

## CHAPTER 1: PURPOSE AND NEED FOR AGENCY ACTION

### 1.1 OVERVIEW

The United States Department of Agriculture (USDA), Forest Service (USFS), has prepared the *Application for Transportation and Utility Systems and Facilities for the Village at Wolf Creek Environmental Impact Statement* (Wolf Creek EIS) to document the environmental impacts of a proposal to authorize the construction and use of road and utility corridors across Federal lands. The proposal was initiated by the submission of an *Application for Transportation and Utility Systems and Facilities on Federal Lands* (Application) by the Leavell-McCombs Joint Venture (Leavell-McCombs) Village at Wolf Creek (Village) Landowners (Applicant) to the Rio Grande National Forest (RGNF). The Application is for authorization for construction and use of year-round road access, new or modified utility corridors, and modified easement terms for public access across a 287.5-acre private parcel of land (private property) to Alberta Lake. The proposed road and utility corridors lie entirely within the Wolf Creek Ski Corporation (WCSC) Ski Area (Ski Area) Term Special Use Permit (SUP) boundary for USFS permitted use as a winter sports resort. The 287.5-acre private property owned by the Applicant is within the 1,581 acres permitted to the Ski Area for a term of 40 years (1997-2037).

This EIS analysis only addresses the Applicant's request for road access and new utility corridors because these are specific proposals that would require new ground disturbance on National Forest System (NFS) land and additional environmental analysis. Generally, USFS road access authorizations are issued to the private landowner, and utility authorizations are issued to the specific companies that install and maintain each of the utility services. The Applicant's request to modify existing utility corridors is not addressed in this analysis because there is no specific proposal. The existing utility corridors are currently under a SUP to San Luis Valley Rural Electric Cooperative (SLVREC) for exclusive use to the Ski Area. Modification of existing utility corridors requires a detailed proposal from SLVREC or other utility companies to the USFS to amend the current SUP. Modifying this SUP to allow for the Applicant's use of utility corridors could occur through the permitting process if there was concurrence from the Ski Area and SLVREC.

The Applicant's request to modify the existing easement terms for public access across the private property to Alberta Lake on Forest System Road (FSR) 391 will not be addressed in this analysis because there is no specific proposal. However, proposals to modify the easement terms may be considered in the future. Public access to Alberta Lake along the current location of FSR 391 will remain the same until a future alternative access route across the private property has been agreed upon by all affected parties (including Applicant, USFS, Ski Area) and constructed.

The analysis has been conducted in compliance with the *National Environmental Policy Act* (NEPA) and Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA, as found in 40 *Code of Federal Regulations* (CFR) Parts 1500-1508. The USFS decision concerning the proposal is authorized under the *Federal Land Policy and Management Act* of 1976 (FLPMA) (40 United States Code [U.S.C.] §1761) and its implementing policy and regulations. This EIS discloses the environmental impacts of the Proposed Action and reasonable alternatives and provides the responsible official with the

information necessary to make an informed decision. The decision will be documented in a Record of Decision (ROD) accompanying the Final EIS after receiving public comments.

This chapter describes the background, the Proposed Action, the purpose and need for the action, the decision to be made, the public involvement process, and the issues to be considered in the analysis.

## **1.2 LOCATION**

The RGNF is comprised of 1.86 million acres located in southwestern Colorado. Denver, Colorado, is approximately 300 miles to the north of the RGNF, and Albuquerque, New Mexico, is approximately 270 miles to the south. The Continental Divide runs for 236 miles along most of the western border of the RGNF. The RGNF contains a variety of ecosystems ranging from a 7,600-foot foothills zone to over 14,300 feet in the Sangre de Cristo Wilderness on the eastern side. The RGNF land surrounds the San Luis Valley, the largest agricultural alpine valley in the world, and includes all or parts of four Wilderness Areas (South San Juan, Weminuche, La Garita, and Sangre de Cristo). The headwaters of the Rio Grande originate within the RGNF boundary. Figure 1.2-1 shows the location of the proposed project area.

The potentially affected Federal land, administered by the USFS, and the 287.5-acre private property are located in the San Juan Mountains at an elevation of approximately 10,300 feet, 1 mile east of Wolf Creek Pass and the Continental Divide. The proposed project area is approximately 25 miles northeast of Pagosa Springs, Colorado, and approximately 18 miles southwest of South Fork, Colorado. The proposed project area is located in Mineral County, Colorado, adjacent to U.S. Highway 160 (Highway 160), the major arterial east-west traffic corridor for southwestern Colorado.

## **1.3 BACKGROUND**

On May 14, 1987, the U.S. conveyed to the Applicant (Leavell Properties, Inc., precursor to Leavell-McCombs Joint Venture), via a patent and pursuant to a land exchange, 300 acres of NFS land as evaluated in an Environmental Assessment (EA), *Environmental Assessment of the Proposed Wolf Creek Land Exchange* (Land Exchange EA). A condition of the Decision Notice of March 6, 1986, for the Land Exchange EA stated: “The land exchange proponent must donate an easement over the Federal tract to the United States which provides a specific level of control of the type of developments on the Federal land conveyed. The purpose of the easement will be to assure that development of the Federal land conveyed is compatible with the Ski Area (USFS 1986b).” Subsequent to patent, the Applicant conveyed fee title of a 12.5-acre segment of that parcel to WCSC, for the development of new ski lifts and ski trails. The remaining 287.5 acres are what now comprises the private property intended for development as the Village. The 287.5 acres of the private property are surrounded by NFS land and lie entirely within the Ski Area SUP boundary. When the land exchange was approved, the USFS recognized that the private property had the potential for development. The USFS also recognized that use of the

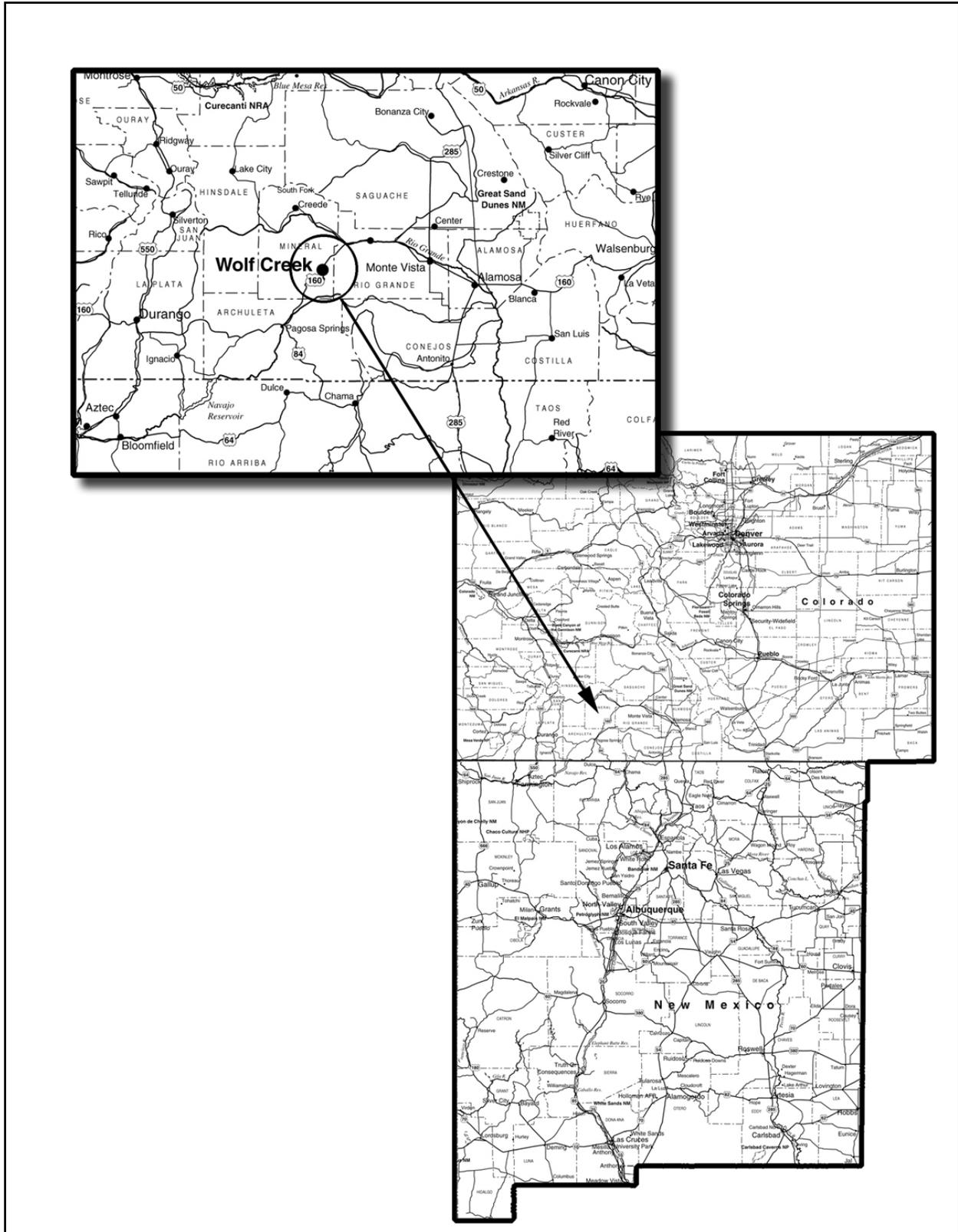


Figure 1.2-1. Location of Proposed Project Area.

287.5 acre private property would be regulated by Federal, state and Mineral County agencies having jurisdiction over the development and use of nonfederal lands.

In addition, the conveyance of the 287.5-acre private property into non-federal ownership included several easements to assure the adequate protection of public interests and compatibility with surrounding NFS land uses, including the ongoing operation of the existing Ski Area.

The land exchange was approved and executed with the following four agreements:

1. *Land Patent from the United States of America.* This document granted the land with all the rights, privileges, immunities, and appurtenances to Leavell-McCombs.
2. *Scenic Easement.* The Scenic Easement document of 1987 stipulates "...a desire to administer the herein described lands to protect the scenic and recreational values of adjoining NFS lands; to protect a specific level of control of the type of development on said land to assure that said development is compatible with the Ski Area". This document established the right of the USFS to enter the private land to inspect the property to ensure compliance with the terms of the Scenic Easement; provided the private property owners the right to develop the property in a mix of residential, commercial, and recreational uses typical of an all-season resort village; established certain constraints on architectural styling, building materials, and building height; prohibited 16 types of land uses as unacceptable; prohibited mobile homes, semi-mobile homes, mobile home parks, or recreational vehicle parks on a long-term basis; prohibited mining and industrial activity; and placed limitations on the number, size, and height of signs per commercial enterprise, and flashing lights. This Scenic Easement document further required that the private property owners seek and obtain approval from the USFS of the proposed architectural style and development plans of the Village. This Scenic Easement document designated the State of Colorado, Mineral County, or other unit of local government as the land use control entities for the Village. Accordingly, any future development of the private land is required to comply with the rules and laws of Mineral County under a Planned Use Development (PUD). An Amended Scenic Easement document was signed by representatives of Leavell-McCombs on November 24, 1998, by the Ski Area on November 21, 1998, and by the USFS on December 11, 1998 (USFS 1998).
3. *FSR 391 Easement to Alberta Lake.* This document provides a perpetual easement for public access via existing FSR 391 across the private property to Alberta Lake and the public lands located east of the private property. The Applicant has the right to use FSR 391 in common with the USFS. The Applicant had an option, which has expired, to grant an alternative access route across the private property as a substitute for the current location of FSR 391.
4. *Snow Course Easement.* The property owners granted the U.S. Soil Conservation Service (now known as the Natural Resource Conservation Service) an easement over and across the private property during the winter months for the sole purpose of accessing the snow course. This easement is no longer needed.

Following a review of documents presented by the developers of the Village, including Conceptual Drawings and Design Guidelines and Regulations, the RGNF Forest Supervisor, on

December 19, 2000, approved the *Village Development Plan, Architectural Style and Design Guidelines*, as required by the Amended Scenic Easement. This approval, coupled with the Amended Scenic Easement was done in compliance with the stipulation in the Land Exchange EA Decision Notice of March 6, 1986 (USFS 1986b), to assure that private ownership is to be compatible with and complementary to the Ski Area. This approval ensures that the initial conceptual plans are visually compatible with the NFS landscape. Any time the plat and architectural plans are changed for the Village on private property, the easement terms allow the USFS another opportunity for review and approval.

The 1999 *Wolf Creek Ski Area Facilities Expansion EA* (Expansion EA) (USFS 1999c) evaluated the Ski Area's proposal to construct two Tranquility Road parking lots and an access road, starting at approximately 100 feet from the existing entrance at Highway 160 to the new parking lots and the proposed Alberta Ski Lift. A Decision Notice and Finding of No Significant Impact (FONSI) (USFS 1999a) were issued in 1999 authorizing construction. An important issue in the Expansion EA was the link between the Ski Area and the potential development of the Village on private property in Alberta Park.

Two documents pertaining to the 1999 Expansion EA were executed by the Ski Area and the Applicant on July 16, 1999, related to the future development of the Village and the Ski Area:

1. *Agreement for Ski, Utilities, Road and Parking Easement for the Village at Wolf Creek*
2. *Easement Grant and Agreement (Ski Trails And Lift Easement)*
  - The Applicant granted the Ski Area four easements across private property for ski trails and one easement for the construction, maintenance, and use of ski lift and terminal (the Alberta Lift Easement).
  - The parties agreed that the Ski Area shall use the ski trail easements for skiing operations during the annually published ski season, generally between November 1st and April 15th, and at other times of the year for maintaining trails, lifts, and related facilities.
  - The Ski Area agreed to operate the ski lifts contemplated on the "Preliminary Development Plan" during the period described above and specified the hours of operation.
  - Both parties agreed, if necessary, to grant an easement to SLVREC for underground electrical lines across either the ski or lift easements discussed above.
  - The Ski Area granted the Applicant an easement across Ski Area land for covered access roads, walkways, parking areas, utility services, and groundwater collection facilities.
  - The Ski Area agreed to design and construct an all-weather gravel-based access road no less than 23 feet in width, from the Ski Area entrance off Highway 160, through the base area and extending to the western boundary of the private property.

- The parties agreed, simultaneously with the pursuit of approvals of the Mineral County PUD, to jointly apply and pursue all necessary USFS approvals for this road.
- The parties agreed that the Applicant may improve, pave and/or upgrade this road at its own expense subject to the approval by the Ski Area.
- The Ski Area agreed to perform all maintenance and snowplowing of the access road.
- The Ski Area agreed to allow, subject to other governmental approvals, the Applicant to construct multi-level parking structures on Ski Area parking lots.

These agreements are now the subject of ongoing litigation between the Applicant and the Ski Area.

It was further noted in the 1999 Decision Notice and FONSI (USFS 1999a) that “In the 13 years since the Alberta Park land was traded by the Forest Service, no tangible progress towards a development plan has occurred. Mineral County has the approval authority on such a plan. Until a formal detailed plan is submitted to Mineral County, the Forest Service cannot fully assess the implications to National Forest resources or the Ski Area. Once a plan is submitted, the Forest Service will participate in the review process conducted under the approval authority of the Mineral County Commission (USFS 1999a).”

Following an August, 1999 appeal, the Associate Forest Supervisor for the San Juan National Forest (SJNF) RGNF (combined at the time) notified the appellant that the WCSC, acting as an interested party to the appeal, agreed to design and construct both the access road turn-around and the easternmost parking lot such that neither facility would reach the actual private property boundary immediately to the east. Additionally, a 100-foot buffer would be retained between the new parking lots and the private land boundary, and a 250-foot buffer would be retained between the access road turn-around and the private land boundary (USFS 1999a). USFS also noted that private landowner access along Forest Development Road 391 (now known as FSR 391) for commercial purposes other than permitted ski use would trigger the NEPA process (USFS 1999a). Tranquility Road and the associated parking lots are expected to be completed in late 2004. The road is approximately 2,100 feet long with a 23-foot wide running surface.

On August 24, 2000, the Leavell-McCombs received Preliminary Approval for development as a PUD – Residential (the PUD is a form of development characterized by a unified site design for a number of housing units and nonresidential uses) from the Mineral County Board of County Commissioners for the Village at Wolf Creek Development (Resolution #00-13 [Mineral County 2000]). The preliminary approval was provided for the Draft Final Development Plan dated July 27, 2000, and the April 11, 2000, Preliminary Draft of the Final Plat. The Resolution does not vest Leavell-McCombs with the right to proceed with actual development. Only after Mineral County Final Approval of the PUD, along with Leavell-McCombs’ compliance with all the conditions and requirements imposed, can the development proceed. Further, the right to sell lots or blocks can only “vest” upon the approval of an Application for Designation of New Phase, the completion of the entire infrastructure for the Designated New Phase (DNP), the filing of an Application for Supplemental Resolution as to that DNP, and the adoption of a Supplemental Resolution with respect to that DNP (Mineral County 2000). All documents and

information requested by the county commissioners is to be provided within a 12-month period unless the Applicant (in this case Leavell-McCombs) is involved in a Federal permitting process including the preparation of an EIS.

For more details concerning the intended development of the private property to full build-out of 2,172 units, see Section 2.10 and Appendix A.

Resolution #00-13, Appendix B in this document, specifies the complete set of the Mineral County Board of County Commissioners conditions required for issuance of the Final PUD and the conditions of development.

The public opportunity to substantially influence the Federal decisions associated with the Village development occurred in 1986 with publication of the Land Exchange EA (USFS 1986a) which covered the land trade itself. Once the land became private property, development on it fell under the jurisdiction of Mineral County. The public was able to participate in the Mineral County review process through multiple public hearings conducted by the Mineral County Planning and Zoning Commission and the Mineral County Board of County Commissioners, prior to passage of Resolution #00-13 covering the potential full build-out of 2,172 units. The Mineral County review is a continuing process that may provide future public input opportunities, including a September 16, 2004 meeting to evaluate the Final PUD application for Phase 1 of the Village (Mineral County intends to consider the approval of the Village in phases).

Currently, the only access to the Village private property by passenger vehicles from Highway 160 is via FSR 391. Use of FSR 391 is limited to times of the year when the road is open for use to the general public. Pursuant to USFS policy in Forest Service Manual (FSM) 2710 (USFS 2004c), a landowner can use any existing USFS system road for accessing non-Federal land, without the need for a special use authorization, as long as the road is used in a manner consistent with the FSM, and at times during which such a road is open and available for use by the public. Access to the private property is not considered commercial use. Final Mineral County PUD approval for the development is not contingent upon new access, so some degree of development can take place without USFS action. However, FSR 391 is a single lane road with turnouts that allow for access by passenger cars at slow speed. Road use is limited to dry weather by vehicles not exceeding 8 feet in width and/or 80,000 pounds gross vehicle weight. Generally, FSR 391 is available and open for use by the public from mid-June through September (or the first snow accumulation of the season). It is closed to public vehicular traffic for the remainder of the year, and is used by the Ski Area as part of its skiable terrain. It is important to note that no road use (other than foot traffic, snowshoes, downhill or cross-country ski access) would be allowed when the road is closed to public vehicular access. Private property access may be accommodated, but restricted (over-the-snow, horse carriages, snow cats, etc.) during this period. Any over-the-snow use or alternative means of access would need to be negotiated between the USFS, the Applicant, and WCSC, and approved by the USFS. The terms of the negotiated agreement would be included in a special use authorization issued by the USFS.

The 12.5-acre segment of the 300-acre private property was sold and conveyed by the Applicant to the Ski Area for new ski lifts and ski trails. These 12.5 acres consist of three private easements (recorded with Mineral County) in which Ski Area infrastructure could be built in association

with the intended development of the 287.5-acre private property. The 1999 document, *Agreement For Ski, Utilities, Road and Parking Easements For the Village at Wolf Creek*, discussed the requirement for covered access/parking required in a 75 foot by 1,400 foot easement in the 12.5-acre segment of the Ski Area private property (July 16, 1999).

The Ski Area does not have lodging facilities or overnight accommodations. The nearest lodgings are in the South Fork, Del Norte, or Pagosa Springs areas, Colorado, which are more than a 20-minute drive east or west from the base of Wolf Creek Pass. If the Village was developed, it would provide for year-round guest accommodations and services within the WCSC SUP (winter sports resort) on the 287.5-acre private property.

## **1.4 PROPOSED ACTION AND USFS DECISIONS TO BE MADE**

### **1.4.1 Proposed Action**

The Proposed Action is to authorize the development and use of a road and utility corridors crossing NFS land to access the 287.5-acre private property for “reasonable use and enjoyment” of the property.

The all weather year-round access road would not exceed 2,350 feet in length within a 60-foot right-of-way (ROW) width. Any new or upgraded sections of the roadway would be constructed to USFS specifications and would cross NFS land from Highway 160 to the private property. The first approximately 2,100 feet of this proposed route has been developed as a road, known as “Tranquility Road”, for access to Ski Area parking lots, and will be operated and maintained under the WCSC SUP (see Figure 1.4-1). Tranquility Road has a 23-foot driving surface, and WCSC plans to complete it in 2004. To access the western boundary of the private property, the Applicant is proposing to extend Tranquility Road by adding approximately 250 feet of road length. The extension would have a minimum 24-foot wide running surface. The access road would merge into the current entrance to the Ski Area at the junction with Highway 160. Residents and services to the private property would enter and exit Highway 160 at the same location as do skiers and services to the Ski Area.

Utility corridors would include buried electrical transmission lines, television and communication cables, fiber optic lines, and other utilities for potential future development. These corridors would consist of:

- One 10-foot wide utility corridor for electricity along side Tranquility Road
- One 10-foot wide utility corridor for other utilities such as telephone, cable, etc., alongside Tranquility Road
- One 10-foot wide utility corridor, which is not adjacent to an access road (identified as “Utility Corridor #3” in Figure 2.3-1) for electricity and located as shown on the map coming from Highway 160 to the northern boundary of the private property.



**Figure 1.4-1. Existing Tranquility Road Under Construction**

## **1.5 PURPOSE AND NEED FOR ACTION**

The purpose of this action is to provide road access and utility corridors to the private property surrounded by NFS lands compatible with Ski Area operations. The road access and utility corridors would serve the future development of the Applicant's private property. This action is needed to meet the requirements 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 when Federal lands are needed to access non-Federal lands, the Secretary of Agriculture (Secretary) has an obligation to grant access across Federal lands as deemed adequate to secure the owners the reasonable use and enjoyment of their land, subject to the Secretary's rules and regulations. For purposes of this analysis, the USFS recognizes the Mineral County Final PUD for the private property as its reasonable use and enjoyment.

## **1.6 DECISION FRAMEWORK**

The decisions to be made by the USFS Responsible Official are: (1) the means, mode, and route of access across NFS lands that are adequate for the Applicant to exercise the reasonable use and enjoyment of the private property, and (2) whether or not to authorize a utility corridor across NFS lands to accommodate potential future development, and if so, the location and specifications of that corridor across NFS lands.

The Decision, which will be documented in the ROD, will:

- Identify the location, specifications, and use stipulations for access roads crossing NFS land.
- Identify the locations and specifications of the underground utility corridor(s) crossing NFS land.

## **1.7 SCOPE**

Under NEPA regulations found in 40 CFR §1508.25, Federal agencies are required to consider three types of actions (connected, cumulative, and similar), three types of alternatives (no action alternative, other reasonable courses of actions, and mitigation measures [not in the proposed action]), and three types of impacts (direct, indirect, and cumulative). Actions are connected if they:

- (i) Automatically trigger other actions which may require environmental impact statements.
- (ii) Can not 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.

As a non-Federal action, the potential future development of the Applicant's private property would not require preparation of an EIS in and of itself. However, any such development would still be required to comply with Federal, state, and local laws, and to obtain relevant permits.

Nor does any future development depend upon the USFS granting additional Federal access road and utility corridors. Development of the Applicant's private property could be accomplished more readily if the Applicant were granted the access and utility corridors that are the subject of the Wolf Creek EIS. Even without the additional access and utility corridors, future development of the private property could proceed using summer access on FSR 391 and potential use of helicopters or over-the-snow vehicles.

In any scenario, it is reasonably foreseeable that the development of the Applicant's private property will result in full build-out of 2,172 units. As required by NEPA, the USFS is required to disclose the cumulative impacts from activities on non-Federal lands, even though the USFS has no jurisdiction over these lands. As such, this EIS includes a bounding assessment of the impacts from the development of 2,172 units and associated infrastructure under any alternative selected by the USFS. As discussed in Section 1.8, the Mineral County PUD would regulate the 2,172 unit development of the private property. Cumulative impacts of future development/expansion of the Ski Area are considered in accordance with the *Wolf Creek Ski Corporation Master Development Plan (MDP)* (WCSC 1998). To assist the decisionmaker in fully understanding the impacts of the Federal actions, separate from the potential cumulative impacts of such future non-Federal development, the direct and indirect impacts of the Federal action alternatives are assessed in detail in Chapter 4. Likewise, the impacts associated with the potential development of the Applicant's private property are analyzed separately from the Federal action impacts and are presented in Appendix A. To assist the decisionmaker in fully understanding the cumulative impacts of the Federal actions and the potential private property development, a bounding cumulative impacts section is presented in Chapter 4. By preparing the EIS analysis in this fashion, the decisionmaker can fully consider the Federal actions and their impacts as well as the non-Federal cumulative impacts.

## **1.8 RELATIONSHIP TO OTHER ACTS, REGULATIONS, PERMITS AND PLANS**

As part of the NEPA process, the EIS must consider whether actions described under its alternatives would result in a violation of any Federal, state, or local laws or requirements (40 CFR 1508.27), or would require a permit, license, or other entitlement (40 CFR 1502.25). Should the Application for the access road and utility corridor(s) be approved, and prior to the start of construction activities, the required Federal, state, and county permits and approvals would need to be obtained by the Applicant. Certain environmental requirements have been delegated by Federal agencies to state authorities for enforcement and implementation. It is USFS policy to conduct its operations in a manner that ensures the protection of public health, safety, and the environment through compliance with all applicable Federal and state laws, regulations, orders, and other requirements. This section provides a brief summary of the primary environmental requirements and permits that relate to the USFS Application decision.

### **1.8.1 *Alaska National Interest Lands Conservation Act and 36 CFR Part 251 Subpart D***

Section 1323 of the ANILCA (Public Law 96-487) requires access to non-Federal lands through lands administered by the Secretaries of Agriculture and Interior. The Secretary of Agriculture's regulations that were promulgated pursuant to Section 1323 of ANILCA, and applicable to NFS lands, are codified at 36 CFR Part 251 Subpart D. ANILCA and those regulations direct that the

USFS authorized officer shall grant such access deemed adequate to secure the landowners the reasonable use and enjoyment of their land (36 CFR 251, Subpart D). Landowner access need not be the most direct, economical, or convenient route for the landowner. Adequate access may not be road access in all cases. Reasonable access is currently determined on a case-by-case basis. The need for a SUP is found in 36 CFR Part 251 Subpart D-Access to Non-Federal Lands. This clause states:

(d) In those cases where a landowner's ingress or egress across National Forest System lands would require surface disturbance or would require the use of Government-owned roads, trails, or transportation facilities not authorized for general public use, the landowner must apply for and receive a special-use or road-use authorization documenting the occupancy and use authorized on National Forest System lands or facilities and identifying the landowner's rights, privileges, responsibilities, and obligations.

These regulations further direct that the authorized officer shall approve only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. For access across NFS lands that will have significant non-NFS user traffic, a landowner may be required to construct new roads or reconstruct existing roads to bring the roads to a safe and adequate standard. A landowner also may be required to provide for the operation and maintenance of the road.

Additionally, the 36 CFR regulations state that “landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land.” Expanding upon this point is the definition of adequate access, which means a route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land, and that minimizes damage or disturbance to Federal lands and resources (36 CFR 251.111). It is clear that the “landowner” shall be granted access. The authorizing officer (USFS), per 36 CFR, shall determine what constitutes reasonable use and enjoyment of the lands, based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria. Conceivably, the method of access could range from walk-in to full vehicle access. Additionally, and of further note, is that the definition of “access” does not include ROW for powerlines or other utilities. Thus, another USFS decision point is whether or not to grant the utility corridor(s) through Federal lands to private property.

### **1.8.2            *Clean Air Act of 1970, as amended (42 U.S.C. 7401 et seq.)***

The *Clean Air Act* (CAA) requires sources to meet standards and obtain permits to satisfy the National Ambient Air Quality Standards (NAAQS), State Implementation Plans, Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants (NESHAP), and Prevention of Significant Deterioration.

The CAA defines Class I areas as areas of special national or regional, natural, scenic, recreational or historic value for which the PSD regulations provide special protection. Under the CAA, Federal Land Managers of each Class I area are charged with affirmative responsibility to protect that area’s unique attributes, expressed as air quality related values (AQRV). The

AQRV's are those attributes of a Class I area that deterioration of air quality may adversely affect.

If the Applicant were to site, construct, and operate a power generating facility as part of the private property development, such action would require CAA compliance with the Colorado Department of Public Health and Environment (CDPHE), and the U.S. Environmental Protection Agency (EPA) siting, construction, and operation permit requirements. Any access road/utility corridor(s) selected by the USFS would need to comply with the CAA.

### **1.8.3      *Clean Water Act of 1972, as amended (33 U.S.C. 1251 et seq.) and State Requirements***

Section 402 of the *Clean Water Act* (CWA), as amended, regulates point source discharges of pollutants into waters of the United States, and specifies that stormwater discharges associated with construction activity be conducted under National Pollutant Discharge Elimination System (NPDES) guidance. To minimize potential erosion impacts from construction of the proposed project, a Storm Water Pollution Prevention Plan, for stormwater discharges associated with construction activity under the NPDES general permit, would be required for the proposed project. A Storm Water Pollution Prevention Plan is required by EPA for construction projects (clearing, grading, and excavation) disturbing over 1 acre of land, which is applicable to all alternatives analyzed in this EIS.

Section 404 of the CWA requires either individual or nationwide permitting through the U.S. Army Corps of Engineers (USACE), Albuquerque District, and the Southern Colorado Regulatory Office. Under the CWA, the USACE and EPA evaluate permits for dredge and fill activities in the waters of the United States, including wetlands. CWA jurisdiction and impact analysis applies to private land as well as public land. The Applicant would consult with the USACE concerning obtaining Section 404 permits applicable to all alternatives analyzed in the EIS.

Additionally, water quality certification may be required from the CDPHE/Water Quality Control Division (WQCD) for the proposed project under Regulation Number 82 (5 Colorado Code Regulation 1002-82) in association with other Federal CWA permits (Section 402 and potentially Section 404). The CDHPE/WQCD certifies, conditionally certifies, or denies certification of Federal licenses and permits in accordance with Section 401 of the Federal CWA (22 USC 1341).

If the Applicant were to construct and operate a domestic wastewater treatment plant as part of the private property development, permits would be required from the WQCD.

### **1.8.4      *Colorado Department of Transportation***

Those portions of access facilities (roads and utility corridors) which encroach upon the ROW of Highway 160 are within the jurisdiction of the Colorado Department of Transportation (CDOT). The Federal Highway Administration (FHWA) oversees interstate highways in coordination with CDOT in Colorado. The USFS selected alternative would require an Access Permit (or Access Permits if more than one intersection with Highway 160 is selected by the USFS), and a Traffic Impact Analysis for any Highway 160 intersection as a result of access to the private property (Village). CDOT requires that peak-hour traffic conform to the 1998 State Highway Access

Code. Depending on the analysis of traffic generated by future private property development in conjunction with Ski Area traffic and Highway 160 traffic patterns, upgrading the Highway 160 intersection, increasing the sight distance by reducing heights of embankments, installing warranted auxiliary lanes, and any other related improvements may be required by CDOT (CDOT 2004). CDOT requires that a State Highway Access Permit Application (CDOT Form 137, 1996) be submitted for the USFS-selected alternative defining the use of Federal lands and private lands in relation to the Highway 160 corridor. The Applicant will need to obtain a permit for crossing NFS land and will need to obtain all Access Permits from CDOT. Additionally, the USFS, as the land management agency for the property that abuts the highway, will also be involved in the Access Permit application process to CDOT under the terms of the *Memorandum of Understanding Related to Activities Affecting the State Transportation System NFS/BLM Public Lands in the State of Colorado*.

### **1.8.5            *Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)***

The *Endangered Species Act* (ESA) is intended to prevent the further decline of threatened, endangered, and sensitive (TES) flora and fauna species and to restore these species and their critical habitats. Section 7 of the ESA requires Federal agencies having reason to believe that a prospective action may affect an endangered or threatened species, or its critical habitat, to consult with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service to ensure that the action does not jeopardize the species or destroy its habitat (50 CFR 17). Section 10(a)(1)(B) applies to development of Habitat Conservation Plans (HCPs) for actions taken on privately held lands. Despite reasonable and prudent measures to avoid or minimize such impacts, if the species or its habitat would be jeopardized by the action, a formal review process is specified. The Colorado Department of Natural Resources (CDNR), Division of Wildlife (CDOW), works directly with USFWS and the USFS on TES species issues (including lynx and Rio Grande Cutthroat trout), and water quality and fisheries (Alberta Lake and the South Fork of the Rio Grande) in the Wolf Creek Pass corridor and adjoining areas. The Applicant has requested and has been approved to be a participant in the Section 7 process. The USFS is currently in consultation with the USFWS concerning this proposed project.

### **1.8.6            *Forest Plan***

The *Revised Land and Resource Management Plan for Rio Grande National Forest* was implemented on November 7, 1996. The *Revised Land and Resource Management Plan for Rio Grande National Forest*, as amended (Forest Plan), provides guidance for all management activities; establishes management standards and guidelines; describes resource management practices, levels of resource production, people-carrying capacities, and the availability and suitability of lands for resource management (USFS 1996a). Additionally, the Forest Plan provides the framework to guide the daily resource management operations of the RGNF, and subsequent land and resource management decisions made during project planning. The *National Forest Management Act* requires that resource plans and permits, contracts, and other instruments issued for the use and occupancy of Federal lands be consistent with the Forest Plan. Site-specific project decisions must also be consistent with the Forest Plan, unless the Forest Plan is modified by amendment (USFS 1996a). This EIS is a project-level analysis, designed to evaluate the Proposed Action's conformance with the NFS Forest Plan and other regulations.

Management Area Prescription 8.22 of the Forest Plan applies to Ski-based Resorts: Existing/Potential (p. IV-35).

This prescription is applied to the mountainous area composing the existing Ski Area, and those lands identified for possible expansion. Associated facilities such as trails, lifts, and lodges are included. Implementation of this Prescription will maintain the possibility of winter-sports expansion. Any resource management activities within this area will be designed and implemented to maintain or enhance the existing resources. Development within this area will not occur until a master development plan has been submitted, alternatives and resource impacts have been analyzed, and a decision has been issued (p. IV-35).

Within the Forest Plan are National Goals Relevant to Land and Resource Management (based on Forest Service Manual Objective Statements). Special-Uses Management, FSM 2730.2, includes guidance to “Provide access across National Forest System land to private land that is adequate to secure the owners thereof of reasonable use and enjoyment of their land without unnecessarily reducing the management options of the Forest Service or damaging National Forest Service lands or resources (USFS 1996a).” Transportation System guidance for USFS lands is delineated in FSM 7702, which includes:

- To plan, develop, and operate a network of transportation facilities and transportation modes that provide user safety, convenience, and efficiency of operations
- To provide access to NFS lands to accomplish management direction and protection objectives which is coordinated with National and state-wide transportation needs

The Forest Plan and FLPMA of 1996 authorize the USFS to issue easements for road access across NFS lands. The Applicant would be provided certain rights subject to terms and conditions imposed by the USFS. Terms and conditions are included in the easement grant generally to protect the rights of others and to protect natural resources on NFS lands traveled to access the Applicant’s private property.

Forest Plan standards and guidelines define how activities are conducted on RGNF land. The applicable standards and guidelines for this project are included in Appendix C.

### **1.8.7 Mineral County Requirements**

Mineral County requires the submission and approval of an Application for a PUD prior to development of the 287.5 acre private property. Leavell-McCombs submitted an Application for a PUD on November 29, 1999. On April 27, 2000, the Mineral County Board of County Commissioners voted for Preliminary Approval of the PUD and found that the PUD is consistent with Mineral County’s Comprehensive Plan. The PUD Preliminary Approval Resolution was adopted on August 24, 2000, and set forth a list of 54 conditions for compliance prior to issuance of Final Approval of the PUD (Mineral County 2000) (Appendix B). Similarly, the Mineral County Public Utilities Department will be required to issue Final Plat approval. This EIS describes the Applicant’s responsibility to comply with the 54 conditions set forth in the Resolution required prior to the Mineral County Board of County Commissioners’ issuance of

the Final PUD approval. Mineral County regulates the development of the private property as a PUD and has ultimate responsibility in overseeing that the Applicant complies with all Federal, state, and county regulations in issuing the Final PUD.

### **1.8.8            *National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.)***

The major provision of the *National Historic Preservation Act* (NHPA) of 1966 for the USFS is Section 106. This section ensures that historic properties are appropriately considered in planning Federal initiatives and actions. Section 106 mandates consultation during Federal actions if the undertaking has the potential to affect a historic property. This consultation normally involves the State and/or Tribal Historic Preservation Officers (SHPO), and may include other organizations and individuals such as local governments, Native Americans, and Native Hawaiian organizations. If an adverse effect is found, the consultation often ends with the execution of a memorandum of agreement that states how the adverse effects will be resolved. Consultation with and concurrence from the Colorado SHPO, regarding identification, evaluation, and determination of effect of the project on cultural resources to meet the requirements of Section 106 of the NHPA, is required.

### **1.8.9            *Ski Area Special Use Permit and the Wolf Creek Ski Corporation Master Development Plan***

The Ski Area is governed under the WCSC SUP and the associated MDP (WCSC 1998) that was prepared to comply with the conditions in the SUP. The existing 1998 MDP is in effect until amended or replaced, with several agreements from 1999 that dictate Ski Area and Applicant interaction. The method for determining the nature, location, and scope of facilities at ski areas on NFS lands is the MDP process. A key factor in this process is establishing the planning capacity of the resort to provide recreation activities. The primary objective of the MDP is to balance the capacities of various improvements and facilities, such as ski trails, tramways, restaurants, restrooms, and parking lots with the established planning capacity in order to insure that the public's needs are met. This planning capacity is often expressed as a comfortable carrying capacity in terms of people at one time. The planning effort encompasses the entire winter sports resort presently envisioned for development in connection with the NFS lands authorized by the permit. In accepting the MDP, the USFS agrees that, conceptually, it represents a logical way to develop the area within the Ski Area permit boundary to meet present and future public needs. Additionally, in accepting the MDP, the USFS agrees to analyze all or parts of this plan, in accordance with the requirements of NEPA, and depending on the results of the analysis, approve specific projects, such as ski trails or ski lifts, for implementation. Elements of the MDP that have not been approved through site specific environmental analysis represent reasonable foreseeable future actions with respect to cumulative effects.

The Ski Area is permitted as a winter use area while the 287.5-acre private property development would operate year-round. Termination of the WCSC SUP as a winter sports resort will occur on June 30, 2037, at which time a new SUP may be granted to WCSC. Of particular note is a condition in the SUP that the permit is not exclusive, and the USFS reserves the right to use or permit others to use any part of the permitted area for any purpose, provided that such use does not materially interfere with the rights and privileges specified in the permit. Within the 1998 MDP are numerous references to the Village, and the acknowledgement that the Ski Area's rate

of growth could be accelerated by construction and operation of the Village. The current comfortable carrying capacity for the Ski Area, based on the accepted MDP, is 4,200 people at one time.

The MDP states that the “Wolf Creek Ski Area has a general agreement with the Leavell-McCombs joint venture that upon breaking ground for housing/hotels, appropriate additional ski lifts would be constructed,” and that development of the Village would require the preparation of “considerable additions or amendment to this plan” (WCSC 1998). The MDP identifies eight ski lifts that are reasonably foreseeable in the future for the Ski Area. The construction of the eight new ski lifts identified is partially dependent upon Village construction and availability of a major power supply (WCSC 1998). Each of these lifts would be evaluated under NEPA at the time that they are proposed. WCSC has stated that there are no plans to construct any ski lifts at this time.

## **1.9 PUBLIC INVOLVEMENT INCLUDING INTERAGENCY COOPERATION**

The USFS developed and implemented a public and interagency involvement process that included formal public scoping for the Proposed Action and preliminary alternatives, and a variety of formal and informal channels of communication. Regular coordination with affected or interested agencies and applicants is also a part of the process. Following publication of this Draft EIS, public meetings will be held to allow agencies, organizations, and the public to comment on the Draft EIS.

### **1.9.1 Scoping Process**

#### **1.9.1.1 *Description of the Scoping Process***

On February 20, 2004, USFS published a Notice of Intent (NOI) in the *Federal Register* announcing its intent to prepare an EIS for the *Application for Transportation and Utility Systems and Facilities Easement for The Village at Wolf Creek* (69 FR 7905). USFS notified interested persons, including Federal, Tribal, state, and local government agencies, public interest groups, regulators, and members of the general public, to participate in the scoping process. The USFS held three public meetings in South Fork and Creede, Colorado, on March 17, 2004, and Pagosa Springs, Colorado, on March 18, 2004. In addition, the project has been posted on the Schedule of Proposed Actions on the USFS website at <http://www.fs.fed.us/r2/riogrande/> published quarterly since April 2004.

The formal public scoping process was to conclude on April 5, 2004; however, due to a concern expressed by the public regarding the scheduled times and locations of the scoping meetings, and lack of a public scoping meeting in Alamosa, Colorado, the USFS extended the scoping period to April 15, 2004, and conducted an additional scoping meeting in Alamosa, Colorado, on April 8, 2004. The scoping period officially closed on April 17, 2004.

To encourage broad participation by the public, the USFS notified stakeholders by mail prior to the public scoping meetings. A display advertisement press release ran during the week of March 3-10, 2004, in the *Valley Courier*, a newspaper published weekly for residents of the San Luis Valley. In addition, a display advertisement press release ran the week of March 4-11, 2004, in the *Pagosa Springs Sun*, a newspaper published weekly for residents of Pagosa Springs. Also,

public service announcements were published in the *Denver Post*, *Santa Fe New Mexican*, and the *Durango Herald* newspapers prior to the scoping meetings. Informational handouts, written comment forms, and both NEPA- and project-specific fact sheets were distributed at the scoping meetings and by request.

### **1.9.1.2      *Public Meetings***

Publication of the NOI on February 20, 2004, marked the beginning of the public scoping period for the Wolf Creek EIS. Public scoping meetings were held on March 17, 2004, from 3 p.m. to 5 p.m. in South Fork; on March 17, 2004, from 7 p.m. to 9 p.m. in Creede; on March 18, 2004, from 6 p.m. to 8 p.m. in Pagosa Springs; and on April 8, 2004, from 5 p.m. to 7 p.m. in Alamosa. At the beginning of the scoping meeting, a moderator explained the public scoping meeting format. This included a welcome session for the participants. A USFS representative then presented an introduction and background of the application for easements and an overview of the EIS and Proposed Action. Following the introduction, the USFS NEPA Coordinator for the project gave a brief overview of the NEPA process. The public comment portion of the meeting began and the moderator invited members of the public to comment on the scope of the EIS. Exhibits and handouts about the Wolf Creek EIS, project site, and the NEPA process were made available for viewing and pickup at the meeting. Technical representatives, including the Applicant, were present to answer questions. In addition to the scoping meeting, scoping comments could also be submitted to USFS via telephone, fax, and conventional and electronic mail. A total of 231 individuals signed in at the 4 scoping meetings with participation as follows: approximately 30 individuals signed in at South Fork; 22 in Creede; 161 in Pagosa Springs; and 18 in Alamosa.

### **1.9.1.3      *Scoping Results***

Environmental considerations are defined as concerns regarding the potential effects from the proposed project. The USFS Interdisciplinary Team (IDT), along with interested and cooperating agencies, organizations, and the public, identified environmental considerations for this project during the scoping process. The collaborative scoping process was also used to clarify environmental considerations in order to identify concerns that should be emphasized or deemphasized, in order to narrow the scope of the EIS in accordance with NEPA regulations (40 CFR §1500.4[g]). Concerns are considered to be Key issues if there is a potential that the impacts of a proposal cannot be avoided by applying standard mitigation measures. This section lists the Key issues and environmental considerations (analyzed in detail in Chapter 4), along with some of the issues identified by the public which are beyond the scope of this analysis.

The Wolf Creek EIS will evaluate the project-specific environmental impacts of the utility and road corridors on lands within the area of potential effects from the Village. Table 1.9-1 lists the categories of major concern identified during scoping, and the number of comments and commentors for each issue category. There were approximately 650 commentors who provided approximately 3,240 comments.

**Table 1.9-1. Total Number of Comments and Commentors for Each Concern Code.**

Concern Category		Number of Comments	Number of Commentors
01	Oppose the development of The Village at Wolf Creek	358	357
02	Support the development of The Village at Wolf Creek	41	41
03	Biological/Ecological Resources	435	320
04	Traffic and Transportation	174	156
05	Recreation	84	81
06	Water	351	271
07	Land Use	332	237
08	Infrastructure/Utilities	158	141
09	Wilderness/Natural Areas	57	54
10	Scale Down of Proposed Development	56	54
11	Visual/Scenic	46	43
12	Air Quality	54	52
13	Snow	89	88
14	Out of Scope	10	8
15	NEPA Analysis and Process	194	116
16	Request for Document	24	24
17	Cumulative Effects/Connected Action	109	67
18	Human Health/Safety	60	52
19	Noise	11	11
20	Waste Management	135	131
21	Mailing List	18	18
22	Alternatives	18	15
23	Socioeconomics	272	230
24	Soils, Geology, and Slope Stability	22	20
25	Support the Proposed Action	32	32
26	Oppose the Proposed Action	98	98
<b>Total</b>		<b>3,238</b>	Not Applicable

Below is a summary and compilation of the concerns raised during the public scoping process. Most comments concerned the development on private property rather than the proposed action on NFS lands. Concerns 1, 2, 25, and 26 were not included in the summaries below because these comments simply registered opposition or support of the development of the Village or the Proposed Action. Concern 14 included issues deemed out of the scope and are discussed in Section 1.13.

### **Concern 03 – Biological/Ecological Resources**

Commentors raised concerns regarding impacts to the reintroduced Lynx, Rio Grande Cutthroat Trout, and other wildlife and plant species in the project area. Commentors were also concerned about impacts to migration corridors. Commentors stated concerns regarding impacts to wetland, watersheds, and biodiversity.

### **Concern 04 – Traffic and Transportation**

Commentors expressed concern about public safety. Commentors are concerned with the infrastructure of existing roads and the increase in the amount of traffic, and the impacts that vehicle exhaust would have on the area.

### **Concern 05 – Recreation**

Commentors were concerned with the impacts the Village would have on backcountry recreational activities, loss of skiable terrain (downhill and groomed Nordic trails), increased demand for dispersed recreation activities at the Ski Area and Village and on adjoining NFS land, and increased use and impacts to the Ski Area. Commentors wanted unimpeded access to Alberta Lake on FSR 391.

### **Concern 06 – Water**

Commentors questioned where an adequate water supply would come from to support the Village. Commentors also asked what developers planned to do if the area experienced another drought. Commentors were also concerned about the impacts on water quality.

### **Concern 07 – Land Use**

Commentors questioned the details surrounding the original land exchange in 1987, such as how the exchange was approved, what were the original terms, and was a development of the current proposed size and scope of the Village included in the original terms of the exchange?

### **Concern 08 – Infrastructure/Utilities**

Commentors questioned where utility lines and power would come from to support development of the private property as the Village.

### **Concern 09 – Wilderness/Natural Area**

Commentors stated concern about the loss of high altitude wilderness and natural areas. Commentors stated that wilderness areas adjacent to the project would be affected by traffic, noise, and air pollution.

### **Concern 10 – Scale Down of Proposed Development**

Commentor concerns addressed the large size of the proposed Village. Many commentors stated that the Village is not compatible with the Ski Area and should be scaled down to reduce crowding.

### **Concern 11 – Visual/Scenic**

Commentors stated that the proposed Village would destroy the beauty of the area and would create visual impacts to skiers, backcountry users, and users of Highway 160.

### **Concern 12 – Air Quality**

Commentor concerns addressed the impacts the proposed Village will have on Class 1 Air Quality Areas, including Weminuche and the South San Juan wilderness areas. Commentors believe the new development will create increased use of wood stoves, heating systems, and result in increases in vehicle exhaust.

### **Concern 13 – Snow**

Commentor concerns involved questions regarding snow removal and snow stockpiling when snow is removed.

### **Concern 15 – NEPA Analysis and Process**

Numerous commentors suggested impacts/environmental considerations they would like to see addressed in a detailed EIS, such as impacts to wildlife, air pollution, traffic and transportation, etc.

### **Concern 17 – Cumulative Effects/Connected Action**

Commentors expressed general concern/opposition to the Village if approval of the utility and transportation easements were granted.

### **Concern 18 – Human Health/Safety**

Some commentors expressed concern for public safety in the Village in case of emergencies if there was only one access point. Commentors expressed concern regarding the availability of emergency services for those suffering from the effects of altitude sickness.

### **Concern 19 – Noise**

Commentors stated that they believe excessive noise will be an issue associated with the project.

### **Concern 20 – Waste Management**

Multiple concerns were raised regarding waste/sewage management. Commentors expressed concern that the Village would cause an increase in the amount of waste/sewage created and that infrastructure is not in place to deal with the increased sewage.

## **Concern 22 – Alternatives**

Commentors suggested alternatives to the development of the Village. Some commentors suggested reducing the size of the Village and buying back the private land through conservation funding.

## **Concern 23 – Socioeconomics**

There were numerous concerns raised regarding the impacts the development would have on local businesses in Pagosa Springs and South Fork. There were both positive and negative comments concerning impacts to the local and regional economy. Numerous commentors believed that the affected areas would be negatively impacted by the development, that surrounding towns would lose revenue, the cost of living would increase, and that there would not be enough housing, schools, or emergency services for new employees of the Village.

## **Concern 24 – Soils, Geology, and Slope Stability**

General comments concerned soil erosion impacts during construction and excavation.

### **1.10 KEY ISSUES**

The USFS IDT used the scoping comments to identify Key issues. A Key issue provides the focus for one or more alternatives, and can be used to compare the alternatives. It is used to track effects throughout the analysis. Key issues for the EIS were identified through public and internal scoping. The IDT used an issue sorting process to analyze comments received during scoping. This process is intended to ensure that all key issues are identified, and that all other issues are meaningfully addressed in the analysis. Comments were received from individuals, organizations, and state and Federal agencies. Each comment received during scoping was considered a potential issue. These were evaluated through a screening process and determined not to be Key issues if:

- Required by law, regulation, or policy
- Resolved by Forest Plan Land Management Area Prescriptions
- Addressed through implementation of Forest Plan standards and guidelines
- Addressed through the implementation of project-specific mitigation measures
- Addressed during processes or analyses routinely conducted by the IDT

Most of the comments received during scoping focused on the private property (Village) development, which is included in the cumulative impact assessment in this EIS.

For an issue to be considered a Key issue at the project level, it must be relevant to the specific project and able to be appropriately addressed at the project level.

The following four issues were determined to be Key issues and within the scope of the project decision. These Key issues are addressed through the Proposed Action and alternatives.

1. *Adequate Access Across NFS Land For the Applicant to Secure the Reasonable Use and Enjoyment of the Village Property.* The USFS decision is to evaluate and develop conditions associated with “reasonable access” across NFS land to the private property (Village). The No Action alternative and action alternatives are evaluated in Chapter 4 to determine if they meet the criteria of providing “reasonable access” to the private property. For the purposes of this analysis, the USFS recognizes the PUD for the private property (Village) as its reasonable use and enjoyment. Since the potential access to this private property is through lands within the WCSC SUP boundary, such access must be provided in a manner that does not materially interfere with the rights and the privileges granted to the WCSC SUP.

The USFS statutory requirements pursuant to ANILCA pertain to access that allows “reasonable use and enjoyment” of private land, which in this circumstance is surrounded by NFS land. An important point in this analysis is that other than the rights retained by the USFS in the Amended Scenic Easements, and the development prohibitions therein, the USFS recognizes and respects the jurisdiction of Mineral County in regulating and approving the use and development of the 287.5-acre private property with 54 conditions required in Resolution #00-13. The Applicant has stated that under the No Action alternative and all other action alternatives, full build-out of 2,172 units would occur. In exercising the jurisdiction on private property, the Mineral County Board of Commissioners is responsible for granting Final Approval of the PUD of the private property, which may be developed as the Village. This Key issue is interrelated with Key issue 2.

2. *Compatibility with the Wolf Creek Ski Area.* Central to the project is the private property being entirely within the WCSC SUP boundary of 1,581 acres. The USFS must adhere to conditions of the WCSC SUP in providing the Ski Area management control of operations in compliance with USFS oversight. The decision to be made by the USFS must consider reasonable access to the private property in relation to the management objectives associated with the Ski Area. The 1987 Land Exchange EA specified that development of the private property be “complementary and compatible” to the Ski Area. Granting access to the private property could potentially conflict with existing Ski Area operations. The No Action alternative and action alternatives are evaluated in Chapter 4 to determine the degree of compatibility between the private property and the Ski Area operations, and whether separation between the two entities should occur for the Federal action. This EIS evaluates compatibility of the Ski Area and access to the private property as a Key issue developed around traffic concerns and land use issues, and is interrelated with public access and safety. The compatibility issue on Federal land is primarily focused on the potential shared (mixed) use of Tranquility Road by the Applicant and the Ski Area. There is approximately 2.3 acres (250 feet by 400 feet) of skiable terrain affected by the access road (Tranquility Road) in Alternatives 2 and 4. There are other compatibility concerns with some potential development aspects of the private property that are beyond the scope of this analysis.

The Ski Area currently has one entrance for all ski facilities located approximately at milepost 167.9 on Highway 160. Skiers at the Ski Area primarily park their vehicles in the main lot off of FSR 391. The Tranquility parking lots (currently under construction) are

intended for overflow parking during peak skiing days. The Key issue of compatibility is characterized by a discussion of the traffic impacts associated with mixed use of the Ski Area/Village at the Ski Area entrance (No Action alternative or Proposed Action). WCSC has significant traffic control issues associated with operation of the Ski Area, based primarily on known ingress/egress relating to the Ski Area daily operations (morning parking for skiers with late afternoon departures). Topics pertaining to compatibility concerning traffic include truck deliveries/timing of deliveries (the WCSC requires truck deliveries outside of Ski Area hours of operation); potential construction equipment and personnel; existing Ski Area parking control; potential employees; trash/waste removal; potential retail operations; sightseers, and the general public; public access; and CDOT requirements. The current Ski Area operating plan allows gated closure of roads into the Ski Area boundary during hours when skiing is not occurring, primarily for security reasons. In addition, the ability to close Ski Area roads is critical for snow removal during the winter months. The private property access expectations may require 24-hour access. The WCSC does not conduct 24-hour snow removal. Tranquility Road is currently typically last in their snow removal progression.

Tranquility Road has been built by WCSC at considerable expense with a maximum 7.8 percent grade and a 23-foot driving surface constrained by retaining walls in portions of the road. The WCSC has built Tranquility Road with precise engineering to account for wetlands (per USACE CWA Section 404 permitting requirements), water issues, and snow removal. WCSC plans on paving Tranquility Road in 2004-2005 to decrease the potential for sedimentation and deforestation impacts. To prove compatible for mixed use Ski Area/Village traffic, Tranquility Road (under current conditions) would require significant management and traffic control. WCSC plans on completing Tranquility Road and the Tranquility Parking lots by late 2004 for overflow parking operations for the 2004-2005 ski season. The WCSC has expressed no interest in widening Tranquility Road beyond the 23-foot driving surface (Eisenfeld 2004).

3. *Public Safety.* In conjunction with the private property/Ski Area compatibility issue there is the Key issue of providing for public safety. The No Action Alternative and action alternatives are analyzed in Chapter 4 to determine which route(s) would protect the public in accessing the private property while acknowledging Ski Area operations. Traffic and Emergency evacuation are discussed in Chapter 4 with respect to Ski Area operations and the intended development of the private property. Skiable terrain at the Ski Area potentially conflicts with access to the private property and must be analyzed within the discussion of the No Action Alternative and action alternatives.

Another concern of public safety (and compatibility) is liability for traffic accidents if Tranquility Road is used by both the Ski Area and access to the private property. Liability may be incurred by the WCSC and the Applicant, depending on circumstances. Traffic levels and the access road/Highway 160 intersections are of primary concern to the USFS and CDOT for public safety. While not required by Mineral County, the USFS will also consider multiple ingress/egress access roads to provide for emergency access to the private property.

Shared use agreements for Ski Area/private property use and maintenance of Tranquility Road are not in place at this time. These agreements could be quite complex and could require significant USFS administrative/managerial involvement.

4. *Public Access to NFS Land.* The public lands surrounding the proposed 287.5-acre private property are used by the public for recreation opportunities. The Key issue is to evaluate the alternatives to determine how the USFS can maintain unimpeded public access to NFS lands regardless of the intended development of the private property. The public currently uses FSR 391 to gain access to the Alberta Lake area.

#### **1.11 COORDINATION WITH AGENCIES AND OTHER ORGANIZATIONS**

On June 18, 2004, the USFS mailed letters to other agencies concerning the Wolf Creek EIS and the potential for cooperating status. To date, no agency has formally responded to the USFS request to be a cooperating agency. Meetings have been held with representatives of various agencies and special interest groups:

- U.S. Fish and Wildlife Service, July 22 and 23, and September 15, 2004
- United States Army Corps of Engineers, June 28, 2004
- Colorado Department of Wildlife, July 9, 2004
- Colorado Department of Transportation, July 23 and September 15, 2004

The USFS welcomes cooperation with other agencies and organizations, and is willing to consider scheduling additional meetings upon request.

#### **1.12 OTHER ENVIRONMENTAL CONSIDERATIONS**

Many comments received during public scoping are not considered Key issues because they have been mitigated in the same way in all alternatives, or are not significantly affected by any alternative. Some of these concerns are already regulated by the standards and guidelines of the Forest Plan, many of which are described in Chapter 2 under “Items Common to All Action Alternatives”. The resource concerns with the greatest potential to be impacted, while not Key issues, are displayed as environmental considerations in Chapters 3 and 4 to determine the effects of the Federal action as analyzed for each alternative. These also include social and economic considerations. Both direct and indirect impacts are analyzed, as are cumulative effects of the Proposed Action with other past and reasonably foreseeable future projects that could affect the area. Environmental considerations of the potential private land development are discussed in Appendix A specifically. The potential cumulative impacts of the private land development and the Federal actions are presented in Section 4.19. Chapter 4, Section 4.20, also includes a discussion of the Key issues identified in Section 1.10 above, even though these Key issues are not necessarily related to “environmental impacts”.

### **1.13 ISSUES BEYOND THE SCOPE OF THIS EIS**

Some comments received during scoping are not specific to this project, relate to decisions at a higher level of planning, or cannot be appropriately addressed at the project level. These comments are paraphrased and addressed below:

- Health effects of high altitude
- Development requirements and considerations on private land – Development requirements on private land fall under the jurisdiction of Mineral County and other state and Federal permitting agencies. However, the cumulative impacts of development of the private property as the Village are included in Chapter 4.