



United States
Department of
Agriculture

Forest
Service

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Wolf Creek Access Scoping Packet

**Special Use Application for Road and Utility
Access to Leavell-McCombs Joint Venture
Property near Wolf Creek Pass**

Divide Ranger District
Rio Grande National Forest
Mineral County, Colorado



Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review. (Authority: 40 CFR 1501.7 and 1508.22, 36 CFR 220.5(b) and Forest Service Handbook 1909.15, Section 21)

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1 Purpose of and Need for Action

1.1. Background

1.1.1. Village at Wolf Creek EIS History

Leavell-McCombs Joint Venture (LMJV) acquired 300 acres surrounded by National Forest System lands within the Wolf Creek Ski Area boundary in a land-for-land exchange with the Forest Service in 1987. Subsequently, LMJV transferred 12.5 acres of that parcel to the Wolf Creek Ski Corporation for the development of new ski lifts and ski trails. LMJV submitted an application with the Forest Service, requesting permanent access to their private property. In response, the Forest Service initiated the Application for the Transportation and Utilities Systems and Facilities for the Village at Wolf Creek (Village at Wolf Creek) EIS in 2004.

Mineral County Board of County Commissioners, the regulatory authority on private property development, approved LMJV's Final Planned Use Development (PUD) for a year-round resort village, known as the Village at Wolf Creek, on the remaining 287.5 acres in 2004. A lawsuit challenging the PUD resulted in the following court order: "[We] conclude that [the state statute] requires at a minimum year-around wheeled vehicle access between State Highway 160 and the Village." Wolf Creek Ski Corp. v. Board of County Com'rs of Mineral County, 170 P.3d 821, 830 (Colo.App. 2007). The result of the state court litigation was to void the county approval of LMJV's PUD. While no PUD is currently in effect, the state court litigation upheld the PUD on all issues other than access.

In March 2006, prior to the state court decision, Forest Supervisor Peter Clark (retired), of the Rio Grande National Forest signed a Record of Decision (2006 ROD) granting access to LMJV and issued a Final Environmental Impact Statement (Final EIS) for the Village at Wolf Creek. A lawsuit was filed against the US Forest Service, challenging the 2006 ROD and Final EIS. All parties involved reached a settlement agreement on February 19, 2008 to resolve the litigation in which the Forest Service agreed to withdraw the 2006 ROD and initiate a new scoping process and preparation of a new draft and final EIS in connection with LMJV's new application.

1.1.2. Wolf Creek Access Project Background

In June and July 2008, LMJV submitted amended Applications for Transportation and Utility Systems and Facilities on Federal Lands (application). A new project scoping and environmental analysis called the Wolf Creek Access EIS for the amended application is now beginning.

1.2. Purpose and Need for Action

The purpose of this action is to provide safe and efficient road access compatible with Ski Area operations to the private property surrounded by NFS lands. This action is needed to meet the mandate of the *Alaska National Interest Lands Conservation Act* (ANILCA) (Public Law 96-487) to provide access to private land. Section 1323(a) of ANILCA provides that the Forest Service must grant access across federal lands as the Forest Service deems adequate to secure the owners the reasonable use and enjoyment of their land, subject to Forest Service rules and regulations. However, the Forest Service does not have regulatory authority over the density of

development on the private land and any parcel of private land surrounded by Forest Service land could have a range of reasonable uses. The Forest Service does not decide which use of the private property within the range of reasonable uses will be allowed. The Forest Service must provide access over National Forest System lands that are adequate to allow use and enjoyment of the private property within that range of reasonable uses.

A key purpose for the 1987 land exchange was to provide for private land to be developed for residential and commercial uses in a manner that would complement the ski area. Based on the previously referenced State of Colorado appellate court ruling, Mineral County could not approve subdivision of the Village property for purposes of residential and commercial development without “year-around wheeled vehicle” access. Therefore, the Forest Service concludes that ANILCA requires it to grant “year-around wheeled vehicle access” so that LMJV may use its property for residential and commercial purposes as contemplated by the 1987 land exchange. This conclusion does not prejudge the density of development that Mineral County may approve.

Currently, LMJV does not currently have “year-round wheeled vehicle” access. The only wheeled vehicle access to LMJV property is available on Forest System Road (FSR) 391, which is limited to dry weather. FSR 391 is generally open for use from mid-June through September, or until the first snow accumulation of the season. For the remainder of the year, FSR 391 is closed to public vehicular access and is used by the Wolf Creek Ski Area as part of its skiable terrain.

1.3. Proposed Action

The Proposed Action is to authorize the construction and use of a safe and efficient road, approximately 1,650 feet in length, across NFS land to provide “year-around wheeled vehicle access” to LMJV for their reasonable use and enjoyment of the property. The proposed action also includes authorizations for the construction and use of utilities adjacent to the access road to service the Village property. See the attached Vicinity Map 1, Project Map 2, and the LJMV proposal Map 3.

1.4. Connected Actions

In addition to the Proposed Action, other actions to be analyzed include:

- The intersection of Highway 160 and proposed access road, sufficient for Colorado Department of Transportation (CDOT) to issue a highway access permit
- The full build-out of LMJV’s Village at Wolf Creek as described in their application.

1.5. Decision Framework

1.5.1. Forest Service Decision

Dan S. Dallas, Forest Supervisor Rio Grande National Forest, has the authority to make the decision associated with this proposal. Access must be granted to private inholdings in accordance with ANILCA, so the decision is not whether to grant access. Rather, the decisions to be made are the means, mode, and route of safe access across National Forest System lands

that are adequate for the Applicant to exercise the reasonable use and enjoyment of the private property.

The proponent's application also includes utility corridors adjacent to the access road. While ANILCA does not require utilities access, it is reasonable to consider them along with the road access to the proposed development. Another decision to be made is whether to authorize utility corridors across National Forest System lands, and if so, the location and specifications of those utility corridors.

The Record of Decision will:

- Identify the location, specifications, and use stipulations for access roads crossing National Forest System land.
- Identify the locations and specifications of the utility corridors, if approved, crossing National Forest System lands.
- Identify measures to reduce potential impacts from the federal action
- Identify conservation measures from the United States Fish and Wildlife Service (USFWS) Biological Opinion.

1.5.2. Decisions outside of Forest Service jurisdiction

Forest Service authority and Decisions are limited to those actions that occur on National Forest System lands and will not be making any Decisions outside of Forest Service jurisdiction. Many local, state and federal agencies have regulatory jurisdiction over aspects of the private Village development. The Forest Service respects and defers to these agencies' authority. For this project, CDOT has the regulatory responsibility for permitting the intersection with Highway 160. Mineral County Board of Commissioners (Mineral County) must approve and regulate the degree or density of development on private land. US Army Corps of Engineers regulate and approve permits for jurisdictional wetlands on both the federal and private lands.

1.6. Lead and Cooperating Agencies

The Forest Service is the lead agency for this project. The Forest Service has requested other agencies with jurisdictional oversight over the private development to join this analysis as Cooperating Agencies. To date, the Colorado Department of Transportation, US Fish & Wildlife Service and US Army Corps of Engineers have agreed to be Cooperating Agencies. Mineral County has agreed to limited involvement. Other agencies including Colorado Public Utilities Commission, US Environmental Protection Agency, Colorado Division of Water Resources, Colorado Department of Health and Environmental Resources, and Colorado Water Conservation Board have been invited to be potential cooperating agencies.

1.7. Public Involvement

The Notice of Intent (NOI) is to be published in the Federal Register on September 22, 2008. The NOI asked for public comment on the proposal to be postmarked by October 31, 2008. This

scoping packet has been posted on the Rio Grande National Forest webpage at <http://www.fs.fed.us/r2/riogrande/projects/forcomment>

The public is invited to attend any of three open house scoping meetings to obtain more information and provide written comment about the project. Each open house scoping meeting will begin at 5:00 pm and end at 7:30 pm. Dates and locations for the open house scoping meetings are:

- October 7 - Creede Mining Museum, 503 Forest Service Road 9, Creede, CO 81130
- October 8 - Rio Grande County Annex, 965 6th St., Del Norte, CO 81132
- October 9 - Pagosa Springs Community Building, 451 Hot Springs Blvd., Pagosa Springs, CO 81147

The interdisciplinary team will use the comments from the public and other agencies to develop issues and alternatives.

1.8. Preliminary Issues

The 2006 Village at Wolf Creek EIS process had extensive public involvement, which resulted in a set of issues we will bring forward. These preliminary issues will be refined in the current public involvement and analysis process.

1.8.1. Compatibility with the Wolf Creek Ski Area operations

1.8.2. Public Safety associated with the traffic at the Hwy 160 intersection

1.8.3. Public Access to Alberta Park Reservoir

1.8.4. Potential Impacts to Wetlands and Fens

2 Preliminary Alternatives

As a minimum, we will analyze the Proposed Action and a No Action Alternative where the access road and Village at Wolf Creek would not be constructed. An additional alternative being considered would combine the LMJV Village at Wolf Creek access and Wolf Creek Ski Area access into one integrated access using a single grade-separated interchange access point from US Highway 160. Other alternatives meeting the purpose and need may be developed based on scoping input.

3 For more information and to contact us

To obtain more information on this project please visit the Rio Grande National Forest website at www.fs.fed.us/r2/riogrande/projects/forcomment. This website will be regularly updated with new information.

To be added to the project mailing list please send your address to:

Rhonda Johnson
Ottawa NF
East 6248 US Hwy 2
Ironwood, MI 49938

Please send written comments on the project to:

Wolf Creek Access EIS, C/O Content Analysis
Group, 1584 South 500 West, Suite 202, Woods Cross, UT, 84010, or
wolfcreek@contentanalysisgroup.com, or
Fax: 801-397-5628.

For more information on the project contact

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