determination that 19 lots (and the ability to tie into the platted private road system) was the reasonable use and enjoyment of the inholding? In your discussion of Alts Considered But Eliminated, it is not apparent that any alternative other than perhaps a drive way capable route to the East leg was eliminated based on the ANILCA determination. Was that based on Similarly Situated Properties rather than some presumption that you had to grant access that would allow development of 19 lots? I note that the Muddy Pass development appears about as close as you could get to Berlaimont. Discussion of the access road at Muddy Pass probably bears additional discussion. The table indicates it is a County Road. It seems pretty doubtful that it was a county road when the property was first developed since it is a dead-end in the National Forest. Did it become a County Road before or after ANILCA was passed in 1980?
- Did you consider any alternative which would have much less impact on NFS resources but would not ensure the specific platted development (19 lots with the platted private road system)? It appears from your discussion of Alts Considered But Eliminated that you eliminated routes on the West, South and East based on resource impacts (as well as contacting and not getting permission from private land owners). Does the impact to wildlife

west of the West-leg of Berlaimont also apply to the Red Canyon Route? Or, would the Red Canyon route be better for wildlife than any other? If so, that could justify requiring Berlaimont to attempt to get access on that route as it appears to have been an historic access to the property. What did Berlaimont identify as its historic access as required by 36 CFR 251.112(b)?

I note that you included Project Design Criteria and BMPs to benefit NFS resources like wildlife winter range. You might consider imposing additional PDC/BMPs in the FEIS. Would there be a benefit to retaining the motorized closure between dawn and dusk or similar restrictions that would *both* allow year around residential use and also mitigate adverse effects to winter range? I note your seven PDC/BMPs for wildlife include speed bumps, no guard rails and similar construction elements but not any restrictions on *use* of the right-of-way.

Thanks!

Ken



Kenneth S. Capps  
**Senior Counsel**  
Mountain Region  
***Office of the General Counsel***  
**U.S. Department of Agriculture**  
**1617 Cole Blvd., Ste. 385E**  
**Lakewood, CO 80401-3305**  
 **303-275-5538 (Voice)**  
 **844-282-1195 (Fax)**  
 **[Kenneth.Capps@ogc.usda.gov](mailto:Kenneth.Capps@ogc.usda.gov)**