

- RECORD OF DECISION -
WASATCH POWDERBIRD GUIDES SPECIAL USE PERMIT RENEWAL
USDA-FOREST SERVICE, WASATCH-CACHE
AND UINTA NATIONAL FORESTS
SALT LAKE, DAVIS, MORGAN, SUMMIT, WASATCH,
AND UTAH COUNTIES, UTAH
SEPTEMBER 2004

I. INTRODUCTION

This Record of Decision (ROD) documents the Forest Service's decision regarding a proposal for reauthorization of guided helicopter skiing activities on portions of the Wasatch-Cache (WCNF) and Uinta (UNF) National Forests in northern Utah. The Responsible Officials for this decision are the Forest Supervisors for the two National Forests, and this ROD outlines the details of their decision and rationale.

Since 1973, Wasatch Powderbird Guides (WPG) has operated a helicopter skiing outfitter and guide service in this area and their current special use permit (permit) will expire on January 14, 2005. On October 11, 2002, WPG submitted a proposal to reauthorize their activities and to modify some of the conditions of their current permit. Following submittal of this proposal the Forest Service began preparation of an Environmental Impact Statement (EIS) to analyze its environmental impacts and to examine alternatives to WPG's proposal. As a part of that process, on March 30, 2004, a Draft EIS was released for public comment. With completion of the Final EIS, the environmental review process has now concluded.

The Draft and Final EISs were prepared under provisions of the National Environmental Policy Act (NEPA). In compliance with NEPA's direction to reduce paperwork and not duplicate analyses, the 2004 EIS incorporates by reference (40 CFR 1502.21) considerable analysis from a 1999 EIS that remains valid today. In addition, the current EIS tiers (40 CFR 1502.20) to the Final EISs for the Land and Resource Management Plans for the Wasatch-Cache and Uinta National Forests (Forest Plans).

This ROD is divided into 11 main sections. Following this introduction is a description of the public involvement process used in the analysis and a discussion of the decision and the rationale. The ROD goes on to list the mitigation and monitoring requirements that will be made a part of a new permit for heli-skiing and some that will be the responsibility of the Forest Service to implement. The next section includes responses to the major issues that surfaced as a part of public comment and a narrative that explains why other alternatives examined in the EIS were not selected. The next sections discuss how the decision relates to the purpose and need outlined in the EIS, the relationship of the two Forest Plans to this ROD, findings required by other laws and regulations, and the environmentally preferred alternative. The ROD concludes with an explanation of the administrative appeal procedures that apply to this decision.

The Final EIS and this ROD have been published and circulated concurrently and both are available electronically at <http://www.fs.fed.us/r4/wcnf/projects/decisions/>.

II. PUBLIC INVOLVEMENT

Involvement of the public in Federal decision-making is an important part of the NEPA process. In total, 353 responses were received during the initial public scoping, a period which extended from November 1, to December 13, 2002. Similarly, 345 individual responses were received commenting on the Draft EIS, during an extended comment period that ran from April 9 to June 7, 2004. Though mostly originating from residents of the local Wasatch Front, comments were also received from elsewhere in Utah, other states, and several foreign countries. Two public meetings were held to provide information about the proposal and the Draft EIS. The 1999 EIS, WPG's 2002 proposal, and the 2003 Draft EIS have been available electronically on the Wasatch-Cache National Forest website at: <http://www.fs.fed.us/r4/wcnf/projects/proposed/> and in hard copy format at the Salt Lake Ranger District office.

As it has during past EISs, reopening the question of guided helicopter skiing has proven to be a controversial activity in the Wasatch Mountains. A full range of public comments was received as a part of the current EIS process. Many who commented simply expressed a preference or opinion that helicopter skiing was not appropriate and that the proposal should be denied, or that it should be reduced in various ways. Others expressed that it was an important recreation opportunity that should continue to be offered, or even expanded. A notable number of commentors expressed the opinion that the Forest Service should retain the terms and conditions of the 2000 permit if the activity was to continue. In other areas, a substantial number of comments were received about wildlife, especially the impact of heli-skiing on golden eagles; disruption to backcountry users from noise and other aspects of heli-skiing; and the potential impacts of the activity on Wilderness. A detailed listing of public comments, along with an agency response, is included in Appendix B of the Final EIS. Section III of this ROD addresses the issues that were central to the Forest Service decision regarding the current proposal.

III. DECISION AND RATIONALE

After considerable review, deliberation, and discussion with the interdisciplinary team and other Forest Service staff at various levels, our decision is to authorize continued heli-skiing on the two National Forests. This decision includes most of the elements of Alternative C (2000 Permit) in the Final EIS, though some adjustments have been made as a result of the environmental analysis. In making this decision, we have reviewed both the 1999 and 2004 EISs, including the impacts of the Proposed Action and alternatives to it. We believe that this decision is consistent with and serves to implement the Forest Plans for the two National Forests. We have also reviewed the extensive public comment that was provided during the process. Finally, we carefully considered and followed direction provided by the Regional Forester that resulted from an administrative appeal of the decision to issue the permit that has been in effect since 2000.

For convenience, the table below lists the major components of the decision, while the following section reiterates these elements and provides the rationale for the decision. Mitigation measures, permit conditions, and monitoring requirements are listed in Section IV of this ROD.

SUMMARY OF DECISION ELEMENTS

Season of Use: Authorize a December 15 to April 15 operating season. Additionally, a seasonal limit of five operating days outside the December 15 to April 15 season will be authorized. Days used prior to December 15 must be for non-commercial purposes only.

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Tri-Canyon Area Use (weekends): Continue the closure of the Tri-Canyon Area to heli-skiing on Sundays and Mondays season-long. Within this framework, exceptions are allowed for home runs as defined below and a season limit of three Monday operating days. WPG may "earn" these Monday exceptions in advance by choosing not to operate in the Tri-Canyon Area on an equal number of Saturdays.

Home Runs: Authorize home runs in Little Cottonwood Canyon when the Tri-Canyon Area is otherwise closed, i.e., on Sundays and Mondays. In particular, the permittee will be authorized a seasonal limit of three "closed" weekend days for use as home runs in the Patsy Marly area. In addition, they may use White Pine Canyon for home runs when the Tri-Canyon Area is otherwise closed without any seasonal limitations. All home runs will count towards Tri-Canyon Area skier-day limits, or "caps".

Tri-Canyon Area Use by Two Helicopters: Tri-Canyon use by two helicopters at the same time is authorized on five days per season with prior Forest Service notification.

Alpine Tours: Alpine Tours will continue to be authorized only in the Lone Peak Wilderness.

Skier-Days: Heli-skiing will be authorized with the following seasonal limits on skier-days:

- Permit area: 1,600 skier-days.
- Tri-Canyon Area: 800 of the 1,600 skier-days in the permit area.
- Northern Powder Circuit: 650 of the 800 skier-days in the Tri-Canyon Area.

DECISION TO ISSUE A NEW PERMIT

A new permit will be issued that will include the terms and conditions noted below. Mitigation measures and terms and conditions considered in the Final EIS and displayed in Section IV of this ROD will also be part of the authorization.

1. **Season of Use:** Authorize a December 15 to April 15 operating season. Additionally, a seasonal limit of five operating days outside the December 15 to April 15 season will be authorized. Days used prior to December 15 must be for non-commercial purposes only.

We have decided to continue the December 15 to April 15 operating season authorized in the 2000 permit, but to add some flexibility on both ends of the season. We know that maintaining the core season dates provides other recreationists early and late season opportunities to use the backcountry without heli-ski impacts, but believe that adding five days in the manner indicated should not significantly impact this group. Compared to many other areas of the Wasatch Mountains, good ski conditions tend to develop earlier in the Tri-Canyon Area and we are aware that our decision will create some additional potential impact for backcountry users prior to December 15. However, we believe this will be minimized through the restriction that pre-season operating days may be used only for non-commercial, preparatory purposes. This aspect of our decision will allow commercial operations to start on the first day that weather and snow conditions allow during the normal season.

We believe that allowing for a limited number of additional days of heli-skiing in the spring should help to improve WPG's operational efficiency without seriously impacting backcountry users. Generally, backcountry use is declining after April 15, as many recreationists are moving on to summer type activities. At the same time,

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data suggest that WPG's operational success each season is closely related to the number of days it is able to provide heli-skiing opportunities and even a few additional days could be helpful. Finally, we recognize that spring ski conditions, whether for backcountry skiers or heli-skiing, are highly variable and in some seasons there may be few suitable days.

2. **Tri-Canyon Area Use (weekends):** Continue the closure of the Tri-Canyon Area to heli-skiing on Sundays and Mondays season-long. Within this framework, exceptions are allowed for home runs as defined below and a season limit of three Monday operating days. WPG may "earn" these Monday exceptions in advance by choosing not to operate in the Tri-Canyon Area on an equal number of Saturdays.

We believe that the Sunday/Monday closure of the Tri-Canyons to heli-skiing under the 2000 permit has been especially critical to the relative success of joint, heli-ski and backcountry use of this part of the permit area. We understand that continuing the two-day per week heli-skiing closure imposes restrictions on the permittee's operational efficiency, but yet we also believe that maintaining its basic elements is essential to the continued co-existence of the two uses. That said, on a trial basis we have decided to allow a limited number of exceptions to the Monday portion of the closure by creating an incentive for WPG to use non-Tri-Canyon Area terrain on Saturdays. A Monday exception must be "earned" in advance by not operating in the Tri-Canyon Area on a Saturday, which is perhaps the busiest day of the week for other backcountry skiers. These Saturdays must be days when WPG can operate, but instead chooses to take its clients to other terrain and does not use the Tri-Canyon Area at all. To count towards an exception, WPG must actually take clients to peripheral terrain on that Saturday. It is our expectation that WPG will use this additional flexibility to help avoid conflict in the Tri-Canyons and that the earned Saturdays will have been otherwise good days for skiing there. We have included this provision on a trial basis because we want to provide a mechanism to ensure that WPG is encouraged to use this flexibility in a way that benefits other backcountry users, versus simply trading a marginal day of heli-skiing for a better one in the future. If our sense is that this is not working as envisioned to moderate conflict and build good will, the Forest Service reserves the right to not approve this provision in subsequent year's Operating Plans and the authorization will revert to the Sunday/Monday closure with no earned Monday exemptions. As final requirements, WPG must make its plans known through its recorded telephone message and website on the prior evening for the applicable Saturdays and Mondays, and at the same time notify the Forest Service.

The two-day per week heli-ski closure provides backcountry users season-long assurance they can recreate in the Tri-Canyon Area on Sundays and Mondays without being subject to the impacts of heli-skiing. At the same time, those who choose to recreate when heli-skiing is in the area do so with full knowledge that they will likely hear and see these aircraft and compete for untracked snow with heli-skiers. While we carefully considered other day-type restrictions (e.g., odd-even), there seemed to be no real benefit to non-heli-skiers in fundamentally altering what has become an expected schedule. We understand that other backcountry users will usually not have much advance notice of when Monday exemptions are earned or used, but we believe this is a concept that could prove useful in addressing the recreation conflict issue and could provide as many as three complete weekends with no heli-skiing in the Tri-Canyons. The desire for the Tri-Canyon Area to be closed more frequently to heli-skiing on Saturdays and Sundays was a frequent public comment during the EIS process. Inevitably, the Sunday/Monday closure does not work for all other backcountry enthusiasts, yet it's important to note that there are some portions of the Tri-Canyon Area that will remain closed to heli-skiing seven days per week season-long, just as they were under the permit issued in 2000.

We are fully aware the Sunday/Monday closure poses challenges for WPG, particularly when peripheral ski terrain is unavailable because of weather and snow conditions. On these closed days in many seasons WPG is not able to offer heli-skiing at all, even if conditions in the Tri-Canyon Area would have allowed it. As the EIS acknowledges, the Sunday/Monday closure likely had adverse operational impacts for WPG and contributed to

the 17 percent reduction in skier-days under the permit issued in 2000, as compared to reported use under the previous permit. The degree to which this reduction is attributable to the Sunday/Monday closure versus other factors is unknown, and skier use data by day of the week during the two permits suggests other influences were also at work. With the three Monday exceptions, WPG will have the capability to shift its Saturday operations out of the Tri-Canyon Area on a limited number of days so they can save them for Mondays later in the season, when no other terrain may be available. On up to three Mondays, and Tuesday through Saturday, the permittee will have the full range of terrain available for heli-skiing.

In summary, we believe it is important to maintain the basic structure of the Sunday/Monday closure because it appears to have been relatively effective in addressing the conflict between heli-skiing and other recreationists. This is evidenced in comments on the EIS and in the frequency of complaints received in the past five years, compared to the previous permit. We appreciate that WPG has also played a role in altering its operations to moderate conflict and expect that they will continue to do so in order help to assure heli-skiing is available in the Wasatch Mountains.

3. **Home Runs:** Authorize home runs in Little Cottonwood Canyon when the Tri-Canyon Area is otherwise closed, i.e., on Sundays and Mondays. Specifically, the permittee will be authorized a seasonal limit of three “closed” weekend days for use as home runs in the Patsy Marly area. In addition, WPG may use White Pine Canyon for home runs when the Tri-Canyon Area is otherwise closed without any seasonal limitations. All home runs will count towards Tri-Canyon Area skier-day caps.

Home runs are the practice of ending the last ski run of the day at a road where a van transports skiers back to the heli-base and are an important component of the permittee’s operation. The current permit provides no exceptions for this on Tri-Canyon closure days, which tends to increase over-flights and helicopter noise in upper Little Cottonwood Canyon. It is apparent that providing this allowance for home runs on closure days should help to reduce noise impacts in upper Little Cottonwood Canyon. In addition, it could help to improve the permittee’s operational efficiency by reducing the number of helicopter trips and provide for more rapid transit of clients when poor weather dictates a quick return from peripheral terrain.

On the other hand, we acknowledge that other backcountry skiers in White Pine and in the Patsy Marley area will be affected on some days, typically later in the day, when there would not otherwise be heli-skiing in the area. Those affected will be the ones utilizing these areas at the time heli-skiers are making home runs. The duration and magnitude of the helicopter encounter will be less than a typical heli-skiing operation because the helicopter will only be dropping off skiers at normal locations along the ridgeline and not picking them up at the bottom of the run.

As with all home runs, they will count against the appropriate skier-day caps, and no additional days for home runs will be authorized. Review of actual use data indicates that not having a specific allocation of skier-days available for home runs has not been a limiting factor for WPG operationally. This is discussed further in item 6 below.

4. **Tri-Canyon Area Use by Two Helicopters:** Tri-Canyon Area use by two helicopters at the same time is authorized on five days per season with prior Forest Service notification.

In our view two permit conditions, the Sunday/Monday Tri-Canyon heli-ski closure and limitations on the simultaneous operation of two helicopters in this same area, have underpinned the degree of public acceptance that has been achieved in recent years regarding heli-skiing in the Wasatch Mountains. WPG’s proposal requested additional days of two-helicopter use in the Tri-Canyons and the EIS included several alternatives to this permit condition. However, we believe that maintaining the five-day limit is important in maintaining a sense of balance

and compromise among other users. Considering its relatively small size and its popularity with other backcountry users, the Tri-Canyon Area should be considered a place suitable for only one helicopter at a time. The five days each season when two helicopters are authorized should be regarded as an exception to offset some of the days when peripheral terrain is not available because of weather or snow conditions.

We are aware that limitations on the operation of a second helicopter in the Tri-Canyon Area presents another challenge to WPG operationally. This portion of the permit area typically has the best snow throughout the season, the most favorable early season conditions, and the easiest access from WPG's base at Snowbird. In addition, as the Final EIS (section 3.2.3) notes, having some access to the Tri-Canyon Area is important to make a second helicopter feasible each season. The Final EIS suggests that WPG has not been fully capitalizing on the simultaneous use of two helicopters in the Tri-Canyon Area, but concludes that this may not necessarily be because it is not needed. Other factors could also play a role, such as whether a second helicopter was under contract in a given year, whether suitable peripheral terrain conditions existed, and limitations in the way use data is reported annually.

In considering all of the information and analysis regarding limitations on the simultaneous use of two helicopters in the Tri-Canyon Area, the Final EIS concludes that this permit condition has probably not contributed towards WPG's decline in skier-days, but that it most likely has been an impediment in reversing the downturn. While we expect that in some years the availability of peripheral terrain could be quite limited, we anticipate that over the longer term, use of outlying ski terrain should usually offset the need for more days of use with two helicopters in the Tri-Canyon Area. We understand that continuing the five-day two-helicopter limitation will tend to perpetuate some of the operational challenges created by the 2000 permit, yet we believe that it is a critical part of maintaining the balance between between heli-skiing and other backcountry users.

We also considered expressing limits on the use of two helicopters in the Tri-Canyon Area at once as either an annual average, or a fixed seasonal limit. The EIS describes the implications of each scenario in detail. We believe that a fixed, five-day limit on Tri-Canyon Area use by two helicopters provides an incentive to use the periphery when conditions allow and to reduce conflict overall. Finally, the implications of utilizing annual averaging includes the potential for "banking" days for the use of a second helicopter for several seasons, which would have increased recreation conflicts in the Tri-Canyon Area in a given season.

5. Alpine Tours: Continue to authorize Alpine Tours in only the Lone Peak Wilderness.

We believe it is appropriate to continue to allow alpine tours in this wilderness, but do not believe it is appropriate to expand them into the Twin Peaks Wilderness. Alpine Tours provide a unique experience and offer a reduced price heli-ski opportunity that compliments WPG's regular services, though participation in this activity has been relatively low and will likely continue so.

While the current permit has been in effect, certain helicopter landing spots that have been historically used by WPG have been closed administratively because of concerns about the effect on the Lone Peak Wilderness. The result has been that Alpine Tours have sometimes had to traverse more difficult terrain to access their routes, or forego a tour because of the ability level of the touring party. WPG's proposal to expand Alpine Tours into portions of the Twin Peaks Wilderness would have tended to offset the impact of the earlier closures. In spite of this, we decided to not approve Alpine Tours in the Twin Peaks Wilderness for the reasons outlined below. First, doing so would have required a permit area increase and boundary change, which would not be appropriate based on the limited historical use shown for Alpine Tours. In addition, the WCNF Forest Plan provides guidance that discourages additional outfitter guide use in wilderness. It states as a desired future condition that "additional outfitter and guides will not be allowed in wilderness and current outfitter and guide areas and use levels in the wilderness will be closely monitored and adjusted if needed to protect wilderness values" (WCNF Forest Plan

page 4-159). Finally, we believe there are other areas within WPG's current permit area that could be utilized to provide an Alpine Tour type of opportunity.

Some who commented questioned the additional recreation conflict created by Alpine Tours. Since the drop-off points are the same ones used for heli-skiing and this use is counted towards the skier-day caps, alpine tour use is indistinguishable from regular heli-ski operations or private touring parties. If kept at past levels of use, the impact of Alpine Tours in contributing towards recreation conflict is minor.

6. Skier-days: Heli-skiing is authorized with the following seasonal limits:

Permit Area: 1,600 skier-days.

Tri-Canyon Area: 800 of the 1,600 permit area skier-days.

Northern Powder Circuit: 650 of the 800 Tri-Canyon skier-days.

The EIS examined various levels of allocated use for heli-ski operations, for the permit area as a whole as well as for two important subsets of it, the Tri-Canyon Area and the Northern Powder Circuit. This review indicated that, for over a decade of heli-skiing, actual levels of use fell well below the allocation for the 2000 permit area. In contrast, heli-ski use within the Tri-Canyon Area and the Northern Powder Circuit more closely approached allocated levels of use. We believe it is important to maintain the sense of balance that has been struck between heli-skiing and other backcountry users brought about by the 2000 permit's limits on Tri-Canyon Area heli-ski use. Consequently, we have decided to reduce the overall permit area allocation, but to retain the limits on Tri-Canyon Area and Northern Powder Circuit skier use.

In the current authorization, it is likely that the terms and conditions of the permit play some role in WPG not achieving the allocation of skier-days for these two areas. At the same time, factors such as weather, snow conditions, the economy, and WPG business and operational decisions are probably at work also. It is our assessment that the 2000 permit's conditions have been a key factor in reaching some level of consensus, though certainly not universal agreement and support, about the level of heli-skiing that should be allowed in the Wasatch Mountains. As such, we do not believe it's appropriate or necessary to increase the internal permit area allocations and believe that doing so would tend to discourage full utilization of the periphery terrain. Conversely, we don't believe there is sufficient information or data to indicate that the internal caps should be lowered and we believe that the other permit conditions provide sufficient assurance that recreational conflicts are adequately addressed. In addition, leaving these caps in place provides opportunity on those occasional years with very good conditions to allow the permittee to operate up to those levels and to improve their operational efficiency.

Permit area caps represent a much different situation than the internal permit area allocations. Over the past 13 years, the highest reported levels of use for the entire permit area were 1,248 and 1,096 skier-days, which occurred during the 1996-1997 and 2003-2004 ski seasons, respectively. Reducing the permit area allocation to 1,600 skier-days represents no reduction as compared to past actual use and is consistent with agency policy for administering outfitter and guide permits. Yet this allocation still contains a sufficient margin for growth so as to maintain the incentive to more fully utilize peripheral terrain.

In summary, our decision relative to skier-day caps should not reduce WPG's ability to offer heli-skiing, as compared to what they had been able to achieve over the last decade. However, these allocations do establish an upper limit on the level of heli-ski use and potential conflict within a critical part of the permit area. In addition, these skier-day caps provide a more realistic estimate of the heli-skiing that the permit area as a whole can support in a good season.

UNDERLYING RATIONALE

Heli-skiing has been a part of the recreation environment in the Wasatch Mountains for over 30 years and its place is established to the extent that Congressionally designated wilderness boundaries have been drawn to help provide for its continuation. Likewise, Forest Plans for the two National Forests allow for continued heli-skiing. The Forest Plan for the Uinta National Forest notes that heli-skiing opportunities will be available, within the resource capabilities of the land and in consideration of other land uses and resource management goals. Though not making a site-specific decision relative to this permit proposal, the Forest Plan and supporting documents for the Wasatch-Cache National Forest more explicitly address heli-skiing (Final EIS, section 1.5.1.1). The WCNF Forest Plan clearly notes that heli-skiing within its current boundaries is an appropriate use and that one of the Plan's many goals is that heli-skiing be a part of the array of recreation opportunities over the long term. At the same time, it acknowledges uncertainty whether heli-skiing can remain profitable in the future as measures are taken to reach compromises and accommodate other backcountry users. Recognizing the intense recreational pressures on the land and the Forest's proximity to a large and growing urban population, the WCNF Forest Plan anticipates that these lands will experience relatively high densities of visitors. In addition, it acknowledges there will be competition among the various user groups and these areas will not be places where visitors should expect to find solitude. More specifically, this Forest Plan states:

Helicopter skiing will continue to operate as a component of the recreational picture in the Central Wasatch. Helicopter skiing and ski mountaineering will continue to compete for untracked conditions, and those users seeking quiet in the winter backcountry will likely continue to object to helicopter skiing in preferred terrain. (page 4-162)

In his decision approving this Forest Plan, the Regional Forester stated:

I am well aware of the growing recreational pressures on the Wasatch-Cache National Forest. I also recognize that it has become increasingly difficult for Forest users to find solitude and escape from the sights and sounds of civilization. In future years I anticipate this will become increasingly difficult. In a location like the Wasatch Front, backcountry recreationists, whether backcountry skiers, snowmobilers, or heli-skiers, must find ways to coexist and reach a level of acceptance for other users.... (Forest Plan ROD, page 26)

In part, project level environmental reviews and decisions such as this one are intended to implement the broad direction and vision contained in Forest Plans. In addition, they also serve as a means to evaluate and respond to a proposal from an applicant for a special use permit. In this case, WPG has applied for reissuance of their outfitter-guide special use permit. Thus, it is appropriate that the purpose and need section of the EIS be developed around these objectives. Accordingly, the EIS described the purpose and need for action in terms of an "[a]ttempt to provide improved operating efficiencies for WPG relative to the current permit while seeking to minimize conflicts between heli-skiing and other winter recreational uses." This mirrors the inherent conflict highlighted in the WCNF Forest Plan and directly relates to how we undertook the difficult job of formulating our decision.

Many questioned whether it was appropriate to incorporate an objective of the permittee in the purpose and need section of the EIS. As noted above, this was stated as attempting to improve the "operational efficiency" for WPG. Accordingly, each alternative was evaluated from the standpoint of how its provisions might impact WPG operationally. Some viewed this as a Forest Service attempt to ensure WPG's economic viability. While the EIS notes that the Forest Service is not responsible for any permittee's financial success, whether a permittee is able to

survive can have a bearing on whether the agency is able to offer the desired range of recreation opportunities, including heli-skiing.

A 2000 appeal decision by the Regional Forester further supported our approach to the EIS. In the appeal decision, it was determined that the 1999 EIS had not thoroughly evaluated the impacts on WPG from a business standpoint. Though the financial considerations of an outfitter-guide are not normally a part of NEPA analyses, it was important in this case because one of the elements of the purpose and need for action in the 1999 EIS was listed as: "Allowing for an economically viable helicopter skiing operation" (page 1-6). This objective was a part of the 1999 EIS because the 1985 Forest Plan for the Wasatch-Cache National Forest included management direction to "[c]ontinue one helicopter ski special use permit on the present permit area" (page IV-231). Logically then, achieving this objective over the long term necessitated an "economically viable helicopter skiing operation." Release of a Revised Forest Plan for the Wasatch-Cache National Forest in 2003 essentially made this a moot point. It contained no direction to continue a helicopter skiing special use permit. Instead it noted that, though it is the Forest Service's desired future condition to maintain helicopter skiing among the Forest's recreation opportunities, it was uncertain whether this will be possible, given the intense use and competition in the backcountry.

When the process for this current EIS was initiated in 2002, the 1985 Forest Plan was still in effect. In order to comply with the appeal decision and begin the lengthy process to consider renewal of the 2000 permit, we accepted a proposal from WPG that incorporated elements from a Forest Service-directed accounting review. This review was also a part of the 1999 appeal decision that directed that if the analysis showed WPG could not maintain their economic viability, the Wasatch-Cache Forest Supervisor "should consider this as evidence of need to modify the permit." The report indicated the 2000 permit had adverse impacts to WPG and that two Tri-Canyon Area permit conditions presented potential impacts, specifically limits on the use of two helicopters at one time and restrictions on weekend use (i.e., the Sunday/Monday closure). Through this ROD and the accompanying EIS, we have fully complied with the 1999 appeal decision by giving full consideration to WPG's proposal, which was developed based on the report and included an increase in Tri-Canyon heli-ski use. Even though neither the appeal decision, nor the Revised Forest Plan, mandated that we grant relief to WPG on the conditions of the 2000 permit, after careful consideration we have made some changes that should be helpful to the permittee operationally and yet not significantly change the recreation experience of other backcountry users.

In consideration of WPG's operational efficiency and at the same time factoring in the impact on other recreationists, it was appropriate to modify some permit conditions. We believe the accommodations we have made to expand the season of use, allow some home runs during on otherwise closed days, and allow for a limited number of Monday exceptions to the Tri-Canyon Area closure will benefit WPG, but will not create serious additional impacts to the experience of other backcountry users.

We recognize that it is important to look beyond individual permit conditions and consider their combined effects, whether from the perspective of WPG, or other backcountry users. In spite of the fact that WPG experienced its second highest level of heli-ski use in the past 13 years during the 2003-2004 season, we believe the 2000 permit did have an adverse effect on WPG, and we acknowledge that some important aspects of this decision will carry those impacts into the next permit. In spite of that, in a good snow year our decision will continue to allow some margin for WPG to operate at slightly higher levels than they have in the past. We are aware that our decision will create some additional impacts on other backcountry users. However, when considered as a group of permit conditions, we believe that most users will not detect much of a difference from the impacts of the 2000 permit, versus the new one. Further, the decision includes an incentive to avoid the Tri-Canyon Area on a limited number of Saturdays, even though the area is open to heli-skiing on those days.

IV. MITIGATION MEASURES AND MONITORING REQUIREMENTS

This section describes the measures that will be taken to mitigate the impacts of the heli-ski activities under a new permit, in addition to steps to be taken to monitor its operation. Mitigation is defined in terms of the various ways the adverse impacts of a project or activity might be avoided, minimized, eliminated, or compensated for (40 CFR 1508.20). On the other hand, monitoring involves actions to ensure "agency decisions are carried out..." (FSH 1909.15, Sec. 53). Generally, monitoring takes the form of oversight to ensure the terms and conditions of a permit are met and anticipated results are achieved. Put another way, mitigation measures are important to keeping adverse impacts within levels predicted in the EIS, while monitoring activities usually are a part of the Forest Service's permit administration program. Accordingly, the measures listed and described below are denoted as either mitigation or monitoring.

The 1999 ROD included 20 mitigation and monitoring measures. The analysis assumed these would be retained under any new permit unless specifically eliminated, altered, or replaced unless specifically addressed and modified in the Final EIS. Most measures remain unchanged from the 1999 ROD, though several have been modified based on 2004 EIS analysis or experience gained in five years of monitoring the current permit. For example, requirements related to golden eagles has been narrowed to a focused effort to protect nest sites, rather than the more research-oriented program to gather data about heli-skiing's effects on eagle behavior and nesting success that proved impractical following the 1999 decision. Similarly, the 1999 ROD indicated that several technological approaches would be used in monitoring permit compliance, such as using GPS tracking instruments and video cameras. Again, the Response to Comments section of the Final EIS details why these techniques were of limited value, or extremely difficult to implement. The measures listed below will be required as a part of issuing the new permit:

Wildlife

- To minimize potential impacts on golden eagles nesting in the WPG permit area, the following mitigation measures, based on U.S. Fish and Wildlife Service (FWS) raptor protection guidelines (Romin and Muck 1999), will be implemented:
 - Half-mile, no-fly buffers will be placed around all known golden eagle nest sites beginning February 1 and ending August 31. Within these buffers, helicopters will not fly at less than 1,000 feet above ground level (AGL) or at less than 30 miles per hour. The buffer will be initiated earlier if courtship behavior is confirmed before February 1. (Note: the FWS guidelines suggest a January 1 buffer initiation date but, as noted in the 1999 EIS [p. A-92] the date was shifted to February 1 based on the delayed initiation of courtship at the high elevation of the permit area.)
 - If additional site-specific helicopter flight path and landing spot variances to the 0.5-half-mile buffer are proposed, the Forest Service, in coordination with the FWS, could consider them for authorization.
 - Once nesting has been confirmed by Forest Service biologists in a given season, buffers will be retained for occupied nest sites and removed from unoccupied sites for the remainder of that season.
 - Nest sites that have not been occupied for seven years will be evaluated by the Forest Service to determine if they should be considered abandoned and the buffer removed.
- Monitoring of all golden eagle nest sites will be conducted twice a year by aerial surveys to determine nest occupancy and the number of young produced. The first survey will be conducted during the early part of the incubation period, and the second, follow-up survey will be conducted in the latter half of the

nesting period, when eaglets are large enough to be seen and counted from the air. Standard aerial survey protocols will be followed, and minimal time will be spent over the nest sites to minimize potential disturbance.

- In accordance with the Utah Northern Goshawk Forest Plan amendment (Forest Service 2000b), 30-acre no-fly buffers will be placed around all known active northern goshawk nest areas in the permit area from March 1 through September 30. Within these buffers, helicopters will not fly at less than 1,000 feet AGL or at less than 30 miles per hour.
- A Forest Service biologist will be notified if any special status wildlife species are observed in the project area. The agency will implement appropriate actions to insure that the species is adequately protected.

Designated Wilderness Area Considerations

- WPG will maintain a flight plan for operations over designated wilderness areas. This plan will be approved by the Forest Service and will be a part of WPG's annual operating plan. WPG helicopters will fly at least 1,000 feet above any designated wilderness, except: (a) when conducting avalanche control work for the Utah Department of Transportation (UDOT) above Little and Big Cottonwood Canyon highways; (b) when conducting authorized rescue work; (c) when flying above 1,000 feet would compromise safety.
- Compliance with wilderness regulations is mandatory.
- Wilderness education will be a component of wilderness Alpine Tours.
- Wilderness use will be documented in all Activity Reports for monitoring purposes.

Safety in Aircraft Operations

- WPG will maintain an aircraft operating and safety plan. This plan will be approved by the Forest Service and will be part of WPG's annual operating plan.
- WPG will ensure that helicopters operated under the permit, whether leased or owned, will hold a Federal Aviation Administration (FAA) FAR Part 135 certificate and will abide by all FAR Part 135 safety standards and requirements. The FAA recognizes that mountain flying conditions involve complex geographic features and wind patterns that often require WPG to fly at low levels along ridges and through passes.
- WPG helicopters will fly at least 750 feet above roads and buildings except when landing or taking off or when flying at that altitude would compromise safety.
- Explosive use will be documented in Activity Reports

Safety in Use of Explosives

- Explosives use for stability evaluation is authorized at 300 explosive charges per year on an annual average.
- WPG will conduct all backcountry explosive slope stability testing before 9:00 a.m. or as early as practical to minimize the chance of affecting other users.
- WPG will make every practical effort to assure that their explosive stability testing will not endanger people using the area being tested.
- WPG will record the date, time, and location of all explosive duds and will find and destroy all explosive duds within reasonable time limits.
- WPG will use as few explosives on NFS lands as practical.

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Safety and Courtesy in Interaction with Other Backcountry Recreationists

- WPG will practice good backcountry ethics, including: (a) allowing ski mountaineers who arrive at a particular location before WPG an opportunity to ski first, and (b) avoiding, when practical, flying through passes and along ridges occupied by other backcountry users.
- WPG will continue its efforts to notify the public of its operating plans a day in advance. This will include the notification of the second helicopter used in the Tri-Canyon Area. WPG operating plans will be reported on the Utah Avalanche Center (UAC) recorded information line and website (<http://www.avalanche.org/~uac/advisory.html>). WPG's web site (<http://www.powderbird.com/>) will be linked to the UAC web site and the WCNF web site (<http://www.fs.fed.us/r4/wcnf/>). WPG's office will be open 7 days a week and personnel will be available to provide detailed information during regular business hours. The information provided will note the main drainages in which WPG intends to operate, as well as areas they will not be skiing.
- WPG will emphasize the use of peripheral terrain when conditions allow reducing the level of potential competition and conflict with other backcountry recreationists in the Tri-Canyon Area.

Monitoring of Permit Compliance

- WPG will provide monthly and season-end activity reports, in an electronic format, recording the details of their operations to enable the Forest Service to observe their compliance with the terms and conditions of the permit. The Forest Service will stipulate the content and format of activity reports.

Private Landowner Considerations

- WPG will identify all staging and refueling areas in their operating plan. All staging and refueling areas not located on NFS lands will require written approval and/or a permit from the landowner(s). WPG will provide copies of these written approvals to the Forest Service as part of their annual operating plan. Refueling operations will conform to any applicable regulations.

V. RESPONSE TO MAJOR ISSUES

The 1999 ROD includes an extensive section on the Forest Service response to issues that were raised as a part of the previous EIS process. Many of these issues and the responses to them remain as valid today as they were five years ago. Generally, this discussion is not repeated here and the reader is directed to the 1999 ROD for further information on these points; though in some cases we wanted to take the opportunity to respond again to several issues that seemed to surface with great frequency in comments. The section below mostly focuses on those subject areas identified in the Final EIS where conditions have changed to some degree, where relevant new information has become available, or where some aspect of our decision is sufficiently different from what was previously approved that new impacts would likely result as compared to the 1999 EIS. The process of refining the scope of study is detailed in Section 2.5 of the Final EIS. Finally, readers should refer to Appendix B of the Final EIS for a comprehensive discussion of the issues raised during the EIS process and the Forest Service response.

Recreation

The 1999 ROD indicates that the most difficult part of that decision was addressing the opposing views, values, and interests of winter backcountry enthusiasts, versus the rationale for continuing to provide a heli-skiing recreation opportunity. The words of former Wasatch-Cache Forest Supervisor Bernie Weingardt's decision in 1999 still ring true today:

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“This issue is clearly the most challenging to address in an equitable manner, and impossible to resolve while satisfying all parties. People’s preferences and values are diverse, intense, and deep-seated; their sense of how public lands should be used, and who should have priority for that use spans the range of opinion.

On the one hand, there are those who emphasize that national forests are national resources and should be managed to facilitate use by those who are unfamiliar with the terrain. Helicopter skiing primarily serves a national and local constituency. On the other hand, there are those who believe that the Wasatch Mountains are above all a local resource, and that local area resident’s needs should have priority. Especially in light of an increasing local population, it is difficult for the latter to understand why the Forest Service would continue to provide for non-local use.

In a similar vein, some people believe that the experience of backcountry skiing, and especially the reward of “untracked powder” should be reserved for those who labor for it by climbing the slopes under their own power. Others believe just as strongly that backcountry skiing and its rewards should be available to those whose physical condition precludes non-motorized access. These views are further compounded by the perception that non-motorized access is available to those with lower income levels while helicopter skiing is for the wealthy. Allegations of elitism have been applied both to the physically well-off and to the economically well-off.

Finally, there are differences in expectations and the desired recreation experience among different users. People vary widely, for example, in the effects of noise on their level of enjoyment. Likewise, some people enjoy the social aspects of recreation, while others seek to be alone or in small groups. Even among non-motorized backcountry skiers, there is a range of relationships with helicopter skiing. On one end of the spectrum are those who ski where the helicopter is operating because they appreciate knowing where WPG considers the snow conditions safest; on the other end are those whose day is ruined if their backcountry experience involves interacting with a helicopter. For some in the middle, sharing terrain is not a big deal one way or the other” (1999 ROD, page 8).

We are fully aware that since 1999 some circumstances have changed to a degree, but the trends noted then have continued. For example, snowmobile use in the peripheral terrain has increased, diminishing its utility for WPG and other recreationists. In addition, the Final EIS notes that as the population grows along the Wasatch Front, participation in backcountry skiing, snowboarding, snowshoeing, and other sports has increased. Improvements in equipment technology have also spurred the increase in backcountry recreation. As well, the terms and conditions of the permit issued in 2000 appear to have caused a shift in winter recreation use patterns, as WPG evolved to make the best utility of the new permit. Many backcountry skiers, especially those who did not want to encounter heli-skiing, have adjusted their backcountry use around the Sunday/Monday Tri-Canyon Area closure. Others prefer to recreate when and where heli-skiing is occurring, but do so with full knowledge of what they will likely hear and see. We made our decision understanding that recreation use in all forms will continue to grow and participants will either reach some level of acceptance of other uses, or they will decide to recreate in locations where the competition is not so keen, or where uses they object to do not occur. What most persuades us to retain the major components of the 2000 permit is its relative success in moderating recreational conflict, particularly the Sunday/Monday closure of the Tri-Canyons to skiing and the limitations on the use of two helicopters at one time there. For additional information about how the major issues were considered in the decision, the reader should refer to the discussion in Section III of this ROD which details rationale for each element of the new permit.

A point that was made in public comments on the 1999 EIS and that we heard again in public input received for this EIS was that the Forest Service needs to have detailed data available about the numbers of people

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participating in various backcountry recreation activities in order to make its decision. We believe that the EIS appropriately considered data, reports, and estimates from a variety of sources, even though no comprehensive or statistically reliable study of backcountry use levels has been done. Such a study might be appropriate if the Forest Plan directs that recreation use be capped at certain levels, or if agency direction requires some uses to be given preference over others. Neither of these are the case. In fact, the Forest Plan clearly recognizes the competing recreation forces associated with heli-skiing and predicts competition, and to some degree conflict, will continue to grow. We believe that the qualitative approach used in the recreation analysis was consistent with the intent of NEPA and sufficient to make this decision. In short, we believe that it is appropriate in this case for the Forest Service to encourage and facilitate cooperation among the user groups, rather than dictate one user group be excluded in favor of another. We sincerely hope this decision will further that goal and a level of acceptance and respect for other users can result.

As we completed this EIS it became clear that, for many backcountry recreationists, helicopter noise was as much, or even perhaps even more of an issue than was the competition for untracked powder ski conditions. This is detailed in Chapter 4 of the Final EIS and was a part of our deliberations. In addition, we considered another aspect of the noise issue as it relates to residents and visitors of upper Little Cottonwood Canyon. In this case, we have decided to allow WPG to use the White Pine area extensively for home runs on Sundays and Mondays, when the Tri-Canyon Area is otherwise closed and on three days in the Patsy Marly area. Particularly with the White Pine option, we believe this can greatly reduce the number of flights and associated noise in the upper canyon on these days. As was the case with the analysis of other issues in the EIS, a comparative method of analyzing noise impacts was used. We believe this was appropriate, given that the concern was another aspect of the social impact of heli-skiing, versus a health and safety issue. Likewise, the type and intensity of noise a person might find objectionable would vary widely between individuals. Thus, we believe that the qualitative approach used in the noise analysis was consistent with the intent of NEPA and sufficient to make this decision.

A large volume of the public comment offered on the EIS for the 2003 Wasatch-Cache Forest Plan related to heli-skiing in the Wasatch Mountains. Section III of this ROD summarizes important points from the Forest Plan, particularly recognizing that: 1) heli-skiing is an appropriate use in the area; 2) competition between heli-skiing and other uses will continue; 3) the Forest Service would like to see a heli-skiing recreation opportunity continue to be offered; and 4) heli-skiing's future may be uncertain in the face of growing backcountry pressures. This was also an important part of our decision and we believe that we have carefully balanced the inherent conflict between these two competing uses in a manner consistent with the Forest Plan.

Golden Eagles

A good deal of the public comment we heard about environmental issues focused on golden eagles. Two pairs of golden eagles are known to use portions of WPG's permit area historically, and the 2000 permit included a number of requirements related to this species. Though they are not a Federally listed species under the Endangered Species Act, they are protected by the Bald and Golden Eagle Act. Under the Act, it is prohibited to "knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase or barter...any golden eagle..." Further, the Act notes that the term "take" includes "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb..." Thus, the basic Forest Service responsibility under the Bald and Golden Eagle Act is to ensure that the agency's activities and those that it authorizes, do not result in a "take" of any golden eagle. The EIS analysis (Section 4.4.3) documents a careful analysis and concludes that implementation of any of the alternatives would be consistent with the Act, avoid a "take", and not significantly impact golden eagles in the permit area.

Our decision involves continuation of most elements of the golden eagle nest buffer program as established for the 2000 WPG permit, including providing for helicopter flight variances under certain situations. We believe

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doing so complies with the intent and pertinent factors outlined in raptor protection guidelines developed by the FWS (Romin and Muck 1999). In addition, the Forest Service will implement a monitoring program for golden eagles that is more tightly focused on meeting regulatory requirements and more realistic in terms of its level of cost and effort. Details of this monitoring program are included in Section IV above.

We recognize a number of those who commented expressed concern about heli-skiing's impact on golden eagles and the need for undertaking a much more comprehensive study about its effects on courtship, site fidelity, and a variety of other behaviors and factors. Yet, the EIS analysis notes golden eagles have co-existed with heli-skiing in the permit area for more than 30 years and the analysis and conclusions in the document include consideration of various other studies for other raptors applicable to this situation. Some who commented expressed the opinion that the raptor protection guidelines mandate closure of portions of the permit area to heli-skiing. In this regard, it's important also to consider that the guidelines were developed as "optimal" measures to help agencies assess proposed activities in NEPA and to reduce impacts to raptors to "insignificant levels" and avoid the need to prepare an EIS. In this case, we have taken the step of ensuring raptor protection guidelines are incorporated into the new permit, even though an EIS has been completed. The issue of flight buffer variances was carefully considered in the EIS from the perspective of the four criteria that are identified in the raptor protection guidelines, i.e., the type and duration of the activity; topography and vegetation patterns; habituation; and the local population density. Our decision with regard to golden eagles was also guided by the knowledge that there are a variety of other impacts to nesting golden eagles in the permit area, including the relatively large numbers of other backcountry recreationists.

It would be desirable if a large body of scientific information were available about the effects of helicopter use on golden eagles. However, we believe the EIS analysis appropriately deals with the issue of whether sufficient information is available, or can be reasonably collected, regarding golden eagles in order for us to make an informed decision. While we do not believe it is necessary in supporting this decision, we want to express our intention for Forest Service staff to fully explore the possibilities and funding options to undertake a comprehensive study, in coordination with the U.S. Fish and Wildlife Service, in order to more intensively examine the helicopter - golden eagle interaction.

VI. ALTERNATIVES NOT SELECTED

In addition to Alternative C, five other alternatives were considered in detail in the Final EIS. Of these, Alternative F was added between the Draft and Final EIS in order to consider an alternative that might better respond to recreation conflict issues. The summary of the rationale for not selecting these alternatives hinges mostly on the degree to which we believe they would have achieved the proper balance between competing recreation uses.

ALTERNATIVE A - PROPOSED ACTION: This alternative was not selected because it is our belief that it would eliminate the two most important points in balancing the conflict between heli-skiing and other backcountry recreationists, namely limitations on the use of two helicopters at one time in the Tri-Canyon Area and loss of season-long predictability about weekend use of the Tri-Canyons for heli-skiing.

ALTERNATIVE B - NO ACTION: The No Action alternative was not selected because, though it would eliminate the heli-skiing conflict with other backcountry users, it would not help to achieve the Forest Plan's objective of offering a heli-skiing recreation opportunity.

ALTERNATIVES D, E, and F: These alternatives offered a variety of options that helped to examine the environmental consequences of a range of alternatives to the proposed action. Similar to Alternatives A and B, after reviewing the analysis, we don't believe that they strike the right balance between conflict resolution and

providing for improved operating efficiency for heli-skiing. It should be noted that some components of Alternatives D and F will be adopted and made part of the new permit.

VII. RELATIONSHIP OF THIS DECISION WITH PURPOSE AND NEED FOR ACTION

The Final EIS recognizes the inherent conflict that exists between the competing objectives of improving WPG's operational efficiency while attempting to minimize conflict with other backcountry users. Achieving what we believe to be the appropriate balance between these objectives in many ways is the heart of our decision. Much of the discussion related to this natural tension is detailed in Section III, where the six main components of our decision are outlined. The discussion below simply summarizes how our decision was informed and guided by the purpose and need for action:

- *Attempt to provide improved operating efficiencies for WPG relative to the current permit*

We believe our decision incorporates several elements that should be helpful to WPG operationally. The non-commercial days prior to the season will improve their ability to start commercial operations on the season's first day if conditions allow. Providing for some additional heli-ski days beyond the April 15 closing date should also be helpful. Allowing home runs when the Tri-Canyon Area is otherwise closed will reduce the impact of those closures from an operational standpoint. Information provided by WPG for the EIS suggests that the 2000 permit conditions resulted in a loss of about six operating days annually, as compared to the previous permit. Though not by design, it is our conclusion that modifications listed above will, to some extent, offset this reduction.

- *Seek to minimize conflicts between heli-skiing and other winter recreational users*

We believe the conditions of the current permit made important strides in addressing the recreation conflict that has surrounded this permit for more than 30 years. It is also our belief that maintaining certain conditions of that permit will continue to minimize recreational conflicts. As noted earlier in this ROD, the permit changes may affect other recreationists to some degree, but we believe that overall the changes will not present major new impacts and will be undetectable to most.

VIII. RELATIONSHIP OF THIS DECISION WITH FOREST PLANS

This decision is consistent with the 2003 Wasatch-Cache and Uinta National Forests' Forest Plans. Both plans state that helicopter skiing is an appropriate activity in the permit area. Consistency with the Forest Plans is well documented in the Final EIS and is also addressed at other points in this ROD.

IX. ENVIRONMENTALLY PREFERRED ALTERNATIVE

The Council on Environmental Quality (CEQ) Regulations (40 CFR 1500-1508) require that the Record of Decision identify the alternative(s) that could be considered environmentally preferable. The environmentally preferred alternative is defined by CEQ as: 1) the alternative that causes the least damage to the biological and physical environment, and 2) the alternative that best protects, preserves, and enhances historic, cultural, and natural resources. Though the projected impacts to the physical and biological environment are negligible under all of the action alternatives (i.e., Alternatives A, C, D, E, and F), the EIS does disclose some potential impact to golden eagles and a Forest Service sensitive species as noted in Section X. below. Consequently, Alternative B - No Action, is the environmentally preferred alternative.

X. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

National Environmental Policy Act - Among other requirements, this law mandates consideration of long- and short-term effects of decisions. The EIS prepared for this project discloses the analysis of effects for a range of alternatives, including No Action.

National Forest Management Act -This decision is consistent with the intent of the 2003 Wasatch-Cache National Forest Revised Forest Plan's forestwide goals, subgoals and objectives listed on pages 4-16 to 4-34 and the desired future condition of the Central Wasatch Management Area on pages 4-152 to 4-165. The project incorporates applicable forest wide standards and guidelines from Chapter 4, Section A4. This decision is consistent with management prescription direction mapped for the area. This decision is also consistent with the intent of the 2003 Uinta National Forest Revised Forest Plan's forestwide goals, subgoals and objectives listed on pages 2-1 to 2-25 and the desired future condition for All Management Areas on pages 5-1 to 5-9, the desired future condition for American Fork Management Area on pages 5-11 to 5-26, and the desired future condition for the Lower Provo Management Area on pages 5-74 to 5-87. The project incorporates applicable forest wide standards and guidelines from Chapter 3, pages 3-1 to 3-32. This decision is consistent with management prescription direction mapped for the area. Finally, as a part of the EIS process, a Biological Evaluation was completed and is included in the project record. As a part of this, the potential impacts to 19 Forest Service sensitive species were evaluated. With the exception of Northern goshawk, the determination was that the project would have no impact on these species. For Northern goshawk, the determination was that the project “may impact individuals or habitat, but not likely to create a trend toward Federal listing or cause loss of viability.”

The Bald and Golden Eagle Act- This Act provides for the protection of the bald and golden eagles by prohibiting, except under certain specified conditions, the taking, possession and commerce of such birds. With this decision there could be some temporary disturbances to individual golden eagles. However, measures included in the decision should help to minimize disturbance to nesting golden eagles and prevent a "take", as defined in the Act.

Endangered Species Act -This Act directs that all Federal departments and agencies shall seek to conserve endangered, and threatened (and proposed) species of fish, wildlife and plants. This obligation is further clarified in a National Interagency Memorandum of Agreement (August 30, 2000), which states our shared mission to “...enhance conservation of imperiled species while delivering appropriate goods and services provided by the lands and resources.” Based on the disclosure in Chapter 4 of the EIS, the Biological Assessment that is included in the project file, and coordination with FWS, it has been determined that, there will be no adverse effects to Federally listed endangered, threatened, or proposed, species of fish, wildlife and plants associated with implementation of this decision, with the exception of Canada Lynx. For this species, the determination is that the project “may affect, not likely to adversely affect.” On September 29, 2004, the FWS concurred with the determinations in the Biological Assessment.

Executive Order 13186 of January 10, 2001 – Based on the discussion in Section 4.5.5 of the Final EIS and information in the project file concerning migratory birds, my decision is in compliance with this Executive Order for Conservation of Migratory Birds.

Wetlands and Floodplains - Implementation of this decision will not have any adverse impacts on wetlands and floodplains and will comply with Executive Orders 11988 and 11990.

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Prime Farmland, Rangeland and Forest Land (Secretary of Agriculture Memorandum 1827) – There is no prime land within the project area.

Equal Employment Opportunity, Effects on Minorities and Women - The EIS describes the relevant impacts associated with social and economic factors in Chapter 4. Implementation of this decision will not have a disproportionate impact on any minority or low-income communities and will not differentially affect the Civil Rights of any citizens, including women and minorities.

Environmental Justice (E.O.) 12898 - This order (59 Fed. Register 7629, 1994) directs Federal agencies to identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. Based on the analysis in the EIS, this decision complies with Executive Order 12898.

XI. APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant to 36 CFR 215.7. A written Notice of Appeal must be postmarked within 45 days after the date this notice is published in the Salt Lake Tribune, Salt Lake City, Utah. The Notice of Appeal should be sent to: USDA, Forest Service, Intermountain Region, ATTN: Appeals Deciding Officer, 324 25th Street, Ogden, UT 84401.

Appeals must meet the content requirements of 36 CFR 215.14.

This decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer at *Appeal Deciding Officer, Jack Troyer, Regional Forester, 324 25th Street, Ogden, Utah 84401 fax 801-625-5277*. The office business hours for those submitting hand-delivered appeals are: 8:00 to 4:30, Monday through Friday, excluding holidays. Electronic appeals must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), and Word (.doc) to appeals-intermtn-regional-office@fs.fed.us. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Appeals, including attachments, must be filed within 45 days from the publication date of this notice in the Salt Lake Tribune, the newspaper of record. Attachments received after the 45-day appeal period will not be considered. The publication date in the Salt Lake Tribune is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source. This notice is also published in the Provo Daily Herald.

Individuals or organizations that submitted substantive comments during the comment period specified at 215.6 may appeal this decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

IMPLEMENTATION

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

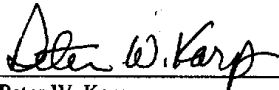
CONTACT PERSON

For further information on this decision, contact Steve Scheid, EIS Project Manager at the Salt Lake Ranger District, 6944 South 3000 East, Salt Lake City, UT 84121, (801) 733-2689.



Thomas L. Tidwell
Forest Supervisor
Wasatch-Cache National Forest

10/14/04
Date



Peter W. Karp
Forest Supervisor
Uinta National Forest

10/14/04
Date

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