



November 22, 2022

Hahns Peak/Bears Ears Ranger District
Attn: Mad Rabbit Trails Project
925 Weiss Drive
Steamboat Springs, CO 80487

RE: Mad Rabbit Proposal

Dear Sirs:

Please accept this correspondence as the opposition of the above groups to the Mad Rabbit Trail Proposal (hereinafter referred to as "the Proposal"). The Organizations have been seeking the development of a recreation master plan for this portion of the HPBE RD for decades and we have been informed that this type of a plan was coming at some point in the future even after the original scoping of Mad Rabbit was provided. This has simply never occurred and as a result we have mishmash of conflicting and often overlapping NEPA efforts, including the Proposal, despite the fact the masterplan is required under NEPA regulations and relevant Executive Orders and just generally makes a lot of sense on the ground as well.

As a result, the Proposal for Mad Rabbit fails to coordinate standards with existing NEPA for the same area, allows analysis of issues that may be uncomfortable for managers to be avoided as they are consistently found outside the scope of smaller scale planning efforts, allows factually incredible assertions to be moved forward without question and elevate some users above others without discussion or engagement of other interests. Not only is this course of conduct illegal, it leads to conflicting statements of fact and authority, such as assertions that the USFS has no authority to close trail but this authority was clearly and directly addressed in EAs that were completed 5 years ago on areas that are completely overlapped by the Mad Rabbit Planning area. Failing to align decisions also allows viable management tools for the area to never be mentioned, such as the fact the Steamboat Ski Area has a zero tolerance policy for user created

routes on lands they manage and as a result have no illegal trails issues. These types of flaws have resulted in an astonishing amount of user conflict on the Project, which is simply ignored as a management issue for analysis in the EA.

Our concerns around the Proposal extend beyond just alignment of standards and poor messaging but extend to the larger issue of the message being sent by the Proposal. User created routes are accepted and blind eye enforcement appears to continue while the concerns and requests of groups that have really tried to work with the District are not provided for and rather are dismissed for totally insufficient reasons. These types of basic faults are objectionable to us and as a result we cannot support the Proposal.

1(a) The horrible history of broken relationships on the District simply continues to get worse.

The Organizations first concern on the Proposal is an update of our primary concern from scoping, mainly the degrading nature of the relationship with motorized clubs and the District. This was the degrading nature of our relationship with the District and the fact the relationship would be made worse by the Proposal. Since the scoping effort the Proposal appears to have degraded our relationship and many other relationships as well as exemplified by the fact that the Grizzly/Helena connection was pulled due to conflict with administrative boundaries despite the fact it could have been moved to another location and avoided the conflict. We are unable to identify a single club member that was approached on this issue.

We continued to seek a masterplan that the USFS had asserted would be coming for years and we had provided \$50k funding to move forward with effort. This preliminary grant was going to be leveraged the following year with another grant for a second \$50k to support the planning effort. The motorized funding was also to be leveraged with non-motorized funding to complete the masterplan. This first \$50k round of funding was basically never used and returned, despite the critical need for such an effort being recognized by almost every party to the Mad Rabbit effort. A masterplan would have avoided the myriad of legal failures we are now forced to

address on an ad hoc basis and moved relationships forward on the District rather than destroying them further.

While these comments focus on the more recent failures of this relationship, these comments are submitted in conjunction with those of the Timberline Trail Riders. Those comments detail more than 35 years of failure on this District despite this relationship providing almost a million dollars in direct, consistent funding to support management and maintenance. In the 5 years following the scoping of this Proposal, this relationship has continued to erode and it has become clear that our concerns simply were not a priority on the District. Over this time the Organizations have supported the funding of almost another ½ million dollars in direct grant funding to the District to fund trail maintenance and resource protection. This is money that was used to protect resources and close user created trails.

We have continued to try and repair this relationship with support extending far beyond mere funding as evidenced by the fact that when USFS hired staff with the OHV grant funds were comically undertrained for their positions. In response, local club representatives took weeks of vacation time that could have been spent relaxing with family and trained these new USFS staff members on basic skills such as riding OHVs, equipment operation and trail design and layout. Those staff members were not retained on the District and we were right back where we started. The comically small requests of the motorized community on the Proposal area are not provided for and illegal trails in the area are simply accepted, often with assertions that entirely lack factual merit. Many of our minimal requests which had been previously been supported by USFS staff in writing since the early 1990s, are dropped from analysis without discussion in any manner.

It has been our experience that while the District often claims to struggle with funding and staffing, there is almost an entitlement to OHV programmatic funds without recognition of source of funding and no concern for programmatic efficiencies. Even more frustrating is the fact often times this funding is treated as a burden to the District, despite the continued decline in government funding. A master plan, such as we had previously funded would have provided

huge levels of efficiency and a reasoned and rational basis for management of issues and resources effectively and efficiently. This would have reduced costs moving forward and ensure partner time was used as efficiently as possible moving forward. Rather the District continued with the shotgun management approach of the area and this has already proven inefficient and now entirely repetitive of other efforts.

The impacts of this shotgun approach to management are VERY concerning to winter users as absolutely no decision made on the District has been maintained. Bad actors are rewarded for their bad behavior and those that are trying to do the right thing are dismissed or marginalized. The message sent by the Proposal to user groups moving forward is very clear. It is an invitation to continue to violate management standards without repercussion. When coupled with the clear District mentality that any actual attempts to partner with funding to protect resources and avoid illegal trails as fast as possible being seen as a burden to the Office, this message is a catastrophic failure and could easily result in users simply disconnecting from the entire discussion and effort to partner.

1(b) The motorized community has successful relationships on public lands.

Land managers may be surprised by the confrontational tone that we have taken in these comments and efforts, but this is because we have worked hard from day one to avoid the situation we are now in on the Rabbit Ears/Buf Pass landscape. We have also provided significant funding to avoid this situation and countless hours of volunteer support to drive master planning efforts and pick up the pieces from the shotgun approach now being pursued. We are intimately familiar with the challenges of trails management and are aware that sometimes users may not pursue the proper course of action, especially when opportunities are not provided and this results in resource impacts. We have also found that resource impacts have always prompted a quick and strong response from managers.

While the motorized community is far from perfect, it is the only community bringing significant resources to the HPBE RD to assist with management and maintenance of routes for the benefit of all users. This program has provided more than a million dollars for summer maintenance. This significant direct funding probably makes the motorized trail network the most sustainable on the planning area and was the source of the two \$50k grants for planning on the District. These types of contributions were recently recognized by the USFS planners as part of the Congressionally mandated Sustainable Trails effort as follows:

“The engagement and efforts of motorized groups have improved the condition of trails across National Forest System lands and we look forward to continued engagement with the motorized community as part of the Trail Challenge.... During phase one, I welcome collaboration to adequately track, monitor, and acknowledge accomplishments by the motorized community while identifying lessons learned to incorporate into future phases of the Trail Challenge.”¹

As this recognition is from the National USFS Offices, the value of this type of this statement should be significant. We have a demonstrated history of coming to the table to tackle tough issues as a partner with managers and we bring money to make that happen. We simply are unable to align our successful relationship with so many Districts and Offices throughout the region and tackling issue FAR more difficult and complex than the current proposal with the positions being taken and process being used on this Proposal. The Organizations can only say that if people had pursued the master planning process originally in development for the area, we probably would not be in the mess we currently are in with the entire area.

The Organizations also recognize that user created trails can be sustainable and an indication that demand has outpaced supply in an area for any user group. The mere fact these routes are user created does not create our opposition to the Proposal as our concerns extend far beyond this issue. These are user created routes in an area that has massive opportunities already

¹ A copy of this correspondence is included as Exhibit “1” of these comments.

provided on both Steamboat Ski Area and the Buffalo Pass area and there has already been conflict in the area over winter use of the illegally created trails. Any assertion of limited opportunity is simply without merit. We would note that when Buffalo Pass Trails were authorized, this was partially done with the desire it would slow user creation of routes moving forward. Rather than slowing creation of user created routes, it appears this effort was seen as an invitation to expand these efforts. The Proposal seeks to minimize the impacts of this behavior by permitting more user created routes onto the network. We have no idea why this would be received as anything but an invitation to continue the creation of routes by users. This is a huge concern as we are dragged into fights about this issue every time they occur and we simply have better things to do than fight about trails we can't use.

Our concerns go far beyond these concerns as we have always viewed the Rabbit Ears Pass area in the summer as an area of reasonably intact wildlife habitat area and an area that served as a buffer between the local communities expanding up the pass and activities in other parts of the planning area. This habitat area reduced conflicts for our interests on other parts of the District as it provided the large block of contiguous wildlife habitat and the loss of that benefit is a concern. We are also concerned that once Mad Rabbit is completed any legal trail construction in the area in the future is simply not viable. There will never be a Grizzly/Helena connection or anything else on the Pass for motorized despite assertions planning would be moved for these minimal requests for more than thirty years. While legal trails are not going to happen, user created routes for single interest groups is being invited.

2(a)(1) The lack of factual coordination in the Proposal with existing NEPA is totally unacceptable.

We have sought from day one to achieve consistent thoughtful planning on the Rabbit Ears/Buff Pass landscape and have also provided significant funding to avoid this situation. It was our hope that this planning effort would align factual assertions and accurately analyzed resources and needs. This appeared to be a highly logical course of action for the area that had broad community support. Without the master plan, managers could easily make factual assertions and conclusions that often overlap or completely contradict other recently completed NEPA in

the area. The failure of the USFS to address landscape issues in the area is exhibited by the fact the Proposal is the 5th NEPA action undertaken to address mountain biking on the District generally in the 10-mile areas between US 40 and the Mount Zirkel Wilderness that has been undertaken in the last 10 years. These would include the Buffalo Pass Trails EA; the Dry Lake/Buffalo Pass Road EA; Mad Rabbit; Dry Lake EA that is still in progress; the Rabbit Ears Parking EA and this does not include any of the dozens of analysis for recreational development on the Steamboat Ski area. This shotgun model of planning is simply not the model of efficiency for anyone and has done nothing but create massive user conflict.

The desire for consistent systematic planning in the area was recognized by the motorized community long ago and sought to resolve in partnership with the District by obtaining a \$50,000 planning grant for the District to start to address the need for a master plan.² Our commitment to the master planning effort continued with a second round of grant funding to provide a second \$50k for completion of the masterplan. The Organizations cannot overlook the fact that 5 years ago the USFS staff agrees with the strong need for a masterplan in this area as their letter of support clearly states this as follows:

“As you are aware, the Hahns Peak/Bears Ears District has been re-assessing our trail system, and is creating a trails master plan which incorporates the existing trail system for recreationalists and reduces trail impacts in a more sustainable and desirable trail network.”³

This effort was supported by the City of Steamboat Springs, Biketown USA, TPA and the Rout County Riders. This grant was vigorously supported with testimony from CPW representatives during the grant presentation. The USFS grant support letter laid out a very reasonable vision of matching these funds with funds from the City of Steamboat Springs for non-motorized activities. It is disappointing that a project that started with broad community support has been allowed to devolve so far that groups are running radio ads to oppose it and publicly fighting with each other.

² A complete copy of this grant application is attached to these comments as Exhibit “2”.

³ A complete copy of the letter of support for the 2018 Grant can be found on pg. 8 of Exhibit 1 to these comments.

Our efforts in furtherance of the master planning for the planning area, extend well beyond merely obtaining grants as the motorized users also updated their maintenance plans for trails. A copy of the maintenance schedule is attached as Exhibit “3”. This schedule identified priority maintenance areas and short motorized trail connections that could be made when NEPA occurred and other interests that would be engaged in these efforts. This was a significant effort beyond the grant applications. This application was actually supported by several of the Organizations commenting the Buffalo Pass/Rabbit Ears management chaos. It is frustrating for us to admit the District never spent a dime of this funding despite the huge amount of coordination that took place, the overlap of concerns with the Proposal and that effort. The amount of our members volunteer partner time that was wasted in that endeavor is astonishing.

2(a)(3) The Proposed Master plan for the area is legally required to insure factual consistency in planning.

Not only is a master plan immensely logical for factual reasons, it is legally required given the huge number of overlapping efforts that have occurred in such a small geographic area. The need to coordinate multiple smaller NEPA efforts in an area is addressed in great detail in the CEQ regulations but exemplified by the large number of standards that are inaccurately summarized in the Proposal. The Proposal is the 5th NEPA action undertaken to address mountain biking on the District generally in the 10-mile area between US 40 on the Pass and the Mount Zirkel Wilderness that has been undertaken in the last 10 years. These would include the Buffalo Pass Trails EA; the Dry Lake/Buffalo Pass Road EA; Mad Rabbit; Dry Lake EA that is still in progress; the Rabbit Ears Parking EA and this does not include any of the dozens of analysis for recreational development on the Steamboat Ski area. The Organizations would assert that the failure to address issues in the area with a master plan has allowed USFS staff to avoid uncomfortable comparisons of the effectiveness of the Steamboat Ski Area zero tolerance policy for user created routes on the ski area with the USFS policy of turning a blind eye to user created routes in the hope this just stops. Enforcement is a major tool and it works.

The current situation on the Rabbit Ears Pass area met each of the statutory criteria triggering the need for a master planning effort spelled out in the CEQ regulations. CEQ regulations address the scope of any overlapping effort with great detail as follows:

“Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined

impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”⁴

Given this is now the 5th NEPA in 10 years in the planning area dealing with recreation, this is by definition a cumulative action and must be addressed cumulatively by operation of law. Clearly this series of 5 EAs in such a comically small geographic area in such a short period of time have cumulatively significant impacts and should therefore be discussed in the same impact statement. The failure of the USFS staff to address these issues in a cumulative manner as required by the CEQ does not allow them to merely ignore this situation. Shotgun management simply does not work nor is it allowed.

Courts reviewing the need to consolidate various NEPA efforts due to geographic proximity and factual similarities have applied a general summary of this CEQ standard as follows:

“When the proposed action is an integral part of a coordinated plan to deal with a broad problem, the range of alternatives that must be evaluated is broadened.”⁵

Courts have consistently applied this general standard very directly in cases of overlapping and related planning efforts. Courts have also returned NEPA efforts that have been drawn to avoid major EIS work with a series of smaller EA level decisions in an attempt to minimize impacts and issues stating as follows:

“there are situations in which an agency is required to consider several related actions in a single EIS, see id. at 409-410, 96 S.Ct. at 2729-2730. Not to require this would permit dividing a project into multiple “actions,” each of which individually has an insignificant environmental impact, but which collectively

⁴ See, 40 CFR 1508.25

⁵ See, NRDC v. Morton, 458 F.2d 827 (9172) at pg 835.

have a substantial impact. See *Alpine Lakes Protection Society v. Schlapfer*, 518 F.2d 1089, 1090 (9th Cir.1975).”⁶

The Organizations vigorously assert that the shotgun management approach on Rabbit Ears/Buff pass is nothing more than an attempt to divide up the issues on Rabbit Ears pass into a series of decisions that seek to mitigate issues and avoid analysis of impacts and issues such as gravity biking and comparisons between USFS management of user created routes and the Ski Area policies on the issue. This shotgun management model is an attempt to apply the same management model as the Court struck down in the *Thomas* decision cited above to this situation. The *Thomas* decision is by no means an outlier of a decision as several other Courts have summarized this situation as follows:

“In *Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir.1974), we stated that an EIS must cover subsequent phases of development when “[t]he dependency is such that it would be irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken.” Id. at 1285, quoted in *Thomas*, 753 F.2d at 759. “The dependency of the road on the timber sales meets this standard; it would be irrational to [reconstruct] the road and then not sell the timber to which the road was built to provide access.” *Thomas v. Peterson*, 753 F.2d at 759.”⁷

Again, we assert that there is no rational argument that the shotgun management approach for the area has satisfied any of the *Yaak Committee* Court’s concerns either. Our frustration with the entire situation starts from the clear requirement of coordination of this many efforts in such a small area by CEQ regulation and relevant Court decisions. This is compounded by the fact that the USFS staff clearly and directly recognized the current situation as untenable as demonstrated in their letter of support for the 2015 planning grant. The Organizations would also note that

⁶ See, *Thomas v. Pederson*, 753 F.2d 754 (1985) at pg. 758.

⁷ See, *SAVE THE YAAK COMMITTEE v. Block* 840 F.2d 714 27 ERC 1687, 18 Env’tl. L. Rep. 20,608, 18 Env’tl. L. Rep. 20,869 (9th Circuit 1988)

EVERY SINGLE OTHER LETTER OF SUPPORT for this grant echoed hugely similar sentiments around the area and the need for a master plan on the District to avoid exactly the situation we are now facing. Not only did we support the concept, we funded and provided huge volunteer support for it as well and this funding was never used despite assertions it was needed from the USFS.

2(a)(2) Gravity biking issues plague the Rabbit Ears/Buffalo Pass area since the flurry of NEPA efforts and have never been analyzed due to a fluid scope of analysis being applied by USFS.

An example of an issue that is interconnected to the planning in the area but never analyzed as USFS managers have chosen not to address the Buffalo Pass/Rabbit Ears area with a masterplan as specifically required in the CEQ regulations, rather than the current shotgun approach on issues such as gravity biking. Gravity biking would be one such issue that is simply never looked at despite the fact that Proposal clearly structured to provide gravity biking opportunities simply due to the location of the trail network. Gravity biking has become a major management issue, as exemplified by the fact that the Palisade Plunge Trail outside Grand Junction has no less than a dozen licensed van services that will bring you anywhere on the trail you would want. These issues are already occurring in the area as the County has faced subsequent to the Buffalo Pass Trails EA and the BLMs Emerald Mountain project. The Organizations submit that building trails at the top of any hill will result in people wanting to ride down the hill. This issue is not managed by claiming it has removed from analysis as it is outside the scope of the analysis⁸ or by managers asserting that these are cross country type trails.

Not only is gravity biking a major management concern for most Colorado mountain bike trail development, these are challenges that have already impacted other non-USFS managers around Rabbit Ears/Buffalo Pass area. This is still occurring despite the USFS not addressing the issue in other NEPA efforts. This is exemplified by the problems that Rout County experienced with gravity biking issues after the Buff Pass Road and Trail EAs were finalized in May 2016. These

⁸ See, Proposal at pg. 8.

concerns are outlined in the May 15, 2018 County Commissioners meeting where major problems from gravity biking had resulted from these proposals and several other mountain bike efforts across the county. Minutes indicate that as a result safety concerns from gravity biking the County was now looking at building additional trail in an attempt to move such usages off county roads. A review of the meeting minutes from this meeting alone indicates an extensive discussion. The County commissioners expressed concern on issues such as safety of users returning from riding areas on roads as follows:

“Councilperson Lacy asked if the County is not getting the communication that they need. Commissioner Monger stated that they have been “told” what is happening but there has not been a conversation. This began with the Emerald Mountain exchange and bike trails spilling out onto Cow Creek and county road 14 which are not particularly safe for bike traffic. There also needs to be the understanding that levels of maintenance on these county roads will likely not increase.”⁹

We would agree. These meeting minutes continue on to address the poor communication between USFS and the county on concerns such as this as follows:

“Ms. DelliQuadri suggested communicating concerns with the federal partners as well. Commissioner Hermacinski replied that the County has had better communication with the USFS regarding this project than they have from the City.”

Again, we must agree with the sentiments as the Organizations are aware this is only one of many meetings that occurred in the County to address issues that were not addressed in USFS NEPA for these projects. Providing more detailed minutes or all the meetings we are aware of would

⁹ A complete copy of the minutes from this meeting are attached as Exhibit “4” to these comments.

simply be overwhelming at best. In prior efforts the gravity biking issue was asserted to not be occurring¹⁰ and now the current proposal says it is outside the scope of the effort.

Candidly the idea of any gravity biking on US 40 from the Rabbit Ears Pass into Steamboat town is not appealing at all and creates exponentially more of a safety concern than ever could be created on County Road 14. For this reason alone, the issue warrants significant analysis and probably warrants some planning. The cycling community already recognizes the thrill of screaming down the Rabbit Ears Pass and possible crashes as follows:

“When you finally get to Rabbit Ears Pass, you have a choice. You can turn around and backtrack for eight miles to the west summit and then scream down the pass. This is one road where you can hit some serious speed. Or, you can head down the east flank. Muddy Pass is a mere 3 miles below Rabbit Ears. The roads are wide, but there is one hairpin to watch your speed on. I once saw a biker launch himself into the forest because he took the turn too fast.”¹¹

We would count the cyclist above lucky he went into the forest rather than into the road as that could have easily ended much worse. A quick Google search finds numerous sites with these concerns and summaries and our members have encountered cyclists descending US40 coming off Rabbit Ears Pass and this is never a good interaction on the best of days. These interactions are often further complicated by slow moving commercial vehicles on US 40. These safety concerns around access to US 40 by motor vehicles was recognized in the Purpose and Need for the Rabbit Ears Parking lot project in 2014.

Safety concerns have also been repeatedly recognized by the USFS as a concern raised by Colorado Dept of Transportation in the area.¹² This should only expand with the use of bicycles

¹⁰ See, USDA Forest Service; Dry Lake Campground and Parking Area – Expansion and Refurbishment *Environmental Assessment and FONSI* at pg. 10.

¹¹ [Bicycling Rabbit Ears Pass Colorado \(mybicycleroutes.com\)](http://mybicycleroutes.com)

¹² See, USDA Forest Service; *Rabbit Ears Winter Parking Lot EA*; June 2014 at pg. 3.

instead of vehicles that would be entering US 40 throughout the area. The Organizations would submit that if someone engaged to the CDOT to discuss gravity biking on US40 in this area they would have serious concerns about that issue. Given the shotgun approach to the planning we doubt CDOT will even be aware of the discussion. This is just an example of why a masterplan is needed for the area, so the unintended consequences of these projects can be addressed in a cohesive and logical manner after all groups have been engaged with.

The Organizations submit that a masterplan for the area would directly erode other factually basis asserted to support the current proposal. An example of this would be the asserted lack of opportunity and the very different and far more successful zero tolerance model that the Ski area has applied for user created trails than the USFS. Steamboat Ski Area already provides 30 miles of maintained routes and numerous sources estimate the trail mileage in the area to be around 500 miles. How this huge opportunity was not addressed in the EA is puzzling at best. Even more troubling is the fact the recently approved Buffalo Pass trail network is not addressed in this assertion of imbalance. We don't understand this asserted imbalance as there are more miles of bicycle trails on the Ski Area than there are a motorized miles on Rabbit Ears/ Buffalo Pass entirely. We are also very concerned that the current scope of analysis also avoids what is probably an uncomfortable example for the USFS of the effectiveness of the zero-tolerance model in stopping user created routes on the Steamboat Ski Area. We would hope a masterplan as required under CEQ regulations would recognize these issues and correct them. Could a master plan open discussions between the motorized community and Steamboat Ski area to address our desire to expand motorized trails in the area with expansion of trails on the ski area? Possibly. Is the ski area aware that the extensive high- quality opportunities they are providing have been found insufficient by the mountain bike community? We doubt that. We also doubt that the Steamboat Ski Area will be participating in the current Proposal making that type of discussion even more difficult to approach for us. These are problems that must be addressed.

2(a)(3) The scope of the EA allows comparisons of enforcement effectiveness that will be uncomfortable for the USFS to be avoided.

The Organizations must also point out that the lack of a master plan and arbitrary scope of this EA have allowed the USFS to avoid some pretty uncomfortable comparisons between alternatives of enforcement. While we understand why this desire might be present it does not resolve the issue. The comparisons in management and enforcement would involve the policy by the Steamboat Ski Area of an almost zero tolerance for anything user created, which has stopped the proliferation of user created routes on the Ski Area. The USFS adopted a blind eye to the issue and is now trying to avoid the implications of this decision by adopting hundreds of miles of user created routes that have resulted. While we understand there is a difference in resources, clearly the USFS could have taken some action to stop the creation of these routes, such as posting “Smile your on camera” or “Building trail is illegal” type signs at trailheads. We are not aware of a single effort that arguably attempted to move forward with even informal enforcement of restrictions, such as messaging on illegal nature of trail building with partners. The failure of even basic efforts such as this is evidenced by the fact that when the major supporter of the Proposal website is reviewed there is no message close to “don’t build illegal trails” or “only ride on legal routes” or similar messaging. Rather the entire website is endorsements of trail building from members and long videos that appear to be people hacking trail out of the woods. There is no doubt why there is a user-built trail issue in the Steamboat valley as the Proponent endorses the behavior and managers continue to accept the results. We are also intimately aware of how effective these tools can be and we are also aware of how uncomfortable a discussion on this issue may be for the USFS but the motorized community has devoted millions of dollars to this type of informal messaging and education as exemplified by the Stay the Trail program in Colorado. There is zero discussion in the Proposal how such a management direction will be altered in the future by continuing the blind eye enforcement and acceptance of user created routes. Without enforcement the invitation to build user created routes will continue to be accepted by those users in new portions of the District.

2(b) The Proposal fails to provide accurate factual information which results in facially insufficient analysis of many issues.

The Organizations vigorously assert the management of issues outlined in the Proposal fails to address many viable options for management as a result of the numerous basic factual flaws that are outlined more completely in these comments. The Organizations believe these analysis flaws have resulted in an Alternative being presented that simply bears no rational relationship to the planned usage or benefits that are currently accruing to the local communities from the recreational usage. As we have outlined, other NEPA efforts are not accurately summarized and some concerns that were identified in the purpose and need of other efforts are asserted to be outside the scope of the Proposal.

Providing an accurate and reasonable alternative to the public as part of the NEPA process is a critical component of the NEPA process and legally required. The rational decision-making process of NEPA is compromised when agencies consider only a limited range of alternatives to their proposed projects.¹³ It is well established that NEPA regulations require an analysis to provide all information under the following standards:

"... It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment..... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses...." ¹⁴

This standard simply has not been met. When reviewing ranges of alternatives provided in a NEPA analysis, the Courts have consistently held:

"The alternative section is 'the heart of the environmental impact statement,' 40 C.F.R. 1502.14; hence, '[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate.'" ¹⁵

¹³ James Allen; *Does not provide a range of alternatives to satisfy NEPA.....NEPA Alternatives Analysis: The Evolving Exclusion of Remote and Speculative Alternatives*; 2005 25 J. Land Resources & Env'tl. L. 287.

¹⁴ See, 40 CFR 1500.1

¹⁵ See, *Citizens for a Better Henderson v. Hodel*, 768 F. 2d 1051, 1057 (9th Cir. 1985).

When determining if analysis has provided a satisfactory range of alternatives, Courts have held the proper standard of comparison is to compare the purpose and intent of the Proposal to the Range of Alternatives provided. The Courts have consistently held:

“[E]nsure that federal agencies have sufficiently detailed information to decide whether to proceed with an action in light of potential environmental consequences, and [to] provide the public with information on the environmental impact of a proposed action and encourage public participation in the development of that information.”¹⁶

The Organizations are aware this is an EA and not an EIS, however this does not mitigate the need for high quality accurate information on challenges regardless of the level of NEPA undertaken. There is no rational argument these standards have been complied with. The public prejudice possible from an EA failing to provide accurate information on foundational problems is compounded as unlike an EIS there are no alternatives to be compared in an EA. This places a higher burden on the public to find and address these factual issues. The Organizations vigorously assert foundational problems with the Proposal simply preclude any real analysis of the Alternative provided in the EA. The Proposals foundational problem would include assertions such as there is an imbalance in access to the area, or that the USFS lacks authority to stop illegal usage.

The Council of Environmental Quality regulations also clearly state the need for the quality information being provided as part of this relationship as follows:

"Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by

¹⁶ *Kunzman*, 817 F. 2d at 492; see also *Citizens for a Better Henderson*, 768 F. 2d at 1056.

evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions."¹⁷

Again, the Organizations believe so many of the foundational assertions in the Proposal are so completely in conflict with any rational or legal basis that the entire process is flawed and misleading. A couple of examples of how erroneously directed some of the foundational assertions are in the Alternative. The assertion that the USFS lacks authority to manage illegal trail building is one of the most astonishing assertions we have ever seen and is directly conflicting with existing NEPA in the planning area. How can seasonal closures be optional for the planning area when a significant portion of the planning area has had them in place for over a decade. Examples of how the lack of factual accuracy issue impacts specific provisions of the Proposal would be exemplified by answers to questions like:

- Is it possible to realign the Grizzly/Helena Trail outside of planning areas where there is asserted to be a conflict? That answer is clearly yes.
- Could the horribly out of date forest plan provisions be amended to align with the Project? Again, that answer is yes.

But for reasons that are unclear none of these options are even mentioned as the foundational assessments and assumptions for the Proposal are so completely without factual basis or merit. A summary of planning regulations will not satisfy NEPA requirements that there is a detailed statement of high-quality information regarding why a decision was made. Again, assertions that seasonal closures are not necessary and rehabilitation is not needed simply do not sustain these basic legal requirements of NEPA and evidence why we are opposed to the Proposal.

¹⁷ See, 40 CFR 1502.1

2(d) Relevant Court rulings addressing NEPA standards directly apply the NEPA regulations.

The Organizations believe a brief summary of the standards Court's apply reviewing agency NEPA analysis is relevant to this discussion, as the Courts have consistently directly applied the NEPA regulations to the Proposal analysis review. Relevant court rulings have concluded:

*" First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845."*¹⁸

As previously addressed in these comments, public involvement simply has not been stimulated and a hard look has not been performed. Basic legal standards are not summarized. Boundaries of analysis are comically arbitrary and seek to repeat decisions already made in other areas and funding issues are not even mentioned despite the fact the district funding has a largely been declining or stagnant for decades. The high levels of frustration expressed from the public in response to the release of the Proposal speaks volumes to the quality of information provided and the ability of the public to comment on the information.

3(a). The Proposal makes some of the most inaccurate legal summaries of USFS authority over federal lands we have ever seen.

The Organizations are going to generally try and divide our more detailed discussion of our generalized non-NEPA concerns around the accuracy of the Proposal into two categories in an attempt to provide some structure to these comments. These two categories would be legal questions and factual problems. These issues are intertwined and difficult to divide clearly, but we believe the division helps understanding. Our legal concerns start from the fact the Proposal claims the USFS has no legal authority to stop the development of user created routes that are

¹⁸ See, Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 F.3d 437 at pg. 442; 42 ERC 1594, 26 Env'tl. L. Rep 2127b

impacting resources. An example of this systemic misstatement of authority is provided on page 2 of the Proposal, which is stated as follows:

“Several unauthorized non-system trails exist, some sections of which are causing resource damage; and...

- There is no mechanism in place to prevent off-trail bicycle travel across the entire project area.”

A more extended discussion of this perceived issue is provided on page 4 of the proposal but is not reproduced here simply to avoid repetition. Forest Service is authorized and governed by several statutes that establish the agency’s mission and generally define the scope of its regulatory and management authority. This basic authority starts with Article 4, section 3, clause 2 of the Constitution that provides Congress broad power to retain, buy, sell, and regulate federal lands, such as by limiting cattle grazing on them. It is further refined and clarified by numerous provisions such as the 1897 Organic Act, the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), and the National Forest Management Act of 1976 (NFMA). The USFS also has broad authority to manage activity on USFS lands to protect water, created by the Clean Water Act, and air quality provided by the Clean Air Act. Courts have consistently provided wide ranging authority for managers to address activities that are impacting the federal estate.¹⁹ We must assert this position on general forest service authority is foundationally incorrect, as there are a myriad of tools available to managers to address this type of problem and legal obligations for them to protect resources from illegal activities impacting resources.

As we have noted the USFS has now created a staggering number of NEPA analysis to address user created routes along the Rabbit Ears/Buff Pass Area and this is the first time anything close

¹⁹ As an example of these court decisions we would note: *Gibson v. Chouteau*, 80 U.S. 92, 99 (1872); *U.S. v. Grimaud*, 220 U.S. 506 (1911); *Light v. U.S.* 220 U.S. 523 (1911); *Utah Power & Light Co. v. U.S.*, 243 U.S. 389, 405 (1917); and *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 336 (1936).

to this type of problem has been asserted to be present. By contrast the Buffalo Pass Trails EA completed in 2016 clearly asserted the USFS had this authority as follows: ²⁰

“Forest Service options to manage this unauthorized use include:

1. Closing these popular routes and prohibiting use.
2. Developing a Forest Service trail system where needed.”

There is simply no question the USFS had this authority several years ago, so we must question where they think it went in the last 6 years. The 2016 Buffalo Pass Trails EA further clarified this position, while recognizing the direct impact of this issue on resources and the conflict with the existing RMP requirements for the area as follows:

“The effects are not anticipated to be irreversible or irretrievable, except possibly where unauthorized user-created trails are negatively impacting fens. This alternative is not consistent with Forest Plan direction, particularly MA 3.23 Water and Soil Standard 1: Promptly restore disturbed areas contributing to water quality degradation.”²¹

Any assertion in the Proposal that the illegal trails are not creating resource impacts is factually inaccurate as the Buffalo Pass Trails EA has already recognized this resource impact in the exact same planning area. If the Proposal is seeking to rehabilitate illegal routes in the area, it should at least align the factual conclusions with documents and recognize the authority has been possessed by the agency since the first day of its existence. This Proposal assertion is legally incorrect and insulting to other users who try to do the right thing. We have no idea how an average public user would be able to question such a facially incorrect assertion in an EA.

3(b) Inaccurate factual assertions allow the Proposal to expand existing problems.

The Proposal is comically misleading as it seeks to close trails well outside any rational planning boundary and in areas that have been the basis of multiple site specific NEPA planning efforts,

²⁰ See, USDA Forest Service; Buffalo Pass Trails EA at pg. 24

²¹ See, Buffalo Pass Trails EA at pg. 33.

Buffalo Pass. As a result of these previous planning efforts, the USFS already has a legal obligation to rehabilitate and close non-system trails in these other areas as these routes were not in the recent analysis of these areas. Rather than undertake these closures, the USFS has now undertaken a 5th EA in this area and USFS still claims no authority to manage trails.

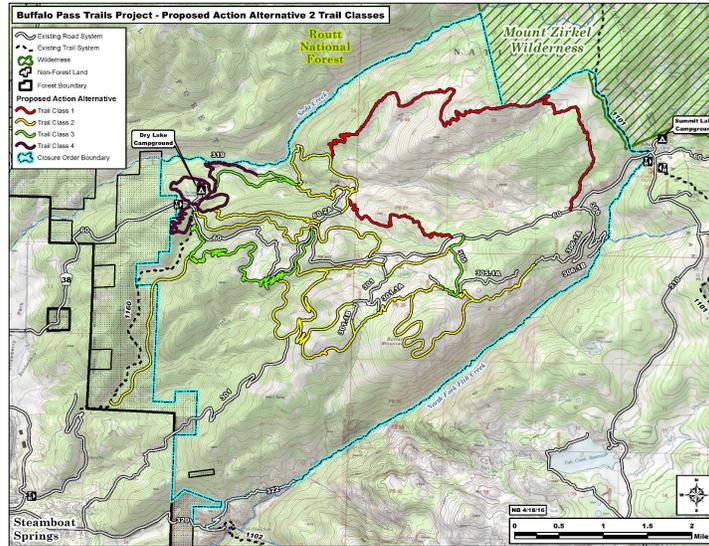
The immediate factual conflict around specific existing authority created by the Proposal is with the 2016 Buffalo Pass Trails EA which specifically prohibits further illegal trail construction in the area as follows:

“This project is needed because Forest Service designated trails in the area are currently limited, which has resulted in the construction, maintenance, and recreational use of a network of unsustainable and unauthorized user-created trails in the area. Generally, these trails are not meeting Forest Service design standards and are damaging resources. If left unmanaged, resource damage will likely continue, and may increase as use increases and more unauthorized trails are constructed.”²²

The Buff Pass Trails EA provides the following map of the analysis area that clearly shows no mountain bike trails running northwest out of the Dry Lake Campground area: ²³

²² See, Buffalo Pass Trails Project: Draft Decision Notice 1

²³ See, Buff Pass FONSI at pg. 77.



In the FONSI issued in the Buffalo Pass Trails EA the following statement was CLEARLY and directly made:

“Closure Order

To address further unauthorized user-created trail development and protect resources, a closure order will be implemented to prohibit mountain bike and all other wheeled-vehicle use off of designated roads and trails within the analysis area. The Proposed Action Map on page 7 includes the Closure Order boundary for the Buffalo Pass area.”²⁴

There can be no argument that several of the trails on the north-western end of the analysis area, generally running north out of the Dry Lake Campground have been illegal from the day they were built and prohibited under the May 2016 FONSI decision. USFS has continued planning in the Dry Lake area and we cannot understand how closure of the trail out of the parking lot was thought to be within the scope of this effort and outside the continued planning on Dry Lake parking. The Organizations highly doubt that this unnumbered trail starts and ends in the middle of the woods making any assertion of additional benefits from enforcement actions on existing requirements could somehow result in additional benefits. Making illegal activity more illegal

²⁴ See, FONSI Buff Pass Trails EA at pg. 6.

does not gain any additional benefit but does confirm our concerns around users accepting the invitation to continue to build user created routes as they see fit in the area.

The Organizations are astonished that compliance with previous NEPA designations is now sought to be asserted as a benefit under the Proposal. The Organizations are vigorously opposed to any assertion that continued capitulation to continued illegal activity will somehow reduce future bad behavior as this type of mentality has not worked in the Buff Pass planning area despite the massive expansion of mtn bike routes in that area with the May 2016 decision. This is simply an attempt by managers to mislead the public into thinking there is more benefit from the Proposal than there really is.

The amazingly arbitrary scope of the Proposal is exemplified by the fact the mountain bike trails at Steamboat ski area are outside of the scope of the Proposal but then includes trails miles north of the ski area as rehabilitate despite being further from heart of analysis area. The factually questionable proposition is addressed as follows:

“Although the ski area does offer certain types of mostly downhill specific mountain bike opportunities in the project area, it does not meet the visitor demand for semi-primitive trail experiences that can accommodate a wide variety of user abilities and trail classes across the project area. We continue to see visitors exploring non-system trails within areas of existing recreation infrastructure (roads, trailheads, campgrounds, day use areas).”

The Organizations assert that any attempted distinguishing of trailheads and campground that have been the basis of user created routes while asserting the Steamboat Ski Area is something different just lacks factual basis. The opportunities on the Steamboat Ski area are not municipal greenway trails in the center of town. The Organizations must question how the factual basis of decision to avoid discussion of benefits from opportunities in the Steamboat Ski Area while asserting benefits may be obtained by actually enforcing closures further north that are already in place.

The Organizations would like to highlight a reason why the EA sought to avoid any discussion of trails in the Steamboat Ski Area, which is immediately apparent. The Steamboat Ski Area simply did not tolerate the creation of user created routes as has been required in almost every planning document in the area for more than a decade. They provided management response on the issue immediately rather than turning a blind eye to the situation. This provides a concrete example of a different course of action for addressing the issues and one that was not pursued by the USFS. Again, we vigorously assert this is totally misleading to the public and represented a viable management option for the area that was not pursued.

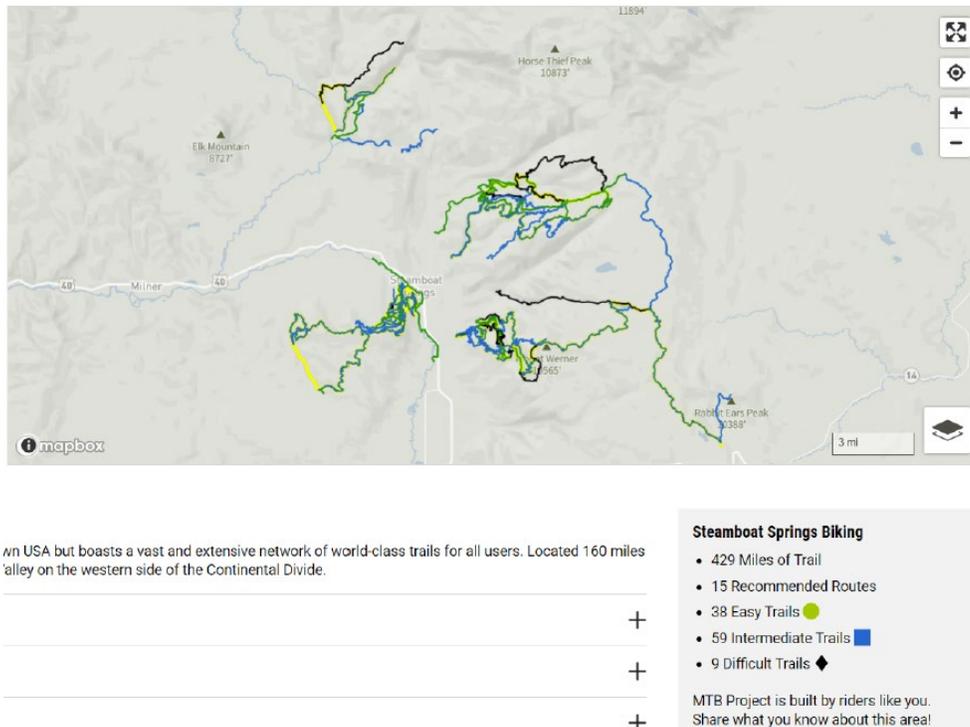
3(c) The Proposal creates imbalance rather than resolving it.

As we have previously noted, there are significant concerns with many of the foundational assertions that are the basis of the Proposal and the horribly arbitrary nature of issues in the Proposal as whole. The Proposal claims to balance the lack of non-motorized routes in the area by allowing illegally constructed routes to be permitted in an effort to provide balance. This desire is outlined as follows:

“The responsible official believes the proposed activities presented in this assessment strike a balance between managing increased trail-based recreation and providing areas without trails for other resource benefits and that analyzing an alternative with more trails at this time, would not address the concerns expressed by the public and partners on this project.”

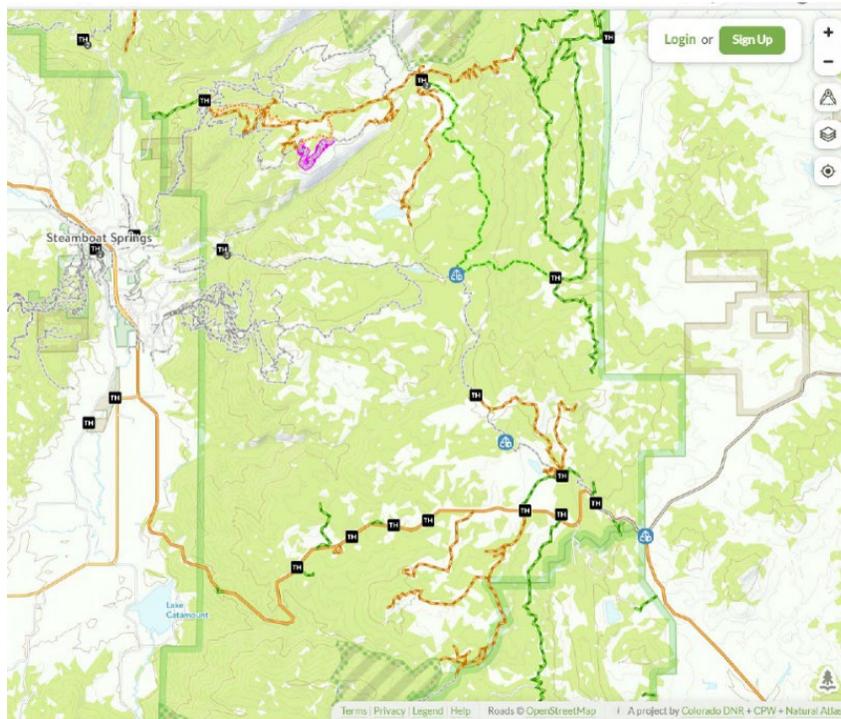
The Organizations simply have no idea how this goal is achieved as the Proposal furthers the existing imbalance by creating more single interest trails in the area that have no process for maintenance or support. The Proposal then asserts there is a need to provide a more dispersed mechanized recreational experience, despite the fact this opportunity is already provided in the Buff Pass area immediately north of the planning area. Steamboat Ski area provides miles of routes ranging from beginner to advanced that are well maintained and supervised.

The comical nature of any assertion of imbalance is the fact Mtbproject.com identifies there is 429 miles of mountain bike trails easily available from Steamboat Springs before the Proposal is adopted.²⁵ Many sources place the miles of mtn bike trails even higher. The mtbproject.com website provides the following map of these opportunities:



By comparison, the same area provides motorized opportunities that are functionally non-existent and will remain so even after the Proposal. The following represents a screenshot of the exceptionally limited motorized access to the entire area:

²⁵ [Mountain Bike Trails near Steamboat Springs \(mtbproject.com\)](http://Mountain Bike Trails near Steamboat Springs (mtbproject.com))



This imbalance becomes even more concerning when the comparison is made to singletrack motorized trails, as almost every route available on COTREX is a two track or road. There are more miles of mtn bike trails on the Steamboat ski area than motorized trails on the south end of the Ranger District. While the Steamboat Ski area provides a large number of miles that we must assume are not acceptable to the mtn bike community, the ski area provides absolutely no motorized opportunities at all.

3(d) User Conflict is exploding as a result of the Proposal and will only get worse with the “build it and we will accept it” mentality and continued zero enforcement displayed by USFS in the Proposal.

The Organizations are intimately familiar with the explosion of user conflict that has resulted from the scoping of the Project and are astonished that the Proposal simply ignores this issue. While there has been an explosion of user conflicts around the Proposal, the Proposal addresses this issue with nothing more than two passing references to the issue, one of which is asserted to be a basis for the project to move forward. We must question how this decision was made as there has been an unprecedented amount of discussion around the project, and candidly very

few supporting the project outside the mountain bike community. This opposition has been the basis of large-scale radio advertising, major social media efforts and major county engagement to try and address the Proposal. None of these efforts have supported the Proposal. Any of these responses to a trail project even viewed in isolation is unprecedented and should have warranted a detailed discussion in the Proposal. The totality of the unprecedented response simply is never even mentioned.

The Mad Rabbit Proposal was also the basis of a series of targeted facilitated meetings with the Rout County Roundtable in 2019. These meetings spanned many months and the USFS representatives were actively involved in these discussions. After months of facilitated discussions on the Proposal, and issuance of a 72-page report from the facilitator consensus on even basic issues could not be achieved with the group. A copy of this report is attached as Exhibit "5" to these comments. Again, we cannot understand how this type of conclusion that the USFS actively participated in would be ignored in the Proposal as this is factually insulting to those that participated their volunteer time in the effort and also will prove to be a significant barrier to interests working together in the future.

Another example of the explosion of user conflicts would be the discussion with the CPW Parks and Wildlife Commission regarding the Mad Rabbit Proposal in December 2021 in Lamar, CO. This discussion spanned more than 10 minutes of on the record discussion.²⁶ In an astonishing turn of events, Mad Rabbit was blamed on the motorized community despite the fact we have opposed the Proposal from Day 1. Turning a blind eye to the creation of massive user conflict that has resulted from the blind eye enforcement policy from the USFS outlined in the Proposal will not make it go away. It will simply allow it to expand and continue to grow.

The final unprecedented issue that was totally overlooked is the fact the motorized community and the Conservation and Hunting Community are in agreement that the Mad Rabbit Proposal in

²⁶ A complete recording of this meeting is available here. [Colorado Parks and Wildlife Commission Meeting - Lamar - Day 1 - YouTube](#). A complete copy of our letter of concern on this exchange is available as Exhibit 6 to these comments.

its current form is largely unacceptable. It is safe to say that we often disagree with the Conservation interests on many issues and that when we agree this should probably be seen as a strong message on whatever issue is being addressed. Here we agree and that is entirely overlooked in the planning process.

3(e) EO 11644 and 11989 require a unified federal plan to reduce user conflict must be performed.

The Organizations are intimately familiar with EO 11644 and EO 11989 and will vigorously assert that the minimization report that has been issued with the Proposal is WOEFULLY inadequate in rational and scope as it starts from the position that conflict can only flow from the motorized community. The Organizations are unable to find any basis for such an interpretation as user conflict is not a one-way street. It works both ways. Several provisions of the Proposal seem to target creating user conflict with the motorized interests. The Proposal just adopts hundreds of miles of trails for a user group that has never tried to support managed recreation while entirely dismissing a request for 4 miles of trail that serves the same need and desire from a user group that has consistently supported management efforts on the forest and not simply ridden in what they want. Not only are these trails accepted, the Proposal does not mention any attempt to alter the Blind Eye enforcement policy that has created the situation we are now forced to work with. The Organizations submit that the Proposal is directly and completely the type of unified plan those EO were issued to address. For reasons that are unclear, Proposal has chosen not to provide any basis for this disparate treatment, which clearly could lead to people illegally riding the trail simply to make a political statement. This decision is merely inviting motorized users to violate management decisions in a somewhat disgusting and insulting manner.

Despite the clear invitation to violate management decisions provided in the Proposal, this invitation is not sufficient to satisfy EO 11644 and 11989 which require these efforts be made with a unified plan as this decision will CREATE user conflict. The need for a unified plan addressing impacts from motorized and possibly to motorized usage is clearly stated in the introduction to these Executive Orders as follows:

“The widespread use of such vehicles on the public lands--often for legitimate purposes.....has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.”

The minimization report fails to address how the loss of the Grizzly Helena connection is not a legitimate purpose of the area and would not be furthered by a unified federal plan for the area. The motorized community vigorously asserts that the Grizzly Helena trail is simply a concept and not a finalized trail location. Could the connection be made in other locations consistent with the RMP? That answer is clearly yes. Section 1 of the EO also specifically provides

“§1 It is the purpose of this order to establish policies and provide for to minimize conflicts among the various uses of those lands.”

For the last 30 plus years we have asked for the Grizzly-Helena connection, and most recently we have been operating under the direction that the connection and related RMP Amendment would be provided in the Proposal. For reasons that are simply never addressed this has not occurred, despite our patience and our users simply not going out and riding in the connection. User conflict to be addressed under the EO are not a one-way street but requires managers to address conflict in all forms.

Despite the clear mandate of the EO that ALL conflict be addressed around motorized uses, the conflict that could result from not building the Grizzly Helena connection is dismissed in the minimization report despite the clear factual basis for these concerns in the Proposal. The Forest Service proposes adding a new trail (#7 and #31) that parallel an existing trail (1101/CDST) which is non-motorized south of the Percy Lake trail, for the benefit of a user group that has never pursued the legal course of action for trail development in the area. Again, why is absolutely no consideration given to making this new trail a true multiple use trail, open to motorcycles. It could easily be routed to avoid conflicts with the existing Forest Plan or the Forest Plan could be amended. The non-motorized users already have 1101 for a backcountry trail traveling from Rabbit Ears Pass to Buffalo Pass. There are compelling reasons to make this new trail motorized

giving those users a route north to Buffalo Pass. And imagine linking this with the old Grizzly-Helena trail and re-establishing that trail. That would provide a true loop and true destination trail system. The existing 1101 trail would give those who do like to share the option of staying on the non-motorized trail.

Is the Grizzly-Helena connection a legitimate public concern? We believe it is and this has been confirmed by the USFS support of the idea previously. Can this connection be provided in a manner consistent with the out-of-date RMP on the Forest and without resource impacts? Clearly that answer is yes. Has anyone contacted a motorized representative to even discuss this issue or foster understanding on the issue? That answer is no. Is this legitimate public concern identified for heightened analysis under EO11644? It clearly is. While we cannot compel the connection to be provided for, legally a detailed statement of high-quality information as to how this decision to remove the connection was made, while recognizing so many other activities that have caused resource impacts is legally required. As such we are requesting that analysis be provided.

4(a) The Proposal provides a 20% buffer on trail mileage while existing NEPA provides no flexibility on this issue.

The following portions of these comments are provided as more examples of the types of systemic problems that plague the current Proposal. This is in no way a complete list of issues and simply changing these standards to address these conflicts simply does not fix the problem. The Proposal asserts that the effort is allegedly moving illegally constructed routes onto the legal system so they can be managed better. Since this is largely an existing trail network, determining the mileage of these routes should be easy to obtain. Again, the Proposal eludes basic logic such as this by providing a 20% margin of error on the total mileage for the project, which is outlined as follows:

“Total miles of completed trail (primary routes and alternate lines) should not be 20 percent greater than the total miles of trail included in the project’s decision

unless extenuating circumstances require longer than anticipated trails. Supplemental information reports may be prepared by resource specialists to ensure compliance with all laws, regulations, and policies if the percentage may be exceeded.”²⁷

We are unable to align this with any provision in the Buff Pass Proposal, as this provision simply is not provided at all in that analysis. While the Organizations are intimately familiar with the challenges of trail development and maintenance, we were astonished with a 20% margin of error on trail mileage being provided without restriction. Generally, there are two standards for analysis in this situation, basically a trail corridor or a trail corridor and mileage cap. It is highly unusual to have just a cap with a 20% margin of error, which will cause planners to simply build 20% more trail than was analyzed. We are familiar with the trail corridor concept for new trails, where a narrow corridor is analyzed and then the trail is restricted to staying in the corridor. Here there is no restriction of the Proposal with a corridor and no reason for planners not to simply create 20% more trail than was originally proposed. This is again totally misleading and unacceptable as these are largely existing routes that can be easily identified and measured.

4(b) Illegally created routes may be rehabilitated and decisions not to rehabilitate conflict with existing management decisions.

The Organizations were astonished that the blind eye to enforcement mentality extends into rehabilitation of impacted areas as well. It has been the Organizations experience that any time travel management efforts are undertaken that any closures and rehabilitation of impacts must be completed before new trail is EVER thought about being constructed. The Proposal makes no requirements to mitigate before constructing rather it adopts discretionary provisions for rehabilitating user created bicycle routes that are not adopted providing as follows:

Non-system trails in the project area may be closed and rehabilitated. Before rehabilitation activities occur, 1) heritage surveys and any necessary National

²⁷ See, Proposal at pg. 101.

Historic Preservation Act Section 106 consultation will be completed; and 2) the Forest Service hydrologist and soils scientist will be consulted for any site-specific rehabilitation recommendations²⁸

The optional rehabilitation of an illegal route is again simply astonishing. Any motorized project we have ever pursued has required mitigation of any user created routes before any new trails are built. No reason is provided why this type of standard would not be applied here, especially given the consistent recognition that these illegal routes were causing resource damage. Not only is the rehabilitation optional, the Proposal asserts that foundational work for the rehabilitation efforts, such as §106 Consultation with SHPO has not occurred. Again, this is the pinnacle of twisting the fact that construction of these trails was illegal and never went through any analysis.

The astonishing nature of these provisions is compounded by the fact these standards are in DIRECT conflict with the FONSI that was issued on the Buffalo Pass Trail Project in 2016. In the Buffalo Pass Trails Project rehabilitation was mandatory and must be completed before any trails are built. This EA specifically provides these standards as follows:

“ If long term funding/maintenance guarantees do not get implemented, re-assess decision to complete project and consider closing and rehabilitation of trails.”²⁹

The 2016 Buffalo Pass Trails EA continues as follows:

“Existing non-system trails not incorporated into Alternative 2 should be rehabilitated. Any new unauthorized non-system trail construction will be immediately closed and rehabilitated following discovery. Rehabilitation will consist of some or all of the following:”³⁰

²⁸ See, Proposal at pg. 97.

²⁹ See, Buff Pass EA at pg. 9.

³⁰ See, Buff Pass EA at pg. 10.

Any assertion in this Proposal that the USFS lacks authority to close trails running generally north out of the Dry Lake lot is without basis given these provisions. We are vigorously opposed to any effort to mitigate or reduce these standards moving forward. It is simply insulting. The goal of NEPA in these situations must be to return the area to its condition prior to the illegal activity and not to place barriers to this effort. This is a perfect example of why a master plan is legally required for the area and makes perfect sense as different standards of enforcement cannot be justified in such a small area and also make a ton of sense just from an enforcement perspective.

4(c) Seasonal closures are not discretionary and conflict with existing management decisions.

There are no provisions in the Proposal that provide for any mechanism for enforcement of seasonal closures to protect wildlife and water resources in the area. This is very concerning as the Proposal asserts there are impacts from these illegal usages and indicates Blind eye management will continue. These are foundational questions that must be answered in any motorized proposal before NEPA is even thought about. The Seasonal closures are further not even mentioned with regard to conflict with other users as the Proposal clearly states: ³¹

“There may be seasonal restrictions on proposed trails and/or segments of proposed trails to protect elk production (calving) habitat. There will be a mandatory closure from May 15 through June 30 in the Ferndale area on segments 23, 24, 25, and 27 based on current information.”

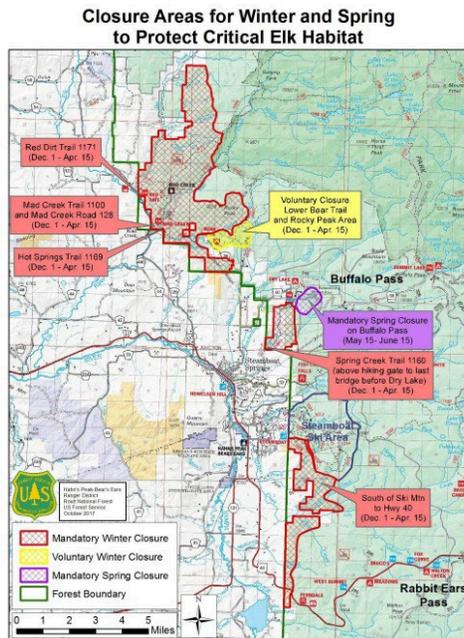
Again, this standard is in stark contrast to the Buffalo Pass Trails EA that was completed in 2016, which required mandatory seasonal closures of any routes in habitat areas as follows:

“The following seasonal restrictions on trails and/or trail segments may be implemented to protect elk calving and big game winter range. Any further seasonal restrictions will be determined on a case-by-case basis, as needed, in collaboration with CPW.

³¹ See, Proposal at pg. 101.

- a. There will be a mandatory closure for Management Area 7.1: Residential/Forest Interface from December 1-April 15, which includes Trail Segment 12 and Spring Creek Trail (#1106).
- b. There will be a mandatory closure from May 15-June 15 for trail segments that are within or linked to CPW mapped Elk Production Areas. This will include Trail Segments 8, 9, 22, and 23, and possibly Segment 12.”³²

The Medicine Bow Routt NF recently published a map of seasonal closures in the area that reflects seasonal closures throughout the Rabbit Ears/Buffalo Pass Area.



The Organizations have to question the utter arbitrary nature of these boundaries as they extend right to portions of the Mad Rabbit planning effort. Clearly impacts to wildlife do not align with such arbitrary boundaries.

5a. Winter Travel will be impacted as a result of the blind eye enforcement policy from the District.

³² See, Buffalo Pass Trails EA at pg. 12.

We were astonished that there was no mention of processes or requirements to address the highly certain conflict that the Proposal will have on existing winter travel decisions in the area. This issue needs to be clearly and explicitly addressed as we are intimately aware of the fact the mtn bike community has attempted to groom portions of the illegal network already and this has met with a strong and immediate response from the Cross-country ski community. The snowmobile community was then drawn into this fight despite the fact we were not maintaining the trails in any manner and the trails we do maintain were open to fat tire bikes. This is merely another reason why we are concerned about the blind eye enforcement policy on the District.

There are passing references to the scope of the Proposal no changing winter travel decisions in the area, but these are far from strong positions. The snowmobile community is already far too familiar with the conflict that has resulted from the illegal use of user created summer mtn bike routes in the winter. This has already caused a lot of conflict with the non-motorized winter usage on Rabbit Ears Pass. We simply have no idea why there would be an expectation that this type of issue would be reduced given the systemic capitulation of the USFS to illegal mtn bike routes. The only thing that this type of usage and management is going to lead too is more closures for motorized in the winter and we are opposed to that.

There are no provisions even addressing how the Proposal will be enforced. This fails to address a foundational problem as the entire trail proposal is the result of illegal trail construction. This model has not worked on the Buffalo Pass area that adopted the same Blind Eye model of enforcement, and as a result there are numerous new illegal routes in the area that must now be rehabilitated. Rather than enforcing current management, managers are allowing the trails to remain and rewarding bad behavior. Why would there be any reason not to continue to build trails as there are no new enforcement tools and managers now have set the precedent that illegally built trails will be allowed to be moved to legal trails. Bad behavior should be the basis of enforcement rather than rewarded. This is a perfect example of why a master plan is legally required for the area and makes perfect sense as different standards of enforcement cannot be justified in such a small area and also make a ton of sense just from an enforcement perspective.

5(b) The challenges in the District schedule for trails project have been addressed in direct conflict with decisions in the Proposal.

The Organizations believe a comparison of the maintenance schedule for motorized usage on the district that was updated around the time analysis of the Proposal and the current Proposal is very enlightening. Almost no headway has been made on this list since its last update in 2018 despite a strong desire and funding being available to undertake these projects and the Proposal has simply marched onward.

The Proposal has a large number of routes located in known wetland and riparian areas, and makes any sort of seasonal closures or other restrictions entirely discretionary. The resolution of this issue in this Proposal is entirely in conflict with the management of wetlands in areas where motorized usage is sought to be expanded by reopening several old logging roads. While the existing logging roads were the subject of extensive NEPA, hardened to USFS standards for roads for large trucks and sustained heavy truck traffic over the life of the logging operation, managers are unable to allow motorized routes on these old logging roads as there is asserted to be risk to wetlands. We are unable to align these two standards in any way and that is a problem.

5(c) Grizzly Helena Trail connection is again ignored.

Our only single-track motorized request for the Proposal involved reopening the Grizzly Helena Trail on the western end of the Project area, which would allow you to ride your motorcycle on a trail from the Wyoming Border to the Colorado River. That was not provided for in the Proposed Alternative and there is no reason provided for this change other than an alleged conflict with the horribly outdated Resource Management Plan for the Forest. What is even worse is the fact that this trail connection has been discussed with HPBE staff for years and they recognized the need for the RMP amendment. In these discussions, this small amendment of the RMP was not seen as a barrier and was specifically identified in every planning document prior to the EA in order to make sure the issue was resolved.

The absolutely amazing analysis of the Grizzly Helena trail situation is the fact that a purely administrative boundary established in 1998 is found to be an insurmountable barrier to a trail, but the illegal creation of trails that are causing resource impacts is not a problem. This decision is made even more frustrating by the fact the loop connection would be available to motorized and non-motorized users, could be supported and maintained by motorized funding that has been in place for decades and would actually reduce user conflicts in the areas.

The Organizations also assert the arbitrary nature of this removal is further highlighted by the fact that rerouting the trail into areas where usage is more consistent with the RMP is never even mentioned despite the fact the request is more conceptual than referring to a specific trail location. If someone had talked to the motorized community about exploring this connection before deciding it could not be achieved, managers would have intimately aware it is the connection users want rather than the specific location. There is nothing scenic or otherwise valuable in the specific location of the Grizzly/Helena Trail, it is merely the name that has been given to the desire to connect the two trail sections. There is no argument that this type of connection could easily be funded with a grant for construction and then subsequent funding for maintenance would also be available.

5(d) Nipple Peak Trail reconstruction is again avoided.

While technically outside the scope of the EA, this project is well within the scope of our concerns on the poor relationship between partners and the district. As noted in the Timberline comments, local users wanted to undertake stabilization and repair on the Nipple Peak Trail in 1991. This project has remained on the list of priority issues for users since this time despite some period touch ups on the Trail. This project remains on the Priority Trails project for the District, as again the touch up efforts need more work and was AGAIN the basis of a request to repair the trail through a motorized trails grant. Rather than continuing to request the OHV program funded crew to address this area, which had proven unsuccessful, Mountain Axxess requested a different course of action to fix this issue as the club sought a separate grant to fund repair of the area with an approved contractor. All the District had to do was provide a letter of support and work

with the Club and contractor to oversee the work. Mountain Axxess was just informed that their request for support of the District for a grant to hire a contractor to finally work on the Nipple Peak Trail was again declined as there was no GIS location data for the project, despite this project being on the Trail Plan for the District for more than 30 years at this point. This is simply insane as we are aware how many years of effort have gone into the Mad Rabbit Proposal and how much effort is still to be needed on this effort without even addressing maintenance issues or other challenges.

5(e) Wildlife concerns.

We have a high degree of comfort in the fact this issue will be addressed in great details by other interests and as a result we are merely stating we have concerns as well.

5(f) Sustainability.

We repeat our concerns from scoping regarding the need for support for management and maintenance of these areas. This issue is not addressed at all in the Proposal.

6. Conclusion.

The Organizations are forced to oppose the Proposal as this is nothing more than application of management standards that have been a complete failure in the area. This document has hugely accelerated the degrading nature of our relationship with the District. The comments of TTR detail more than 35 years of failure on this District despite this relationship has provided almost a million dollars in direct, consistent funding to the District to support management. In the 5 years following the scoping of this Proposal, this relationship has continued to erode and it has become clear that our concerns simply were not a priority on the district. Over this time the Organizations have supported the funding of almost another ½ million dollars in direct grant funding to the District to fund trail maintenance and resource protection.

Entitlement to funds without recognition of source of funding rather than being a benefit, often times this funding as treated as a burden to the District rather than a partnership as staffing continued to be difficult, despite continued rapid decline in government funding to the agency. Often times staff that was hired was poorly trained if at all and users then were requested to train the staff that was grant funded. Our members then took personal vacation time to train crews on equipment and those crew members were not retained in any capacity.

The message sent by the Proposal to user groups moving forward is very clear. It is an invitation to continue to violate management standards without repercussion. When coupled with the clear District mentality that any actual attempts to partner with funding to protect resources and avoid illegal trails as fast as possible being seen as a burden to the Office, this message is a catastrophic failure and could easily result in users simply disconnecting from the entire discussion and effort to partner. We will also view any actual attempts to partner with large sums of money as a burden and avoid addressing any actual partner concerns. This message is a catastrophic failure and could easily result in users simply disconnecting from the entire discussion and effort to partner. The Organizations would welcome a discussion of these opportunities and any other challenges that might be facing the District or how a master trails plan might be developed after this Proposal. Please feel free to contact Scott Jones, Esq. at (518) 281-5810 and his email is scott.jones46@yahoo.com or Chad Hixon at (719)221-8329 and his email is chad@coloradotpa.org

Respectfully Submitted,



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