

Matthew K. Bishop  
Western Environmental Law Center  
103 Reeder's Alley  
Helena, Montana 59601  
406-324-8011  
[bishop@westernlaw.org](mailto:bishop@westernlaw.org)

Michael A. Kauffman  
DRAKE LAW FIRM, P.C.  
111 North Last Chance Gulch  
Suite 3J, Arcade Building  
Helena, MT 59601  
406-502-1668  
[michael@drakemt.com](mailto:michael@drakemt.com)

*Counsel for Plaintiffs*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

FRIENDS OF THE CRAZY  
MOUNTAINS, et al.,

Plaintiffs,

vs.

MARY ERICKSON, in her capacity  
as Forest Supervisor for the Custer-  
Gallatin National Forest, et al.,

Federal-Defendants.

19-CV-00066-SPW-TJC

STATEMENT OF  
DISPUTED FACTS

In accordance with Local Rule 56.1(b), Plaintiffs, Friends of the Crazy Mountains *et al.*, submit this combined statement of disputed facts in response to Federal-Defendants' (the Forest Service's) statement of undisputed facts (Doc. 83) and Defendants' (the landowners') statement of undisputed fact (Doc. 87).

***Response to the Forest Service's Statement of Undisputed Facts (Doc. 83):***

1. *The Porcupine Lowline Trail has been depicted on historic Absaroka National Forest maps going back to the early 1900s, though the trail location changes over time. (AR4637–56; Declaration of Kathy Nash, Doc. 8-38 at ¶ 3; Declaration of Kamille Crootof, Doc. 14-1, at ¶ 3(a), (b).) Through the 1960s, public use and USFS trail maintenance was occurring. (Doc. 8-38 at ¶ 4.) That use and maintenance dropped off significantly in the 1970s and 1980s. (Doc. 8-38 at ¶ 4.) The trail became difficult to follow, needed signing, and was blocked by extensive blowdown. (Doc. 8-38 at ¶ 4.) There was no trail tread in several areas. By the late 1990s it was difficult to find the trail. (Doc. 8-38 at ¶ 4; see also Declaration of Todd Orr, Doc. 8-37 at ¶ 12.)*

Undisputed that the Porcupine Lowline trail (No. 267) has been depicted as a public National Forest trail going back the 1900s. Also

undisputed that the declaration cited states that at times the Porcupine Lowline trail was difficult to follow and that trail maintenance dropped off at times. Note that the trail was officially designated a National Forest trail in the 2006 travel plan and managed and maintained as such since that time. Doc. 80 at ¶¶ 55-60. In 2015, the Forest Service worked on maintaining and improving the trail for public use and access, including removing debris, removing no trespassing signs, and installing new “Welcome to Your National Forest” signs. Doc. 80 ¶¶ 112-113. Dispute that the location of the trail changed much over time. Doc. 29-6 at 11. As previously explained by the Forest Service, the trails “have always followed a definite fixed course” and to the extent depictions on various maps may vary that is “merely an artifact of changing technology over the years.” *Id.* The 1937 map and other earlier maps were “based on ground surveys and hand-drafted” but as technology has changed the maps have become more precise. *Id.* Regardless, the various representations of the trails on the maps “do not change the fact that these Trails have always followed a definite fixed course.” *Id.* The Forest Service also noted that landowner attempts to prevent Forest Service and public access on the trails “with

gates and destruction of signage . . . [also] results in lack of clarity on the ground.” *Id.*

2. *Landowners along the Porcupine Lowline trail began complaining about public use of the trail by 2002 and made attempts to shut down public access. (Doc. 8-38 at ¶ 5.) Signs were posted noting, “Private Property, No Trespassing.”*

Undisputed.

3. *At about this same time, USFS began the process of creating the 2006 Travel Plan. (AR5223.)*

Undisputed.

4. *In 2004, USFS and landowners began meeting to try and negotiate public access. As these negotiations continued, USFS released the Draft EIS for USFS’s Travel Management Plan. (Doc. 8-38 at ¶ 6.)*

Undisputed that this is what the declaration states.

5. *The Final EIS and Record of Decision (ROD) for the Travel Management Plan (referred to here as the 2006 Travel Plan) were completed in 2006. (AR1869–2676, 3695–3823, 5219–5362.) The 2006 Travel Plan identified opportunities for public recreational use and access using the Forest’s road and trail system. (AR5264, 5270–71.)*

Undisputed.

6. *The Travel Plan included program level objectives and identified areas where USFS needed to address access needs across the Forest, including the Porcupine Lowline Trail. (AR5244–84.) The Travel Plan contains four categories of direction: goals, objectives, standards, and guidelines. (AR5223.) The Travel Plan did not set forth any standards for either the East Crazies or Ibex areas. (See, e.g., AR5244–84.)*

Undisputed.

7. *The Travel Plan indicated USFS was seeking to re-route the Porcupine Lowline Trail off private property and onto National Forest. (AR5224, 5270–71.)*

Disputed. The document cited (AR-5224) does not mention a re-route of the Porcupine Lowline trail (No. 267). The other document cited (AR-5270-71) describes the Forest Service's interests in providing motorcycle opportunities in this region which the travel plan decision does by authorizing such use on the Porcupine Lowline trail (No. 267)) and its interests in looking for ways reroute trails in the area, including the Shields-Lowline route (No. 268) AR-5270-5271. There is no mention

of re-routing the Porcupine Lowline trail (No. 267) in particular or any discussion or analysis of the four-part Porcupine Lowline trail project (Ibex project). *See id.*

8. *As the Plan was being developed, USFS and private landowners continued to negotiate public access along the Porcupine Lowline Trail, but they could not reach a resolution. (Doc. 8-38 at ¶ 6, AR4701–45.)*

Undisputed that this is what the declaration states.

9. *The public was invited to participate and comment during the planning process, which began in 2002. (AR5349–53.)*

Undisputed.

10. *Landowners commented on the Travel Plan and ultimately appealed the decision because it purported to establish public access across their private property. (Doc. 8-38 at ¶ 6.) USFS responded by acknowledging that the 2006 Travel Plan itself does not establish or perfect public access rights. (Doc. 8-38 at ¶ 6, AR5112.) USFS had also acknowledged this reality in response to public comments. (See, e.g., AR3271.)*

Undisputed. Note, however, that the Forest Service explained that while the 2006 travel plan in and of itself does not establish access rights, the 2006 travel plan does designate the Porcupine Lowline trail (No. 267) and North Fork Elk Creek trail (No. 195) as public National Forest trails open for public use and access because the Forest Service believes it has a valid easement interest in these trails “due to the historic and ongoing public and administrative use and maintenance.” Doc. 79-15 at 3. “The public is the beneficiary of this right of access and the Forest Service defends and maintains that right.” *Id.* Because “the Forest Service believes the United States has an ‘easement interest’ in this trail system, the Forest Service has a responsibility to manage this trail system under the [2006 travel plan].” *Id.* at 4.

11. *The 2006 Travel Plan was implemented through a site-specific Road & Trail Environmental Analysis (referred to here as the “2009 EA”). AR1–209.*

Undisputed.

12. *The purpose of the 2009 EA was to analyze the potential environmental effects of several road and trail projects on the Forest, including the Porcupine-Ibex reroute. (AR3835, 3845–46.) This included*

*opportunities for public notice and comment to reflect the Porcupine Ibex reroute. (See, e.g., AR188–209.)*

Undisputed that the 2009 was designed to analyze the potential effects for various road and trail projects on the Forest but dispute that it included and analyzed the trail re-route for the Ibex project, in particular. Dispute that the 2009 EA provided the public with opportunity to comment on anything close to the current Porcupine-Ibex project, because the EA only included vague and aspirational discussion of a possible reroute. The 2009 EA said the current Porcupine Lowline trail (No. 267) passes through private lands “and needs to be remarked and reconstructed.” AR-3845. The 2009 EA said under the 2006 travel plan, this trail “is to provide opportunities for motorcycle, mountain bike, stock, and foot use.” *Id.* The 2009 said that “*some* portions of the trail *may* be shifted onto National Forest lands to the east,” *id.* (emphasis added), but this was purely aspirational and no details were provided.



13. *The EA's preferred alternative for the reroute was described as follows:*

Porcupine Area (Crazy Mountain Range, Map CRZ-1)

*In the Porcupine area portions of the Porcupine-Lowline Trail #267 between the Ibex and Porcupine trailheads would be relocated to correspond with final rights-of-way. Some portions of the trail may be shifted onto National Forest land to the east. Currently, the trail passes through large portions of private lands with fences, gates, past harvest and road building and needs to be remarked and reconstructed. Under the decision for the Gallatin Travel Plan this trail is to provide opportunities for motorcycle, mountain bike, stock and foot use (Travel Plan Decision, page II-111). Work would involve about 5.2 miles of new trail construction, 2.6 miles of reconstruction and 3.0 miles of maintenance.*

(AR3845–46.)

Undisputed.

14. *Two maps showed the area of the proposed reroute. (AR4039–40.) The maps were distributed during scoping and attached to the EA. (AR861, 872, 4039–40.) The maps fix the beginning and end points of the reroute next to the words, “Relocate portions of Porcupine Trail onto final rights of way between these points.” (AR4039–40.) One of the maps also shows a narrow red oval around the area of land where the trail would be re-routed, thus defining the area of “National Forest land to the east” where USFS would seek to relocate the trail. (AR4039.) In red*

*text, the map states within this oval: “Relocate portions of Porcupine Trail onto final rights-of-way and NF Lands between these points.”*

*(AR4039.)*

Undisputed. Note, however, that the Forest Service said in the 2009 EA that no changes to the Porcupine Lowline trail (No. 267) would occur until all applicable authorizations are in place and that, as per the 2006 travel plan, it “intends to continue to maintain the route for existing uses as it has in the past until a relocation agreement has been reached.” AR-4021. Also note that the proposal was purely aspirational – “some portions” of the trail “may be” moved into the red oval area (which is two-miles wide and includes a wide variety of elevations and environmental conditions). The Forest Service did not commit or decide to proceed with the trail re-route in the 2009 EA and no details are provided. Also note that the trail re-route is only one part of the four-part IbeX project (the 2009 EA does not discuss the easement exchange or trail obliteration).

*15. The 2009 EA showed that the various roads and trails projects created no threat of significant environmental impacts. (AR210–55.) In the 2009 EA, USFS expressly examined the potential direct,*

*indirect, and cumulative effects of the Porcupine-Ibex reroute, along with all the other road and trail work described in the EA. (AR3874–75.)*

Undisputed that the 2009 EA reached a finding of no significant effect. Dispute that the 2009 “expressly examined” the potential direct, indirect, and cumulative effects of the trail re-route for the Ibex project. The trail re-route for the Ibex project is not discussed or analyzed in the 2009 EA.

*16. For instance, in the fisheries analysis, the Porcupine-Lowline trail was identified as one of the work areas where trail work would involve stream crossings and wetlands. (AR3889.) But USFS concluded the work would not result in any significant environmental effects. (AR3889–91.)*

Disputed. The fisheries analysis in the 2009 EA does not discuss or analyze the environmental effects of the trail re-route for the Ibex project. AR-3889-3891 does not discuss or analyze the trail re-route for the Ibex project. Table 3 mentions a “Porcupine” work area and the presence of Yellowstone cutthroat trout and stream crossings and wetlands being a potential issue, but not details or analysis about the trail re-route are provided or included. AR-3889.

*17. The EA further discussed the risk of mortality to aquatic organisms, including westslope cutthroat trout (an ESA-listed species),*

*and again found that none of the proposed actions would likely endanger any species in any of the work areas. (AR3891.)*

Undisputed that this is what the 2009 EA discussed but dispute that any of these discussions pertain to the trail re-route for the Ibex project or other aspects of the Ibex project.

18. *USFS also analyzed potential effects on big game and carnivores in the EA’s “General Wildlife” analysis. (AR3896.) USFS noted that “Road and trail improvements have several potential ways of affecting wildlife species.” (AR3896.) USFS analyzed these effects in detail. (AR5299.) It concluded motorized uses have greater adverse effects than non-motorized with “wildlife displacement from human activity as the primary factor.” (AR5299–5300.) To address wildlife displacement, USFS applied a one-kilometer buffer on each side of both motorized and non-motorized routes, and categorized everything else as “core” habitat for wildlife. (AR5300.) This analysis revealed that—even if the Porcupine-Ibex reroute were open to motorized use (it is not)—the effects on wildlife habitat would still be virtually the same as a “no action alternative.” (AR5300.) This makes sense: As pointed out in the Wildlife Report, “Some direct loss of wildlife habitat from new routes will occur, but habitat will also be gained from routes that are closed.” (AR3903.)*

Undisputed that the 2009 EA analyzes potential effects in its “General Wildlife” section. Dispute that the analysis of potential effects includes the trail re-route for the Ibex project (or other aspects of the Ibex project), which is nowhere mentioned in the pages cited.

*19. Implementation of the projects described in the 2009 EA benefits species through an overall reduction in motorized routes, especially in areas important for wildlife. (AR240.) To ensure these benefits, USFS directed that trail construction would be implemented in a way that mitigates effects to species. (AR236–50.) New routes like Porcupine-Ibex “will be surveyed and routed in such a manner as to avoid important wildlife habitats such as old growth, riparian, willow, aspen, and whitebark pine, therefore, there will be minor to no effect to rare habitats.” (AR240.)*

Undisputed that this is what the 2009 EA states. Dispute that it applies to the trail re-route for the Ibex project (or other aspects of the Ibex project) which nowhere mentioned or discussed in the pages cited.

*20. The 2009 EA further analyzed the direct, indirect, and cumulative effects of the reroute project to ensure it did not negatively impact grizzly bears, lynx, migratory birds, roadless areas, water quality, wolverine, rare plants, sensitive species, and to ensure it does*

*not promote the spread of invasive weeds. (AR3919, 3945, 3954, 3960, 3966, 3972, 3982, 3990, 3993–96.)*

Undisputed that the 2009 analyzed the effects on the species listed but dispute that this analysis included the trail re-route for the Ibex project (or other aspects of the Ibex project), which is nowhere mentioned, discussed, or analyzed in the pages cited.

*21. Against the backdrop of this analysis, USFS compared two alternatives: Alternative 1, the proposed action, consisted of undertaking all the proposed road and trail work described in the EA, including the Porcupine-Ibex reroute; Alternative 2 was a no-action alternative. (AR3839–66.) USFS concluded these two alternatives were adequate for two reasons: (1) “the significance of environmental issues could be minimized through application of mitigation and design features to the Proposed Action,” and (2) “the effects of other alternatives (i.e. combinations of the Proposed Action and No Action Alternatives) can be adequately understood through comparison of the Proposed Action and No Action Alternatives.” (AR3862.)*

Undisputed that the 2009 EA compared two alternatives. Dispute that these alternatives included the trail re-route for the Ibex project (or other aspects of the Ibex project). The trail re-route for the Ibex project is nowhere mentioned on the pages cited.

22. *The public was invited to comment on the EA during a 30-day period. USFS received one comment regarding the relocation of the Porcupine Lowline Trail, which stated:*

*Any new crossings related to the relocation of the trail should not negatively impact the streambed and/or banks and should not be a sediment source. The preferred alternative is a bridge that spans the stream and its immediate banks. Porcupine and North Fork Elk Creek have known populations of pure Yellowstone Cutthroat trout.*

*(AR253.)*

Undisputed. Note, however, that the comment refers to any future trail relocation in the Porcupine area generally and the need to not have the trail be a sediment source for the streams which have known populations of pure Yellowstone Cutthroat trout. AR-253. Also note that no details about a trail re-route are provided because the re-route was not authorized by the 2006 travel plan or 2009 EA – it was vague and purely aspirational. AR-4021. The Forest Service said construction work or design of the trail re-route will occur at some future date after all authorizations are in place and an agreement with the landowners is reached. *Id.* This did not occur until 2018 when the Ibex project was put out for public comment and scoping. AR-261.

23. *Further illustrating that USFS considered such effects of the proposed reroute, USFS responded that live stream crossings would meet or exceed standards. (AR253, 319, 563.)*

Undisputed (but see response to No. 22 above).

24. *Based on the effects analysis summarized above and detailed in the EA, USFS concluded there would be no significant effects from the proposed road and trail work, including the Porcupine-Ibex reroute. (AR210–51.) USFS issued its Decision Notice and FONSI (Finding of No Significant Impact), authorizing the reroute, on April 15, 2009. (AR210–51.)*

Undisputed that the 2009 EA concluded there would be no significant effects but dispute that this conclusion applies to the trail re-route for the Ibex project. None of the pages cited discuss or analyze the impacts of the Ibex project or the proposed trail re-route.

25. *At the time the 2009 EA was issued, USFS and landowners had not negotiated a resolution to the access issue. Instead, the landowners had erected a locked gate to block public use of the trail, and they continued posting the area as, “Private Property, No Trespassing.” (Doc. 8-38 at ¶ 7.) The landowners refused to remove the gate despite USFS’s requests. (Doc. 8-38 at ¶ 7.) In 2010, USFS recommended in an*



*internal notice the public not use the trail until an easement was acquired. (Doc. 8-38 at ¶ 7.)*

Undisputed that this is what the declaration states. Dispute that the public was advised not to use the trail in 2010 (that was merely an internal discussion). In 2013-2017 the Forest Service received regular complaints from members of the public about landowner efforts to obstruct public access on the Porcupine Lowline trail (No. 267) and worked to defend public access in response by documenting these incidents, reporting them to the Park County Sheriff, and meeting and exchange letters with the landowners about them. Doc. 80 at ¶¶92-101, 112-113, 126, 145-146. The Forest Service also took steps to improve and maintain the trail for public use and access in 2014 and again in 2015. *Id.* at ¶¶100, 112-113. The public also continued to use the trail despite landowner efforts. Doc. 80 at ¶¶ 112-113, 126, 145-146; Docl 79-5; Doc. 79-7.

*26. USFS initially estimated that it would complete the work outlined in the 2009 EA within five years. (Doc. 8-38 at ¶ 6.) But budgetary constraints and negotiations with private landowners delayed implementation of the Porcupine-Ibex reroute. (AR627-28; Doc. 8-9 at 1.)*

Undisputed that this is what the declaration states. Note that in the 2009 the proposed trail re-route for the Ibex project was simply aspirational in nature – “some portions” of the trail “may” be moved as some future date onto National Forest lands. AR-223. The Forest Service said at the time that no relocation, construction, or updates to the Porcupine Lowline trail (No. 267) would occur until an agreement with the landowners is reached and details sorted out and all authorizations obtained (this did not occur until 2018). AR-192. Until then, the trail would be managed for public use and access as directed by the travel plan. *Id.*

*27. USFS continued to work with private landowners and others for several years after the EA and FONSI were issued in order to negotiate access for the reroute. (Doc. 8-38 at ¶¶ 7-10; AR4741-61.)*

Undisputed that this is what the declaration states. Note that from 2013-2017 tensions with the landowners existed over management of the trail and the landowners’ obstruction and the Forest Service’s efforts, through 2015, to manage it for public use and access, consistent with the 2006 travel plan. Doc. 80 at ¶¶92-101, 112-113, 126, 145-146.

*28. In 2018, USFS and the landowners reached a tentative agreement regarding public access and rerouting the trail. (AR425-27.)*

Undisputed.

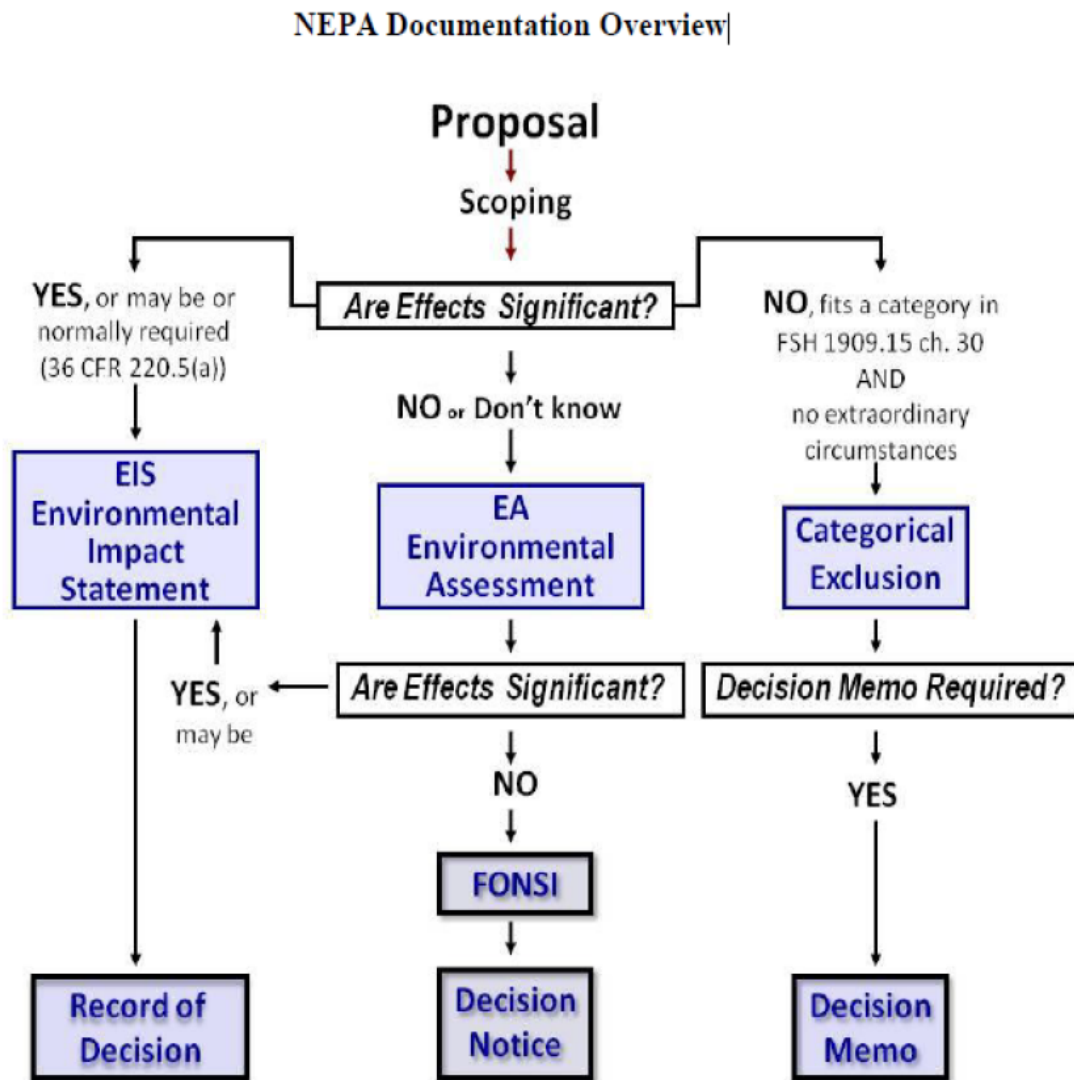
29. *A tentative route for the Porcupine-Ibex reroute was proposed in early 2018. (Doc. 8–38 at ¶¶ 7–10; Declaration of Mary Erickson, Doc. 30-8, at ¶ 9; Second Declaration of Mary Erickson, Doc. 54-1 at ¶ 7.)*

Undisputed.

30. *In March 2018, USFS released a public scoping notice asking for input on the proposed reroute. (AR425–27, 431–40.) The purpose of the scoping was to determine changed circumstances or new information required USFS to revise its previous analyses or decisions. (AR425–27, 431–40.) The public was invited to participate and comment. (See, e.g., AR282–424.)*

Undisputed that scoping was released in March, 2018. Dispute that the scoping notice was solely for the trail re-route. The scoping packet (AR-431), Frequently Asked Questions (AR-424), and March 18, 2018 update explain the scoping is for the entire four-part Ibex project, which includes the trail re-reroute, acquiring new easement interests from the landowners, releasing easement interests on the existing trails, and obliterating the trails. AR-432. A map depicting all four parts of the Ibex project was also provided. AR-434. Dispute that the purpose of the scoping notice was to evaluate “changed circumstances or

new information.” Under NEPA, scoping is for new proposed actions (the agency prepares a supplemental information report to evaluate new information or circumstances) and the Forest Service said it was initiating scoping for the IbeX project in accordance with 36 C.F.R. § 220.4(e) and 40 C.F.R. § 1501.7 to evaluate whether to prepare an EIS, EA, or CE. AR-435; AR-437 (defining scoping);



AR-438 (scoping and options that result from it). Under NEPA, scoping is never done to evaluate changed circumstances or new information.

AR-438.

*31. USFS made clear that, based on the information received in scoping, if there was any uncertainty as to whether the reroute would have a significant effect on the environment, USFS would prepare an EA. (AR439.)*

Undisputed, but note that what the Forest Service actually stated was that if it was “uncertain whether the proposed action [(the four-part Ibex project)] may have a significant effect on the environment” it would prepare an EA and if a potential “significant environmental effect” was determined it would prepare an EIS. AR-439. Otherwise, the Forest Service would prepare an CE. AR-440.

*32. While public opinions on the reroute varied, no new issues were identified. (AR1–209, 444–53, 885–89.) The public comments confirmed the location of the reroute would not result in any unforeseen effects that would undermine the 2009 EA and FONSI. (AR627–29, 696–702.) As a result, USFS affirmed its previous decisions and notified the public through both an open letter and a public meeting. (AR627–28.) USFS explained that since the reroute had already been analyzed and*

*authorized through the 2006 Travel Plan EIS and the 2009 EA, no further NEPA analysis was required: “Based on a review of all comments received in this latest public scoping, I have determined that our past two environmental analyses and decisions have adequately addressed public issues and resource effects of the trail re-route.”*

*(AR627–28.)*

Disputed. The majority of public comments received on scoping for the Ibex project opposed the project or requested the agency – at the very least – prepare an EA. Doc. 80 at ¶¶167-183. Members of the public raised serious concerns about the potential environmental effects of the project, including effects to big game habitat and the loss of a century year old Forest Service trail and whether the easement exchange was in the public interest (and a fair deal). *Id.* Undisputed that the Forest Service cancelled the NEPA process for the Ibex project because it determined it was already addressed in the 2006 travel plan EIS and 2009 EA.

33. *USFS’s decision to not conduct further NEPA analysis in 2018 is entirely consistent with the 2009 EA. The 2009 EA identified the narrow corridor through which the proposed reroute would pass.*

*(AR4039–40.) The EA also specified the design criteria that, if adhered*

*to, would ensure compliance with the EA and its effect analysis. (AR3855–62.) That design criteria specified the type of work authorized, standard operating procedures, mitigation efforts, and monitoring protocols. (AR3855–62.)*

Disputed. The 2009 EA did not discuss or analyze the effects of the Ibex project or trail re-route (see response to Nos. 12-14 above). The 2009 EA only contemplated moving ‘some portions’ of the trail to the east, on National Forest lands and within a two-mile wide “corridor” comprised of public and National Forest lands with varied terrain and elevations. Doc. 80 at ¶84.

*34. During summer 2018, an interdisciplinary team analyzed the final layout of the reroute to evaluate impacts and designate appropriate mitigation measures. (AR263–76.) The standard operating procedures and mitigation utilized by the Team were designated by the 2009 EA and Decision Notice. (AR29–32, 236–39.) Pursuant to those terms, the Forest completed additional specialist checklists and consulted with the U.S. Fish and Wildlife Service and the State Historic Preservation Office. (AR562–90, 613–14, 623–26.) These checklists and consultations confirmed the Porcupine-Ibex reroute would not entail any unacceptable environmental effects. (AR562–90, 613–14, 623–26.)*

Undisputed that additional surveys and checklists were conducted during the summer of 2018, *after* the Forest Service had already approved the Ibex project. Note that all of this work and the documents produced were also never included in a NEPA document or analysis and never made available for public review and comment as required by NEPA.

35. *USFS acquired recorded trail easements across M Hanging Lazy 3, LLC (MHL3), and Henry Guth, Inc. (Guth) for the rerouted Porcupine Ibex Trail No. 267, via donation, under the authority of FLPMA. (AR5002-21; see also Declaration of Cynthia Anne Hockelberg, attached as Exhibit A, at ¶ 1.)*

Disputed. The exchange documents state that the Forest Service acquired the recorded trail easements from the landowners by “donation,” but exchange was based on the express condition that the Forest Service release its easement interests on portions of the Porcupine Lowline trail (No. 267) and North Fork Elk Creek trail (No. 195). AR-5483, 5484. This was an exchange of easement interests. *Id.* An “exchange” is a “discretionary, voluntary transaction involving mutual transfers of land or interests in land between . . . the Forest Service and a non-federal entity.” 36 C.F.R. § 254.31.



36. *The landowners' easement contributions in this case were specifically denominated as donations, and therefore do not implicate any of the "exchange" requirements under FLPMA §1716. (AR4996–5021; Ex. A at ¶¶ 2–6.)*

Disputed. The Trail Easement Agreement states that the donated easements from the landowners “are consideration for an agreement” that the Forest Service release its easement interests in the two National Forest trails. AR-5483, 5484. The landowners actually insisted on the Forest Service releasing its easement interests in the two trails before agreeing to donate new easements to the Forest Service: “[The landowners] really want assurance that the old trail segments are relinquished at the same time they are granting new easements.” AR-5582; *see also* AR-6012 (landowner resolution that it only grant easement to Forest Service “[o]n the condition that the United States Forest Service relinquishes all previous claims” to the trails on its property). This is why the Forest Service reassured the landowners that it would relinquish its easement interests in the two trails, explaining that it is “exchanging interests” with the landowners. AR-5498. With the landowners’ donation “of a trail easement to provide public access

across your property, the Forest Service will relinquish any interests and claims on the Porcupine Lowline trail and North Fork Elk Creek trail through your property (as depicted on the 2012 map or on any other Forest Service map if some came forward with something else they have found).” AR-5498.

*37. The landowners’ donations did not trigger any “exchange” protocols under FLPMA. (Ex. A at ¶¶ 3–6.)*

Disputed (see responses to Nos. 35 and 36 above).

*38. When the use, occupancy, or control of an easement is no longer needed, USFS may simply release the easement to the owner of the dominant tenement. (Declaration of Cynthia Anne Hockelberg, Doc. 40, at ¶ 2; Ex. A at ¶ 6.)*

Undisputed that is what the declaration states. But note that the declaration is a post-hac rationalization and extra-record that is not properly before this Court. Also note that the only reason the Forest Service’s easement interest in the Porcupine Lowline trail (No. 267) and North Fork Elk Creek trail (No. 195) are “no longer needed” is because of the easement exchange with the landowners for the new Ibex project. But for the new easement donation and trail re-reroute, the easement

on the existing trails would still be needed (and still is needed due to its unique location in the low country).

*39. By their terms, USFS's Releases of Easement Interests in the Porcupine Ibex area extinguish only USFS interests, not the public's interest. (AR4996-5021.)*

Disputed. The two interests are connected and intertwined. The Forest Service previously explained that the Forest Service “on behalf of the public, has an easement interest” in these trails and that the “public is the beneficiary of this right of access and the Forest Service defends and maintains that right.” Doc. 79-15 at 3. In other words, as trustee, the Forest Service manages and maintains the trails for the public. *Id.* As such, without the Forest Service protecting and defending public access and its easement interests on these trails, there will, in effect, be no public easement and as per the Ibex project, the public National Forest trails will be obliterated, public signs removed, and all public easement interests released.

*40. USFS in the Northern Region has filed Statements of Interests (“SOI”) on certain trails and roads for which the United States does not have a recorded easement as a means to provide constructive*

*notice in the public records of the United States' claimed interests. Prior to filing a SOI the Forest Supervisor must make a diligent effort to resolve access issues with private landowners and make a concerted effort to secure a recordable easement. The Forest Service views the filing of Statements of Interest as a notice and communication tool that it rarely uses, preferring to negotiate with landowners. Where the Region has chosen to file a SOI, it must first confirm the United States has a solid claim supported through adequate historical evidence showing the United States constructed, used and maintained the facility and that the route has a definite course and continuous use that was not permissive. Prior to the SOI being filed in the county records, Forests proposing the SOI must consult with Regional Office staff and OGC. If, after the filing of a SOI, the Forest later successfully negotiated easements, the SOI will be terminated. (Ex. A at ¶ 7.)*

Undisputed. Note, however, that a statement of interest is a creature of Forest Service policy in Region 1 designed to provide constructive notice of public record that the United States claims an interest in the disputed trail. Doc. 29-12 at 4, 13; *see also id.* at 14 (example). The filing of a statement of interest is purely discretionary,

*id.* at 2, 4, and most National Forest System trails in the Gallatin National Forest that remain unperfected and without recorded deeds do not have statements of interests filed on them, *id.* at 13, because statements of interest are “rarely used.” Doc. 83-1 at 6. Also note that the Forest Service did not need to file “statement of interests” for the two disputed trails implicated by the Ibex project following publication of the 2006 travel plan which gave actual (as opposed to constructive) notice of the United States’ easement interests in the trails. Filing a statement of interest would have been unnecessary and redundant following publication of the 2006 travel plan which formally designated the two trails National Forest System trails open for recreational (and even motorized) use in the travel plan and related maps. Doc. 80 at ¶¶ 54-60. The Forest Service also went further – beyond filing a statement of interest – and prepared and submitted a sworn declaration in federal court describing the history and contours of its easement interests in the two trails when defending the travel plan in *Montana Wilderness Association*, CV-07-39-DWM, 2008 WL 11348231 (D. Mont. 2008). Doc. 80 at ¶¶ 74-77 (describing case); Doc. 79-15 (declaration).

41. *In Wonder Ranch, LLC v. United States*, 2016 WL 6237196, at \*8 (D. Mont. Oct. 24, 2016), *aff'd*, 740 F. App'x 519 (9th Cir. 2018), USFS filed a “Statement of Interest” with the county clerk because the disputed trail met the criteria for a prescriptive easement, and the Statement notified the public of USFS’s ongoing interest pending litigation. *Id.*; (see also *Ex. A* at ¶ 7).

Undisputed. Note that the Forest Service in *Wonder Ranch* – in accordance with FSM 5460.3, Reg. 1 Suppl. (Doc. 79-10) – assumed it had a valid easement interest in the disputed trail and filed a statement of interests to that effect even though it was not recorded, not perfected, nor established by court decree. The statement of interest included an attached survey and a statement that the United States asserts it has an easement interest in the disputed trail. *Id.* at \*8.

42. *USFS does not have recorded property interests on all portions of the eastside trails that pass through private property (Declaration of Lauren Oswald, Doc. 14-3, at pp. 5–6.)*

Undisputed. But note that a “recorded” property interest is not needed to have a valid easement interest in the trails. Doc. 79-15 at 3.

43. *Private property owners along the eastside trails dispute the public’s use of those trails. (See, e.g., AR5112, 4499–4593.)*

Undisputed. The property owners also objected to the depiction of these trails as National Forest trails in the 2006 travel plan but lost that objection (appeal). Doc. 80 at ¶¶ 43-44, 66-67.

44. *USFS has made clear to the public that access rights through private property along the eastside trails is uncertain. (See, e.g., AR 5246–47; Doc. 7-12 at 7–14.) Because of that uncertainty, USFS policy is to “strive to obtain a recordable easement deed working directly with the landowner.” (See Robert Dennee deposition transcript, attached as **Exhibit B**, at 38:20-39:21 (citing USFS 5460 right-of-way acquisition manual, 5409 right-of-way acquisition handbook, and associated policy letters).)*

Disputed. In the pages cited from the travel plan decision (AR-5246-5247) the Forest Service “made clear” that the goals, objectives, and guidelines in the travel plan related to public access address the agency’s “intent to provide and maintain reasonable, legal access to Gallatin National Forest lands.” AR-5246. The Forest Service explains that these components of the travel plan give them “direction to protect existing access rights and to cooperate with landowners to meet mutual transportation needs.” AR-5247. Undisputed that Forest Service policy

is to strive to work with landowners on disputes *but not* at the expense of losing public access rights. FSM 5460 – Region 1 Supplement No. 5400-93-2 states that whenever “an action or threat interferes with continued use and management of a road or trail and the Forest Service has not perfected title” then certain actions need to be taken, including filing a statement of interest and notifying the landowners that the United States has title. Doc. 79-10 at 8. This is consistent with the travel plan which states that “in situations where continued use of an historic road or trail access route is challenged or closed” the Forest Service is to “take actions necessary to protect existing access rights” to National Forest lands. Doc. 80 at ¶50; *see also* Doc. 29-12 at 13 (same).

*45. Securing public access on the eastside is a top priority for USFS. But it has been a challenge given the long history of disagreement between USFS, landowners, and the public on access issues and the lack of recorded easements along portions of the trails. (Declaration of Mary Erickson, attached as **Exhibit C**, at ¶¶ 1, 6.)*

Undisputed that this what the declaration states. Note that this declaration is post-hoc and extra-record and not properly before this court. Also note that while negotiating a resolution with landowners



appears to be a “top priority” for the Forest Service, protecting public access rights on National Forest trails like the East Trunk trail (No. 115) and Sweet Grass trail (No. 122) during the multi-year negotiation effort is not. Doc. 79 at 43-44.

46. *These issues came to a head in 2016, when the Yellowstone District Ranger advised his direct staff to not seek permission for access on disputed routes. (Ex. C at ¶ 7; AR4595.) In this internal direction to his employees, the District Ranger names a number of routes where he felt a historic public interest may exist. (Ex. C at ¶ 7; AR4595.) This internal memo ended up on a public access advocacy group’s Facebook page, which led to an escalation in controversy between landowners and the public. (Ex. C at ¶ 7.) USFS has not been formally advising the public on the status of these routes; rather it has focused on resolving the need for additional access as identified in the 2006 Travel Plan. (Ex. C at ¶ 7)*

Undisputed. But note that the Forest Service does not have to choose between negotiations and protecting public access – it should do both as it said it would do in the travel plan decision. AR-5247. The travel plan decision gives the Forest Service “direction to protect

existing access rights *and* to cooperate with landowners to meet mutual transportation needs.” *Id.* (emphasis added).

47. *As more attention was placed on eastside trail access, USFS recognized that securing public access would require further relationship building. (Ex. C at ¶ 8.) In early 2017, the Crazy Mountain Stockgrowers reached out to groups with multiple interests in order to generate a more constructive dialogue about access solutions. (Ex. C at ¶ 9.) This group has continued to convene and the Forest Service participates at their invitation. (Ex. C at ¶ 9.)*

Undisputed that this is what the declaration states. Note, however, that this declaration is post hoc and extra-record and technically not properly before this Court.

48. *Over this period, USFS has also met with individual landowners and their third-party facilitator to work toward a public access solution. (Ex. C at ¶ 10.) Last year, the landowners and facilitator shared their preliminary proposal for public access on the eastside. (Ex. C at ¶ 11.) They indicated they intend to submit a formal proposal to USFS in 2021. (Ex. C at ¶ 11.) If the proposal is acceptable and feasible, USFS*

*would initiate its administrative process, which would involve public participation and comment. (Ex. C at ¶ 11.)*

Undisputed that this is what Exhibit C states. Note that this declaration is post-hoc and extra-record and not properly before this Court. Also note that Plaintiffs (and other stakeholders) were excluded from these meetings and that the Forest Service went to great efforts not to provide any information about them. No documentation about the negotiations was provided in the record and in January, 2020 the Forest Service told Plaintiffs there were no pending proposals being considered for the two east-side trails and thus no records or documents to produce. Doc. 31-1 at 38 n.4.

***Response to the Landowners' Statement of Undisputed Facts (Doc. 87):***

1. *The area in and around the Crazy Mountains, like much of the American west, is a checkerboard of federal, state, and private land. AR\_005156.*

Undisputed.

2. *There are few points within the range providing access via public lands or perfected easements. Doc. 7-12 at 9–10.*

Undisputed.

3. *There are several other areas where access rights have long been disputed but no easements or other rights have ever been established by law. Doc. 7-12 at 9–10.*

Undisputed that there are several areas where access rights have been disputed. Dispute that no easement rights have been established in these areas.

4. *M Hanging Lazy 3, LLC and Henry Guth, Inc. are owned and operated by the Zimmerman family. AR\_005981; AR\_006012; AR\_005746; AR\_005747.*

Undisputed.

5. *The Zimmerman family, through their companies, holds title to private land in the area surrounding the Crazy Mountains, which they use for ranching and timber harvesting. AR\_005613; AR\_005781–82; AR\_005385; AR\_005892.*

Undisputed.

6. *Prior to their recent donation of an easement to the Forest Service, the Zimmerman's land was not encumbered by any easement for a Forest Service or other public trail. AR\_005866–67; Order on motion for preliminary injunction, Doc. 10 at 18.*

Disputed. The Forest Service has a legally valid easement interest in the Porcupine Lowline trail (No. 267) and North Fork Elk Creek (No. 195) trails across Zimmerman's land. This is why these two National Forest trails are included in the 2006 travel plan and open and designed for public use and access. Doc. 80 at ¶¶55-60; Doc. 79-15 at 3. This is also why the Forest Service had to relinquish its interests in the two trails and sign a formal "Release of Easement Interests" pursuant to 41 C.F.R. § 102-75.936. AR-4996; *see also* Doc. 80 at ¶208 (discussing same and providing map); AR-4998 (map of releases); AR-5484 (agreement explaining release); AR-5498 (email explaining release). The Porcupine Lowline trail (No. 26&) is part of the Lowline trail system in the Crazyes that connected historic guard stations. Doc. 80 at ¶¶ 10-12. These trails have been "maintained, signed, and managed and used for Forest Service for management purposes and public recreational activities" for nearly a century and, as such, the agency has acquired a legally valid easement interest in the trails for the public. Doc. 79-15 at 3.

7. *Forest Service personnel and members of the public had speculated that the agency could establish an easement by prescription for a trail, the Porcupine Lowline Trail. AR\_005063.*

Disputed. The Forest Service did more than “speculate” about having a valid easement interests in the trails. The Forest Service chose to designate the trails as National Forest trails in the 2006 travel plan because it has a valid easement interest in the trails and the agency defended that position in federal court in with a sworn declaration to that effect. Doc. 79-15. And, if the position was merely “speculation” there would be no need for a formal Release of Easement Interests (AR-4996) for the Ibex project.

8. *Neither the Forest Service nor any other party has ever attempted to perfect any such easement, a process that would require them to bear the burden of establishing several factors by clear and convincing evidence under state law. AR\_005063.*

Undisputed that the Forest Service has not “perfected” its easement interests in such trails but note that the 2006 travel plan anticipated the agency doing so in the future (Doc. 7-12 at 10) and that “perfection” is not a prerequisite to the Forest Service owning a valid

easement interest in the trails. Doc. 79-15 at 3.

9. *The Zimmermans have taken several steps to protect their rights and their property, including erecting fences, installing gates, and posting signs. AR\_001525. They have maintained these items for at least 20 years. Doc. 8-38 ¶¶ 5, 7.*

Undisputed that the Zimmermans have installed gates and erected fences and posted signs. Note, however, that much of this was done to obstruct public access on two public National Forest System trails: the Porcupine Lowline trail (No. 267) and the North Fork Elk Creek trail (No. 195). From 2013-2018, the Forest Service received regular complaints about locked gates, fencing, and “no trespassing” signs across the public National Forest trails. Doc. 29-6 at 3, 10-12. In June, 2014, told the Zimmermans its effort to obstruct public access on the trails was unacceptable and needed to change. Doc. 80 at ¶80. In 2014 and 2015 the Forest Service made numerous trips to the trails to remove the Zimmermans’ obstruction, maintain the trails, and reinstall “Welcome to Your National Forest” signs at the trailhead. Doc. 80 at ¶¶98-101, 112-113. Also note that the Zimmermans’ obstruction efforts were unsuccessful and members of the public continued to use the

National Forest trails. Doc. 79-2; Doc. 79-5; Doc. 79-7.

10. *Since 2010, the Forest Service has advised the public not to enter the Zimmermans' property. Doc. 8-38 ¶ 10.*

Disputed. From 2010-2018, the Forest Service informed the landowners and members of the public that the public had access rights to the Porcupine Lowline trail (No. 267) and North Fork Elk Creek trail (No. 195) and that the landowners' efforts to obstruct public access was illegal. Doc. 80 at ¶¶ 92 -101. In 2013 and 2014 the Forest Service replaced trail signs in the area and walked and surveyed the trails. *Id.* at ¶¶ 100-101. In 2015, members of the public and the Forest Service visited the trails and cleared debris, re-painted trail blazes and put up ribbons to mark the trail. *Id.* at ¶112. The Forest Service also posted "Welcome to Your National Forest" signs at the trailhead for the trails. *Id.* at ¶113. Public complaints about landowner efforts to obstruct public access on the two trails occurred up until the Ibex project was approved. Doc. 80 at ¶¶ 126, 145-146, 148. In 2018, the Forest Service also surveyed the trail for potential inclusion in the National Register. *Id.* at ¶149.

11. *The Zimmermans have also been willing to work with the*



*Forest Service to grant public access, provided that their property rights are respected. AR\_005885-97.*

Disputed. The Zimmermans appeared to be willing to work out a solution for the North Fork Elk Creek trail (No. 195) but refused to budge on the Porcupine Lowline trail (No. 267) and said it would “leave the gates” to the trail locked and only allow public access on a permissive basis. Doc. 29-6 at 13-14.

*12. In 2006, the Forest Service issued a Travel Plan for the Gallatin National Forest, including the Crazy Mountains. One of that plan’s goals was to provide “reasonable, legal access to Gallatin National Forest lands to provide for human use and enjoyment and to protect and manage Forest resources and values.” Doc. 7-12 at 7; AR\_005246.*

Undisputed.

*13. With respect to public use of the Porcupine Lowline Trail, the Plan acknowledged that the Forest Service “must first negotiate an easement for portions of this trail that pass through private land.” AR\_005271.*

Disputed. The Forest Service was referring to the need to accommodate motorcycle use on the Shields-Lowline route (No. 258) and

was referring to the need to perfect its easement interests in that area through negotiation (as opposed to establishing an easement interest in the first place). AR-5271; *see also* AR-4583-4584 (discussing same). The Forest Service explained that it only displayed trails in its travel plan for which “it believes there are sufficient rights, either perfected or historic, to rightfully show and designate public or administrative uses.” AR-5112. Where there are historic easement rights that have yet to be perfected, the travel plan includes perfection of such rights as an objective. *Id.*; *see also* Doc. 79-15 at 4 (discussing process and approach).

14. *The Plan also listed the Porcupine Lowline area as one where trail access would have to be perfected. Doc. 7-12 at 7–8, 10.*

Undisputed. The Forest Service recognized that it owned a valid easement interest in the trail based on a nearly a century of prescriptive use and management but that it would seek to “perfect” this easement interest in the future, if possible. Doc. 79-15 at 2-3.

15. *In the Plan’s discussion of the Ibex Travel Planning Area (the area containing the west side of the Crazies), the Forest Service reiterated its objective to “secure easements through private land on roads and trails designated for public use[.]” Doc. 7-12 at 25.*

Undisputed but note that the Forest Service was referring to the need to perfect easement interests, not establish them. Doc. 79-15 at 2-3.

16. *In the response to the Zimmermans' comments, the Forest Service expressed its "willing[ness] to work with any landowner in agreeing to a long-term location and easement" for a trail. AR\_003271.*

Undisputed.

17. *In an administrative appeal, the Zimmermans objected to the Plan's depiction of a trail across their property when the Forest Service had established no valid easement rights. AR\_005363-72.*

Undisputed that this was the basis for the Zimmermans' objection. Dispute the Forest Service had not established a valid easement right for the National Forest trails. Doc. 79-15 at 2-4.

18. *The Appeal Deciding Officer acknowledged that such depictions have led "to concern with adjacent landowners over what rights currently exist or do not exist." AR\_005376.*

Undisputed. Note that the 2006 travel plan put the landowners on actual notice (not just constructive notice) of the United States' interests and claims to the trails depicted across their property and that

the landowners elected not to file a Quiet Title Action at that time (or within the twelve year statute of limitations following publication of the 2006 travel plan).

*19. However, the Appeal Deciding Officer concluded that the Travel Plan adequately disclosed that “there are insufficient rights or no existing rights” for some trails depicted in the Travel Plan, including the Porcupine Lowline Trail, by identifying them in a table as areas where the Forest Service’s objective was to establish needed rights. AR\_005377.*

Undisputed but note that the reference is to the need to perfect certain easement interests, including those for the Porcupine Lowline trail (No. 267) and that this is an objective of the travel plan. Note, however, that the United States still claimed a valid easement interests in the trails (despite no perfection) based on nearly a century of maintenance, management, signing, and public and administrative use. Doc. 79-15 at 2-3.

*20. The Appeal Deciding Officer further recommended the Forest Supervisor clarify how such rights would be obtained. AR\_005376.*

Disputed. The Appeal Deciding Officer recommended the Forest Supervisor identify “the process she expects to use to clarify some of the

identified access needs.” AR-5376.

21. *In 2009, the Forest Service issued a Road and Trail Decision to implement the 2006 Travel Plan. AR\_001514–56.*

Undisputed.

22. *This document provided the clarification suggested by the Appeal Deciding Officer, acknowledging that the route depicted for the Porcupine Lowline Trail “passes through large portions of private lands with fences, gates, past harvest and road building” and proposed that some portions of this route “may be shifted onto National Forest land to the east” and any route across private land “will be relocated to correspond with final rights-of-way.” AR\_001525.*

Undisputed that this is, in part, what the 2009 Roads and Trails Decision states but the statement is incomplete and taken out of context. The 2009 Decision did not provide “clarification” suggested by the Appeals Deciding Officer. The 2009 Decision also noted that because the Porcupine Lowline trail (No. 267) passes through private lands it needed to be “remarked and reconstructed.” AR-1525. The Forest Service also said this trail “is to provide opportunities for motorcycles, mountain bike, stock, and foot use.” *Id.* The Forest Service did mention

shifting “some portions” of the trail east to National Forest lands but no details were provided and it was purely aspirational. *Id.*

23. *The Environmental Assessment and Finding of No Significant Impact accompanying the 2009 Road and Trail Decision analyzed the environmental impacts of constructing a trail if final rights-of-way could be obtained. AR\_001209–419.*

Disputed. There is no analysis of the direct, indirect, or cumulative impacts of the trail re-route for the IbeX project in the 2009 EA (or any mention or analysis of the other three aspects of the project). And no specific citations are provided in the statement. The 2009 EA implements the 2006 travel plan which designates the trails for public use and access (not obliteration and moving it east). Doc. 80 at ¶¶54-59.

24. *The Forest Service Manual provides a policy of acquiring access rights through negotiation. AR\_004974; AR\_004980.*

Undisputed that policy allows Forest Service to acquire access rights by negotiation. Also note that Forest Service policy (FSM 5460 Region One Supplement 5400-93-2) also allows the Forest Service to acquire access right by prescription. Doc. 79-10.

25. *Pursuant to the Forest Service Manual, and the Forest*

*Service's representations in the 2006 Travel Plan and 2009 Road and Trail Decision, the agency negotiated with the Zimmermans to secure a perpetual easement and resolve the dispute. AR\_005885-97.*

Undisputed that the Forest Service and Zimmermans reached an agreement on an easement exchange which was memorialized in the Trail Easement Agreement. AR-5885. Dispute that this agreement and the exchange itself was discussed, analyzed, or even contemplated by the 2006 travel plan and 2009 road and trail decision – both of which designated the Porcupine Lowline trail (No. 267) and North Fork Elk Creek trail (No. 195) as public National Forest trails open for specific uses and public access. Doc. 80 at ¶¶55-60.

*26. In 2018, the two sides were close enough to an agreement that the Forest Service began the public scoping process for construction of the Porcupine Ibex Trail. AR\_000277.*

Undisputed.

*27. The Forest Service asked the public to identify any environmental impacts of trail construction that had not previously been analyzed under the 2006 Travel Plan and the 2009 Road and Trail Decision. AR\_000277. No significant, unanalyzed environmental*

*impacts were identified. Id.*

Disputed. The document cited (AR-277) is a July, 2018 internal document write up and response from the agency. The Forest Service initiated scoping for the Ibex project – the proposed action – in order to determine whether to prepare an EIS, EA, or issue a CE (not evaluate new changed information). *See* AR-431 (scoping packet); AR-256 (scoping proposal release); AR-261 (request for comments). The majority of the comments received opposed the project and raised a number of significant environmental concerns. Doc. 80 at ¶¶167-183.

*28. In June 2019, the Zimmermans agreed, pending formal approval by the Forest Service, to donate an easement across their property in exchange for the agency not pursuing its disputed claims related to the Porcupine Lowline Trail. AR\_005885–97.*

Disputed. The Zimmermans only agreed to donate their easement across their property in exchange for the Forest Service’s agreement to release its easement interests on portions of the Porcupine Lowline trail (No. 267) and North Fork Elk Creek trail (No. 195). AR-5885-5886. This was the “consideration” for the easement exchange. AR-5885.

*29. The Zimmermans and the Forest Service executed this Trail*



*Donation Agreement on September 30, 2019, with the Zimmermans donating a well-defined easement to the Forest Service and the Service releasing “any easement interests it may have” in the Porcupine Lowline Trail. AR\_005976–88.*

Undisputed.

Respectfully submitted this 18th day of June, 2021.

/s/ Matthew K. Bishop  
Matthew K. Bishop

/s/ Michael Kauffman  
Michael Kauffman

*Counsel for Plaintiffs*