

February 27, 2020

Via Hand-delivery

United States Department of Justice
United States Attorney's Office for the District of Colorado
1801 California Street, Suite 1600
Denver, Colorado 80202

RE: DLCTM, Ltd. V. United States Forest Service

Dear U.S. Department of Justice:

I am writing to request that a Department of Justice attorney contact me as soon as possible about a preliminary injunction motion I may file in this action.

I represent DLCTM, Ltd., the plaintiff in this action which I filed today in the District of Colorado. The action involves a land exchange near Crested Butte, Colorado that the Forest Service plans to undertake in the near future on an unknown date. The complaint requests that the Court enter an injunction unless or until the Forest Service satisfies a condition of its land exchange decision.

As a courtesy, I would like to discuss whether a preliminary injunction motion is necessary, and if so, an expedited briefing schedule. I may be contacted at 303-228-2529 and zwilliams@lewisbess.com.

Sincerely,



Ezekiel J. Williams

Enclosures

cc: E.F. Mano DeAyala
Spencer Allen

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DLCTM, Ltd., a Texas Limited Partnership
(b) County of Residence of First Listed Plaintiff Harris County, Texas
(c) Attorneys (Firm Name, Address, and Telephone Number)
Lewis, Bess, Williams & Weese P.C.
1801 California St, Suite 3400, Denver CO 80202
303-861-2828

DEFENDANTS
United States Forest Service, an Agency of the United States Department of Agriculture
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
United States Department of Justice

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Judge from Appeal to District Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. 706
Brief description of cause:
The USFS is prepared to complete a land exchange without satisfying an express condition of its land exchange Decision, which is agency action that is arbitrary, capricious, and contrary to law.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

DATE: February 27, 2020
SIGNATURE OF ATTORNEY OF RECORD: s/ Ezekiel J. Williams

FOR OFFICE USE ONLY
RECEIPT #
AMOUNT
APPLYING IFP
JUDGE
MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows.

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment noting, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:	U.S. Civil Statute: 47 USC 553
Brief Description:	Unauthorized reception of cable service
Or:	"AP Docket"

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

DLCTM, LTD., a Texas Limited Partnership,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,
AN AGENCY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE

Defendant.

COMPLAINT

Plaintiff DLCTM, LTD., a Texas Limited Partnership (“Plaintiff” or “DLCTM”), brings the following Complaint against Defendant United States Forest Service (“Forest Service” or “Defendant”), an agency of the United States Department of Agriculture.

INTRODUCTION AND SUMMARY

1. This complaint for judicial review of agency action under the Administrative Procedure Act seeks an order setting aside and enjoining the Forest Service from completing a planned exchange of federal lands for non-federal lands in Gunnison County, Colorado unless or until the Forest Service satisfies an express condition of its land exchange decision. DLCTM seeks an order compelling the Forest Service to satisfy that express condition.

2. The Forest Service is prepared to complete the Fossil Ridge II Land Exchange, also known as the Long Lake Land Exchange (the “land exchange”), without satisfying the express condition of the land exchange decision that “the Non-Federal Party [to the land

exchange] will be required to provide a replacement easement at closing, authorizing equivalent rights” to the “Reciprocal easement granted to Pristine Point Inc., recorded at Gunnison County on January 29, 1996, Book 777, Page 722.” The “replacement easement” condition of the land exchange decision ensures that the land exchange will not diminish or prejudice the access rights of owners of lands within the Pristine Point Subdivision (including DLCTM) that adjoin or are near the federal lands to be transferred. The condition ensures that, after the exchange, DLCTM will continue to have vehicle and subsurface utility line access across the federal parcel to be transferred out of federal ownership so that DLCTM may access the residential subdivision and construct a residence on its land.

3. Crested Butte Land Trust (“CBLT”) is the non-federal party to the land exchange. The Forest Service decided to transfer the federal parcel adjoining the Pristine Point Subdivision to CBLT in exchange for private lands elsewhere in Gunnison County that CBLT will convey to the United States.

4. The land exchange condition requires the Forest Service to require CBLT to provide “at closing” of the land exchange an easement over the federal parcel transferred out of federal ownership “equivalent” to the “reciprocal easement” that appears at Book 777, Page 722 of the Gunnison County real property records. The stated express condition appears on page 2 of the Forest Service’s June 25, 2019 Categorical Exclusion and Decision Memo (the “Decision”), attached as Exhibit 1.

5. DLCTM seeks in this action an order of this Court compelling the Forest Service to require CBLT to provide the replacement easement at closing of the land exchange, and an order enjoining the Forest Service from undertaking the exchange unless or until it does so.

Absent this Court's relief, the Forest Service plans to transfer the federal lands to CBLT, an entity who claims that DLCTM is not entitled to utility line access to its own property, and who refuses to acknowledge that both it and the Forest Service are legally required to provide DLCTM with vehicle and subsurface utility line access across lands to DLCTM's Lot 18.

JURISDICTION

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331.

7. Venue is proper under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this district and the property that is the subject of the action is situated in this district.

8. The Decision is final agency action within the meaning of 5 U.S.C. § 704.

9. No statute or regulation required DLCTM to submit an administrative appeal, objection, protest or request for review within the Forest Service or the Department of Agriculture prior to filing this Complaint. See Exhibit 1 at 7. DLCTM was not required to exhaust any administrative remedies prior to filing this Complaint.

10. This Court has authority to review the Decision under the APA, 5 U.S.C. §§ 702, 706. This Court may grant declaratory and injunctive relief under 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C § 2202 (injunctive relief), and the APA, 5 U.S.C. §§ 701-706.

PARTIES

11. Plaintiff DLCTM, Ltd. is a Texas Limited Partnership located at 301 Mayerling Dr., Houston, Texas, 77024. DLCTM owns Lot 18 in Pristine Point Subdivision, Gunnison County, Colorado. DLCTM purchased Lot 18 in reliance that it would have year-round access to Lot 18 to use and develop it for a residence, including by providing subsurface utilities to Lot 18,

using the easement the Forest Service granted to Pristine Point, Inc. that appears at Exhibit 2. See Exhibits 2, 8, 9. DLCTM is a member in good standing of the Pristine Point Owners' Association, Inc. DLCTM is a beneficiary of and authorized user of the easement attached as Exhibit 2.

12. DLCTM has constitutional and zone of interest standing under the Administrative Procedure Act, 5 U.S.C. § 702.

- a. DLCTM has constitutional standing to invoke this Court's jurisdiction to review this case and controversy. The Forest Service's refusal to adhere to the condition of the Decision that it require CBLT to provide "at closing" an easement "equivalent" to the easement attached as Exhibit 2 injures DLCTM by wrongly depriving it of vehicle and subsurface utility access to Lot 18. The Forest Service caused that injury to DLCTM because the Forest Service denies that it has any obligation to require CBLT to provide "at closing" a "replacement easement" to benefit DLCTM and other owners within the Pristine Point Subdivision. An order of this Court compelling the Forest Service to satisfy the replacement easement condition of the land exchange Decision, or an order enjoining the Forest Service from closing the land exchange without satisfying that same condition, would redress the injury to DLCTM.
- b. DLCTM's interests are within the zone of interests protected by the Federal Land Policy Management Act, National Environmental Policy Act and Administrative Procedure Act. DLCTM has interests as an owner of Lot 18, a member of Pristine Point Owner's Association, a beneficiary of the easement attached as

Exhibit 2, and is a party that is adversely affected or aggrieved by the agency's refusal to satisfy the replacement easement condition of the Decision. Those interests are protected by the right-of-way and land exchange provisions of the Federal Land Policy Management Act, 43 U.S.C. §§ 1716, 1761, the National Environmental Policy Act, and the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. § 702, 706.

13. Defendant United States Forest Service is a federal agency within the United States Department of Agriculture. The Federal Land Policy Management Act authorizes the Forest Service to dispose of a tract of public land by exchange where the Forest Service finds it to be in the public interest. 43 U.S.C. § 1716(a); see also 36 C.F.R. § 254.3. Conditions for a land exchange identified in a public interest determination under the Federal Land Policy Management Act are legally binding upon the agency because those conditions are the statutory prerequisite for the agency to convey title to federal lands. 43 U.S.C. § 1716(a). Pursuant to the Federal Land Policy Management Act, the Forest Service issued the Decision and determined it to be in the public interest to convey the federal parcel to CBLT so long as CBLT provides at closing an easement over that parcel to benefit the lot owners within the Pristine Point Subdivision, including the owners of Lot 18.

ADDITIONAL ALLEGATIONS

14. The Forest Service's land exchange Decision imposes the following condition for the agency's decision to transfer the federal parcel to CBLT, the non-federal party to the exchange:

Outstanding Rights:

1. Reciprocal easement granted to Pristine Point Inc. recorded at Gunnison County on January 29, 1996, Book 777, Page 722; the Non-Federal Party will be required to provide a replacement easement at closing, authorizing equivalent rights.

Exhibit 1 at 2. The “reciprocal easement” that is the subject of the express condition of the Forest Service’s land exchange Decision appears at Book 777, Page 722, Gunnison County, is attached as Exhibit 2, and is referred to in this Complaint as the “Reciprocal Easement.”

See Exhibit 2.

15. The Reciprocal Easement provides access over Forest Service lands to Lot 18 of the Pristine Point Subdivision near the Town of Mt. Crested Butte in Gunnison County, Colorado. See Plat Depicting Easement and Lot 18, attached as Exhibit 4 at 2. The purpose of the Reciprocal Easement was, and is, to allow for road and subsurface utility line access over Forest Service lands to lots within the Pristine Point Subdivision, including Lot 18 so that the owner of Lot 18 may construct a residence. The Reciprocal Easement provides that it “shall continue for as long as needed for the purpose of access to a residential subdivision.” Exhibit 2 at 2. The Exhibit A to the Reciprocal Easement states that the easement over the Forest Service parcel is 80 feet wide, 40 feet on each side of the centerline, and depicts the Reciprocal Easement providing the sole access to Lot 18 of the Pristine Point Subdivision. See Exhibit 2 at Ex. A.

16. On information and belief, Exhibit A to the Reciprocal Easement provides that the depicted easement allows for utilities. See Exhibit 2 at Ex. A.

17. “Access to a residential subdivision” within the meaning of the Reciprocal Easement, and within the meaning of Exhibit A to the Reciprocal Easement, includes year-round vehicle access and subsurface utility line access for the owner of Lot 18 sufficient to allow for the construction, use and occupation of a residence on Lot 18. Exhibit 2.

18. The Reciprocal Easement is “reciprocal” because it was and is intended to provide the same easement and access rights and subsurface utilities as a separate easement to which the Reciprocal Easement connects at three locations. Pristine Point, Inc. granted that separate easement to the Forest Service in the Pristine Point Subdivision, recorded in Gunnison County, Book 777, Page 433. The easement recorded at Book 777, Page 433 expressly provided for the “installation, replacement, repair and maintenance of underground utility lines and fixtures.” See Grant of Existing Road Easement, Gunnison County, Book 777, Page 433, attached as Exhibit 3 at page 2. That separate easement attached as Exhibit 3 is referred to in this Complaint as the “Separate Easement.”

19. The recorded plat for Pristine Point Subdivision depicts both the Reciprocal Easement and the Separate Easement and shows that vehicle and subsurface utility line access to Lot 18 requires travel over the Separate Easement, over a segment of the Reciprocal Easement, over a segment of the Separate Easement, and over a segment of the Reciprocal Easement. See Exhibit 4 at 2. The recorded plat states that the Reciprocal Easement granted by the Forest Service provides vehicle and utility access to Lot 18. It depicts the Reciprocal Easement over Forest Service lands and states “80’ Wide Lot 18 Utility And Access Easement Per Book 777, Page 722.” See Pristine Point at Crested Butte Plat, Gunnison County, Reception No. 478904 at 2, October 8, 1997, attached as Exhibit 4 at page 2. The recorded plat shows that the connected segments of the Reciprocal Easement and the Separate Easement provide vehicle and subsurface utility line access to Lot 18. See Exhibit 4 at 2.

20. Pristine Point, Inc., the original grantee of the Reciprocal Easement, assigned the Reciprocal Easement to the Pristine Point Owners’ Association, Inc. in 2019. See Assignment of

Easement, Gunnison County, Reception No. 660914, recorded July 8, 2019, attached as Exhibit 6.

21. The land exchange condition obligates the Forest Service to require CBLT “to provide a replacement easement at closing authorizing equivalent rights” to the “Reciprocal easement granted to Pristine Point Inc. recorded at Gunnison County on January 29, 1996, Book 777, Page 722.” Exhibit 1 at 2. The land exchange “replacement easement” condition requires the Forest Service to require CBLT to provide “at closing” an easement in favor of the Pristine Point Subdivision that provides year-round vehicle access for Pristine Point lot owners and subsurface utility line access sufficient to allow for the construction, use and occupation of a residence on Lot 18.

22. The Forest Service has stated its intent to disregard the replacement easement condition of the Decision. The Forest Service has stated that the agency plans to transfer the federal parcel to CBLT without requiring CBLT to provide the replacement easement at closing to benefit the Pristine Point Subdivision, including DLCTM, the owner of Lot 18. The Forest Service has not explained why it refuses to follow the replacement easement condition of the land exchange Decision. See Letter of Forest Supervisor Chad Stewart January 28, 2020, attached as Exhibit 5.

23. CBLT’s Executive Director Noel Durant has had several phone and email conversations with representatives of DLCTM. Contrary to the express language of the Decision, CBLT now maintains it is no longer required to provide a replacement easement. DLCTM has been consistent in its efforts to document with CBLT access for utilities to Lot 18.

Although Mr. Durant expressed a willingness to consider the topic of utilities to Lot 18 after the transaction closed, when pressed he stated CBLT's position that Lot 18 has no rights to utilities.

24. DLCTM purchased Lot 18 in 2013. During the marketing and sale of Lot 18 to DLCTM, the Seller expressly represented "[c]ity utilities available" and more specifically "Gunn. Cnty Electric, Telephone, Public Sewer, Central Water." See Marketing for Sale of Lot 18 Pristine Point, attached as Exhibit 8; and Detailed Land Report, attached as Exhibit 9.

25. CBLT refuses to follow the terms of the land exchange Decision. CBLT refuses to provide at closing an easement to Pristine Point Subdivision, including DLCTM as owner of Lot 18, that provides lot owners with vehicle access, and DLCTM with subsurface utility line access to Lot 18 through the federal parcel to be transferred to CBLT. CBLT claims that the Reciprocal Easement does not provide utility line access to Lot 18. But CBLT has record title notice under Colorado law that the Reciprocal Easement provides for subsurface utility line access for the owner of Lot 18, including based on the recorded plat for Pristine Point. See Exhibit 2, Exhibit 4 at 2; Arrove v. First Fed. Sav. & Loan Ass'n of Tarpon Springs, Fla., 713 P.2d 1329, 1331 (Colo. App. 1985) (noting that all persons have constructive notice of the terms of recorded instruments). Yet CBLT intends to close upon the land exchange without fulfilling at closing its duty under the land exchange Decision to provide a replacement easement to the Pristine Point Subdivision. The Forest Service has not explained why it plans to ignore the replacement easement condition of the land exchange Decision. The Forest Service's refusal to require CBLT to provide a replacement easement at closing will landlock and maroon Lot 18, rendering it undevelopable.

26. The Forest Service's willful disregard of the replacement easement condition of the land exchange Decision is arbitrary, capricious, an abuse of discretion, and not in accordance with law within the meaning of 5 U.S.C. § 706(2). The agency's plan to transfer the federal parcel to CBLT without complying with the express condition of the Decision is also agency action unlawfully withheld or unreasonably delayed within the meaning of 5 U.S.C. § 706(1).

27. The Forest Service is bound by the replacement easement condition of its land exchange Decision because the agency is required to follow conditions it imposes on itself. E.g., 40 C.F.R. § 1505.3 ("Mitigation . . . and other conditions established . . . during its review and committed as part of the decision shall be implanted by the lead agency.").

28. The Forest Service will violate the Federal Land Policy Management Act if it undertakes the land exchange without requiring CBLT to provide "at closing" a "replacement easement" that provides Pristine Point Subdivision with vehicle access and subsurface utility line access, including to Lot 18, over the lands to be transferred to CBLT because that condition is a basis for the agency's determination that the exchange is in the public interest within the meaning of 43 U.S.C. § 1716(a).

29. The Forest Service will violate the National Environmental Policy Act if it undertakes the land exchange without requiring CBLT to provide "at closing" a "replacement easement" that provides Pristine Point Subdivision with vehicle access and subsurface utility line access, including to Lot 18, over the lands to be transferred to CBLT.

- a. The Forest Service's land exchange decision is major federal action that triggers the duty to prepare an environmental review document under the National Environmental Policy Act. 42 U.S.C. § 4332(c).

- b. The Forest Service did not prepare an environmental assessment or environmental impact statement prior to issuing the land exchange Decision. See Exhibit 1.
- c. The Forest Service instead relied upon a categorical exclusion from the National Environmental Policy Act set forth at 36 C.F.R. § 220.6(d)(7). That categorical exclusion is for an “exchange of land or interest in land where resulting land uses remain essentially the same.” 36 C.F.R. § 220.6(d)(7).
- d. The “land use” of the federal parcel to be transferred to CBLT includes the Reciprocal Easement in favor of the Pristine Point Subdivision for vehicle and subsurface utility line access to a residential subdivision, including to Lot 18. Further, the “land use” of Lot 18 for purposes of the categorical exclusion allows for development of a residential structure, with utility line access, as depicted on the recorded Pristine Point Subdivision Plan, of which the Forest Service and CBLT have had record title notice under Colorado law. See Exhibit 4.
- e. If the Forest Service transfers the federal lands to CBLT without requiring CBLT to provide the replacement easement, the Forest Service will take action that changes the land uses of both the federal parcel and Lot 18. That action will land lock, or maroon, Lot 18 without access sufficient to develop a residence. Changing the uses of the lands resulting from the land exchange exceeds the scope of the categorical exclusion at 36 C.F.R. § 220.6(d)(7), and results in environmental consequences that the Forest Service neither disclosed nor analyzed under the National Environmental Policy Act. Such a result would not

ensure that “resulting land uses remain essentially the same” as required by 36 C.F.R. § 220.6(d)(7).

30. But the Forest Service now prefers not to follow the replacement easement condition of its own Decision. Without ever explaining why, the Forest Service has stated that it will not require CBLT to provide the easement at closing to benefit Pristine Point, including the owner of Lot 18. See Exhibit 5. The Forest Service instead says it will assign the Forest Service’s interest as grantor of the easement it granted to Pristine Point Inc. to CBLT. See Exhibit 5 at 1 (“[T]he agency plans to convey the agency’s rights to administer and enforce the easement to CBLT.”).

31. The Forest Service cannot delegate the agency’s interest as grantor of the Reciprocal Easement to CBLT because CBLT, a non-federal entity, is not authorized to hold or administer a right-of-way issued pursuant to and subject to the Federal Land Policy Management Act. See 43 U.S.C. § 1761 (authorizing the Department of Agriculture and Department of Interior to issue, hold, and administer rights-of-way over federal lands); Forest Serv. Emps. for Env’tl. Ethics v. U.S. Forest Serv., 689 F. Supp.2d 891, 905 (W.D. Ky. 2010) (ruling that the Forest Service could not delegate to a non-Forest Service entity the power to administer special use permits because “[t]he delegation of such power by the Forest Service constitutes unlawful delegation of the agency’s duty” and “the Forest Service has been unable to show affirmative evidence of Congressional authority to delegate so extensively in direct violation of its regulations.”). It would be arbitrary, capricious, an abuse of discretion, and contrary to law for the Forest Service to delegate the grantor’s interest in the Reciprocal Easement to CBLT given

CBLT's position that the Reciprocal Easement does not provide subsurface utility line access to Lot 18.

32. The Forest Service, prepared to receive the private lands conveyed to it in the land exchange, and as a result of its own failure to honor its own written obligation, now seeks to avoid requiring CBLT to provide the replacement easement, instead preferring to force DLCTM, Ltd. to suffer uncertainty and no access to its real property across lands to be conveyed to CBLT.

33. The Forest Service never stated in the Decision that the Reciprocal Easement does not provide subsurface utility line access to Lot 18.

34. DLCTM wrote the Forest Service on February 4, 2020 and requested written confirmation that the agency will satisfy the replacement easement condition of the land exchange Decision. See Exhibit 7. The Forest Service has not responded.

35. The Forest Service's refusal to satisfy the express condition of the Decision that CBLT will provide "at closing" a "replacement easement" "equivalent" to the Reciprocal Easement is agency action unlawfully withheld or unreasonably delayed under the APA because it is: (a) discrete agency action that (b) the agency is required to take. See 5 U.S.C. § 706(1); Norton v. S. Utah Wilderness All., 542 U.S. 55, 64 (2004). The APA authorizes the Court to compel the Forest Service to require CBLT to provide the "replacement easement" "at closing" for the Reciprocal Easement because that action is specific, defined, and legally required by the Decision. 5 U.S.C. § 706(1).

36. In the alternative, Plaintiff DLCTM, Ltd. respectfully requests that the Court declare that the Forest Service may not close the land exchange, and enjoin the agency from closing the land exchange, unless or until the Forest Service satisfies the express condition of the

Decision that it require CBLT to provide at closing the “replacement easement” that provides vehicle access for lot owners within Pristine Point, and sub-surface utility access to Lot 18, across the federal parcel to the exchange.

PLAINTIFF’S CLAIMS FOR RELIEF

Claim 1 – The Forest Service’s Refusal to Satisfy the Replacement Easement Condition of its Land Exchange Decision Is Agency Action Unlawfully Withheld Under 5 U.S.C. § 706(1)

37. Plaintiff DLCTM reasserts and incorporates by reference each of the above paragraphs.

38. DLCTM is entitled to judicial review under the APA, which grants that right to “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.” 5 U.S.C. § 702; see also id. at § 551(13) (“‘agency action’ includes the . . . failure to act”).

39. The APA authorizes a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

40. The Forest Service’s Decision is final agency action pursuant to 5 U.S.C. § 704.

41. The Decision states that “the Non-Federal Party [to the land exchange] will be required to provide a replacement easement at closing, authorizing equivalent rights” to the “Reciprocal easement granted to Pristine Point Inc., recorded at Gunnison County on January 29, 1996, Book 777, Page 722.” Exhibit 1 at 2.

42. By expressly refusing to require CBLT, the non-federal party to the land exchange, to provide the replacement easement described in the Decision, the Forest Service has unlawfully withheld a discrete agency action it is legally required to take. See 5 U.S.C. § 706(1); Norton v. S. Utah Wilderness All., 542 U.S. 55, 64 (2004).

43. The APA authorizes the Court to compel the Forest Service to require CBLT to provide at closing of the land exchange the replacement easement required by the Decision to provide the Pristine Point Subdivision with year-round access to Lot 18, including subsurface utility line access. 5 U.S.C. § 706(1).

Claim 2 – The Forest Service’s Refusal to Satisfy the Replacement Easement Condition of the Land Exchange Decision Existing Road Is Arbitrary, Capricious, and Contrary to Law

44. DLCTM reasserts and incorporates by reference each of the above paragraphs.

45. The replacement easement condition of the land exchange Decision states that “the Non-Federal Party [to the land exchange] will be required to provide a replacement easement at closing, authorizing equivalent rights” to the “Reciprocal easement granted to Pristine Point Inc., recorded at Gunnison County on January 29, 1996, Book 777, Page 722.” Exhibit 1 at 2.

46. The replacement easement condition requires the Forest Service to require CBLT to provide “at closing” an easement in favor of the Pristine Point Subdivision that provides year-round vehicle access for lot owners and subsurface utility line access over the federal parcel to be transferred to CBLT sufficient to allow for the construction, use and occupation of a residence on Lot 18.

47. The replacement easement condition of the land exchange Decision is binding upon the Forest Service.

- a. Having imposed the replacement easement condition upon itself in the land exchange Decision, the Forest Service is legally obligated to refuse to close unless or until CBLT provides the replacement easement that provides vehicle and subsurface utility line access to Lot 18 under the binding terms of the Decision.

- b. The Forest Service is bound by the replacement easement condition it imposed upon itself in the land exchange Decision because the agency must adhere to conditions to which it commits. E.g., 40 C.F.R. § 1505.3 (“Mitigation . . . and other conditions established . . . during its review and committed as part of the decision shall be implanted by the lead agency.”); Pac. Coast Fed’n of Fishermen’s Ass’ns v. Blank, 693 F.3d 1084, 1104 n.16 (9th Cir. 2012) (“An agency must implement the measures it chooses to adopt in its decision.”) (citing 40 C.F.R. § 1505.3); Tyler v. Cisneros, 136 F.3d 603, 608 (9th Cir. 1998) (same).

48. The replacement easement condition of the land exchange Decision is a binding condition of the Forest Service’s public interest determination for the land exchange under the Federal Land Policy Management Act, 43 U.S.C. § 1716(a).

- a. The Forest Service’s statutory authority to undertake the land exchange under the Federal Land Policy Management Act is conditioned on the agency’s determination that the exchange is in the “public interest.” 43 U.S.C. § 1716(a).
- b. A condition that the Forest Service imposes in the land exchange decision to ensure that the statutory public interest standard is satisfied is binding and judicially enforceable.
- c. The replacement easement condition of the land exchange decision serves to protect the public interest within the meaning of 43 U.S.C. § 1716(a) because it operates to provide access within a subdivision and is necessary to prevent Lot 18 from being land locked. See Exhibit 1 at 2.

- d. The Forest Service will violate the public interest requirement of 43 U.S.C. § 1716(a) if it completes the land exchange without satisfying the replacement easement condition of the land exchange decision.

49. The replacement easement condition of the land exchange Decision is a principal basis on which the Forest Service rested its compliance with the National Environmental Policy Act. It would be arbitrary and capricious for the agency to rely upon that condition in its categorical exclusion but dispense the same condition in undertaking the land exchange.

- a. The Forest Service relied upon the categorical exclusion from the National Environmental Policy Act at 36 C.F.R. § 220.6(d)(7), which may be used only for land exchanges “where resulting land uses remain essentially the same.”
- b. The replacement easement condition ensures that “resulting land uses remain essentially the same” within the meaning of the categorical exclusion by requiring CBLT to provide “at closing” the easement to permit Pristine Point lot owners, including DLCTM, with year-round vehicle and utility access to Lot 18, the same access provided by the Reciprocal Easement at Gunnison County, Book 777, Page 722. See Exhibit 2.
- c. It is arbitrary, capricious, and contrary to law for the Forest Service to rely upon the replacement easement condition for purposes of employing a categorical exclusion from the National Environmental Policy Act but to abandon the same condition in undertaking the land exchange itself.

50. The Forest Service has not explained why it decided not to follow the replacement easement condition of the land exchange Decision. See Exhibit 5. The Forest Service instead

has simply stated it will do something else. See Exhibit 5. The Forest Service has not responded to DLCTM's February 4, 2020 letter asking for confirmation that the agency will satisfy the replacement easement condition of the land exchange Decision. See Exhibit 7.

51. The APA authorizes a reviewing court to hold unlawful and set aside agency action that is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A). The Forest Service's stated intent to refuse to satisfy the replacement easement condition of the land exchange Decision prior to completing the land exchange is arbitrary, capricious, and contrary to law within the meaning of 5 U.S.C. § 706(2)(A).

Claim 3 – The Forest Service Cannot Delegate the Reciprocal Easement to CBLT

52. DLCTM reasserts and incorporates by reference each of the above paragraphs.

53. The Forest Service stated its intent to delegate the Reciprocal Easement to CBLT for CBLT to administer. Exhibit 5.

54. The Forest Service cannot delegate the agency's interest as grantor of the Reciprocal Easement to CBLT.

55. The Forest Service's interest as grantor under the Reciprocal Easement is authorized and defined by the right-of-way provisions of the Federal Land Policy Management Act referenced on the first page of the Reciprocal Easement. See Exhibit 2; 43 U.S.C. § 1761 (statute authorizing Department of Agriculture to issue a right-of-way).

56. Under federal law, only the Department of Interior and the Department of Agriculture may issue, authorize, and administer the grantor's interest in a Federal Land Policy Management Act right-of-way. See 43 U.S.C. § 1761(a).

57. CBLT, a non-governmental entity, cannot grant, hold as successor-grantor, or administer as successor-grantor, a right-of-way or easement that under the Federal Land Policy Management Act may be issued, authorized or administered solely by the Department of Interior or Department of Agriculture. 43 U.S.C. § 1761(a).

58. The Federal Land Policy Management Act states that where the Department of Agriculture “decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way . . . the lands may be conveyed subject to the right-of-way,” which requires the Department of Agriculture to continue to administer the right-of-way. 43 U.S.C. § 1768. The same statute does not permit the Department of Agriculture to convey the agency’s interest as grantor under the right-of-way to a non-federal party such as CBLT.

59. The Forest Service cannot delegate to CBLT, a non-federal entity, the Forest Service’s duty to administer Forest Service special use authorizations such as the Reciprocal Easement. E.g., Forest Serv. Emps. for Env’tl. Ethics v. U.S. Forest Serv., 689 F. Supp.2d 891, 905 (W.D. Ky. 2010) (ruling that the Forest Service could not delegate to a non-Forest Service entity the power to administer special use permits because “the delegation of such power by the Forest Service constitutes unlawful delegation of the agency’s duty” and “the Forest Service has been unable to show affirmative evidence of Congressional authority to delegate so extensively in direct violation of its regulations.”).

60. On information and belief, the Forest Service is aware that CBLT’s position is that DLCTM has no subsurface utility line access to Lot 18. The Forest Service, however, never stated in its Decision that the Reciprocal Easement does not provide utility line access to Lot 18.

61. It would be arbitrary, capricious, and contrary to law for the Forest Service to delegate the grantor's interest in the Reciprocal Easement to CBLT given CBLT's position that the Reciprocal Easement does not provide subsurface utility line access to Lot 18.

62. The APA authorizes a reviewing court to hold unlawful and set aside agency action that is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A). The Forest Service's stated intent to delegate the agency's interest as grantor in the Reciprocal Easement to CBLT is arbitrary, capricious, and contrary to law within the meaning of 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DLCTM respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant and provide the following relief:

1. Compel the Forest Service to require CBLT to provide at closing of the land exchange a replacement easement that provides Plaintiff with year round vehicle access and subsurface utility line access to Lot 18 of Pristine Point Subdivision over the federal parcel to be exchanged to CBLT as required by the Forest Service's land exchange Decision;
2. Declare that the Forest Service may not close the land exchange without satisfying the replacement easement condition on page 2 of the land exchange Decision;
3. Declare that the Forest Service's intent to delegate the agency's interest as grantor in the Reciprocal Easement to CBLT is arbitrary, capricious, and contrary to law within the meaning of 5 U.S.C. § 706(2)(A);
4. Award Plaintiff a preliminary and permanent injunction enjoining the Forest Service from completing the land exchange unless or until the Forest Service satisfies the replacement easement condition of the Decision by requiring CBLT to provide at closing an

easement that provides Plaintiff with year-round vehicle access and subsurface utility line access to Lot 18 of Pristine Point Subdivision over the federal parcel to be exchanged to CBLT;

5. Award DLCTM its attorneys' fees under the Equal Access to Justice Act; and
6. Provide such other relief as the Court deems just and proper.

Respectfully submitted this 27th day of February 2020.

LEWIS, BESS, WILLIAMS & WEESE P.C.

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EXHIBIT 1

CATEGORICAL EXCLUSION AND DECISION MEMO
Grand Mesa, Uncompahgre and Gunnison National Forests
Gunnison Ranger District
Gunnison, Colorado

Name of Project: Fossil Ridge II Land Exchange

Location of Project: This land exchange is located within the Gunnison Ranger District of the Gunnison National Forest. Both the Federal parcel and the Non-Federal parcels are located within Gunnison County, Colorado.

Description of Project:

The Crested Butte Land Trust (CBLT), a non-profit corporation in Colorado, is seeking to acquire one parcel of National Forest System (NFS) land near the Town of Mt. Crested Butte (Federal Parcel A) in exchange for the remaining parcel of the Fossil Ridge private inholding (Non-Federal Parcel 1) and a patented mining claim near the Town of Crested Butte (Non-Federal Parcel 2). The Non-Federal Parcels are owned or will be owned by CBLT. All parcels are shown in Exhibit A.

Non-Federal Parcel 1

The acquisition of Non-Federal Parcel 1 would complete the conveyance of the entire 960.15-acre Fossil Ridge inholding to the United States of America, except for a 15.00 acre parcel within Tract 37 along the southern property boundary encompassing the Jorgensen Cabin and associated outbuildings. This 15-acre parcel is not available for acquisition and will remain an inholding for the foreseeable future. In 2013, 331.539 acres of the Fossil Ridge parcel was conveyed to the United States in the Fossil Ridge I Land Exchange.

The scope of the analysis of the Environmental Assessment (EA) for the Fossil Ridge I Land Exchange was the 945.15-acre Fossil Ridge parcel. The Decision Memo and Finding of No Significant Impact for that land exchange, signed on September 20, 2013, determined that *“the remaining 613.611 acres of the NFP are suitable for acquisition in future land exchanges where acceptable non-federal lands are being offered to the United States. Acquisition of these remaining lands is consistent with the GMUG [Grand Mesa, Uncompahgre and Gunnison National Forests] Forest Plan and pertinent law, regulation, and policy.”*

The mineral estate of Non-Federal Parcel 1 was reserved by the United States upon issuance of the patent, and will merge with the title at the closing of this land exchange.

Non-Federal Parcel 2

Non-Federal Parcel 2 is the Mineral Survey Number 19527, Roosevelt No. 3 lode, about 15.39 acres. The acquisition of this parcel would add part of Copley Lake, its associated wetlands and a segment of a National Forest System Trail (NFST) 585 (Elk Creek Trail) to the Gunnison National Forest. The mineral estate of the Copley Lake parcel will be conveyed to the United States.

Federal Parcel A

The Federal land is a parcel of NFS land with reserved public domain status totaling about 120.00 acres including the southwestern portion of Meridian (aka Long) Lake. The mineral estate will be conveyed to CBLT.

Forest Service Objectives

Forest Service objectives in pursuing this exchange include acquiring the remaining portion of a significant undeveloped private inholding abutting the southwestern boundary of the Congressionally-designated Fossil Ridge Recreation Management Area. Acquisition of the Copley Lake parcel would add stunning scenery and wetlands to the Gunnison National Forest, and secure access of a segment of NFST 585 (Elk Creek Trail) to ensure public access to Copley Lake, a popular hiking destination.

The Land and Resource Management Plan for Grand Mesa, Uncompahgre and Gunnison National Forests, issued in 1983, and amended in 1991 (Forest Plan), directs disposal of lands to States, counties, cities, or other Federal agencies as a priority, and when parcels are small and intermingled with mineral or homestead patents.

Federal Parcel A is small and isolated from other NFS land; it does not offer an abundance of resources and recreation opportunities typical of NFS lands. Although CBLT is not a municipality or other Federal agency, it has resource management objectives similar to the Forest Service and future management of Federal Parcel A by CBLT will remain similar to its current management.

There are three unauthorized improvements (portions of two reservoirs and a segment of an irrigation ditch) on the Federal Parcel A that would not need to be authorized nor managed by the United States if this land exchange is completed.

Legal Descriptions of the Parcels:

Federal Parcel A:

Township 13 South, Range 86 West, 6th P.M., Gunnison County, Colorado

Section 22: NW1/4SW1/4, S1/2SW1/4.

Totaling: Approximately 120.00 acres, more or less

Outstanding Rights:

1. Reciprocal easement granted to Pristine Point Inc. recorded at Gunnison County on January 29, 1996, Book 777, Page 722; the Non-Federal Party will be required to provide a replacement easement at closing, authorizing equivalent rights.

Grazing Permit: The parcel is part of the Meridian Grazing Allotment. The grazing permittee has been notified and provided the two-year notice of pending exchange. The non-Federal Party will not be required to authorize this use beyond the two-year period notification period required by the Forest Service.

Federal Parcel A is located approximately 1.5 miles west of the Town of Mt. Crested Butte. The parcel is comprised mostly of steep timbered slopes and the south half of Meridian Lake, a natural alpine lake that has been impounded. The Federal parcel is surrounded by private land on all sides.

Non-Federal Parcel 1– Fossil Ridge

Township 50 North, Range 2 East, N.M.P.M.

Sections 2, 3, 10, and 11:

A parcel of land located within Parcel B, Fossil Ridge Exemption recorded August 16, 2013 at Reception No. 622153, said parcel being a part of the westerly portion of Tract 37 and easterly portion of Tract 38, located in sections 2, 3, 10, 11, Township 50 North, Range 2 East, New Mexico Principal Meridian, and more particularly described as follows:

Beginning at a point on line 1-2, Tract 37, whence Corner No. 1, said tract bears S. 89° 56' 54" E., 1167.77 feet distant; Thence, N. 89° 56' 54" W., 4112.50 feet distant along line 1-2, said tract, to Corner No. 2, Tract 37, identical with Corner No. 5, Tract 38; Thence S 89° 58' 51" W., 2150 feet distant along line 5-6, Tract 38; Thence, S. 0° 08' 53" E., 2641.89 feet distant to line 3-4, Tract 38, identical with line 1-2, Tract 46 to corner No. 4, Tract 38, identical Corner No. 1, Tract 46; Thence S. 0°00'20" W., 2641.05 feet distant along line 2-3, Tract 37, identical with line 4-1, Tract 46 to Corner No. 3, Tract 37, identical with Corner No. 4, and Corner No. 4, Tract 47; Thence, N. 89°56'48" E., 1139.76 feet distant along line 3-4, Tract 37; identical with line 3-4, Tract 47; Thence, along the excepted 15 acre parcel for the following five courses, North, 754.55 feet distant; Thence, S. 76°42'0E., 214.29 feet distant; Thence S. 72°38'27" E., 635.42 feet distant; Thence, S. 64°30'43" E., 327.33 feet distant; Thence, S. 0°00'04" W., 373.78 feet distant to line 3-4, Tract 37, identical with line 3-4, Tract 47, N. 89°56'48" E., 1858.32 feet distant along line 3-4, Tract 37, identical with line 3-4, Tract 47; Thence North,

5277.24 feet distant to the point of beginning.

Together with a nonexclusive permanent and perpetual easement to run with the land described as Parcel III in Exhibit A of General Warranty Deed Reception No. 625368, sixty feet in width being thirty feet either side of centerline, over, across and on two existing roads located on Parcel II, all as shown on parcel B of that certain plat entitle "Fossil Ridge Exemption" recorded August 16, 2013, at Reception No. 622153 as the "Existing Two-Track Access Road" and a portion of the "Existing Roadway Commonly Know as USFS Road 743" extending from the western boundary of Parcel II to the intersection with the "Existing Two-Track Access Road", for the purposes of ingress, egress, and the installment, maintenance, repair and replacement of any utilities, which shall be underground (the "Easement"). Grantor shall be and hereby is authorized to repair and maintain the Easement over the Parcel II to ensure that it is useable and passable for ingress and egress to Parcel III, as described on Exhibit A hereto, and for the installment, maintenance, repair and replacement of any utilities, and is permitted to place basecourse and gravel on the Easement, but shall have no authority or permission to pave the Easement or otherwise make the Roadway surface impermeable. Grantor shall have the right to cut timber within the Easement to the extent necessary for maintaining the road. Plowing of the Easement in the winter time is prohibited. Grantor shall first consult with and receive Grantee's approval prior to plowing snow in the spring or fall.

Totaling: Approximately 613.611 acres more or less.

Outstanding Rights

1. Access and Utility Easement from The Trust for Public Land to Gunnison Valley Housing Foundation as set forth in the instrument recorded August 16, 2013 at Reception No. 622156.

Non-Federal Parcel 1, owned by The Trust for Public Land (TPL), is located at the headwaters of Beaver Creek and Lost Canyon Gulch west of the Fossil Ridge Wilderness Area. The parcel is surrounded by NFS lands. Its northern boundary abuts the Fossil Ridge Recreation Management Area, a Congressionally-designated area. The Non-Federal Party has entered into a purchase and sale agreement dated January 13, 2017, with TPL to acquire the remaining 613.611 acres of the Fossil Ridge parcel, to be conveyed to the United States at closing.

Non-Federal Parcel 2– Copley Lake

Township 14 South, Range 87 West, 6th P.M.

Roosevelt No. 3, Lode Mining Claim, U.S. Survey No. 19527, RUBY MINING DISTRICT, said mining claim as defined and limited by respective patent;

EXCEPTING THEREFROM any and all portions of the above subject property lying within the boundaries of U.S. Survey No. 2698 or U.S. Survey No. 3137.

Total Acreage: 15.39 acres, more or less.

Together with the Absolute Decree for Copley Lake for an amount of water not to exceed 39.75 acre feet for recreation, fish culture, biological study and research, and for heritage preservation purpose, with an appropriation date of 1954, as more particularly described in Water Rights Special Warranty Deed Reception No. 637137.

Evaluation of Extraordinary Circumstances for the Proposal (36 CFR 220.6(a))				
Resource Conditions (36 CFR 220.6(b)(1))	Resource Condition Present? ¹		Evaluation ¹ (36 CFR 220.6(b)(2))	References Required for CE categories under 36 CFR 220.6(e).
	Yes	No		
Federally listed threatened or endangered terrestrial wildlife species or their designated critical habitat, species proposed for Federal listing or proposed critical habitat or FS sensitive species. 36 CFR 220.6(b)(1)(i)	X		<p>The BA determined that the proposed Land Exchange will have no effect to Canada lynx or Canada lynx critical habitat as the baseline will not change only land ownership.</p> <p>The proposed land exchange will have no impact for the northern goshawk, boreal owl, burrowing owl, olive-sided flycatcher, flammulated owl, American marten, or western bumblebee.</p>	<p>Memorandum for Categorical Exclusion Prepared by Wildlife Biologist Suzanne Parker, signed December 12, 2017; and reviewed by Wildlife Biologist Matt Vasquez, signed January 30, 2018.</p> <p>Informal concurrence from USFWS took place on July 31, 2013 during the Fossil Ridge I land exchange based on the evidence there will be no change in how the Federal Parcel is managed once conveyed. This rationale also applies to the Fossil Ridge II land exchange.</p>
Federally listed threatened or endangered aquatic species or their designated critical habitat, species proposed for Federal listing or proposed critical habitat or FS sensitive species. 36 CFR 220.6(b)(1)(i)	X		<p>Because there are no Colorado River Cutthroat Trout known to inhabit the Washington Gulch watershed, this land exchange will have no effect.</p> <p>Given that CBLT intends for the foreseeable future to manage Federal Parcel A in part for wildlife habitat, this land exchange may affect but is not likely to adversely affect the boreal toad.</p>	<p>BA/BE prepared by Melvin R. Woody, Aquatic Biologist, signed February 9, 2018.</p>
Federally listed threatened or endangered plant species or their designated critical habitat, species proposed for Federal listing or proposed critical habitat or FS sensitive species. 36 CFR 220.6(b)(1)(i)		X	<p>Currently there are no listed threatened or endangered plant species</p>	<p>Memorandum for Categorical Exclusion Prepared by Wildlife Biologist Suzanne Parker, signed December 12, 2017; and reviewed by</p>

				Wildlife Biologist Matt Vasquez, signed January 30, 2018.
Floodplains, wetlands or municipal watersheds. 36 CFR 220.6(b)(1)(ii)	X		The Forest Service has evaluated the proposed exchange to be in accordance with EO 11988 "Floodplains" and EO 11990 "Wetlands" and is in compliance with these orders. Preliminary analysis for Federal Parcel A estimates 1.13 acres of wetlands. Wetlands to be acquired in the exchange include 1.68-3.37 acres depending on Copley Lake levels and includes fens.	Wetlands and Floodplain Report for Copley Lake, signed by Hydrologist John Almy, January 27, 2018.
Congressionally designated areas ² such as wilderness, wilderness study areas, or national recreation areas. 36 CFR 220.6(b)(1)(iii)		X	The acquired parcel abuts the Fossil Ridge Recreation Management Area.	
Colorado Roadless Areas ³ or potential wilderness areas. 36 CFR 220.6(b)(1)(iv), 36 CFR Part 294		X		
Research natural areas ² . 36 CFR 220.6(b)(1)(v)		X		
American Indians and Alaska Native religious or cultural sites. 36 CFR 220.6(b)(1)(vi)		X	No comments were received from the three Ute Tribes.	
Archaeological sites, or historic properties or areas. 36 CFR 220.6(b)(1)(vii)		X	No archeological sites, or historic properties were found.	See Report No. R2017-020409-002, dated February 6, 2018
¹ The mere presence of one or more of these resource conditions does not preclude the use of a categorical exclusion. It is the existence of a cause effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action these resource conditions that determines whether extraordinary circumstances exist. ² If present, verify authorities. Additional requirements may exist. ³ Roadless consultation with RO is required except for limited circumstances. Submit completed forms to NEPA coordinator.				

This land exchange is the most reasonable and effective approach to modify unmanageable land boundaries, resolve unauthorized improvements on the Federal parcel, and acquire highly valued recreation areas. After the completion of Fossil Ridge I Land Exchange in 2013, the remaining Fossil Ridge parcel was identified regionally as a land bank for other exchanges. It was part of two other land exchanges but was dropped because values were not large enough to acquire it. It was submitted for purchase consideration under the Land and Water Conservation Fund in Fiscal Years 2013-2016, but its low ranking prohibited consideration beyond the Regional level.

An appraisal meeting Federal standards has been prepared for both the Federal and non-Federal parcels. The value of the Federal parcel is \$3,000,000. The value of the non-Federal parcels is \$3,015,000. A cash equalization payment of \$15,000 will be made by the United States to equalize values as required by Section 206, P.L. 94-579, October 21, 1976, as amended through December 19, 2014.

In a letter provided on October 23, 2017, CBLT stated "...acquisition of the Meridian Lake property aligns with the organization's mission to forever protect and steward open lands for vistas, recreation, wildlife and ranching, thus contributing to Gunnison County's unique heritage and quality of life. The Land Trust's

intended use of the Meridian Lake property falls into three main categories: public access, wildlife habitat, and grazing.” The letter goes on to state “The property will be managed for wildlife habitat and, in general, largely left to natural process, consistent with the management of adjacent land protected and managed by the Land Trust. The Land Trust will manage the meridian lake parcel to minimize human caused impacts to the native wildlife habitat existing in the aspen and conifer forests, montain meadows, and riparian areas on the property.”

This project is categorically excluded from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under 36 CFR 220.6(d)(7) *Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same, (ii) Exchanging NFS land or interests with a State agency, local government, or other non-Federal party with similar resource management objectives* because future management objectives and practices will remain similar.

Evaluation of Extraordinary Circumstances

The following table documents environmental compliance for projects categorically excluded under NEPA.

Scoping Efforts

The Agreement-to-Initiate was signed by CBLT on December 19, 2017 and the Forest Supervisor on December 20, 2017. The proposal for exchange was listed in the Schedule of Proposed Actions for the period of August 9, 2018 through present time. The proposal was provided to the Colorado Congressional delegation, State agencies, Gunnison County Commissioners, three Ute Indian Tribes, local residents, environmental groups and others for comment. Public notice of the exchange was published in the *Grand Junction Daily Sentinel* (the newspaper of record for the GMUG National Forest) on August 18, and 25, and September 3, and 8, 2018. Formal notice of scoping and opportunity to comment was published in the aforementioned newspaper on August 13, 2018.

The comment period closed on September 18, 2018. Numerous favorable comments were received, including from the Gunnison County Commissioners, Meridian Lake Park Corporation (the subdivision adjacent to the Federal parcel), and the Town Council of Mt. Crested Butte.

One comment letter submitted by WildEarth Guardians received on November 8, 2018, requested the preparation of an Environmental Assessment to identify two concerns:

1. This “*proposal does not identify the environmental impacts of privatizing 120 acres of National Forest. The public notice of this proposal does not identify the use of a conservation easement that would ensure no changes in current use in perpetuity*”.

Response: In a letter provided on October 23, 2017, CBLT stated “*The property will be managed for wildlife habitat and, in general, largely left to natural process, consistent with the management of adjacent land protected and managed by the Land Trust. The Land Trust will manage the meridian lake parcel to minimize human caused impacts to the native wildlife habitat existing in the aspen and conifer forests, montain meadows, and riparian areas on the property.*” CBLT and the Foreset Service have similar resource management objectives, as required by 36 CFR 220.6(d)(7). Thus I have determined a conservation easement is not necessary and if applied would likely significantly reduce the market value of the Federal Parcel, which is not consistent with agency policy.

2. This proposal does not *identify any possible impacts or liabilities in aquiring the Fossil Ridge II parcels. My understanding is that Fossil Ridge parcels were previously the property of Homestake Mining Corporation and may have been used for mining support or be the locations of mining claims.*

Response: The mineral estate of the Fossil Ridge parcel was reserved by the United States when the patent was issued. Homestake Mining Corporation has never held an interest in the Fossil Ridge parcel. They were, however, the proponent of the Fossil Ridge I Land Exchange in 2013 when they received NFS land adjacent to

their privately-owned mined land in exchange for the 331.54 acres of the Fossil Ridge parcel. An Environmental Assessment analyzed the full 945.15 acres of the Fossil Ridge inholding in anticipation of a purchase or exchange leading to the acquisition of the whole parcel.

- No other concerns were identified during the comment period.

The Congressional Appropriations Committee was provided the required 30-day notification period on November 27, 2018. No comments were received. Secretary of Agriculture notification was not required.

Findings Required by Other Laws and Regulations

Per the requirements of 36 CFR 254.3(b)(2)(i), resource values and public objectives served by acquisition of the Non-Federal Parcels exceed those of the tract of Federal Parcel to be conveyed. Analysis herein and in specialist reports address the criteria for the public interest determination. Under the Forest Plan General Direction, the following objectives would be met by acquiring the Non-Federal Parcels and conveyance of the Federal Parcel. This exchange will result in acquisition by the United States of high quality recreation opportunities, wetlands, big-game winter range, stunning scenery, and secure access to NFST 585 (Elk Creek Trail). The Federal Parcel (Meridian Lake) serves a greater public purpose for conserving the Town of Crested Butte’s open space (Resolution No. 12 Series No. 2018) and improving water supply and storage for the Mt. Crested Butte Water and Sanitation District and Upper Gunnison River Water Conservancy District. Additionally, the exchange will provide funds to be used for affordable housing in the Gunnison Valley. Also the Federal Parcel is of such a minor size compared to the GMUG National Forest that it does not present an opportunity for management at the Forest’s scale.

The Mineral Potential Report is in progress.

The Phase 1 Environmental Site Assessment (ESA) is scheduled to be completed after the ground is free of snow. Any adverse findings will be taken into consideration.

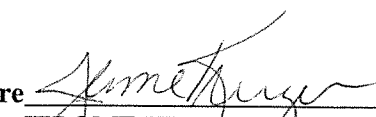
Implementation

This decision is not subject to administrative review under 36 CFR 218. This decision will be implemented immediately after receiving BLM concurrence on the Mineral Potential Report and satisfactory results from the Phase 1 ESA.

For Additional Information Contact: Rebecca Bruno, Project Manager
Phone: (970) 642-4946; or electronically at rmbruno@blm.gov

Decision and Finding

I am approving the proposed land exchange as described above. I have considered the above listed resource conditions and have determined there are no extraordinary circumstances described in 36 CFR 220.6 (b) related to the proposed land exchange warrant further analysis or documentation in either an environmental assessment or environmental impact statement. I am convinced that this land exchange is in the public interest. Per the requirements of 36 CFR 254.3(b)(2)(i), in my opinion, the resource values and public objectives served by acquisition of the Non-Federal Parcels exceed those of the Federal Parcel to be conveyed.

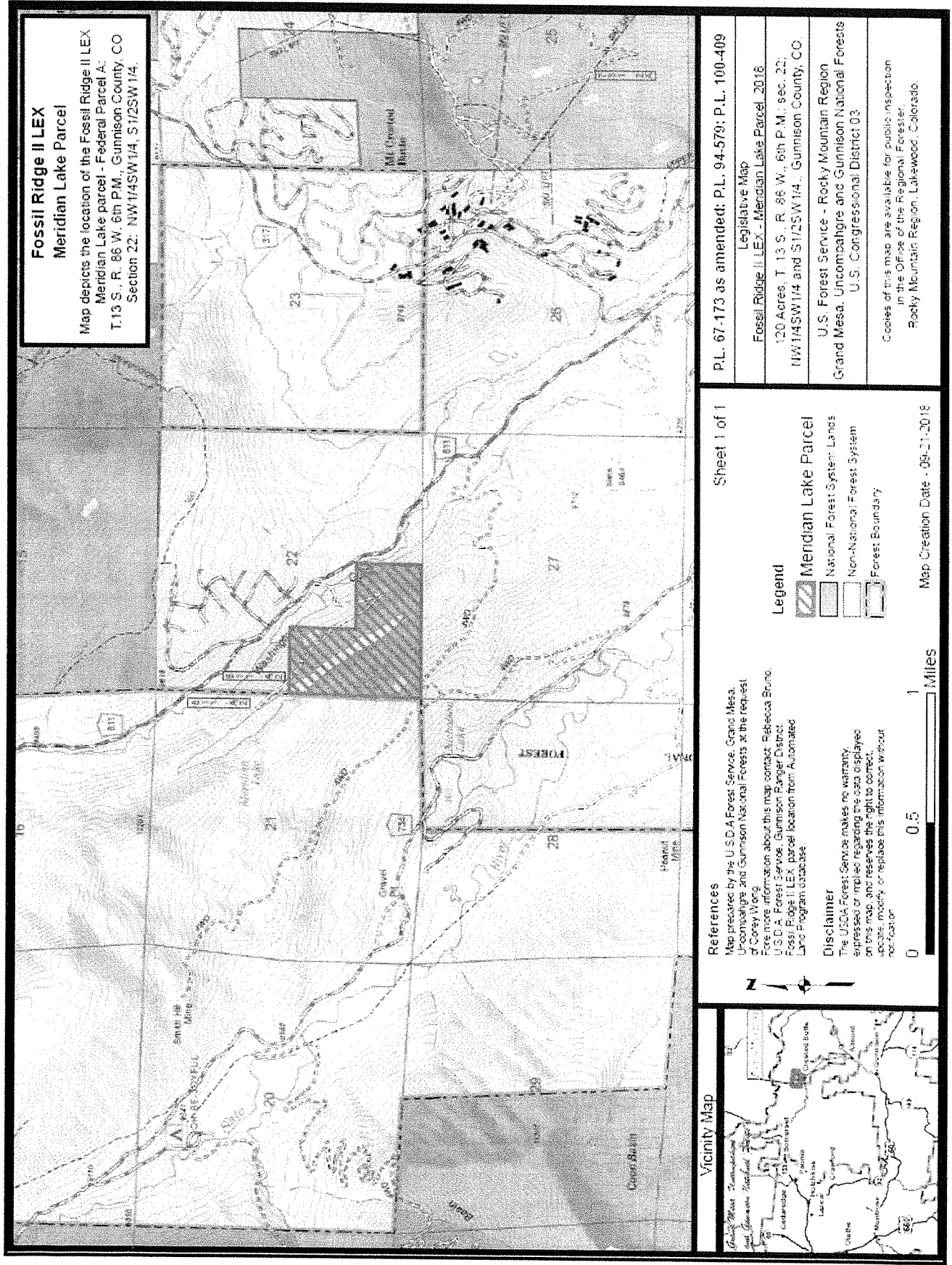
Signature 

 JEROME KRUEGER
 Acting Forest Supervisor
 Grand Mesa, Uncompahgre and
 Gunnison National Forests
 USDA, Forest Service

Date 25 June 2019

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer and lender.

Exhibit A: Federal Parcel A



**Fossil Ridge II LEX
Meridian Lake Parcel**
Map depicts the location of the Fossil Ridge II LEX Meridian Lake parcel - Federal Parcel A: T.13 S., R. 86 W., 6th P.M., Gunnison County, CO Section 22: NW1/4SW1/4, S1/2SW1/4.

P.L. 67-173 as amended; P.L. 94-579; P.L. 100-409
Legislative Map
Fossil Ridge II LEX - Meridian Lake Parcel, 2018
120 Acres, T. 13 S., R. 86 W., 6th P.M., sec. 22:
NW1/4SW1/4 and S1/2SW1/4, Gunnison County, CO.
U.S. Forest Service - Rocky Mountain Region
Grand Mesa, Uncompahgre and Gunnison National Forests
U.S. Congressional District 03
Copies of this map are available for public inspection in the Office of the Regional Forester, Rocky Mountain Region, Lakewood, Colorado.

Sheet 1 of 1

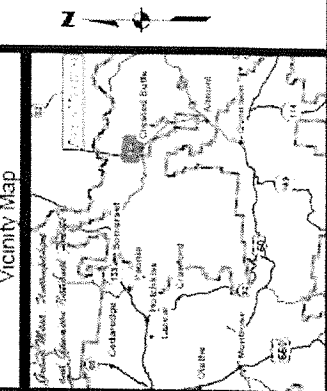
References
Map prepared by the U.S.D.A Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests at the request of Corey Wong.
For more information about this map contact: Rebecca Bruno, U.S.D.A. Forest Service, Gunnison Ranger District, Fossil Ridge II LEX parcel location from Automated Land Program database.

Disclaimer
The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.

Legend

- Meridian Lake Parcel
- National Forest System Lands
- Non-National Forest System
- Forest Boundary

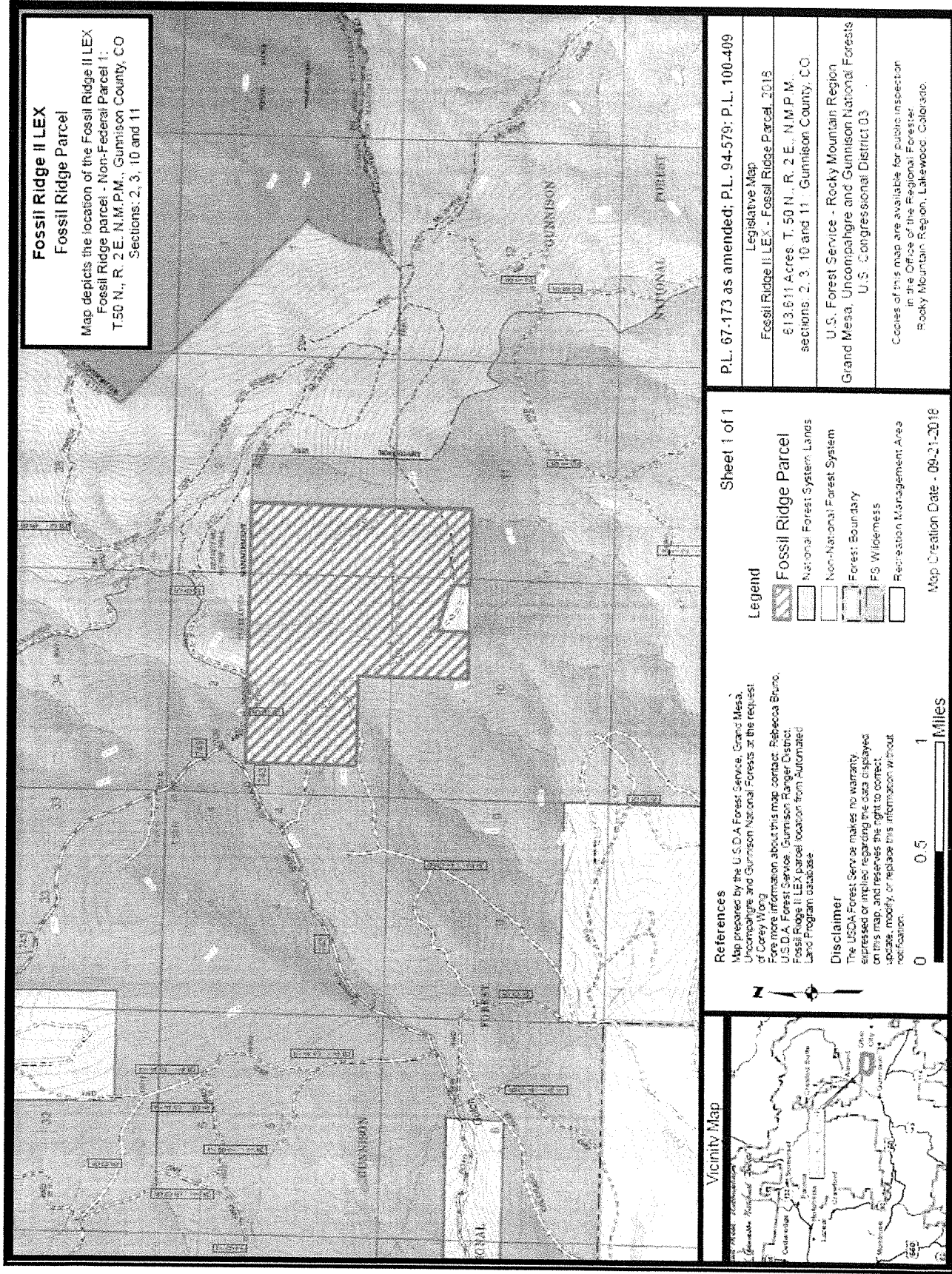
0 0.5 1 Miles
Map Creation Date - 09-21-2018



Data used in creation of this map are on file with the USDA Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests, Lakewood, Colorado.

Exhibit A

Exhibit A: Non-Federal Parcel I: Fossil Ridge



Data used in creation of this map are provided by the USDA Forest Service, GDMG NFS, T-50, N.M.P.M., Fossil Ridge II LEX parcel location from Automated Land Program database.

Exhibit A: Non-Federal Parcel 2: Copley Lake

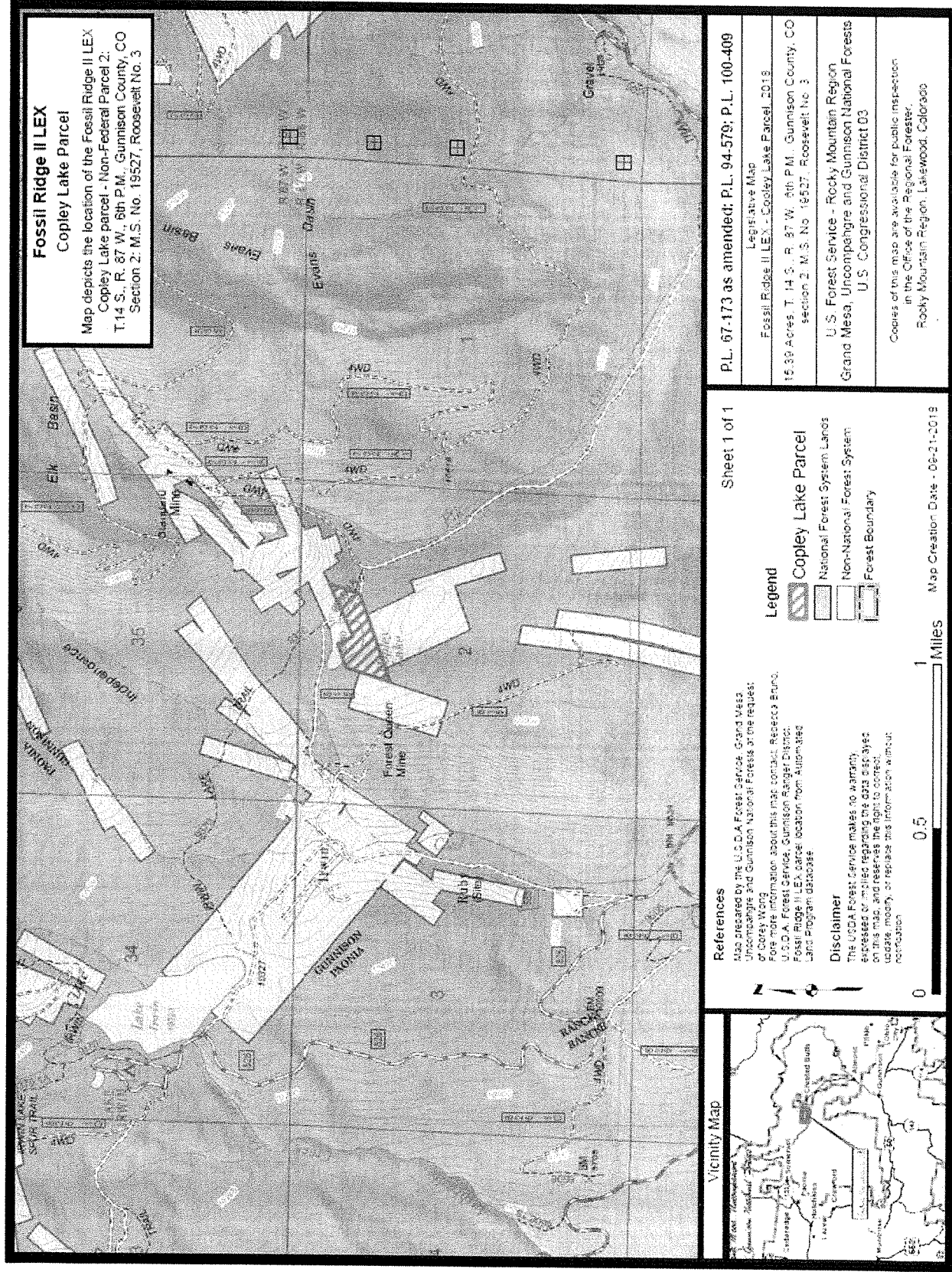


Exhibit A

EXHIBIT 2

FS-2700-91 (1/93)
 OMB No. 0596-0082
 (Expires: 06/30/96)

GUNNISON COUNTY, CO JOANNE M. REITINGER, RECORDER
 465580 BK 777 PG 722 01/29/96 04.00P

U. S. DEPARTMENT OF AGRICULTURE Forest Service FOREST ROAD EASEMENT Act of October 21, 1976 (PL 94-579); 36 CFR 251.50, et seq	Holder No.	Issue Date	Expir. Date
	-----	---/---/---	---/---/---
	Type Site	Authority	Auth. Type
	7 5 2	6 7 6	- 1 0 -
	Region/Forest/District	State/County	
	---/---/---	---/---	
	Cong. Dist.	Latitude	Longitude
	---	-----	-----

THIS EASEMENT, dated this 27th day of November, 1995, from the United States of America, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to Pristine Point, Inc., a corporation organized under the laws of the State of Colorado and having its principal place of business at 24728 Foothills Drive North, Golden, Co 80401, hereinafter called Grantee.

WITNESSETH:

WHEREAS, Grantee has applied for a grant of an easement under the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761), for a road over certain lands or assignable easements owned by the United States in the County of Gunnison, State of Colorado, and administered by the Forest Service, Department of Agriculture.

NOW THEREFORE, Grantor, for and in consideration of the grant of Existing Road Easement recorded in Book 777 at page 433, in the public records of the County of Gunnison, State of Colorado, does hereby grant to Grantee, subject to existing easements and valid rights, a nonexclusive easement for use of a road, whether existing or as constructed or reconstructed, over and across the following described lands in the County of Gunnison, State of Colorado:

T. 13 S., R 86 W., Sixth Principal Meridian
 Section 22: SE1/4

The location of the road is shown approximately on exhibit A attached hereto.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantee, its permittees, contractors, assignees, and successors in interest.

A. Grantee shall comply with applicable Federal or State law and shall comply with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-ways for similar purposes, if those standards are more stringent than applicable Federal standards.

B. Except as hereinafter limited, Grantee shall have the right to use the road for the purposes set forth in clause D, subject to such traffic control regulations and rules as Grantor reasonably may impose upon or require of other users of the road without unreasonably reducing the rights herein granted.

Pristine Point, Inc.
Forest Road Easement

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C. Upon the change of ownership of the Grantee's land served by this road, the rights granted under this easement can be transferred or assigned to the new owner upon written notification to Regional Forester.

D. This easement shall continue for as long as needed for the purpose of access to a residential subdivision; Provided, That the Grantee shall make no use of the road for hauling forest products or other commercial use of the road until it pays or makes arrangements acceptable to the Grantor to pay its share of the road construction or reconstruction costs; and Provided further, that the Grantor shall review terms and conditions of this easement at the end of each 30-year period from the date of issuance, and may incorporate in the easement such new terms, conditions, and stipulations as existing or prospective conditions may warrant. These shall have the same force and effect as if included in the original grant.

E. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Grantor prior to beginning such construction or reconstruction.

F. The rights herein conveyed do not include the right to use the road for access to developments for short- or long-term residential purposes, unless and until the Grantor and the Grantee agree upon traffic control regulations, rules, and other provisions to accommodate such use of the road.

G. Grantee shall pay the Grantor for its share of maintenance cost or perform maintenance, as determined by the Grantor. The maintenance obligation of the Grantee shall be proportionate to total use and commensurate with its use. Any maintenance performed by the Grantee shall be authorized by and shall conform with an approved maintenance plan. In the event the road requires maintenance, restoration, or reconstruction work to accommodate the Grantee's needs, the Grantor shall authorize the work required in the same manner as provided herein for maintenance or in clause E for reconstruction. The Grantee shall perform such work at its own expense.

H. This easement shall terminate in the event an easement is granted subsequently by the United States to a public road agency for operation of this road as a public highway.

I. Grantee shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

J. Grantee shall indemnify the United States for any and all injury, loss, or damage, including fire suppression costs the United States may suffer as a result of claims, demands, losses, or judgments caused by the Grantee's use or occupancy under this easement.

This easement is granted subject to the following reservations by Grantor:

1. The right to cross and recross the road at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with Grantee's use of the road.

2. The right to relocate the road on which this use is authorized to the extent necessary to accommodate the management needs of the National Forests.

Pristine Point, Inc.
Forest Road Easement

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3. The right to use the road for all purposes deemed necessary or desirable by Grantor in connection with the protection, administration, management, and utilization of Grantor's lands or resources, now or hereafter owned or controlled.

4. The right alone to extend rights and privileges for use of the road and right-of-way to other Government departments and agencies, States, and local subdivisions thereof, and to other users including members of the public; Provided, That the Grantor shall control such use so as not to interfere unreasonably with use of the road by Grantee or to cause Grantee to bear a share of the cost of maintenance greater than is commensurate with the Grantee's use of the road.

The grant of a right to use the road described in this easement does not create an obligation on the Forest Service of the United States to maintain the road in a usable condition.

The Regional Forester may take action to suspend, revoke, or terminate this easement under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes in 7 CFR 1.130-1.151. An administrative proceeding is not required when the easement terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

EXHIBIT 3

GUNNISON COUNTY, CO JOANNE M. REITINGER, RECORDER
465465 BK 777 PG 433 01/24/96 11:45A

**GRANT OF
EXISTING ROAD EASEMENT**

PRISTINE POINT, INC., a Colorado corporation, of Golden, County of Jefferson, State of Colorado, Grantor, for and in consideration of a reciprocal grant of a Private Road Easement in a form acceptable to Grantor does hereby grant unto the United States of America, Grantee, an exclusive easement (subject to the conditions of paragraph "D" hereof) for an existing road for use for all lawful purposes by the United States, over and across the parcels of land in the County of Gunnison, State of Colorado, described as follows:

A tract of land within NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 13 South, Range 86 West, Sixth Principal Meridian, Gunnison County, Colorado, said tract being more particularly described on EXHIBIT A which is attached hereto and incorporated herein by this reference.

This easement is subject to the following terms and conditions:

A. The easement hereby granted is for the reconstruction, maintenance, and full, free and quiet use and enjoyment of the existing road as it is located and constructed over and across the above-described premises as more particularly described by EXHIBIT B, attached hereto and made a part hereof.

B. The width of said easement shall be 80 feet, 40 feet on each side of the centerline, or more if necessary to accommodate cuts and fills. Provided, however, that the width of said easement, where it crosses the dam of Meridian Lake Park Reservoir No. 1, shall not exceed the width of the top of the dam. The boundary lines of said easement shall be prolonged or shortened to begin and end on, and conform with the Grantor's property lines.

C. The acquiring agency is the Forest Service, United States Department of Agriculture.

D. This easement shall be for the exclusive use of Grantee, until such time as the Board of County Commissioners of the County of Gunnison approves the final plan for the Pristine Point at Crested Butte Subdivision (Application LUC No. 1991-31 as amended and dated January 18, 1994) based on the sketch plan approved nunc pro tunc November 15, 1994 by the Gunnison County Commissioners. After the Subdivision final plan is approved and the final plat is recorded, this easement may be used by the general public for ingress and egress to the Gunnison National Forest.

E. If the Regional Forester determines that the road, or any segment thereof, is no longer needed, the easement traversed thereby shall terminate. The termination shall be evidenced by a statement in recordable form furnished by the Regional Forester to the Grantor, or its successors, or assigns in interest.

EXHIBIT A

to Grant of Existing Road Easement from Pristine Point, Inc., Grantor,
to the United States of America, Grantee, dated _____

BK	PG
777	435

PARCEL NO. 1Township 13 South, Range 86 West, 6th P.M.

Section 22: A tract of land within NW1/4 and NE1/4SW1/4 of said Section,
being more particularly described as follows:

Commencing at the Northwest corner of said Section 22; thence South 00°26'30"
West 1180.49 feet along the westerly boundary of said Section 22 to the POINT OF
BEGINNING for the herein described tract; thence the following courses around
said tract:

1. South 00°26'30" West 1468.99 feet along said westerly boundary to the West quarter corner of said Section 22;
2. North 89°32'32" East 1333.04 feet along the southerly boundary of said NW1/4 of Section 22 to the northwest corner of said NE1/4SW1/4;
3. South 1329.90 feet along the westerly boundary of the said NE1/4SW1/4 of Section 22 to its southwest corner;
4. East 1335.34 feet along the southerly boundary of said NE1/4SW1/4 of Section 22 to its southeast corner;
5. North 00°06'00" West 858.50 feet along the easterly boundary of said NE1/4SW1/4 of Section 22 to the southeast corner of Meridian Lake Park Filing No. One, a subdivision with a plat thereof recorded on December 27, 1973 and bearing Reception No. 298305;
6. South 78°23'33" West 368.01 feet along the southerly boundary of said Filing No. One;
7. Along the arc of a curve to the LEFT a distance of 166.84 feet, said curve having a radius of 210.00 feet and a long chord of North 34°22'05" West 162.49 feet, along the westerly boundary of said Filing No. One;
8. Along the arc of a curve to the LEFT a distance of 31.49 feet, said curve having a radius of 15.00 feet and a long chord of South 62°44'13" West 26.02 feet, along the westerly boundary of said Filing No. One;
9. Along the arc of a curve to the LEFT a distance of 43.27 feet, said curve having a radius of 91.00 feet and a long chord of South 11°01'09" East 42.86 feet, along the westerly boundary of said Filing No. One;
10. South 65°21'31" West 60.00 feet along said westerly boundary of said Filing No. One;
11. Along the arc of a curve to the RIGHT a distance of 100.39 feet, said curve having a radius of 151.00 feet and a long chord of North 05°35'44" West 98.55 feet, along the westerly boundary of said Filing No. One;
12. Along the arc of a curve to the LEFT a distance of 22.20 feet, said curve having a radius of 15.00 feet and a long chord of North 28°57'27" West 20.23 feet, along the westerly boundary of said Filing No. One;

-CONTINUED ON FOLLOWING PAGE-

13. North 71°21'55" West 51.43 feet along said westerly boundary of said Filing No. One;
 14. Along the arc of a curve to the RIGHT a distance of 269.13 feet, said curve having a radius of 380.00 feet and a long chord of North 51°04'33" West 263.54 feet, along the westerly boundary of said Filing No. One;
 15. North 30°47'11" West 247.55 feet along said westerly boundary of said Filing No. One;
 16. Along the arc of a curve to the LEFT a distance of 116.69 feet, said curve having a radius of 250.00 feet and a long chord of North 44°09'28" West 115.63 feet, along the westerly boundary of said Filing No. One;
 17. North 57°31'44" West 81.77 feet along said westerly boundary of said Filing No. One;
 18. Along the arc of a curve to the RIGHT a distance of 232.78 feet, said curve having a radius of 700.00 feet and a long chord of North 48°00'08" West 231.71 feet, to the northwest corner of said Filing No. One;
 19. North 38°28'32" West 212.00 feet along the westerly boundary of Meridian Lake Park Filing No. Two, a subdivision according to the plat thereof filed in Gunnison County records on December 1, 1975;
 20. Along the arc of a curve to the LEFT a distance of 82.68 feet, said curve having a radius of 74.02 feet and a long chord of North 70°28'32" West 78.45 feet, to the southwest corner of said Filing No. Two;
 21. Along the arc of a curve to the RIGHT a distance of 208.46 feet, said curve having a radius of 143.71 feet and a long chord of North 60°55'02" West 190.66 feet;
 22. North 19°21'32" West 211.00 feet;
 23. South 84°03'28" West 267.00 feet;
 24. North 44°21'32" West 195.00 feet;
 25. North 59°21'32" West 297.00 feet;
 26. North 37°21'32" West 514.81 feet to the westerly boundary of said NW1/4 of Section 22 and the POINT OF BEGINNING of the herein described tract.
- Bearings of unrecorded boundaries are based on recorded basis of bearing shown on plat of Meridian Lake Park No. One.

PARCEL NO. 2

Township 13 South, Range 86 West, 6th P.M.

Section 22: A tract of land within NW1/4NW1/4 of said Section, being more particularly described as follows:

Commencing at the Northwest corner of said Section 22; thence South 00°26'30" West 1180.49 feet along the westerly boundary of said Section 22 to the POINT OF

-CONTINUED ON FOLLOWING PAGE-

BEGINNING for the herein described tract (said POINT being the northwest corner of the property conveyed by deed from Lakecrest Corporation to Pristine Point, Inc., as recorded in Book 711 at page 760 of the records of Gunnison County); thence the following courses around said tract;

1. South $37^{\circ}21'32''$ East 130.52 feet along the north boundary of said property;
2. North $00^{\circ}26'30''$ East 335.62 feet more or less to a point on the southwesterly edge of the existing road known as County Road No. 811 (Washington Gulch Road);
3. North $27^{\circ}09'48''$ West 172.65 feet along said southwesterly edge to a point on the westerly boundary of said Section 22;
4. South $00^{\circ}26'30''$ West 385.48 feet along said westerly boundary to the POINT OF BEGINNING.

Bearings are based on assumed bearing of South $00^{\circ}26'30''$ West for the westerly boundary of the NW1/4 of Section 22.

County of Gunnison,
State of Colorado.

307

EXHIBIT B
to Grant of Existing Road Easement from Pristine Point, Inc., Grantor,
to the United States of America, Grantee, dated Nov. 27, 1995.

The easement is situated in Section 22, T.13 S, R. 86 W. 6th P.M., Gunnison County,
State of Colorado

Beginning at a point on the Westerly Right-of-Way of Washington Gulch Road from
whence the S $\frac{1}{4}$ corner of said Section 22, a U.S.G.L.O. brass cap bears S 10°25'57"E
2211.72'; Thence S 33°53'40"W 597.68' to a Point of Curve; Thence 172.15' along the
Arc of a Curve to the left having a Radius of 200.00', a Central Angle of 49°19'03" and a
Chord bearing of S 09°14'08"W 166.88' to a Point of Tangency; Thence S 15°25'23"E
210.27' to a point on the South line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 22 from whence
the said S $\frac{1}{4}$ corner of Section 22 bears S 28°14'47"E 1488.93'.

The second segment of the easement begins at a Point on the South line of the
NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 22 from whence the SW corner of said Section 22, a
U.S.G.L.O. brass cap bears S 51°07'21"W 2155.70'; Thence N 35°41'54"W 590.38' to
a Point on the West line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 22 from whence the SW
corner of said Section 22 bears S 36°02'50"W 2266.44'.

EXHIBIT 4

EXHIBIT 5



United States
Department of
Agriculture

Forest
Service

Grand Mesa, Uncompahgre and
Gunnison National Forests

2250 South Main Street
Delta, CO 81416
970-874-6600
TDD: 970-874-6660
Fax: 970-874-6698

File Code: 2730; 5430
Date: January 28, 2020

Kurt Giesselman
Board President
Pristine Point Owners' Association, Inc.
PO Box 504
Crested Butte, CO 81224

Dear Mr. Giesselman:

Thank you for your emails from you and Marcus Lock, Law of the Rockies, dated December 13, 2019, and the letter from Mr. Lock to Public Service Staff Officer Corey Wong dated January 2, 2020, in reply to my letter of December 2, 2019, regarding the road easement granted to Pristine Point Owners' Association (Pristine Point) by the Forest Service as it relates to the land exchange pending with the Crested Butte Land Trust (CBLT). In your email, you expressed concern for the environmental effects of up to four CBLT fund-raising events per year of up to 50 people per event on the land to be exchanged. You also stated your concern for CBLT's lack of a restoration plan and a timetable to develop such a plan. Additionally, Mr. Lock identified the continued need of Pristine Point's road easement and asserted that the Forest Service does not have the right to terminate this easement upon the exchange of land to CBLT.

Regarding your concern of CBLT's plans for restoration or future use of the land, CBLT has a long history serving as sound stewards of lands they manage either in fee or as holders of conservation easements.

Regarding Mr. Lock's assertion of the agency's authority to terminate Pristine Point's road easement in conjunction with the disposal of the servient estate crossed by the easement, I agree the agency cannot do so without complying with the terms of the easement and, therefore, the agency plans to convey the agency's rights to administer and enforce the easement to CBLT. Pristine Point will continue to hold its road easement.

In regard to the road easement granted to the United States by Pristine Point, Inc. in 1995 (in reciprocation for the easement discussed above), we plan to terminate this easement at closing because the easement is for the exclusive use of the United States (grantee) and is no longer needed given the County's easement, which is similar in scope and nature.

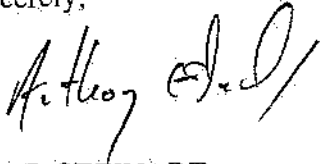


Kurt Gieselman

2

I have determined this land exchange is in the public interest and expect to close on the land exchange within a month. I am copying Noel Durant, CBLT Executive Director, to ensure common understanding of my assessment and plans. Please contact Public Service Staff Officer Corey Wong at 970-874-6668 or corey.wong@usda.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Stewart". The signature is written in a cursive, somewhat stylized font.

CHAD STEWART
Forest Supervisor

For

cc: Noel Durant, Marcus Lock

EXHIBIT 6

Gunnison County, CO
7/8/2019 1:44:37 PM
043

660914
Page 1 of 1
R 13.00 D 0.00



ASSIGNMENT OF EASEMENT

Pristine Point, Inc. n/k/a Pristine Point, Inc., Dissolved June 1, 2003 ("Assignor"), for the good and valuable consideration, in hand paid, hereby assigns to **Pristine Point Owners' Association, Inc.**, a Colorado nonprofit corporation ("Assignee"), whose address is P.O. Box 504, Crested Butte, CO 81224, any and all interest, that the Assignor may claim or may have previously claimed in the following easement in the County of Gunnison, State of Colorado:

Forest Road Easement recorded with the Gunnison County Clerk and Recorder on January 29, 1996 at Reception No. 465580, and attached hereto as **Exhibit A**.

Signed this 2nd day of JULY, 2019.

ASSIGNOR

Pristine Point, Inc. n/k/a Pristine Point, Inc., Dissolved June 1, 2003

Alan D. Wolff
By: Alan D. Wolff, President

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 2 day of July, 2019, by Alan D. Wolff, President of Pristine Point, Inc. n/k/a Pristine Point, Inc., Dissolved June 1, 2003. Witness my hand and official seal. My commission expires: 12-5-2022.

Tammy M. Falletta
Notary Public

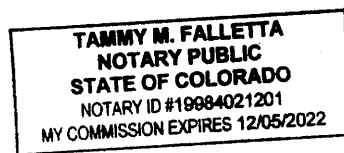


EXHIBIT 7



E. F. Mano DeAyala, Partner
Attorney at Law

2229 San Felipe, Suite 1000
Houston, Texas 77019
Main: 713-225-4500
Direct: 713-546-2415
Fax: 713-225-3719
deayala@buckkeen.com
www.buckkeen.com

February 4, 2020

Via Email

Mr. Corey Wong – corey.wong@usda.gov
Public Service Staff Officer
Grand Mesa, Uncompahgre & Gunnison National Forest
2250 South Main Street
Delta, CO 81416

Re: Long Lake Exchange Categorical Exclusion and Decision Memo
(June 25, 2019) (“Decision”)

Dear Mr. Wong:

As you know, Zeke Williams and I represent DLCTM, Ltd., (“DLCTM”) owner of Lot 18 located in the Pristine Pointe subdivision. I appreciate your time on the phone last week and listening to my concerns concerning the future of Lot 18 after the exchange of 120 acres of National Forest System land to Crested Butte Land Trust (“CBLT”).

I am writing to request the Forest Service’s written confirmation that it intends to adhere to a condition stated in the above-referenced Decision. Specifically, the Forest Service stated on page 2 of the Decision that “the Non-Federal Party will be required to provide a replacement easement at closing, authorizing equivalent rights” to a “Reciprocal easement granted to Pristine Point Inc. recorded at Gunnison County on January 29, 1996, Book 777, Page 722.”

Please confirm that the Forest Service will require CBLT, the Non-Federal Party to the land exchange, to satisfy that condition of the Decision at or before closing. The Decision requires CBLT to provide “at closing” of the land exchange a “replacement easement” over the federal parcel exchanged to Crested Butte Land Trust to be “equivalent” to the referenced easement recorded in Gunnison County at Book 777, Page 722.

The “replacement easement” delivered by CBLT must provide vehicle and subsurface utility access over the federal parcel to Lot 18 of Pristine Point to satisfy the “equivalent rights” requirement of the Decision. The easement at Book 777, Page 722 states in Paragraph D on page 2 that it “shall continue for as long as needed for the purpose of access to a residential subdivision.”

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“Access to a residential subdivision” requires vehicle access, and subsurface utility line access, as a matter of common sense; without such access the subdivision cannot be used as a subdivision. The Forest Service and Pristine Point agreed with that when the Forest Service granted the easement. Exhibit A to the easement contemplates utilities to Lot 18. And the road easement that Pristine Point granted to the Forest Service in 1995, to which the easement from CBLT must be “reciprocal,” expressly provided for the “installation, replacement, repair and maintenance of underground utility lines and fixtures.” See Grant of Existing Road Easement at page 2, Gunnison County, Book 777, Page 433.

The Forest Service should require CBLT to provide the easement with road and subsurface utility access for another reason: it is required by the categorical exclusion from the National Environmental Policy Act on which the land exchange Decision rests. The Forest Service expressly relied upon a categorical exclusion for an “exchange of land or interest in land where resulting land uses remain essentially the same.” 36 C.F.R. § 220.6(d)(7). The “land use” of the federal parcel included the outstanding Forest Service road easement granted to Pristine Point for access to a subdivision, including Lot 18. Further, the “land use” of Lot 18 for purposes of the categorical exclusion allows for development of a residential structure, with utility access. The Forest Service did not disclose in its scoping notice or in the Decision that the land exchange would “land lock” or maroon Lot 18 without road or utility access. Such a result does not ensure that “resulting land uses remain essentially the same” as required by 36 C.F.R. § 220.6(d)(7).

For these reasons, the Decision requires CBLT “at closing” to provide an easement over the federal parcel to the exchange that provides vehicle and subsurface utility line access to Lot 18 of Pristine Point.

Noel Durant of CBLT and I have had several conversations by phone and emails. We (including Pristine Point HOA) have exchanged drafts of the replacement easement as required by the Decision. But that changed recently. Contrary to the express language of the Decision, the CBLT now maintains it is no longer required to provide a replacement easement. On behalf of DLCTM, I have been consistent in my efforts to document with the CBLT access for utilities to Lot 18, whether in the replacement easement or a separate document. Although Mr. Durant has expressed a willingness to revisit the topic of utilities to Lot 18 to some unspecified date after the transaction has closed, when pressed he recently expressed CBLT’s position that Lot 18 has no rights to utilities.

As you know, conditions stated in a Decision are binding on the agency and judicially enforceable. DLCTM has standing to do so and will act if the Forest Service plans to allow CBLT to disregard this condition of the land exchange. The issue of road and utility access to Lot 18 must be resolved prior to the closing. I ask that the USDA, CBLT and DLCTM resolve this issue prior to February 14. To that end, I look forward to hearing from you.

Very truly yours,

BUCK KEENAN L.L.P.

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E. F. Mano DeAyala

MD:lm
Enclosure

cc: Noel Durant
Executive Director
Crested Butte Land Trust

noel@cblandtrust.org

Kurt Giesselman
Board President
Pristine Point Owners' Association, Inc.
PO Box 504
Crested Butte, CO 81224

kurtgiesselman@gmail.com

Zeke Williams

zwilliams@lewisbess.com

EXHIBIT 8

ABOVE ALL OTHERS!

Lot 18 Pristine Point



This premier building site has all the privacy, views and wide open spaces that you could ever dream of and yet it is just minutes from the amenities of historic Crested Butte and world class skiing on Mt. Crested Butte.

City utilities are available but neighbors are not. The borders of this property adjoin National Forest on one side and private ranch land on the other. The lot lines actually extend into the middle of Long Lake.

**The private drive is approximately 1 mile long and gated. A truly Pristine property for the most discerning buyer.
Offered for \$2,200,000**

EXHIBIT 9

CUSTOMIZED CLIENT FULL DETAIL REPORT - LAND



MLS #	36727	ACCESS	Private, Gravel Dirt
Price	\$1,098,000	Timber	11-25%
Status	Active	Irrigation	1-10%
Address	Lot 18 Pristine Point at Crested Butte	WtrRts	No
Address 2		Utilities	Yes
City	Mt Crested Butte	Covenants	Yes
Zip	81225	Acreege Range	11-40
Area	Rural Mount CB	PropFeat	Borders Public Land
		Zoning	Single Family
		Days On Market	45

Virtual Tour:

GENERAL

Legal Lot 18 Pristine Point At Crested Butte #500218
Subdivision Pristine Point
County Gunnison
of Acres 14.40
Lot Size
GrazPerm No

FEATURES

LOT LOCATION Borders Public Land, Waterfront
UTILS TO PROP Gunn. Cnty Electric, Telephone, Public Sewer, Central Water
DOMESTIC WATER Public
SEWER Sewer Available
SURFACE WATER Lake
AMENITIES Fishing Rights, Tennis Courts
DOCUMENTS ON FILE Covenants
TERMS Cash, New Loan

FINANCIAL

Real Property Taxes \$ 10,917.69
HOA Fee slo

Real Property Tax Year 2012
HOA Per

PUBLIC REMARKS

Most exceptional 14.4 acre site with unobstructed views of Long Lake and the adjoining National Forest in Pristine Point at Crested Butte. Access to trails out your back door! Only site available on Long Lake with Property line extending to the middle of the lake. Perfect for both summer and winter! Just minutes from the amenities of Historic Crested Butte and the world class skiing on Mount Crested Butte. Private drive is approximately one mile long and gated. Call for a tour of this truly Pristine property today! Two sets of house plans are available for this property. The first is a 5,330 square foot home, including Lot 18, priced at \$3,515,000. The second is a 3,400 square foot home, including Lot 18, priced at \$2,550,000.

SOLD DATA

Asking Price \$1,098,000
Sold Price
Contract Date
Closing Date
Property Use
Sell Agt 1 - Agt Name
Sell Ofc 1 - Ofc Name
How Sold