



United States
Department of
Agriculture

Forest
Service

Grand Mesa,
Uncompahgre and
Gunnison
National Forests

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Delta, CO 81416
Voice: 970-874-6600
TDD: 970-874-6660

File Code: 2720

Date: November 5, 2009

TIMOTHY T MUELLER
PRESIDENT
CRESTED BUTTE LLC
PO BOX 5700
CRESTED BUTTE, CO 81225

TAMMIE A QUINLAN
CHIEF FINANCIAL OFFICER
CNL INCOME CRESTED BUTTE LLC
450 SOUTH ORANGE AVE 12TH FLOOR
ORLANDO, FL 32801

Dear Mr. Mueller and Ms. Quinlan:

This letter follows my recent telephone conversation with you on October 16, 2009, and my meeting with you on November 3, 2009, held at your request, and documents my determinations regarding the submittal of 1) your Master Development Plan (MDP), and 2) your proposal to develop lift served skiing on Snodgrass Mountain.

On May 20, 2009, Michael Kraatz, on behalf of Crested Butte Mountain Resort (CBMR), submitted a Master Development Plan. On June 18, 2009, CBMR submitted a "Proposal for the Development of Snodgrass." The Forest Service agreed to review both submittals concurrently. In the course of our review, we have considered a number of factors leading to my determination with regard to what is in the "public interest".

Generally the Forest Service accepts a MDP prior to considering a site-specific proposal. We opted to consider both concurrently to expedite the process. Because of this concurrent review, I have reached two conclusions.

First, I am not accepting your Master Development Plan which includes a proposal to develop Snodgrass Mountain for lift-served skiing. A revised MDP, excluding the proposed lift-served skiing on Snodgrass Mountain, will need to be submitted in accordance with the requirements of your permit.

Second, your site-specific proposal to build and operate lift-served ski facilities on Snodgrass Mountain is rejected.

These conclusions will not affect the current Forest Plan allocation of Snodgrass Mountain to downhill skiing (Management Prescription 1B) and your Special Use Permit boundary. However, both may be reexamined at such time as the Forest Land and Resource Management Plan is revised.

RATIONALE

In considering your proposal to develop Snodgrass Mountain, I have applied both the Initial and Second-level Screening criteria as outlined in 36 Code of Federal Regulations (CFR), Subpart B, Special Uses, Section 251.54 and in the Forest Service Handbook FSH 2709.11, Chapter 10.



Upon review, I have found that your Snodgrass proposal meets all of the initial screening criteria. As instructed in CFR 251.54, "A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration."

It further states at 36 CFR 251.54(e)(5) that: "An authorized officer shall reject any proposal ... if, upon further consideration, the officer determines that:

(ii) The proposed use would not be in the public interest ..."

This requirement imposes on me a serious responsibility to make the determination as to what is in the "public interest" fairly, and deliberately, and considering all factors at my disposal. What follows below are the factors I have considered.

- **Community Support:** Ski area development on National Forest lands and adjacent private lands have the potential to change communities perhaps more than anything else the Forest Service authorizes, as described in the Community/Social/Economic Effects section below. Consequently, it is imperative that proposals such as the expansion onto Snodgrass Mountain have community and public support. While total agreement for the project may never be possible, it is reasonable to expect that there be a clear indication of general support.

As I have said in written correspondence with you and in numerous communications through my staff, there is no clear science that can be applied to determining public opinion. It falls to me to make a judgment in this regard based on all sources of information available to me. I have been listening for a long time.

In my letter of January 9, 2009, I expressed my view that public support for this proposal did not exist. At that time I did not see enough opposition to reject a proposal strictly based upon public opposition.

Since then; however, polarization in the community has increased and organized opposition to development of Snodgrass has intensified. There is opposition from the Town of Crested Butte. Gunnison County is unable to submit a letter of support or opposition. Gunnison County also recently adopted Special Development Project Regulations that limit the County's ability to be involved in and comment on the conceptual ideas presented in the MDP. I continue to receive numerous letters from people with an interest in the Crested Butte area who have diverse and heart-felt opinions about this special place where they live and recreate.

Based on what I have heard and read, I am convinced that the community is deeply divided over the proposed development of Snodgrass Mountain.

- **Community/Social/Economic Effects:** While we are well aware of the economic benefits that ski areas bring to communities, there are also economic and social costs. Development of Snodgrass Mountain on the scale proposed would permanently alter this portion of the Upper Gunnison Valley. The direct impact of up to 250,000 additional skier visits would be felt in all sectors of the community. Transportation impacts would occur to roads and highways, city streets and surrounding National Forest roads and lands. Demand for public services including medical/social services, housing, schools, fire, police, water, sewer would not only result from the increased visitation, but would also come from the increased worker base necessary to accommodate this growth.

Many residents in the Crested Butte area and recreational visitors to the area currently use Snodgrass Mountain for hiking, mountain biking and backcountry skiing. Development of the mountain as proposed would alter this use and, in some cases, displace these users to other areas on the National Forest. Many of the hundreds of comments that I have received opposed to CBMR's proposal have expressed their desire to keep Snodgrass Mountain in its undeveloped status. A lift-served skiing proposal would likely adversely affect existing recreation use and visual quality in Washington Gulch and on Snodgrass Mountain.

- **Land Use Changes:** Development of Snodgrass Mountain would place long-term pressure on the adjacent and nearby private lands to shift from ranching toward commercial ski base and housing development both in the Washington Gulch and Upper East River areas. Based on comments received and my knowledge, these shifts in land use would generally be undesired by land owners or those who frequent these areas. Rocky Mountain Biological Laboratory and other private land owners would be adversely affected.
- **Limitations of Snodgrass Mountain for Lift-Served Ski Development:** As we have discussed on numerous occasions, I have significant concerns about the limitations of Snodgrass Mountain for lift-served skiing development based on the numerous studies and environmental issues that have been identified over the years. Following are some of my concerns.

Geologic Hazard: As noted in my January 29, 2009 letter, geologic hazards presented by unstable soils and unpredictable hydrology have eliminated those slopes nearest to North Village from consideration as skiable terrain. Additional areas that exhibit signs of instability remain. These areas would require further study, perhaps resulting in further restrictions. Mitigation measures to address these unstable slopes are uncertain and may alter the mountain's hydrology in unpredictable ways. Implementation of proposed mitigation measures would involve substantial disturbance of already unstable slopes and would have significant environmental effects. The potential for impacts to the lower slopes near private lands from management of water on upper slopes is unknown.

If we learned anything from studies of geology and hydrology on the mountain it is that the interrelationships between underlying geology, hydrology and soil stability are uncertain, and that unforeseen consequences have the potential to be significant. Slope failures in the area and other areas with similar geology highlight the nature of my concern.

Slope/Terrain: Snodgrass Mountain has terrain which would likely require substantial alteration to construct and maintain ski trails. That terrain grading may further alter slope stability and the hydrologic function of the mountain. Also any mitigation measures will have uncertain success.

Avalanche: There continues to be uncertainty over the potential for the increase of avalanche frequency and severity along Gothic Road. Concerns persistently raised by knowledgeable locals perpetuate the issue. Among three commissioned studies there is little agreement.

Boundary Management Issues: Your proposal for Snodgrass Mountain would increase the frequency of backcountry access into known avalanche areas such as the Glory Hole. There will be a resulting uncertainty of success of boundary management efforts.

- **Limits to Public Access to the Snodgrass Mountain Base:** Easy access to Snodgrass Mountain by the general public would be an important goal for the Forest Service. I find that such access would be difficult to establish and see that in your proposal. While you propose bus transportation to North Village from which skiers can load a gondola, skiers on Mount Crested Butte would have a long transport of lifts and runs to access and return from Snodgrass Mountain.
- **Other Environmental Concerns:** There are additional areas of environmental impact that are of concern and affect the public.

Roadless: The majority of the area proposed for development on Snodgrass Mountain is in an Inventoried Roadless Area (IRA). Several Federal Circuit Courts are currently considering the future management of IRAs. A final decision on how ski areas can develop ski facilities in IRAs may be several years away. It is very reasonable to expect; however, that any decision to develop Snodgrass Mountain will be challenged based upon consistency with both the intent and ecological values of roadless areas.

Lynx: The upper portions of Snodgrass Mountain are lynx habitat. Permanent loss of suitable lynx habitat would occur as a result of development. Effects would, we believe, be measurable, leading to an adverse effect to Canada lynx and possibly result in "take" to the species.

- **Gunnison County Coordination:** Gunnison County recently established Special Development Project Regulations asserting procedural and substantive authorities which are at odds with cooperative planning of large projects on National Forest lands. Timing and procedures required by the County would likely result in sequential rather than concurrent reviews. Also, inability of a county to participate in the "front end loading" of a project or in NEPA scoping is unprecedented on the GMUG NF and will not contribute toward joint resolution of complex and controversial off-site impacts.
- **Use of the NEPA Process to Continue the Consideration:** Acceptance of your proposal would require a large commitment of both our resources and yours. In addition, local governments, stakeholders, and interested parties would need to expend time and energy engaging in the NEPA process. To proceed, I must be convinced that such an effort could lead to a decision which serves the public interest and for which there is a high likelihood of success. I am not convinced of this but rather am convinced otherwise.

I believe that perpetuation of the debate in the NEPA process would further deepen the division that exists in the community and would likely uncover additional environmental concerns. Relationships among all interests and all parties would be taxed, if not damaged.

PUBLIC INTEREST DETERMINATION

I believe that the factors discussed above, taken together, lead to only one conclusion. To proceed with consideration and approval of development which would have the social and community effects I summarize above, in the face of the inherent limitations and challenges of the mountain, considering potential environmental effects we already know of, without the clear support of the affected community, would not be in the public interest.

It is my finding that it is not in the public interest to continue to consider development on Snodgrass Mountain any further.

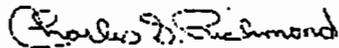
ADMINISTRATIVE APPEAL

Rejection of your proposal is not subject to administrative appeal. Forest Service Handbook 2709.11.12.4 states, "Denial of unsolicited proposals is not subject to administrative appeal under 36 CFR part 215 or part 251, subpart C, and does not constitute a proposed action pursuant to 36 CFR 251.54(e)(6) and the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4347)."

CONCLUSION

I understand that my rejection of your proposal does not align with your business and development plans. I come to my conclusion having weighed this against the much broader public interest that I serve. I am hopeful that we can maintain a productive dialogue about the future of CBMR and find ways to enhance the ski area offerings in ways that are more acceptable to the community and the environment.

Sincerely,



CHARLES S. RICHMOND
Forest Supervisor

Auth ID: GUN699
Contact ID: CNL INCOME
Expiration Date: 12/05/2048
Use Code: 161

FS-2700-5b (03/06)
OMB No. 05

**U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SKI AREA TERM SPECIAL USE PERMIT
AUTHORITY:**

**FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976, SKI AREA PERMIT
ACT October 22, 1986**

CNL INCOME CRESTED BUTTE, LLC, 450 SOUTH ORANGE AVENUE, 12TH FLOOR, ORLANDO, FL, 32801 (hereafter called the holder) is hereby authorized to use National Forest System lands, on the Grand Mesa, Uncompahgre & Gunnison National Forest, for the purposes of constructing, operating, and maintaining a winter sports resort including food service, retail sales, and other ancillary facilities, described herein, known as the Crested Butte ski area and subject to the provisions of this term permit. This permit within, covers 4350 acres described here and as shown on the attached map dated 12/05/2008.

The following improvements, whether on or off the site, are authorized:

All improvements, operations and services as authorized by this permit, including, ski lifts and tows, ski trails, day lodges, restaurants, maintenance and snowmaking facilities (including waterlines for snowmaking), roads, utilities, parking, signs, radio base stations, explosives cache, and other facilities and improvements needed in the operation and maintenance of a winter resort, and the following documents, as approved, which are hereby attached to and made a part of this permit:

- 1) Master Development Plan (in progress)
- 2) Site Development Schedule (in progress)
- 3) Annual Winter Operating Plan
- 4) Annual Summer Operating Plan

Attached Clauses. This term permit is accepted subject to the conditions set forth herein on pages 1 through 17 and to Exhibit A (permit boundary map, dated 12/05/2008) attached or referenced hereto and made a part of this permit.

TERMS AND CONDITIONS

I. AUTHORITY AND USE AND TERM AUTHORIZED

A. Authority. This term permit is issued under the authority of the Act of October 22, 1986, (Title 16, United States Code, Section 497b), and Title 36, Code of Federal Regulations, Sections 251.50-251.64.

B. Authorized Officer. The authorized officer is the Forest Supervisor. The authorized officer may designate a representative for administration of specific portions of this authorization.

C. Rules, Laws and Ordinances. The holder, in exercising the privileges granted by this term permit, shall comply with all present and future regulations of the Secretary of Agriculture and federal laws; and all present and future, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit to the extent they are not in conflict with federal law,

policy or regulation. The Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

D. Term. This authorization is for a term of 5 years to provide for the holder to prepare a Master Development Plan. Subject to acceptance of the Master Development Plan by the authorized officer, this authorization shall be extended for an additional 5 years, for a total of 10 years, to provide the holder sufficient time to construct facilities approved in the Master Development Plan within the schedule outlined in condition II.B. (Site Development Schedule) so that the area may be used by the public. Further Provided; This authorization shall be extended by its terms for an additional 30 for a total of 40 years if it is in compliance with the site development schedule in the Master Development Plan and being in operation by the 10-year anniversary date of the issuance of this authorization. Failure of the holder to comply with all or any provisions of this clause shall cause the authorization to terminate under its terms.

E. Nonexclusive Use. This permit is not exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not materially interfere with the rights and privileges hereby authorized.

F. Area Access. Except for any restrictions as the holder and the authorized officer may agree to be necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this permit shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads or roads as may be constructed by the holder, shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

G. Master Development Plan. In consideration of the privileges authorized by this permit, the holder agrees to prepare and submit changes in the Master Development Plan encompassing the entire winter sports resort presently envisioned for development in connection with the National Forest lands authorized by this permit, and in a form acceptable to the Forest Service. Additional construction beyond maintenance of existing improvements shall not be authorized until this plan has been amended. Planning should encompass all the area authorized for use by this permit. The accepted Master Development Plan shall become a part of this permit. For planning purposes, a capacity for the ski area in people-at-one time shall be established in the Master Development Plan and appropriate National Environmental Policy Act (NEPA) document. The overall development shall not exceed that capacity without further environmental analysis documentation through the appropriate NEPA process.

H. Periodic Revision.

1. The terms and conditions of this authorization shall be subject to revision to reflect changing times and conditions so that land use allocation decisions made as a result of revision to Forest Land and Resource Management Plan may be incorporated.
2. At the sole discretion of the authorized officer this term permit may be amended to remove authorization to use any National Forest System lands not specifically covered in the Master Development Plan and/or needed for use and occupancy under this authorization.

II. IMPROVEMENTS

A. Permission. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named in the Master Development Plan and approved in the annual operating plan, or further authorized in writing by the authorized officer.

B. Site Development Schedule. As part of this permit, a schedule for the progressive development of the permitted area and installation of facilities shall be prepared jointly by the holder and the Forest Service. Such a schedule shall be prepared upon approval of the Master Development Plan, and shall set forth an itemized priority list of planned improvements and the due date for completion. This schedule shall be

made a part of this permit. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met; and provided further, that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled due date.

1. All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least forty-five (45) days before the construction date stipulated in the development schedule.

2. In the event there is agreement with the Forest Service to expand the facilities and services provided on the areas covered by this permit, the holder shall jointly prepare with the Forest Service a development schedule for the added facilities prior to any construction and meet requirements of paragraph II.D of this section. Such schedule shall be made a part of this permit.

C. Plans. All plans for development, layout, construction, reconstruction or alteration of improvements on the site, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be accepted by the authorized officer before the commencement of any work. A holder may be required to furnish as-built plans, maps, or surveys upon the completion of construction.

D. Amendment. This authorization may be amended to cover new, changed, or additional use(s) or area not previously considered in the approved Master Development plan. In approving or denying changes or modifications, the authorized officer shall consider among other things, the findings or recommendations of other involved agencies and whether their terms and conditions of the existing authorization may be continued or revised, or a new authorization issued.

E. Ski Lift Plans and Specifications. All plans for uphill equipment and systems shall be properly certified as being in accordance with the American National Standard Safety Requirements for Aerial Passenger Tramways (B77.1). A complete set of drawings, specifications, and records for each lift shall be maintained by the holder and made available to the Forest Service upon request. These documents shall be retained by the holder for a period of three (3) years after the removal of the system from National Forest land.

III. OPERATIONS AND MAINTENANCE

A. Conditions of Operations. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. Standards are subject to periodic change by the authorized officer. This use shall normally be exercised at least 240 days each year or season. Failure of the holder to exercise this minimum use may result in termination pursuant to VIII.B.

B. Ski Lift, Holder Inspection. The holder shall have all passenger tramways inspected by a qualified engineer or tramway specialist. Inspections shall be made in accordance with the American National Standard Safety Requirements for Aerial Passenger Tramways (B77.1). A certificate of inspection, signed by an officer of the holder's company, attesting to the adequacy and safety of the installations and equipment for public use shall be received by the Forest Service prior to public operation stating as a minimum:

"Pursuant to our special use permit, we have had an inspection to determine our compliance with the American National Standard B77.1. We have received the results of that inspection and have made corrections of all deficiencies noted. The facilities are ready for public use."

C. Operating Plan. The holder or designated representative shall prepare and annually revise by October 1 (winter) and May 1 (summer) an Operating Plan. The Plan shall be prepared in consultation

with the authorized officer or designated representative and cover winter and summer operations as appropriate. The provisions of the Operating Plan and the annual revisions shall become a part of this permit and shall be submitted by the holder and approved by the authorized officer or their designated representatives. This plan shall consist of at least the following sections:

1. Ski patrol and first aid.
2. Communications.
3. Signs.
4. General safety and sanitation.
5. Erosion control.
6. Accident reporting.
7. Avalanche control.
8. Search and rescue.
9. Boundary management.
10. Vegetation management.
11. Designation of representatives.
12. Trail routes for nordic skiing.

The authorized officer may require a joint annual business meeting agenda to:

- a. Update Gross Fixed Assets and lift-line proration when the fee is calculated by the Graduated Rate Fee System.
- b. Determine need for performance bond for construction projects, and amount of bond.
- c. Provide annual use reports.

D. Cutting of Trees. Trees or shrubbery on the permitted area may be removed or destroyed only after the authorized officer has approved and marked, or otherwise designated, that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder at appraised value, provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder.

E. Signs. Signs or advertising devices erected on National Forest lands shall have prior approval by the Forest Service as to location, design, size, color, and message. Erected signs shall be maintained or renewed as necessary to neat and presentable standards, as determined by the Forest Service.

IV. NONDISCRIMINATION. During the performance of this permit, the holder agrees:

A. Nondiscrimination

1. The holder and its employees shall not discriminate against any person on the basis of race, color, sex (in educational activities), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the holder and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and the Age Discrimination Act of 1975, as amended.
2. The holder shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this permit.
3. The Forest Service shall furnish signs setting forth this policy of nondiscrimination. These signs shall be conspicuously displayed at the public entrance to the premises and at other exterior or interior locations, as directed by the Forest Service.

4. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the violation occurs.

B. Equal Access to Federal Programs. In addition to the above nondiscrimination policy, the holder agrees to insure that its programs and activities are open to the general public on an equal basis and without regard to any non-merit factor.

V. LIABILITIES

A. Third Party Rights. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. Indemnification of the United States. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. Damage to United States Property. The holder shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit. The holder shall pay the United States the full cost of any damage resulting from negligence or activities occurring under the terms of this permit or under any law or regulation applicable to the national forests, whether caused by the holder, or by any agents or employees of the holder.

D. Risks. The holder assumes all risk of loss to the improvements resulting from natural or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees, and other hazardous events. If the improvements authorized by this permit are destroyed or substantially damaged by natural or catastrophic events, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis shall be provided to the holder within six (6) months of the event.

E. Hazards. The holder has the responsibility of inspecting the area authorized for use under this permit for evidence of hazardous conditions which could affect the improvements or pose a risk of injury to individuals.

F. Insurance. The holder shall have in force public liability insurance covering: (1) property damage in the amount of one hundred thousand dollars (\$100,000), and (2) damage to persons in the minimum amount of one million dollars (\$1,000,000) in the event of death or injury to one individual, and the minimum amount of two million dollars (\$2,000,000) in the event of death or injury to more than one individual. These minimum amounts and terms are subject to change at the sole discretion of the authorized officer at the five-year anniversary date of this authorization. The coverage shall extend to property damage, bodily injury, or death arising out of the holder's activities under the permit including, but not limited to, occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. Such insurance shall also name the United States as an additionally insured. The holder shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy. The policy shall also contain a specific provision or rider to the effect that the policy shall not be cancelled or its provisions changed or deleted before thirty (30) days written notice to the Forest Supervisor, USDA Forest Service, 2250 Highway 50, Delta, CO 81416, by the insurance company.

Rider Clause (for insurance companies)

"It is understood and agreed that the coverage provided under this policy shall not be cancelled or its provisions changed or deleted before thirty (30) days of receipt of written notice to the Forest Supervisor, USDA Forest Service, 2250 Highway 50, Delta, CO 81416, by the insurance company."

VI. FEES

Ski Area Permit Fees. The Forest Service shall adjust and calculate permit fees authorized by this permit to reflect any revisions to permit fee provisions in 16 U.S.C. 497c or to comply with any new permit fee system based on fair market value that may be adopted by statute or otherwise after issuance of this permit.

A. Fee Calculation. The annual fee due the United States for the activities authorized by this permit shall be calculated using the following formula:

$$\text{SAPF} = (.015 \times \text{AGR in bracket 1}) + (.025 \times \text{AGR in bracket 2}) + (.0275 \times \text{AGR in bracket 3}) + (.04 \times \text{AGR in bracket 4})$$

Where:

$$\text{AGR} = [(\text{LT} + \text{SS}) \times (\text{proration \%})] + \text{GRAF}$$

AGR is adjusted gross revenue;

LT is revenue from sales of alpine and nordic lift tickets and passes;

GRAF is gross year-round revenue from ancillary facilities;

Proration % is the factor to apportion revenue attributable to use of National Forest System lands;

SAPF is the ski area permit fee for use of National Forest System lands; and

SS is revenue from alpine and nordic ski school operations.

1. SAPF shall be calculated by summing the results of multiplying the indicated percentage rates by the amount of the holder's adjusted gross revenue (AGR), which falls into each of the four brackets. Follow direction in paragraph 2 to determine AGR. The permit fee shall be calculated based on the holder's fiscal year, unless mutually agreed otherwise by the holder and the authorized officer.

The four revenue brackets shall be adjusted annually by the consumer price index issued in FSH 2709.11, chapter 30. The revenue brackets shall be indexed for the previous calendar year. The holder's AGR for any fiscal year shall not be split into more than one set of indexed brackets. Only the levels of AGR defined in each bracket are updated annually. The percentage rates do not change.

The revenue brackets and percentages displayed in Exhibit 01 shall be used as shown in the preceding formula to calculate the permit fee.

38.12 - Exhibit 01

Adjusted Gross Revenue (AGR) Brackets and Associated Percentage Rates for Use in Determining Ski Area Permit Fee (SAPF)

Revenue Brackets (updated annually by CPI*) and Percentage Rates				
Holder FY	Bracket 1 (1.5%)	Bracket 2 (2.5%)	Bracket 3 (2.75%)	Bracket 4 (4%)

FY 2007 CPI: 1.041	All revenue below \$4,000,000	\$4,000,000 to <\$20,004,000	\$20,004,000 to \$66,680,000	All revenue over \$66,680,000
FY 2008 CPI: 1.024	All revenue below \$4,096,000	\$4,096,000 to <\$20,484,000	\$20,484,000 to \$68,280,000	All revenue over \$68,280,000
FY 2009 CPI: 1.056	All revenue below \$4,325,000	\$4,325,000 to <\$21,631,000	\$21,631,000 to \$72,104,000	All revenue over \$72,104,000

*The Director of Recreation, Heritage, and Wilderness Resources, Washington Office, updates the revenue brackets annually, based on the Consumer Price Index, (CPI-U), Table A which is published monthly at <http://www.bls.gov>. The CPI is revised and issued annually in section 97.

The bracket update is accomplished by using the change in the CPI-U for "All Urban Consumers" index for the month of July and is based on the percentage increase or decrease for the preceding calendar year. This index base period is 1982-84=100. For example, the 2009 adjustment uses the change between July 2007 and July 2008.

2. AGR shall be calculated by summing the revenue from lift tickets and ski school operations prorated for use of National Forest System lands and from ancillary facility operations conducted on National Forest System lands.

Revenue inclusions shall be income from sales of alpine and nordic tickets and ski area passes; alpine and nordic ski school operations; gross revenue from ancillary facilities; the value of bartered goods and complimentary lift tickets (such as lift tickets provided free of charge to the holder's friends or relatives); and special event revenue. Discriminatory pricing, a rate based solely on race, color, religion, sex, national origin, age, disability, or place of residence, is not allowed, but if it occurs, include the amount that would have been received had the discriminatory pricing transaction been made at the market price, the price generally available to an informed public, excluding special promotions.

Revenue exclusions shall be income from sales of operating equipment; refunds; rent paid to the holder by subholders; sponsor contributions to special events; any amount attributable to employee gratuities or employee lift tickets; discounts; ski area tickets or passes provided for a public safety or public service purpose (such as for National Ski Patrol or for volunteers to assist on the slope in the Special Olympics); and other goods or services (except for bartered goods and complimentary lift tickets) for which the holder does not receive money.

Include the following in AGR:

- a. Revenue from sales of year-round alpine and nordic ski area passes and tickets and revenue from alpine and nordic ski school operations prorated according to the percentage of use between National Forest System lands and private land in the ski area;
- b. Gross year-round revenue from temporary and permanent ancillary facilities located on National Forest System lands;
- c. The value of bartered goods and complimentary lift tickets, which are goods, services, or privileges that are not available to the general public (except for employee gratuities, employee lift

tickets, and discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) and that are donated or provided without charge in exchange for something of value to organizations or individuals (for example, ski area product discounts, service discounts, or lift tickets that are provided free of charge in exchange for advertising).

Bartered goods and complimentary lift tickets (except for employee gratuities, employee lift tickets, discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) valued at market price shall be included in the AGR formula as revenue under LT, SS, or GRAF, depending on the type of goods, services, or privileges donated or bartered; and

d. Special event revenue from events, such as food festivals, foot races, and concerts. Special event revenue shall be included in the AGR formula as revenue under LT, SS, or GRAF, as applicable. Prorate revenue according to the percentage of use between National Forest System lands and private land as described in the following paragraphs 5 and 6.

3. LT is the revenue from sales of alpine and nordic lift tickets and passes purchased for the purpose of using a ski area during any time of the year, including revenue that is generated on private land (such as from tickets sold on private land).

4. SS is the revenue from lessons provided to teach alpine or nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing, including revenue that is generated on private land (such as from tickets sold on private land).

5. Proration % is the method used to prorate revenue from the sale of ski area passes and lift tickets and revenue from ski school operations between National Forest System lands and private land in the ski area. Separately prorate alpine and nordic revenue with an appropriate proration factor. Add prorated revenues together; then sum them with GRAF to arrive at AGR. Use one or both of the following methods, as appropriate:

a. STFP shall be the method used to prorate alpine revenue. The STFP direction contained in FSM 2715.11c effective in 1992 shall be used. Include in the calculation only uphill devices (lifts, tows, and tramways) that are fundamental to the winter sports operation (usually those located on both Federal and private land). Do not include people movers whose primary purpose is to shuttle people between parking areas or between parking areas and lodges and offices.

b. Nordic trail length is the method used to prorate nordic revenue. Use the percentage of trail length on National Forest System lands to total trail length.

6. GRAF is the revenue from ancillary facilities, including all of the holder's or subholder's lodging, food service, rental shops, parking, and other ancillary operations located on National Forest System lands. Do not include revenue that is generated on private land. For facilities that are partially located on National Forest System lands, calculate the ratio of the facility square footage located on National Forest System lands to the total facility square footage. Special event revenue allocatable to GRAF shall be prorated by the ratio of use on National Forest System lands to the total use.

7. In cases when the holder has no AGR for a given fiscal year, the holder shall pay a permit fee of \$2 per acre for National Forest System lands under permit or a percentage of the appraised value of National Forest System lands under permit, at the discretion of the authorized officer.

B. Fee Payments. Reports and deposits shall be tendered in accordance with the following schedule. They shall be sent or delivered to the collection officer, USDA, Forest Service, at the address furnished by the authorized officer. Checks or money orders shall be made payable to: USDA, Forest Service.

1. The holder shall calculate and submit an advance payment which is due by the beginning of the holder's payment cycle. The advance payment shall equal 20 percent of the holder's average permit fee for 3 operating years, when available. When past permit fee information is not available, the

advance payment shall equal 20 percent of the permit fee, based on the prior holder's average fee or projected AGR. For ski areas not expected to generate AGR for a given payment cycle, advance payment of the permit fee as calculated in Item A, paragraph 7 (\$2 per acre for National Forest System lands under permit or a percentage of the appraised value of National Forest System lands under permit, at the discretion of the authorized officer) shall be made. The advance payment shall be credited (item B, paragraph 3) toward the total ski area permit fee for the payment cycle.

2. The holder shall report sales, calculate fees due based on a tentative percentage rate, and make interim payments each calendar month except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shutdown for a specific period. Reports and payments shall be made by the end of the month following the end of each reportable period. Interim payments shall be credited (item B, paragraph 3) toward the total ski area permit fee for the payment cycle.

3. Within 90 days after the close of the ski area's payment cycle, the holder shall provide a financial statement, including a completed permit fee information form, Form FS-2700-19a, representing the ski area's financial condition at the close of its business year and an annual operating statement reporting the results of operations, including a final payment which includes year-end adjustments for the holder and each subholder for the same period. Any balance that exists may be credited and applied against the next payment due or refunded, at the discretion of the permit holder.

4. Within 30 days of receipt of a statement from the Forest Service, the holder shall make any additional payment required to ensure that the correct ski area permit fee is paid for the past year's operation.

5. All permit fee calculations and records of sales are subject to review or periodic audit as determined by the authorized officer. Errors in calculation or payment shall be corrected as needed for conformance with those reviews or audits. In accordance with the Fee Payment Issue clause contained in this authorization, interest and penalties shall be assessed on additional fees due as a result of reviews or audits.

C. Correcting Errors. Correction of errors includes any action necessary to calculate the holder's sales or slope transport fee percentage or to make any other determination required to calculate permit fees accurately. For fee calculation purposes, an error may include:

- a. Misreporting or misrepresentation of amounts;
- b. Arithmetic mistakes;
- c. Typographic mistakes; or
- d. Variation from generally accepted accounting principles (GAAP), when such variations are inconsistent with the terms of this permit.

Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent, and past fees shall be adjusted accordingly.

D. Fee Payment Issues.

1. Crediting of Payments. Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.
2. Disputed Fees. Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by settlement terms or an appeal decision.
3. Late Payments
 - (a) Interest. Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest

assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

- (b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.
- (c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.
- (d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall be responsible for the delinquent fees, as well as any other costs of restoring the site to its original condition, including hazardous waste cleanup.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:

- (a) Administrative offset of payments due the holder from the Forest Service.
- (b) If in excess of 60 days, referral to the Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).
- (c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.
- (d) Disclosure to consumer or commercial credit reporting agencies.

E. Access to Records. For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all of the accounting books and supporting records to the business activities, as well as those of sublessees operating within the authority of this permit, available for analysis by qualified representatives of the Forest Service or other Federal agencies authorized to review the Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information so obtained shall be treated as confidential as provided in regulations issued by the Secretary of Agriculture.

The holder shall retain the above records and keep them available for review for 5 years after the end of the year involved, unless disposition is otherwise approved by the authorized officer in writing.

F. Accounting Records. The holder shall follow Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting acceptable to the Forest Service in recording financial transactions and in reporting results to the authorized officer. When requested by the authorized officer, the holder at its own expense, shall have the annual accounting reports audited or prepared by a licensed independent accountant acceptable to the Forest Service. The holder shall require sublessees to comply with these same requirements. The minimum acceptable accounting system shall include:

1. Systematic internal controls and recording by kind of business the gross receipts derived from all sources of business conducted under this permit. Receipts should be recorded daily and, if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be supported by source documents such as cash-register tapes, sale invoices, rental records, and cash accounts from other sources.

2. A permanent record of investments in facilities (depreciation schedule), and current source documents for acquisition costs of capital items.
3. Preparation and maintenance of such special records and accounts as may be specified by the authorized officer.

VII. TRANSFER AND SALE

A. Subleasing.

1. In General. The holder may sublease the use of land and improvements covered under this permit and the operation of concessions and facilities authorized upon prior written notice to the authorized officer. The Forest Service reserves the right to disapprove subleasees. In any circumstance, only those facilities and activities authorized by this permit may be subleased. The holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet. The holder may not sublease direct management responsibility without prior written approval by the authorized officer.
2. Lease Agreements. Pursuant to clause VII.A.1. above, the authorized officer has approved two lease agreements, one between the holder and Crested Butte, LLC and one between CNL Income Crested Butte TRS Corporation and Crested Butte, LLC for operation of the authorized improvements under the terms of the permit. Crested Butte, LLC is executing this permit in the capacity of a lessee under those lease agreements, rather than as a holder. Crested Butte, LLC is subject to all obligations of this permit, including in particular, those in sections III., IV., V., VI., and clauses VIII.A.1., VIII.A.2., VIII.B., and VIII.D. and is also bound to comply with all terms of the lease agreements in operating the authorized improvements. In signing the permit, Crested Butte, LLC is not acquiring any rights or privileges under the permit. This clause and Crested Butte, LLC's execution of this permit shall not (a) create, enlarge, diminish, or otherwise affect any right or obligation of Crested Butte, LLC, the holder, or CNL Income Crested Butte TRS Corporation under the lease agreements or any other agreement or (b) in any way affect the rights of the holder and CNL Income Crested Butte TRS Corporation to terminate their lease agreements with Crested Butte, LLC.

B. Notification of Sale. The holder shall immediately notify the authorized officer when a sale and transfer of ownership of the permitted improvements is planned.

C. Divestiture of Ownership.

1. In General. Upon change in ownership of the facilities authorized by this permit, the rights granted under this authorization may be transferred to the new owner upon application to and approval by the authorized officer. The new owner must qualify and agree to comply with, and be bound by the terms and conditions of the authorization. In granting approval, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and state land use plans, laws, regulations or other management decisions.
2. Ownership of Certain Personal Property by the Holder's Subsidiary. To comply with current federal tax law, certain personal property authorized by this permit, i.e. the lift towers and moving parts, which constitute approximately 10 to 20 percent of the total improvements authorized by this permit, are owned by the holder's direct, wholly owned subsidiary, CNL Income Crested Butte TRS Corporation. For purposes of this permit, this personal property shall be treated as if it were directly owned by the holder. The construction, operation, and maintenance of this personal property must satisfy all applicable permit requirements. During the term of this permit, the ownership of this

personal property shall not be transferred to any individual or entity other than another direct, wholly owned subsidiary of the holder, or, if permitted by changes in federal tax law, the holder. Transfer of the ownership of this personal property from CNL Income Crested Butte TRS Corporation to another direct, wholly owned subsidiary of the holder or to the holder shall not be considered a change in ownership of the authorized improvements for purposes of 36 CFR 251.59 and clauses VII.B and VII.C.1 of this permit. Transfer of the ownership of this personal property to any other individual or entity shall be subject to 36 CFR 251.59 and clauses VII.B and VIII.C.1 of this permit. As long as this personal property is owned by CNL Income Crested Butte TRS Corporation or another direct, wholly owned subsidiary of the holder, the holder shall own all the issued and outstanding common stock of CNL Income Crested Butte TRS Corporation or that other subsidiary.

VIII. REVOCATION AND SUSPENSION

A. Revocation and Suspension. The Forest Service may suspend or revoke this permit in whole or part:

1. For noncompliance with Federal, State, or local laws and regulations;
2. For noncompliance with the terms of this permit;
3. For failure of the holder to exercise the privileges granted by this permit;
4. With the consent of the holder; or
5. At the discretion of the authorized officer for specific and compelling reasons in the public interest.

B. Opportunity to Take Corrective Action. Prior to revocation or suspension under Clause VIII.A., the authorized officer shall give the holder, and, if applicable, Crested Butte, LLC, written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

C. Revocation for Reasons in the Public Interest. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service with delegated authority determines in planning for the uses of the National Forest System that the public interest requires revocation of this permit, this permit shall be revoked after one hundred-eighty (180) day's written notice to the holder. The United States shall then have the right to purchase the holder's improvements, to remove them, or to require the holder to remove them, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages resulting from their removal. If the amount of consideration is fixed by mutual agreement between the United States and the holder, that amount shall be accepted by the holder in full satisfaction of all claims against the United States under this clause. If mutual agreement is not reached, the Forest Service shall determine the amount of consideration. If the holder is dissatisfied with the amount determined by the Forest Service, the holder may appeal the determination under the agency's administrative appeal regulations.

D. Suspension. The authorized officer may immediately suspend this permit, in whole or in part, when necessary to protect public health, safety, or the environment. The suspension decision must be in writing. Within 48 hours of the request of the holder, the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify, or cancel the suspension.

IX. RENEWAL

A. Renewal. The authorized use may be renewed. Renewal requires the following conditions: (1) the land use allocation is compatible with the Forest Land and Resource Management Plan; (2) the site is being used for the purposes previously authorized and; (3) the enterprise is being continually operated

and maintained in accordance with all the provisions of the permit. In making a renewal, the authorized officer may modify the terms, conditions, and special stipulations.

X. RIGHTS AND RESPONSIBILITIES UPON TERMINATION OR NONRENEWAL

A. Removal of Improvements. Except as provided in Clause VIII. A, upon termination or revocation of this special use permit by the Forest Service, the holder shall remove within a reasonable time as established by the authorized officer, the structures and improvements, and shall restore the site to a condition satisfactory to the authorized officer, unless otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States without compensation to the holder, but that shall not relieve the holder's liability for the removal and site restoration costs.

XI. MISCELLANEOUS AND REGIONAL PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

B. Inspection, Forest Service. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permitted facilities and improvements at any time for compliance with the terms of this permit. Inspections by the Forest Service do not relieve the holder of responsibilities under other terms of this permit.

C. Regulating Services and Rates. The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by the permit. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices significantly different than those charged by comparable or competing enterprises.

D. Advertising. The holder, in advertisements, signs, circulars, brochures, letterheads, and like materials, as well as orally, shall not misrepresent in any way either the accommodations provided, the status of the permit, or the area covered by it or the vicinity. The fact that the permitted area is located on the National Forest shall be made readily apparent in all of the holder's brochures and print advertising regarding use and management of the area and facilities under permit.

E. Water Use Facilities.

1. Water Use Facilities. The National Forest System (NFS) land which is the subject of this permit is hereinafter referred to as the "permitted NFS land." The authorization of facilities to divert, store, or convey water on the permitted National Forest System (NFS) land ("water facilities") in conjunction with water rights acquired by the holder is for the purpose of operating a winter or year-round resort and related facilities under this permit. If use of the water or the water facilities ceases, the authorization to use the permitted NFS land for such water facilities will also cease. The United States reserves the right to place conditions on the installation, operation, maintenance and removal of these water facilities necessary to protect public property, public safety, and natural resources on the permitted NFS land in compliance with applicable laws, provided, however, such conditions shall not permit the imposition of bypass flows on water transported to the permitted NFS land from points of diversion or storage that arise off of the permitted NFS land.
2. Water Rights. This permit does not confer any water rights on the holder. Water rights must be acquired by the holder under state law.

3. **Future Applications and Revocation.** After June 2004, any right to divert water from the permitted NFS land where the use of such water is on the same permitted NFS land shall be applied for and held in the name of the United States and the holder (hereinafter called the "joint water rights"). This provision shall not apply to water rights that are acquired by the permit holder from a source off of the permitted NFS land and transferred to a point of diversion or storage on the permitted NFS land. During the term of the permit and any reissuance thereafter, the permit holder shall be responsible for maintaining such joint water rights, and shall have the right to make any applications or other filings as may be necessary to maintain and protect such joint water rights. In the event of revocation of this permit, the United States shall succeed to the sole ownership of such joint water rights. All joint water rights subject to this clause are listed below:

<u>State ID #</u>	<u>Owner</u>	<u>Type or Basis</u>	<u>Purpose of Use</u>
08CW10	joint (Crested Butte, LLC and USA)	surface/storage	snowmaking

F. **Bonding.** The authorized officer may require the holder to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or any applicable law, regulation, or order.

G. **Current Addresses.** The holder and the Forest Service shall keep each informed of current mailing addresses including those necessary for billing and payment of fees.

H. **Identification of Holder.** Identification of the holder shall remain sufficient so that the Forest Service shall know the true identity of the entity.

Corporation Status Notification:

1. The holder shall notify the authorized officer within fifteen (15) days of the following changes:
 - a. Names of officers appointed or terminated.
 - b. Names of stockholders who acquire stock shares causing their ownership to exceed 50 percent of shares issued or otherwise acquired, resulting in gaining controlling interest in the corporation.
2. The holder shall furnish the authorized officer:
 - a. A copy of the articles of incorporation and bylaws.
 - b. An authenticated copy of a resolution of the board of directors specifically authorizing a certain individual or individuals to represent the holder in dealing with the Forest Service.
 - c. A list of officers and directors of the corporation and their addresses.
 - d. Upon request, a certified list of stockholders and amount of stock owned by each.
 - e. The authorized officer may require the holder to furnish additional information as set forth in 36 CFR 251.54(e)(1)(iv).

Partnership Status Notification:

The holder shall notify the authorized officer within fifteen (15) days of the following changes. Names of the individuals involved shall be included with the notification.

1. Partnership makeup changes due to death, withdrawal, or addition of a partner.
2. Party or parties assigned financed interest in the partnership by existing partner(s).
3. Termination, reformation, or revision of the partnership agreement.

4. The acquisition of partnership interest, either through purchase of an interest from an existing partner or partners, or contribution of assets, that exceeds 50 percent of the partnership permanent investment.

I. Archaeological-Paleontological Discoveries. The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this permit, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the permit holder.

J. Protection of Habitat of Endangered, Threatened, and Sensitive Species. Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, as amended, or listed as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this permit, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the permit holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

K. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof, and any of the following clauses or any provision thereof, the preceding clauses shall control.

L. Superseded Permit. This permit replaces a special use permit issued to: CRESTED BUTTE LLC, GUN155, on 03/01/2004.

M. Disputes. Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto. The procedures for these appeals are set forth in 36 CFR 251 published in the Federal Register at 54 FR 3362, January 23, 1989.

N. Drinking Water Systems (B38).

1. The holder, as the water supplier and owner or operator of the drinking water system, is responsible for compliance with all applicable Federal, State, and local drinking water laws and regulations for the operation and maintenance of a public water system. This includes, but is not limited to, developing, operating, and maintaining the system, and conducting drinking water testing and taking the appropriate corrective and follow-up actions in accordance with Federal, State, and any other applicable requirements. For the purposes of this authorization, public water systems are defined in the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.), and in the National Primary Drinking Water Regulations, Title 40, Code of Federal Regulations, part 141 (40 CFR part 141), or by State regulations if more stringent.

2. When the permit holder operates Federally owned systems (for example, when the permit is authorized under the Granger-Thye Act), the holder shall meet additional requirements for public and nonpublic water systems consistent with FSM 7420. Requirements under FSM 7420 applicable to the permit holder are set forth in an appendix to the permit entitled "Operation of Federally Owned Drinking Water Systems" (Form FS-2700-4h-Appendix F).

3. For Federally owned systems, the holder shall notify and consult with the Forest Service within 24 hours or on the next business day after notification by the laboratory of a sample that tests positive for microbiological contamination. The holder shall notify and consult with the Forest Service within 48 hours of notification of a maximum contaminant level violation or an acute violation.

4. The holder shall retain all records as required by applicable laws and regulations. The holder agrees to make the records available to the Forest Service and to any other regulatory agency authorized to review Forest Service activities. Copies of microbiological test results for Federally owned water systems shall be forwarded monthly to the Forest Service by the 15th of the month following the sampling date. Copies of other required records for Federally owned systems shall be forwarded annually to the Forest Service within 15 days of the end of the operating season for seasonal sites or within 15 days of the end of the calendar year for year-round operations. The holder shall surrender all records for a Federally owned system to the Forest Service upon permit termination or revocation.

5. For Federally owned systems, the holder shall provide the name of the water system operator in writing to the Forest Service and notify the authorized officer within 72 hours of a change in personnel.

O. Revegetation of Ground Cover and Surface Restoration (D9). The holder shall be responsible for prevention and control of soil erosion and gulying on lands covered by this authorization and adjacent thereto, resulting from construction, operation, maintenance, and termination of the authorized use. The holder shall so construct permitted improvements to avoid the accumulation of excessive heads of water and to avoid encroachment on streams. The holder shall revegetate or otherwise stabilize all ground where the soil has been exposed as a result of the holder's construction, maintenance, operation, or termination of the authorized use and shall construct and maintain necessary preventive measures to supplement the vegetation.

P. Utility Installation (R2-B-101). The installation of utilities such as water, sewage, electricity, and natural or liquefied petroleum gas, must conform to national, state, local, and industry standards.

Q. Hazardous Materials (R2-B-102).

Consent to Store. The holder shall not store any hazardous materials at the site without obtaining the prior written approval of the authorized officer, and this approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after the issuance of this permit, shall be amended to include specific terms and conditions addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms and conditions shall be proposed by the holder and are subject to approval by the authorized officer.

Cleanup and Remediation. Except with respect to any Federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either on site or in connection with the holder's activities, whether or not those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

Certification upon Revocation or Termination. If the holder uses or stores hazardous materials at the site, upon revocation or termination of this permit the holder shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the site covered by the permit is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the site, into surface water at or near the site, or into groundwater below the site during the term of the permit. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the site is in compliance with all Federal, State, and local laws and regulations.

R. Noxious Weed/Exotic Plant Prevention and Control (R2-D-103)

1. The holder shall be responsible for the prevention and control of noxious weeds and/or exotic plants of concern on the area authorized by this authorization and shall provide prevention and control measures prescribed by the Forest Service. Noxious weeds and exotic plants of concern are defined as those species recognized by the state of Colorado and the county of Gunnison in which the authorized use is located.

2. When determined to be necessary by the authorized officer, the holder shall develop a site-specific plan for noxious weed and exotic plant prevention and control. Such plan shall be subject to Forest Service approval. Upon Forest Service approval, the noxious weed and exotic plant prevention and control plan shall become a part of this authorization, and its provisions shall be enforceable under the terms of this authorization.

3. The holder shall also be responsible for prevention and control of noxious weed and exotic plant infestations which are not within the authorized area, but which are determined by the Forest Service to have originated within the authorized area.

S. Water Depletions in the Upper Colorado River Basin (R2-D-104)

The holder recognizes that the obligation for providing a reasonable and prudent alternative which allows the Forest Service to issue the special use authorization has been assumed by the co-signers of a cooperative agreement to implement the Recovery Implementation Program For Endangered Fish Species In the Upper Colorado River Basin. In the event the co-signers of the cooperative agreement are unable to meet their responsibilities under the Plan, the individual responsibility of the holder to provide reasonable and prudent measures continues. The Forest Service is obligated to re-evaluate the authorization if consultation is reinitiated.

T. Holder Agreement to Specify Measures to Protect Land and Resources of United States (R2-D-107)

The Holder agrees to operate the facilities in accordance with the agreement dated June 25, 1981 (as amended), between the Holder and US Forest Service in so far as such agreement provides for minimum stream flows. The Holder shall notify the Authorized officer of any changes or modifications to the above referenced agreement, and the Authorized Officer will notify the Holder within thirty (30) days whether such modified agreement satisfies the mitigation requirements of the authorization.

U. Augmentation Plans for Existing Water Rights (R2-D-108)

In the event that the authorized facilities/activities result in an out-of-priority diversion that requires augmentation, the Forest Service authorized officer must approve the augmentation plan in writing prior to the applicant submitting the plan for final decree by the court.

V. Use of Certified Noxious Weed Free Hay, Straw or Mulch (R2-X-107)

Only hay, grain, straw, cubes or mulch certified as noxious weed free or noxious weed seed free by an authorized State Department of Agriculture official or designated county official may be used. Each individual bale or container must be tagged or marked as a certified weed free product and reference a written certification, if one exists.

The following are exempted from this requirement:

1. Pelletized feed or grain products.
2. Persons with a permit specifically authorizing the prohibited act.
3. Transporting straw, hay or mulch on Federal, State, and County roads that are not National Forest System roads and trails.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS:

ACCEPTED:



CNL INCOME CRESTED BUTTE, LLC
By TAMMIE A. QUINLAN

DATE

AGREED to by the holder's lessee, Crested Butte, LLC, for the limited purpose of obligating Crested Butte, LLC to operate the permitted improvements in compliance with sections III, IV, V, VI and clauses VIII.A.1., VIII.A.2, VIII.B and VIII.D. of this permit and enabling the Forest Service to directly enforce that obligation against Crested Butte, LLC:



TIMOTHY T. MUELLER, PRESIDENT

DATE

APPROVED:



CHARLES S. RICHMOND
Forest Supervisor

12/5/08

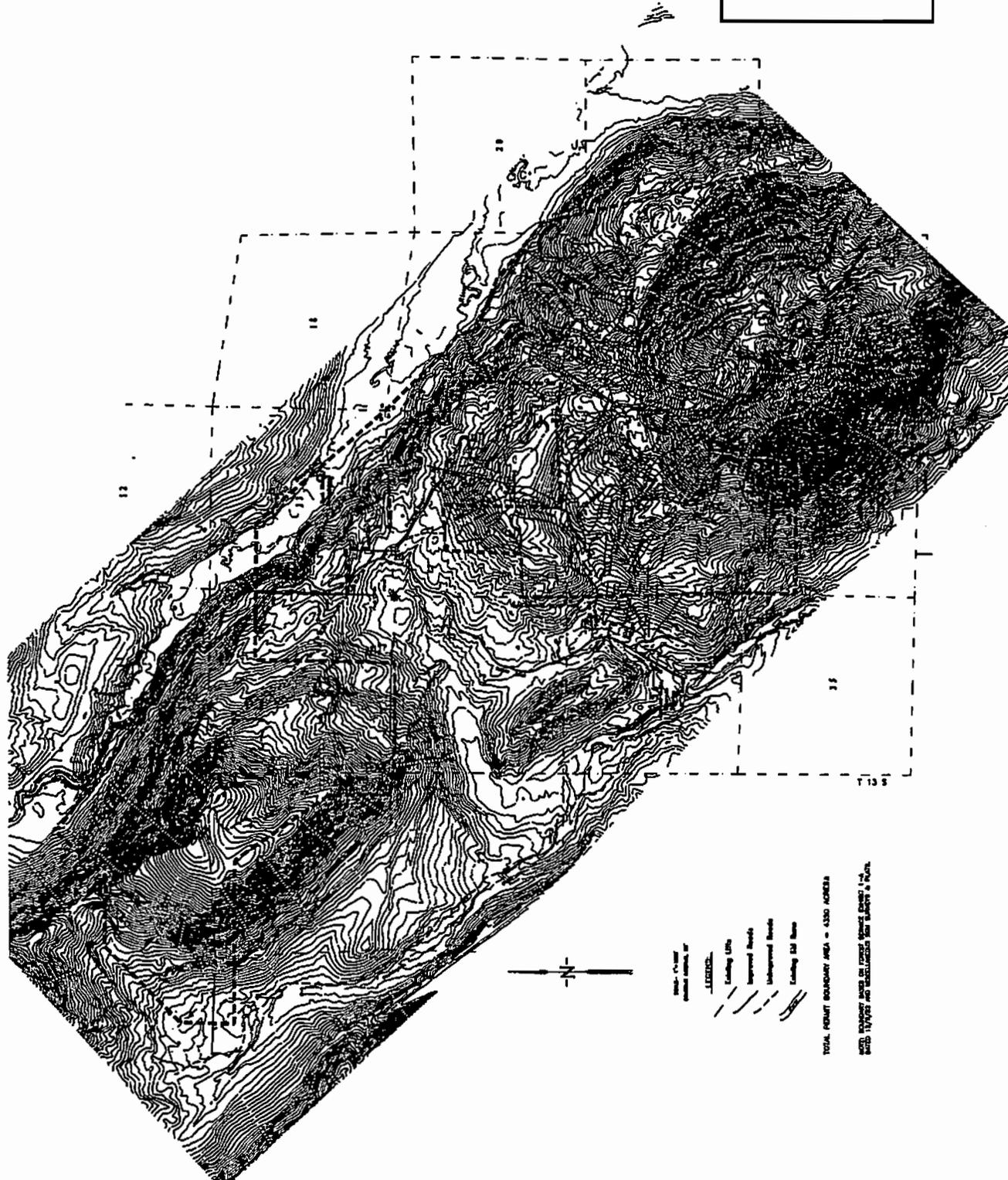
DATE

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0598-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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Old Inverness Ski Area, LLC
 a subsidiary of Inverness Skiing Company
 Inverness, Colorado
 Old Inverness Ski Area, LLC
 a subsidiary of Inverness Skiing Company
 Inverness, Colorado
 Charles S. Williamson, Owner
 Inverness Skiing Company

TOTAL PERMIT BOUNDARY AREA = 4,130 ACRES
 1985 BOUNDARY MAPS BY GORDON MEYER CONSULTING, INC.
 11/19/85 AND REVISIONS FOR BOUNDARY MAPS

- FENCES ---
- EXISTING LIFTS ---
- IMPROVED ROADS ---
- UNIMPROVED ROADS ---
- EXISTING LIFT LINES ---

		SCHMEISER GORDON MEYER 11 W. 4th Street, Suite 300 Aspen, Colorado 81601 Phone: (303) 925-1171 Telex: 251111 Fax: (303) 925-5555		CRESTED BUTTE SKI AREA PERMIT BOUNDARY MAP		SHEET NO. 1 DATE 11/12/85 DRAWN BY G.M. CHECKED BY G.M.		EXHIBIT A		SHEET NO. 1 DATE 11/12/85 DRAWN BY G.M. CHECKED BY G.M.	
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