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Via Email (without exhibits) to appeals-rocky-mountain-regional-office@fs.fed.us, and FedEx

Rick Cables, Regional Forester
USDA Forest Service, Rocky Mountain Region
740 Simms
Golden, CO 80401

Re: Appeal of White River National Forest Travel Management Plan Record of Decision

Dear Mr. Cables:

Please accept this letter as Pitkin County's appeal of the White River National Forest Travel Management Plan ("TMP") Record of Decision ("ROD") pursuant to 36 CFR § 215.14. Pitkin County understands you to be the "Appeal Deciding Officer" for purposes of 36 CFR 215.8; if another official is discharging that role, we respectfully request that we be notified of that individual's identity, and ask that this appeal be forwarded accordingly. All communications concerning this appeal should be addressed to me at the address and telephone number listed above.

Pitkin County provided written comments regarding the draft TMP on January 6, 2009 and October 26, 2006, and thus is a proper appellant for purposes of 36 CFR § 215.13. Copies of those comments are attached to this appeal as Exhibits 1 and 2. The ROD was signed by Forest Supervisor Scott G. Fitzwilliams on March 17, 2011. The public notice commencing the time for this appeal was published in the Glenwood Springs Post Independent on May 4, 2011. Accordingly, this appeal is timely pursuant to 36 CFR § 215.15(a).

In its written comments, Pitkin County identified several different issues of significant concern to the County. Those issues are addressed sequentially in this appeal as follows: (I) Management designations of certain routes within the Crystal River Valley in the Sopris Ranger District; (II) Management of winter parking for Kobey Park snowmobilers; (III) Management of winter travel in the vicinity of County-owned inholdings within the WRNF in the areas of Kobey Park and Sellars Park; and (IV) Designation of routes connecting with Aspen Valley Ranch in the Woody Creek area.

The County appreciates its productive working relationship with the Service on a wide variety of issues in which we cooperate to advance the public interest. The following discussion is offered in the spirit of continuing to improve that relationship.

I. Non-Motorized Routes Within the Crystal River Valley

The first issue on appeal concerns certain routes within the Crystal River Valley that the County believes are important alignments for present and future non-motorized recreational use (the “Affected Routes”). A number of these routes, including those subject to this appeal, exist along the alignment of an historic wagon road for which the County holds an R.S. 2477 right of way. The ROD calls for most of the Affected Routes to be decommissioned and closed to public access; two of them are designated for management pursuant to Special Use Permit, but the County does not understand this designation to contemplate general public access.

Purporting to decommission these routes and close them to public access (or preclude their maintenance) is inconsistent with the County’s property rights in the Affected Routes. Until the parties’ respective property interests in the Affected Routes are adjudicated—or, preferably, resolved by an agreement between the Service and the County—these routes should remain designated for non-motorized public use in the TMP.

A. Identification of Affected Routes

The Affected Routes that are subject to this appeal are located within the Sopris Ranger District, and are designated on the Travel Plan Map for that District as Forest Service Trails **3-1954W.1, 3-1966W.1, 3-1966W.2, 3-1966W.3, 3-310W.1F** and **3-308.1A**. As you can see from pages A2-20, A2-21, and A2-27 of Attachment 2 to the ROD (collectively attached hereto as Exhibit 3), all of these routes are designated for decommissioning and closure to the public other than 3-310W.1F and 3-308.1A. These latter two routes are designated for management by Special Use Permit, but the County has not been contacted concerning management pursuant to such a permit. This, coupled with the designation of route 3-310W.1F as a route not needed for administrative or recreational use, leads the County to conclude that it is not the permittee contemplated by the TMP and that public access is not contemplated along these routes.¹

B. Significance of Affected Routes

As noted in the County’s EIS comments, the Affected Routes have been identified as potential alignments for the Crystal Trail, and potential tributaries to it. Route 3-308.1A is also part of an alignment that currently provides public access to the Filoha Meadows Open Space, one of the crown jewels of the County’s Open Space program.²

The Crystal Trail is itself a component of the proposed Crested Butte to Carbondale Trail (the “CB-CD Trail”). Pitkin County and its partners in the West Elk Scenic Byway Committee

¹ With regard to Route 3-308.1A, there appears to be a conflict between the Travel Plan Map—which calls for this route to be managed pursuant to a special use permit—and Attachment 2, which simply designates it as available for Licensed Use by the general public, including all non-motorized uses. The County has no objection to the designation contained in Attachment 2, and therefore includes this route in the instant appeal only to the extent that the Travel Plan Map designates it for management pursuant to special use permit.

² Filoha Meadows already receives considerable use by the public and is the site of numerous guided naturalist tours by organizations such as the Roaring Fork Conservancy. As explained in footnote 1, therefore, the County assumes there was simply an error in the Travel Plan Map with regard to Route 3-308.1A, as the County and the Service have had numerous communications concerning public access to Filoha Meadows in the past.

continue to investigate the feasibility of the CB-CD Trail, which would connect Crested Butte and Carbondale via McClure and Kebler Passes.

C. Current Use of Affected Routes

Route 3-1966W.2 is the old alignment of McClure pass. It regularly receives foot travel both from summer hikers and winter snowshoers. It provides spectacular views as well as vigorous exercise due to its relatively steep grade. It was identified as a preferred alignment for the CB-CD trail.

Route 3-1966W.3 is commonly referred to as the Bear Creek Trail. This route is presently used by hikers and offers access to the top of Bear Creek falls, a spectacular drop that falls directly into the Crystal River off Highway 133. Although the old Road parallels Highway 133, it is isolated from that highway by topography, and offers incredible views of Chair Mountain. The old road is blocked from vehicular use by boulders on the southern end, where it crosses Highway 133 at grade. As such, it offers a rare walk on an easy gradient in the Crystal Valley. It would make a very natural and simple link in the proposed soft surface bike route from Redstone to Crested Butte.

Route 3-1966W.1 is a spur of the Bear Creek Trail that has also been long used by the public.

Route 1954W.1 is the portion of the old Road from the County's Filoha Meadows Open Space to Avalanche Creek. This route is walked as a connection between the two, and features historic rock walls against Elephant Butte that were built by Pitkin County in the late 1800s.

Route 3-310W-1F is the continuation of the old Road below Avalanche Creek and into the old Janeway Townsite. Several hundred people lived there during the late 1800s, as chronicled in the "Elk Mountain Odyssey." This is also used by hikers and walkers for access to the historic site, and is a very pleasant walk through a large meadow next to the Crystal River.

D. County Ownership of Affected Routes

The County's previous TMP comments identified plat surveys recorded in the Official Records of Pitkin County at Plat Book 1, Page 18 and Plat Book 1, Page 27. Those historic surveys are attached hereto as Exhibits 4-5; both locate a County wagon road extending along the Crystal River Valley (the "Road"). Whether these surveys represented construction drawings or as-built drawings is unclear at this time, but it is clear that they correspond with the location of an historic roadbed that in many areas is visible on the ground today. Attached to this Appeal as Exhibits 6 is a CD containing digital maps prepared by surveyor Mark Beckler that plot the alignment of the Road shown in the historic surveys on contemporary aerial photographic images.³

Historical documents on file with the Pitkin County Clerk and Recorder confirm the County's ownership of this historic Road alignment, and indicate that it was constructed between

³ To be clear, Route 3-1966.W.2 is not along the historic County Road alignment; instead, this route corresponds with the historic location of McClure Pass. The County is still investigating the historical establishment of this alignment.

1888 and 1890. *See* Ex. 7. These exhibits show that the County sent Road Viewers to establish the Road, expended funds to construct and maintain the Road, and sent a surveyor to survey it. The documents consistently refer to the Road as a County asset. Moreover, 1890 federal surveys from the General Land Office confirm the existence of the Road in many of the locations shown by Exhibits 4-5, including the locations of certain Affected Routes. *See* Ex. 8.

Because the Road was created and used prior to the withdrawal of the White River National Forest (and its precursors), the County acquired a right of way for the Road pursuant to R.S. 2477. *See Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 768 (10th Cir. 2005) (holding that state law principles provide measure for acceptance of R.S. 2477 right of way); *Sprague v. Stead*, 139 P. 544, 545-46 (Colo. 1914) (holding public use sufficient to accept offer of dedication made by R.S. 2477). While no longer used as an actual road, the Affected Routes have not been vacated or abandoned pursuant to Colorado law, and indeed continue to be utilized by the public for non-motorized purposes to the present day. Accordingly, the County retains title to the Affected Routes and authority to manage them for public purposes. Designating the Affected Routes for closure when the County intends to manage them for non-motorized purposes creates the potential for management conflicts between the two jurisdictions. While the Service's designation of use is not binding on the County, *see SUWA*, 425 F.3d at 757, the County brings this matter to the Service's attention in hopes of resolving it cooperatively.

E. Conclusion

We wish to emphasize that the County seeks public use of the Affected Routes only for non-motorized recreational purposes. Motorized use would be permitted only for official governmental purposes of the Service, the County, and emergency response or law enforcement agencies. The County is prepared to formalize an agreement with the Service to that effect; until such time, however, the County reserves all rights to assert all available uses of the Affected Routes pursuant to R.S. 2477 and other applicable laws. Nothing herein should be construed as a waiver or abandonment of such rights, including the right to a judicial declaration, in a quiet title action or otherwise, concerning the rights of the public and all interested parties in the affected routes.

II. Parking Demands for Kobey Park Snowmobilers

The TMP designates certain areas for winter recreational use without taking into account how recreationalists will, as a practical matter, access those public lands. The most obvious example of this is snowmobile use in the Kobey Park area.

Snowmobile users require parking areas designed to accommodate the trailers and large trucks that transport snowmobiles to the Forest. The Service has failed to provide such parking, and thus transfers the consequences of its winter management decision to the County. The result has been tremendously contentious and lengthy proceedings at the County level concerning access and parking for snowmobilers, followed by litigation against *the County* that for all intents and purposes is aimed at thwarting the management decision of *the Service* to allow snowmobiling in this area. Two lawsuits related to this issue are currently pending against the

County; the County appreciates the Service's recent decision to join in one of those cases to advocate for its interests. But the legal proceedings will not resolve the management issue, and we believe concrete action by the Service to address these parking concerns is imperative.

Moreover, Lenado Road itself is not in an acceptable condition for the high level of recreational vehicle use it receives. What is essentially a single lane, dirt road with significant drop-offs should not be used by large numbers of people pulling sizeable trailers or driving large trucks. This situation is creating a safety hazard for Lenado residents and other motorists, and the County has no plans—much less funds—to improve the road. The Service needs to take a very hard look at this situation to identify other points of access to the Kobey Park area that would raise fewer conflicts and safety concerns, and to then provide appropriate parking at those locations.

In the past, the Service has claimed that the TMP is not an appropriate vehicle for addressing parking. This approach does not account for the clear impacts that the Service's management decisions are having on County infrastructure and operations. It is also ironic in light of the Service's decision to decommission the Affected Routes in the Crystal on the basis that further planning was necessary before continuing public access along those routes. The issues in Lenado are altogether more pressing, yet the Service seems content to designate Kobey Park for public access without making concrete efforts to address the obvious access concerns created by the designation. This matter urgently requires attention.

III. Winter Travel Near County Open Space Inholdings

Over the years, the County has worked cooperatively with the Service to acquire and sterilize a number of private inholdings within the National Forest. Among these, the County's Open Space and Trails program currently owns mining claims comprising an approximately 365-acre in-holding in the Kobey Park area, and a 160-acre parcel in the Sellars Park area. The Winter Management Plan has much of these County lands bordering or entirely within its "Open Motorized Access" zones. The Pitkin County Code prohibits motorized uses on its Open Space and Trails properties. Such inconsistencies in management of public lands in the backcountry would obviously create confusion among users and would be difficult to enforce.

Adjusting the boundaries for the proposed winter travel areas so that the County-owned in-holdings are removed from proximity to the "Open Motorized Areas" and located within either the "Restricted – Motorized Routes Only" or Motorized Prohibited Areas" would resolve this problem. The specific locations of these in-holdings lend themselves to making such adjustments, as they are located in areas adjacent to either specified travel routes, or in areas that see little, if any, winter travel. The map included as Exhibit 9 depicts how the boundary for "Restricted – Motorized Routes Only" areas could be shifted to alleviate this conflict. We understand that precedent exists for creating buffer areas around Tenth Mountain Hut facilities, and request that the Service make the boundary adjustments requested here as well.

IV. Red Canyon and Dry Woody Connections to Aspen Valley Ranch Trail

For several years, Pitkin County has held a trail easement providing for recreational access through Aspen Valley Ranch to the public lands in Red Canyon and Dry Woody Creek. Negotiations with the landowner to settle litigation over a historic road alignment through AVR and into these areas⁴ have recently resulted in a settlement that provides for improved public access to public lands for pedestrians, equestrians, and cyclists. This new trail alignment will provide a beautiful connection to the old road alignments that extends into the public lands in these areas. In turn, the existing roads and trails on the Forest in this location provide a more gradual means of non-motorized access into the public lands than is available on other access routes such as Triangle Peak Road. The County has invested significant resources into providing a means for the public to access public lands through AVR. It respectfully requests that the Forest not adopt a designation that would thwart the ability of cyclists and equestrians to make use of these areas.

V. Conclusion

The County appreciates both this opportunity to appeal, and its continuing partnership with the Service on our many areas of mutual interest. We respectfully ask that you grant this appeal, and that the TMP be amended in accordance with the requests made in this letter. We stand ready to work with your staff to implement the necessary management adjustments called for herein.

Very Truly Yours,

/s Christopher G. Seldin

Christopher G. Seldin
Assistant County Attorney

Enclosures

cc (w/o attachments):

Pitkin County BOCC
Dale Will
G.R. Fielding
Ellen Sassano

⁴ The County has historic information indicating that R.S. 2477 rights of way exist into Red Canyon and Dry Woody; as with the Crystal, the County's intention is only to provide for non-motorized use along these alignments, and we would seek a cooperative agreement with the Service to this effect here as well.