

From: [Ghormley, Randy -FS](#)
To: [Blackwolf, Guy E -FS](#)
Subject: FW: WCV FP Amendment Question Revisited
Date: Tuesday, March 11, 2014 2:52:17 PM

#36

From: Weiwild@aol.com [mailto:Weiwild@aol.com]
Sent: Wednesday, January 09, 2013 12:38 PM
To: Ghormley, Randy -FS; Capps, Kenneth - OGC; Malecek, Thomas -FS; Wehrli, Christopher L -FS
Cc: david@westerneco.com
Subject: Re: WCV FP Amendment Question Revisited

Randy et al.,

Below is the requested, unedited FP amendment rationale that I pasted from my Dec. 10, 2012 email to David Johnson at WER. It would be beneficial for me to listen in to any discussion resolving this issue.

Thank you,

David,

This puts in writing what we discussed last week after our meeting on Alt. 2 consistency with the ALL S1 standard re: what rationale the FS might use to justify the non-significant Forest Plan amendment for Alt. 2 vs. Alt. 3. Others can flesh this out, but the key points are:

1. The FS is required under ANILCA to provide access to the Applicant's private inholding.
2. Through the NEPA process, the FS is considering providing the required access via a land exchange (Alt. 2) or ANILCA access (Alt. 3).
3. The Applicant's intent, after acquiring sufficient access to the inholding, is to develop the property.
4. The adverse effects to lynx associated with the proposed development are largely those associated with Village-related traffic contributions to Highway 160 as well as habitat losses on the private parcel.
5. The same relative levels of adverse effects to lynx could occur under Alt. 2 or 3, and the likely development effects of the connected action under either Alternative would be inconsistent with Standard ALL S1, requiring a Forest Plan amendment for either Alternative.
6. However, the FS would have no discretionary authority over the type or extent of any development or resulting traffic generation under either Alternative.
7. The same relative levels of adverse effects to lynx that could occur under Alt. 2 or 3 will be minimized as part of ESA consultation between the Applicant and USFWS, although it is currently unlikely that the extent of agreed upon conservation measures will result in the consistency of either alternative with Standard ALL S1.

8. Therefore, because the FS is required to provide access that would result in the same level of indirect effects under either alternative, it would be in the best public interest for the decision maker to select Alternative 2, which would result in the public acquisition of the Alberta Park wetlands as well as the land use benefits of separating Wolf Creek Ski Area from the resulting private parcel, rather than achieving no benefits under Alternative 3.

This approach is considerably more defensible than just saying that the land exchange process, with the intent of Village development from the outset, has been going on since 1987 and this process precedes adoption of the 2008 SRLA.

Rick Thompson

Wildlife Biologist, Western Ecosystems, Inc., 905 West Coach Road, Boulder, CO 80302
phone & fax: (303) 442-6144; weiwild@aol.com

In a message dated 1/9/2013 12:00:05 P.M. Mountain Standard Time, rghormley@fs.fed.us writes:

Rick – per our recent conversations, can you please send an electronic version of the WCV FPA Rationale document that you shared with me hardcopy to everyone included on this email? It will remain privileged under the process noted below by our attorney. Thank you.

From: Capps, Kenneth - OGC
Sent: Wednesday, January 09, 2013 11:11 AM
To: Ghormley, Randy -FS; Malecek, Thomas -FS; Wehrli, Christopher L -FS
Subject: RE: WCV FP Amendment Question Revisited

Randy:

I don't think you need to go through any gyrations to attempt to keep the document from being subject to FOIA. It is subject to FOIA right now but we'd deny any request for it under the deliberative process privilege until the ROD is issued, then, it would most likely be released.

Ken.

From: Ghormley, Randy -FS
Sent: Wednesday, January 09, 2013 10:57 AM
To: Capps, Kenneth - OGC; Malecek, Thomas -FS; Wehrli, Christopher L -FS
Cc: Ghormley, Randy -FS
Subject: WCV FP Amendment Question Revisited

FYI. I felt a need to query you all to see if we might want one more discussion of the site-specific FP amendment issue for WCV. The reason I bring this up is that both Dave Dyer and I rec'd quite a bit of feedback and alarm from our contractor and subcontractors regarding our decision to not go this route in association with the inconsistency with the ALL S1 Standard of the SRLA. Dave of course is now retired, but he shared his thoughts on this possible need before heading out the door in late December. Also, prior to the holidays, the subcontractor completing the lynx analysis and BA (Rick Thompson) discussed in detail with me his concern with this

approach and wanted to share with me a “rationale” write-up that he developed as a means for the FS to justify completing a non-significant FP amendment while selecting Alt. 2 (land exchange) vs. Alt 3 (ANILCA access). I had Rick send that to me hardcopy so it would not be subject to FOIA (is that correct?). Rick’s brief write-up is worth a review/discussion in my opinion so I wanted to get your thoughts on this. If you would like to review this 1 page document of “justification points” please let me know and I’ll have Rick send it electronically through an email with Ken as a cc so it will remain attorney-client privilege and not subject to FOIA from what I understand. If this isn’t a concern and you want to see it anyways I can scan it and share.

I think Rick brings up some very good points that are worth at least a review. Many are the very same points that I was thinking about to explain why an amendment was not needed. But this provides a way for the decision maker to still complete an amendment, and thereby perhaps be more legally sound, while also selecting Alt. 2 with good rationale why we wouldn’t go back to Alt 3 (which would also need an amendment anyways).

Please let me know if you want Rick to send it again with a cc to Ken (afterwards we’ll keep the conversation in-house but have the doc electronically), whether you would like me to scan it and share it (therefore being subject to FOIA), or whether you want to pursue this further at all. If we do the latter, at some point I would request additional written rationale from the RO NEPA shop on why an amendment is not needed.

Of course, if the FWS and the applicant work this out this might become moot in the future, but I don’t think that is likely.

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.