

Assessment and Permitting for Cross-  
Jurisdictional Development Projects :  
A Case Study of the Snowmass Ski Area,  
Snowmass Village, Colorado

by

Catherine E. Preston

Submitted to the Department of Urban Studies and Planning  
in Partial Fulfillment of the Requirements  
for the Degrees of

Bachelor of Science

and

Master of City Planning


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ABSTRACT

The review of major development projects is often characterized by its length and adversarial nature. This problem is exacerbated when projects cross jurisdictional lines and must be reviewed by multiple governmental bodies, each of whom have authority over some part of the project, but none of whom can examine the development as a whole. This problem is especially prevalent in the Western United States, where federal, state, county and local governments may all have a stake in a land use decision.

Three elements appear to cause most of the difficulties in multi-jurisdictional review and permitting: 1) Duplication of review activities leads to a lengthy, inefficient assessment process; 2) Division of authority prohibits a comprehensive review of the issues, impacts and mitigation measures associated with the development and 3) Issues of sovereignty create a "turf war" mentality and adversarial environment.

The case of the expansion of the Snowmass Ski Area provides an excellent example of the problems faced in this type of land use review process. Located within the White River National Forest in Snowmass Village, Colorado, the Snowmass Ski Area required review and/or permitting at the federal, state, county and local level. The process began in the fall of 1991 and most of issues were resolved in April, 1995, though as of the date of this thesis, one decision on the expansion was still outstanding.

Through the examination of the Snowmass case, there are two steps that can be taken to ameliorate these types of multi-jurisdictional review processes: 1) integrate the permitting and review process and 2) create new consensus-based rules for decision making.

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# TABLE OF CONTENTS

<b>CHAPTER 1 - INTRODUCTION</b>	<b>5</b>
<b>OVERVIEW OF THE ISSUES TO BE ADDRESSED</b>	<b>5</b>
<b>CHAPTER 2 - AGENCIES AND AGENDAS</b>	<b>6</b>
<b>WHAT AGENCIES HAVE AUTHORITY OVER WHICH ASPECTS OF DEVELOPMENT AND LAND USE</b>	<b>6</b>
<b>HISTORIES AND MISSIONS</b>	<b>8</b>
UNITED STATES FOREST SERVICE	8
COLORADO MUNICIPALITIES	9
COLORADO COUNTIES	10
<b>CONCLUSION</b>	<b>11</b>
<b>CHAPTER 3 - CASES OF INTER-GOVERNMENTAL ACTION AND COOPERATION</b>	<b>12</b>
<b>COOPERATIVE AUTHORITY</b>	<b>13</b>
<b>IMPORTANCE OF EQUALITY</b>	<b>14</b>
<b>INFLUENCE, NOT JUST AUTHORITY</b>	<b>15</b>
<b>EMOTIONAL AND PERSONAL INTERACTIONS</b>	<b>16</b>
<b>USE OF NEUTRAL MEDIATORS</b>	<b>18</b>
<b>TURNING WIN/LOSE TO WIN/WIN</b>	<b>20</b>
<b>NEGOTIATED DEVELOPMENT V. CRISIS PLANNING</b>	<b>21</b>
<b>CONCLUSION</b>	<b>23</b>
<b>CHAPTER 4 - THE SNOWMASS SKI AREA EXPANSION</b>	<b>24</b>
<b>THE GEOGRAPHY</b>	<b>24</b>
WHITE RIVER NATIONAL FOREST	24
TOWN OF SNOWMASS VILLAGE, COLORADO	26
PITKIN COUNTY AND THE CITY OF ASPEN	27
THE ROARING FORK VALLEY	28
<b>HISTORY OF SNOWMASS' PHYSICAL DEVELOPMENT</b>	<b>28</b>
<b>THE PROPOSAL</b>	<b>29</b>
<b>THE ISSUES</b>	<b>32</b>
AIR QUALITY AND TRANSPORTATION	32
WILDLIFE HABITAT AND SUMMER USE	32
WATER QUANTITY AND SNOWMAKING	33
EMPLOYEE HOUSING	34
<b>OTHER ACTORS</b>	<b>35</b>
COLORADO DIVISION OF WILDLIFE	35
ROARING FORK TRANSIT AGENCY	35
ENVIRONMENTAL GROUPS	35
<b>CHAPTER 5 - THE REVIEW PROCESSES</b>	<b>36</b>
<b>THE FOREST SERVICE REVIEW PROCESS</b>	<b>37</b>

HOW DID THE WRNF PROCESS ADDRESS THE KEY ISSUES?	41
<b>THE TOWN OF SNOWMASS VILLAGE REVIEW PROCESS</b>	<b>44</b>
HOW DID THE TOSV PROCESS ADDRESS THE KEY ISSUES?	48
<b>THE COLORADO WATER CONSERVATION BOARD REVIEW PROCESS</b>	<b>52</b>
<b>CONCLUSION</b>	<b>56</b>
<b>CHAPTER 6 - ASSESSMENT OF REVIEW PROCESSES</b>	<b>58</b>
<hr/>	
<b>BARRIERS TO EFFECTIVE REVIEW</b>	<b>58</b>
EXHAUSTION	58
AMBIGUITY OF JURISDICTION	59
PHILOSOPHICAL DIFFERENCES AND HISTORICAL ANIMOSITY	62
<b>FACILITATORS OF EFFECTIVE REVIEW</b>	<b>64</b>
PUBLIC INPUT	64
SONNY LASALLE	66
<b>CONCLUSION</b>	<b>67</b>
<b>CHAPTER 7 - RECOMMENDATIONS AND CONCLUSIONS</b>	<b>69</b>
<hr/>	
<b>PITKIN COUNTY SKI AREA PLANNING COUNCIL</b>	<b>71</b>
MEMBERS AND AUTHORITY	71
TECHNICAL ADVISORY COMMITTEE	76
MEDIATOR	76
PROCESS	77
<b>CONCLUSIONS</b>	<b>80</b>
<b>INDEX</b>	<b>82</b>
<hr/>	
<b>APPENDIX A - REFERENCES</b>	<b>84</b>
<hr/>	
<b>APPENDIX B - ACRONYMS</b>	<b>86</b>
<hr/>	
<b>APPENDIX C - SNOWMASS TIMELINE</b>	<b>87</b>
<hr/>	
<b>APPENDIX D - MISSION STATEMENTS OF PARTICIPATING AGENCIES</b>	<b>91</b>
<hr/>	
<b>APPENDIX E - RELEVANT FEDERAL LAWS</b>	<b>93</b>
<hr/>	
<b>APPENDIX F - RELEVANT COLORADO STATE LAWS</b>	<b>101</b>
<hr/>	

## Chapter 1 -Introduction

### ***Overview of the issues to be addressed***

One third of the land area of the United States - over 740 million acres - is owned by the federal government.<sup>1</sup> The various federal land management agencies have the difficult task of balancing the interests of local constituencies with those interests of the nation at large. Local municipalities must try to regulate the uses and activities of the development that occurs on the federal lands, over which they have little control. The divisions of jurisdiction, based on political mandates, do not reflect either the ecological or social boundaries which a project may impact. The separation of land use review procedures at the local, state and federal levels has done much to aggravate this naturally conflict-prone situation. Each governmental body, in pursuing their own mandate, asserts their sovereignty, often at the expense of a decision which addresses the issues of concern to the public at large. The multiple review processes do allow for many points of public input and comment on any given project but do little to ensure effective coordination and results in an ineffective review process, characterized by much duplication and little comprehensive review.

A prime example of the difficulties faced by developers and regulators alike in navigating these processes was the recently-resolved case of the expansion of the Snowmass Ski Area, in White River National Forest, near Aspen, Colorado. Using the Snowmass as a case study, I will examine how the United States Forest Service worked with the other governmental bodies in their assessment and permitting of a cross-jurisdictional development project. Chapter 2 will explore the institutional and jurisdictional issues facing such decision making processes. After describing the Snowmass case in Chapters 4 and 5, Chapter 6 will assess the assets and liabilities of the processes used in the Snowmass case, taking into account not merely the regulators and developers, but also the various public interest groups involved. Using examples of inter-governmental cooperation from around the country, I will review the options and model available to parties in such cases in Chapter 3, and finally, Chapter 7 will recommend future methods of handling these complex, and frequently, antagonistic situations.

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<sup>1</sup> Wondolleck, Julia M. Public Lands Conflict and Resolution. Plenum Press. New York. 1988. pp. 19.

## **Chapter 2 - Agencies and Agendas**

### ***What agencies have authority over which aspects of development and land use***

In the regulation and permitting of development activities on federal lands, there are always multiple governmental bodies involved. They will vary greatly in their responsibilities and level of involvement. They may or may not cooperate with each other. They may have very disparate views on each other's authority over the project. In short, for all of the problems, disputes, and bureaucratic tie-ups that are associated with decisions made by a single governmental entity, they pale in comparison to the maze of bureaucratic hierarchies that a federal land development project must go through. This chapter will examine the division of responsibility between agencies and some of the historical and institutional causes and effects of this confusion.

In an effort to clarify and structure the review processes, the lead federal agency on any given project may appoint an Inter-Agency Task Force (ITF) to facilitate a dialogue between governmental agencies. In the case of the Snowmass Ski Area, there were 16 separate governmental bodies with jurisdiction over some aspect of the project. Of those, 12 participated on the ITF. The agencies involved were:

#### **Federal**

- Department of Agriculture, US Forest Service (USFS)
- Department of the Interior, Fish and Wildlife Service (FWS)
- US Army Corps of Engineers (ACOE)
- US Environmental Protection Agency (EPA)

#### **State of Colorado<sup>1</sup>**

- CO Department of Natural Resources, Division of Wildlife (DOW)
- CO Department of Natural Resources, Water Conservation Board (CWCB)
- CO Department of Public Health and Environment, Air Pollution Control Division
- CO Department of Transportation (DOT)

#### **Local**

- Pitkin County
-

- Town of Snowmass Village (TOSV)
- City of Aspen
- Roaring Fork Transit Agency (RFTA)

By a quick look at the names of the agencies, one can see that there are many areas of duplicated jurisdiction. The US Fish and Wildlife Service and the Colorado Division of Wildlife are both responsible for assessing the impacts of major developments on the wildlife and wildlife habitats. The EPA and the CO Air Pollution Control Division are both in charge of assuring that projects consider their impact on air quality and take the appropriate steps to mitigate these effects and ensure compliance with the Clean Air Act. The Roaring Fork Transit Agency and the Colorado Department of Transportation both have to assess the traffic impacts of a development and devise ways of reducing congestion and the associated air pollution.

The US Army Corps of Engineers, and the Colorado Water Conservation Board, in fact, are the only participating agencies in this case whose functions or authority (which are wetlands protection and water resource management, respectively) are not explicitly duplicated by another governmental body.

One might argue that the USFS and TOSV also fulfill unique responsibilities. Indeed, the way many reviews are conducted, this would in fact be the case. The USFS has no statutory obligation to examine associated off-site impacts, let alone development. There is some dispute as to whether or not TOSV has the authority to subject development on USFS lands to local zoning controls, as it is within the incorporated boundaries of the town. Setting this issue aside, however, they do have the authority to regulate all development associated with the ski area that occurs on privately held lands within the town boundaries. Thus, in many cases, the lead federal agency and the local zoning authority will act completely independent of each other, serving the same purpose for two pieces of the same development.

In this particular instance, two of the twelve governmental entities involved with the ITF actually have no statutory authority over the review and permitting of the development. The City of Aspen and Pitkin County, while two governments bound to be seriously affected by the development actually had no authority to regulate or stop the development of the Snowmass Ski Area. Pitkin County was entitled to act as an advisor to TOSV on any projects affecting the Ski Area, due to an inter-governmental agreement that was signed in association with the town's annexation of the Ski Area, but its advisory status meant that it still had no actual authority over the project.

Adding to this bureaucratic confusion is the very real problem of conflicting agency goals and objectives. This is, in part, a result of the differences in responsibilities, but is also due to divergent missions and histories. It is worth examining these differences for at least the three most active players in the Snowmass drama: the United States Forest Service, the Town of Snowmass Village, and Pitkin County.

## ***Histories and Missions***

### **United States Forest Service**

The federal government currently owns over 740 million acres of land in the United States - one third of the nation's total area. Of that, approximately 180 million acres are administered by the Department of Agriculture's Forest Service. The Forest Service was a product of two substantial 19th century forces: the extreme mismanagement of federal lands by the General Land Office (GLO) and the conservationist movement. The GLO, in trying to manage timber, mining, grazing and homesteading claims on all federal lands with a skeleton staff was faced with massive numbers of fraudulent claims, poor ability to enforce regulations and the realization that at the rate things were going, all non-waste lands in the country would quickly be under private control, if not legal ownership. Both the GLO and the general public were anxious for reforms - which left the door open for the conservationist and Gifford Pinchot.<sup>2</sup>

Pinchot, a Yale-educated forester who had practiced in Europe before returning to the US, was the first champion of conservationist forestry in the US. He felt that through watershed management, fire control, and silviculture, the federal forest lands could be managed in such a way as to ensure the long term productivity of the lands, and prosperity of the people. Public lands, he argued, could be managed in such a way as to guarantee "the greatest good for the greatest number in the long run."<sup>3</sup> His advocacy led to the passage of the Forest Management Act in 1897 - the first land management mandate in the country's history.

The major shift from Pinchot's vision of the conservationist forester came in the 1960s, when, in response to efforts to have Congress designate large portions of federal forest lands as wilderness areas, the Forest Service put forth the Multiple-Use Sustained-Yield Act. This act legally changed the mission of the forest service from merely providing lands for agricultural and mining uses to a far more comprehensive use doctrine. It charge the USFS with the management of the National Forests for "for outdoor recreation, range,

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<sup>2</sup> Wondolleck, Julia M. Public Lands Conflict and Resolution. Plenum Press. New York. 1988. pp. 19-21.

<sup>3</sup> Pinchot, Gifford. Breaking new ground.



timber, watershed, and wildlife and fish purposes.”<sup>4</sup> While for the first time, this officially recognized the place of recreation and environmental protection in the management of the nation’s forests, this was not as significant as it might have been. The act went on to say that the Forest Service was charged with managing “the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to *the relative values of the various resources* in particular areas [italics added].”<sup>5</sup> The term “relative values” is not defined by the statute. This meant that while Forest Service had to ensure the continued presence of all the resources, when the use or preservation of these resources was in conflict, the USFS was obliged to consider the value of both resources, but it was at the Forest Service’s discretion to decide how those values would be assigned, which resources were more important.

This discretion, however, was greatly curtailed by the reviews imposed by the National Environmental Policy Act and the National Endangered Species Act (see Appendix E) . These acts not only gave more points of access for outside and public input, but they also gave standing to sue to a much wider public that had previously had no recourse to challenge the administrative decisions.<sup>6</sup> Furthermore, the acts continued to leave the issue of relative value open and ambiguous. This meant that, while new consideration was given to environmental protection and endangered species, where on the scale of importance in forest management these new issues ranked was very much in debate.

### **Colorado Municipalities**

Colorado state law, in establishing the powers of local government, creates a legal environment that begs for a conflict (see Appendix F). Municipalities are granted the right to not merely to regulate land use within their boundaries, but to do so to protect wildlife and wildlife habitat, to control changes in population density, and “to provide planned and orderly use of land and protection of the environment.”<sup>7</sup> Additionally, municipalities are given the authority to regulate the construction of roads on federal lands under certain conditions.

This enabling statute gives municipalities enormous leeway in determining their own growth patterns for itself. If a community is growing, having the right to regulate based on wildlife encroachment does not mean an obligation to do so. If a community

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<sup>4</sup> 16 USC 528.

<sup>5</sup> 16 USC 529.

<sup>6</sup> Wondolleck, J. 1988. pp. 33-35.

<sup>7</sup> Colorado State Code. 24-65. 1-201.

wishes to slow growth, or prohibit it in certain areas, such powers give it the ability to do so.

### **Colorado Counties**

Counties, however, are given even greater authority for land use planning and inter-governmental coordination. Counties are responsible for the planning and zoning of all unincorporated areas within the county boundaries under similar conditions as imposed upon municipalities. Furthermore, counties may establish planning commissions, either on their own or joint with any other municipal or county government. The county (or regional) planning commission is responsible for the development of a master plan, either for the unincorporated areas of the county or for those areas, plus municipalities participating in the regional planning commission. Moreover, “The regional planning commission shall have primary responsibility for those broad plans ...which clearly affect the physical development of two or more governmental units.”<sup>8</sup>

These laws combine to put the county in the position of the primary growth controller. As they control the unincorporated areas, which are likely to be the least developed, at the very least, the county has the ability to maintain very low densities in those areas which are unincorporated. If the county combines with one or more municipality to form a regional planning board (as in the case of the Aspen/Pitkin County Planning and Zoning Commission), growth can be directed away from the unincorporated areas and controlled in the incorporated towns. If the county as a whole is interested in growing, but not in increasing the densities of the incorporated municipalities, the regional planning commission can direct growth to the unincorporated territories and restrict new construction in the towns. While this model does give some control to municipalities as well, it is worth noting that two municipalities cannot form a regional planning commission. At least one county must be involved. It is the county’s responsibility, unless otherwise agreed, to act as the primary governmental actor in cross-jurisdictional land use decisions. It is unclear from the enabling statute whether this means plans and studies which may impact multiple jurisdictions, or over which multiple jurisdictions have explicit control. In the case we shall be examining, Pitkin County and the Town of Snowmass Village had signed an agreement giving the Town this primary status on Snowmass Ski Area development decisions, with the County taking an advisory role.

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<sup>8</sup> Colorado State Code. 30-28-131.

## ***Conclusion***

With such diverse histories and legal mandates, inter-governmental conflict over major development projects is not a new experience. Counties and municipalities battled of growth and local versus regional control. State and federal agencies argue amongst themselves and with surrounding municipalities about the way in which public lands and the surrounding private tracts are managed. Each must fulfill his legislative mandate, be that to protect the environment, ensure the control growth of a community, maintain a safe drinking water supply or any of a number of other regulatory responsibilities. It is therefore important to examine the lessons learned in past conflicts, so that we might apply them to our present and future situations.

## **Chapter 3 - Cases of Inter-governmental Action and Cooperation**

Snowmass is certainly not the first community to experience the tensions between federal land managers and a diverse group of local interests. Through the decades of these types of interactions, many different models of inter-governmental action have been tried with varying degrees of success. Both the successes and failures of the past have lessons to offer us in the planning and assessment of current and future actions.

There are typically two types of inter-governmental action. The first is planned inter-governmental action, where two or more governments come together to address a common issue in a cooperative manner. The second, and far more common, type of inter-governmental action occurs when one government attempts to act alone on an issue that will have impacts and implications beyond the scope of its jurisdiction. This usually results in the other affected governments demanding, either politically or through lawsuits, input into the decision. The resultant action is inter-governmental in that more than one government has had influence on the decision, but does not necessarily indicate that two or more governments have worked together on the decision. In some of these cases, a consensus may eventually be built and a joint decision made. In others, the original actor will still hand down the decision, perhaps reflecting the concerns of the other affected jurisdictions.

It should be noted that the examples and models discussed in this chapter and elsewhere in this document are among those which illustrate the value of cooperative decision making. Cooperative decision making has been shown to be extremely effective in land use decision, which the range of type and severity of impacts is huge, the interests numerous and the thinking long-range. It encourages parties to work together for the long-term and take a comprehensive approach to development planning. It engages community members in meaningful discussion about the values and future of the community. Cooperative planning gives residents, developers and regulators alike greater control over the way in which a community develops. While parties may feel that they are at a disadvantage at the time they are going through a cooperative decision making process, when one steps back and looks at the long-term results of on-going discussions such as this, they typically find that all parties are better off for having pursued this option.

Cooperative planning may not always be the best solution for environmental decision making. There are issues over which it is entirely appropriate for regulators to take an authoritative stance and stick to it. Situations where human health is at risk are a prime example of this. For instance, it may be appropriate to negotiate the mitigation

measures and monitoring requirements for the air quality impacts of a new transportation project. However, it is also appropriate for the regulating agency to set, without consultation with the project proponent, or other developers, but solely on the technical advice of their experts, the air quality standards to which the proponent must adhere. While there are issues, such as water and air quality, where an authoritative model of decision making is merited, where cooperative decision making is feasible, it can be a more effective means of meeting those requirements, as well as addressing many other environmental concerns.

From past examples, we can garner a number of lessons in what makes inter-governmental action more or less effective. Effectiveness in inter-governmental action or decision making can be described in terms of efficiency, comprehensiveness, and stakeholders' satisfaction with the process and the product. Cooperative authority, use of political influence, equality of participants and neutral mediators have been useful elements in effective inter-governmental action. Two elements which have been shown to be barriers to effective inter-governmental action have been negative personal interactions and framing issues as win/lose situations.

### ***Cooperative authority***

In coordinating inter-governmental action, the authority of the decision-making body is often a critical point of contention. The local government wants to assert its right to zone and regulate land within its corporate boundaries. The federal government wants to assert its right to override local authorities on federally-owned lands. Various other governmental and non-governmental actors try to advance their own interests, expand their jurisdiction and influence (i.e. authority).

Previous experience has indicated that a joint decision making/planning body can be far more effective. By combining the authority of multiple governments, the process is stream-lined for greater efficiency. Moreover, the joint body can consider the issues and impacts over which each of its members has authority, allowing for a more comprehensive assessment of the implications of the decision. A comprehensive impact assessment and mitigation plan facilitates greater public support for the decision. Such a body has been used in the Pacific Northwest to plan for the future of the resources of the Columbia River. The Northwest Power Planning Council (NPPC) was created under the Northwest Power Act of 1980 to facilitate decisions regarding the use of the Columbia River for

hydropower.<sup>1</sup> The council itself is made up of two representatives from each of the four states through which the Columbia runs: Idaho, Washington, Oregon and Montana. Representatives are appointed by the governors of the states under procedures determined by those states. In some cases, which have been upheld by the US Court of Appeals, the Council has the authority to restrict or redirect the actions of federal agencies.<sup>2</sup> On the basis of the NPPC's regional, cooperative planning, the federal government has, in effect, relinquished some of its own power in order to facilitate better long-term regional decision making. We can see how if the federal government can step back from decisions such as this, it is plausible that they could act as equal partners in a similar cooperative planning council, where they would not be relinquishing control so much as sharing it. Likewise, seeing the opportunity to share some of this authority, to act as partners rather than competitors or subordinates, state, county and local government would have incentive to participate, even if it means giving up absolute authority over some areas that they currently control.

### ***Importance of Equality***

Making any decision jointly requires that the parties to the decision are all equals, not merely in name or title, but in fact. Otherwise, the decision is apt to be forced upon the group, or no decision may be arrived at, due to resentment of one party's arrogance. Either way, the result in both cases is an increase in the tensions and resentments between parties and a reluctance to attempt such joint decision making in the future. Equality creates a less adversarial atmosphere, which enables a more efficient review process. Furthermore, it ultimately fosters greater stakeholder support for the decision.

Forcing a decision on a group cannot be truly described as joint decision making, though it often is. This is characteristic of many "public participation" processes. Governmental bodies invite the public to assist them in formulating options and alternatives, but in the end, the agencies make high-handed final decisions bearing little resemblance to the comments they have received. This pattern has led to a large portion of the public becoming embittered and cynical about opportunities to truly influence governmental decisions.

Joint decision making requires that those making the decision have at least gotten to the point of sitting down together and at least calling each other partners. However, whether this occurs between public interest groups and government, or different levels of

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<sup>1</sup> Lee, Kai N. "Sustainability in the Columbia Basin" in *Compass and Gyroscope*. Island Press. Washington, DC. 1993. pp. 31.

<sup>2</sup> Lee. pp. 33.

government, there is often the feeling that at least one of the parties feels that “all parties are equal, but some are more equal than others.”

A classic example of where this attitude seriously impeded negotiations was in Leesburg, Virginia. Leesburg, the county seat of Loudoun County was negotiating with the County over an annexation. Leesburg wanted the freedom to grow, but the County was concerned that the town would eventually grow into an incorporated city, and thereby free itself of any over-sight by (or tax obligation to) Loudoun County. It was the County’s parental attitude, however, may have been more likely to drive Leesburg to become a city than the annexation itself. “The town’s negotiators were suspicious of the county’s willingness to accept them as equals in the tasks of government....[T]he town negotiators expressed their feeling that the county treated the town in a paternalistic manner, as a subordinate level of government.”<sup>3</sup> This feeling, stemming from both past incidents with the county, from the county’s continued questioning of the town’s ability to manage the potentially annexed land, drew attention away from the liabilities and benefits of annexation. Much time - and emotion and energy - was spent arguing over whether the negotiations were a waste of time based on the town’s perception that the county would not take them seriously. Such lack of respect, or perception of lack of respect, frequently leads to the complete breakdown of such negotiations.

### ***Influence, not just authority***

Not every stakeholder in a given decision, however, has or should have authority over the decision. While partner governments need real equality to work effectively together, it does not necessarily follow that every stakeholder must be granted the same status. Governmental and non-governmental stakeholders without explicit authority over any aspect of a land use decision can and should contribute to the formation of the decision by using their influence, rather than demanding equal authority.

- The exertion of influence aids in effective inter-governmental action by giving stakeholders the opportunity to shape the decision. This increases stakeholders’ level of satisfaction with the process, and therefore, the likelihood that they will be satisfied with the product. Furthermore, those able to work within the process to exert their influence do not detract from its efficiency, and because their level of satisfaction is higher, they are less likely to slow the process down through lawsuits or other legal maneuvers.

The influential power of stakeholders without authority comes from the persuasive nature of actions or positions taken by a credible entity. This may be a body whose members are independently credible, who have invested time and expertise into the process

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<sup>3</sup> Richman, Roger et al. Intergovernmental Mediation. Westview Press. Boulder, CO. 1986. pp. 51.

and who enjoy public support, or it may be an individual with these same qualities. The second quality - time and expertise - is by far the easiest to secure. Through building on that commitment, an entity may gain credibility, and following credibility, support.

This was again evident in the case of the Northwest Power Planning Council. Peter T. Johnson, the director of the Bonneville Power Authority (BPA), the federal administration in charge of the hydropower resources in the region, ran into questions of authority with the NPPC with some regularity.<sup>4</sup> However, even in the cases where the authority of the BPA was not in question, he was compelled to seriously weigh the concerns and recommendations offered by the NPPC. "Outsiders exerted their influence whether I liked it or not....People who were dissatisfied with what they got from the BPA could plead their case to the Power Planning Council created by the new Northwest Power Act or sue BPA," writes Johnson.<sup>5</sup> Ultimately, the presence of these alternatives forced the BPA into a radical change in the style of their decision making. Jumping into the deep end, the BPA began meaningful public consultation on all major decisions. This included, but certainly was not limited to, discussions with the NPPC about how BPA could better serve the region.<sup>6</sup> The important effect here was not that NPPC or the governors of the participant states got exactly what they wanted, for undoubtedly they were party on more than one occasion to some give and take, but rather that the legitimacy and power of the NPPC was able to exact a institutional paradigm shift within BPA. More than "winning" any one debate, this victory goes a long way towards ensuring the long-term benefit to all the communities and a positive working relationship between those communities and BPA.

### ***Emotional and Personal Interactions***

We would all like to think that, faced with an intractable conflict, we would be able to set aside personal differences and focus on the problem at hand. Unfortunately, this proves far more difficult in reality than in theory. Try as we might to separate the people from the issues, there are those whose negotiating style irritates us, those whose attitude is incomprehensible and possibly insulting, and those with whom we have tried to work before without success. These inter-personal dynamics play a crucial, if often ignored, role in determining the outcome of joint decision making processes. The make-up of

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<sup>4</sup> Johnson, Peter T. "How I Turned a Critical Public into Useful Consultants." Harvard Business Review. January/February 1993.

<sup>5</sup> Johnson, Peter T. 1993.

<sup>6</sup> Johnson, Peter T. 1993.



negotiating teams can be as critical to the result as the strategies those teams employ. Indeed, selecting the negotiating team is often a key aspect of strategy.

Emotional reactions may be written off as a bonus issue that will be addressed “if there is time.” However, while there never appears to be time, addressing these issues up-front can save countless hours (and emotional energy) in abortive negotiations and lawsuits, making the whole process more efficient. Moreover, working through, rather than around, these issues can result in greater satisfaction with the decision, as well as better working relations for future decisions.

These principles are discussed in surprisingly few cases. Their importance is often eluded to, as in the Leesburg case, where barbs and pointed comments from individuals from both the town and county are quoted. But the background the individuals involved in the negotiation had with each other is not discussed. As officials representing two closely associated governments, no doubt they were well acquainted with each other and had dealt with many issues, of varying contentiousness, previously. But whether this had built mutual respect and trust which broke down during this instance, or whether they began the negotiations with much accumulated resentment is not explicitly mentioned as a factor or issue.

Sometimes, cases discuss the effects of these interactions occurring during the planning and negotiating at hand, even if past relations are not mentioned. In the case of the planning and permitting of the Denver Metropolitan Area’s Foothills Water Treatment Complex, the animosity present during the negotiations is cited as a major obstacle and challenge to the mediators involved in the case. In that case, The Denver Water Board was the proponent of a new reservoir and water treatment facility providing almost 500 million gallons of water per day to the Denver metropolitan area.<sup>7</sup> The project involved seven federal and three state agencies, in addition to the municipal bodies proposing the new complex. These participating governmental bodies, and countless interest groups involved, supported a wide range of positions on the project, from advocating its construction a proposed, to reducing its size, to prohibiting it altogether.<sup>8</sup> The Denver Water Board was, if not surprised by the opposition, at least insulted by it. Their disdain for what they perceived to be their opponents’ ignorance led to a cycle of emotionally-charged attacks with local interest groups and other governmental stakeholders who resented this patronizing attitude. Parties used the media to try to destroy each other’s credibility.<sup>9</sup> By

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<sup>7</sup> Burgess, Heidi. “Environmental Mediation: The Foothills Case” in Resolving Environmental Regulatory Disputes. Susskind, Bacow and Wheeler, eds. Schenkmen Publishing. Rochester, VT. 1983. pp. 171.

<sup>8</sup> Burgess, Heidi. 1983. pp. 171.

<sup>9</sup> Burgess, Heidi. 1983. pp. 171.

the time that the Denver Water Board agreed to mediation, tension, resentment and distrust were at such a level that establishing some basis for building respect and trust was the top priority for the mediators. Until these “emotional” and “extraneous” issues had been dealt with, there was no hope of tackling the questions directly relevant to the water treatment facility.<sup>10</sup>

A similar “discovery” was made by the participants in the San Juan National Forest mediation, who had been convinced that mediation would have no hope of success. The United States Forest Service (USFS) had announced plans to construct 50 miles of road through a previously undeveloped section of the forest to facilitate timber harvesting.<sup>11</sup> The local residents, many of whom relied upon tourism for their income, voiced their opposition to the proposal during the mandatory public comment period. USFS was surprised by the opposition and tried to respond with modifications to the proposal. The modifications were met with skepticism and distrust by a public who felt they were not being heard. With a lawsuit in preparation, the suggestion was made that the parties attempt to reach a mediated solution.<sup>12</sup> The participants found that once they got past their pre-conceptions of the other parties, beyond the name-calling and hard-line bargaining stances, that they could in fact work together.

They found, when finally sitting down together at the same table instead of shouting at each other in public meetings, that, in fact, they did have some common concerns. They found that they had misinterpreted some issues and concerns. They suddenly discovered that their assumptions about what the others wanted were off-base, that there were other ways of satisfying the interests involved, and that the Forest Service was not indifferent to their concerns.<sup>13</sup>

But none of these discoveries would have been possible had the parties not agreed to try to put aside their non-material differences in pursuit of solutions to their germane ones. While confidence was low going into the process, the presence of a neutral mediator convinced people that at least one person would listen to their side of the story.

### ***Use of Neutral Mediators***

A common theme in the majority of cases mentioned here is the use of a neutral party - frequently a professional mediator - to facilitate discussions and negotiations between the feuding stakeholders. “Mediation,” says Howard Bellman for the Wisconsin Environmental Mediation Project, “simply adds the participation of a neutral person who

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<sup>10</sup> Burgess, Heidi. 1983. pp. 171.

<sup>11</sup> Wondolleck, J. 1988. pp. 215-16.

<sup>12</sup> Wondolleck, J. 1988. pp. 215-16.

<sup>13</sup> Wondolleck, J. 1988. pp. 215-16.

applies the skills of a conflict resolution specialist.”<sup>14</sup> Neutrals add to the effectiveness of a review process primarily through their ability to build support for a joint decision.

These neutrals can take active roles, suggesting possible solutions or alternatives, or simply act as a passive “referee” for the negotiations. In either case, it is the presence of this neutral, and hence presumably fair, party that can initially convince parties who have long since ceased to trust each other to come to the table. If only subconsciously, there is a feeling that by telling their side of the story to this unbiased individual (or team of individuals), the mediator will see that their side is right and will side with them. In fact, this is the one thing a mediator must not do, but the hopes that someone will validate their position can be a major factor in getting disputants to talk, if not directly to each other, at least through a mediator. As was noted in the Leesburg-Loudoun County case, “both valued the ability to justify proposals in the context of the formal exposition of their team’s interests or, when in joint session, in the interests of both teams.”<sup>15</sup>

Once the parties have assented to discussions through, or using, a neutral, the mediator serves the valuable purpose of helping to filter out what is a material conflict and what is a peripheral or personal issue. They can further point out when parties are using language or references that unintentionally offend others in the discussion. Mediators can also stop arguments before they become fights, keep debates on track and recommend breaks and recesses when prudent to do so. In short, a mediator’s neutrality gives him the freedom to step back from what is going on and assess unemotionally what is or is not productive.

It was through mediation that the Leesburg, the Foothills, and the San Juan Forest cases discussed here, along with thousands of other instances, have been resolved. Sometimes, as in Leesburg, that mediation is prompted by legislative mandate that allows a party to force it. Other times, as in the Foothills case, mediation is undertaken by an interested party who, although not neutral, is sufficiently removed from the situation to be viewed with respect and trust. Most commonly, as in the San Juan dispute, mediation is suggested as an alternative to pending, or soon-to-be pending, litigation - a version of out-of-court settlement hearings. Whatever the motivation for pursuing mediation, besides saving time and money over traditional litigation, mediation has the potential to repair long-dysfunctional inter-party relationships. By working together to form mutually beneficial solutions and working through many past differences and learning to listen and understand

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<sup>14</sup> Emrich, Wendy. “Let’s Reason Together: New Tools” in Successful Negotiating in Local Government. Huelsberg and Lincoln, eds. International City Management Association. Washington, DC. 1985. pp. 189.

<sup>15</sup> Richman, Roger et al. Intergovernmental Mediation. Westview Press. Boulder, CO. 1986. pp. 44.

one another, stronger working relationships , which can be of great value in future conflicts or issues, can be built through the mediation process.

### ***Turning Win/Lose to Win/Win***

The possibility of mutually beneficial solutions sometimes come as something of a surprise to the participants. One of the consequences of the fractional authority over projects is that each issue may be seen in terms of “one of us wins and the other loses,” instead of fostering an environment in which a whole is developed that is a “victory” for all of the stakeholders. Mediation, through exploring and creating various alternatives, can offer solutions from which all the parties will end up better off than had they settled the matter in court. It can, in short, turn what the parties have previously seen as a series of win/lose situations into a comprehensive win/win scenario. This contributes both to a comprehensive approach to problem solving, but dramatically improves stakeholder support for the decision.

In examining the Leesburg-Loudoun County dispute, “[b]oth local governments saw the dispute framed by state law as a win-lose contest with very important issues at stake....[both] made efforts to see and portray the issues as tangible concerns to be won or lost either through negotiations or through the courts.”<sup>16</sup> Believing that for the other party to win, you must lose results in entirely different “negotiating” strategies than when one assumes that a mutually beneficial arrangement can be reached. In this case, the county began the negotiations by closely guarding their positions and information, while trying to extract as much as possible from the town. The town, on the other hand, was trying to show a “good faith” attempt to resolve the dispute, and thus employed a strategy of repeatedly explaining and defending its position. But, in fact, this was not any more a “good faith” strategy than was the county’s. Both strategies were chosen with the notion that the case would inevitably end up in court, where the decision would be “winner take all,” firmly ingrained.

Similarly, in the case of the San Juan National Forest dispute, parties felt that there was no way that they could win without the other parties losing - and visa versa. The Forest Service understood its opponents to be attempting to halt their action entirely, and their opponents believed that the Forest Service would turn a deaf ear to their concerns and go ahead with their plan regardless of what was said. “Even the mediators, when first told of the dispute, were skeptical, thinking it was a classic build–no-build conflict, leaving little

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<sup>16</sup> Richman, Roger et al. 1986. pp. 39, 44.

room for agreement between the parties.”<sup>17</sup> As in the Leesburg case, the parties entered into the negotiations believing that the inevitable conclusion would be litigation, where they would either eventually be granted everything they asked for or none of it.

Indeed, had these attitudes not been later amended through the help of the mediator, this would likely have become a self-fulfilling prophesy: by entering into mediation with the assumption that litigation was inevitable, the parties were far more likely to end up in litigation, and one party would have won, and one would have lost. With help of the mediator, the parties began to recognize that there were other options, that they could work out an agreement in which they would both end up better off than before.

### ***Negotiated Development v. Crisis Planning***

All of the previously discussed cases have happy endings. Through the use of public participation and/or mediation, they were able to resolve their conflicts and produce solutions which met the needs of the stakeholders. However, they can also all be categorized by the fact that they did not begin so happily. None of the project proponents in the cases discussed actively sought input from their potential opposition until after they had announced their intentions and had been attacked. These attacks and counter-attacks mounted until they were forced to either engage in some form of negotiation/mediation or litigation. At that point, joint decision making began to take place, as the parties discussed and shaped their vision for their project and their community. This could be called “crisis planning.” The project proponents were not planning the management of a crisis, but rather only engaged in planning in the face of a crisis - opposition to their project. Approaching planning in this manner ensures that you will be faced with a crisis in the form of opposition. Certainly, as these cases show, crisis planning can lead to consensus, joint decision making and a mutually beneficial plan. But wouldn't it be better to avoid the conflict in the first place?

Though rare, there are communities who are in dialogues similar to mediation, but which resolve problems that have not yet stalemated. These communities engage stakeholders in all local land use issues in on-going discussions about the method, manner, timing, quantity and quality of development they wish to see in their area. This goes above and beyond the negotiations that occur between a private developer and a town planning board - these discussions involve interests groups and individual property owners “join in the process and help negotiated project components as varied as landscaping, lighting,

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<sup>17</sup> Wondolleck, J. 1988. pp. 215.

storm drainage, impact mitigation and compensation.”<sup>18</sup> This process is referred to as negotiated development. Not only does its forward-looking mentality lead to a more comprehensive assessment of potential impacts, but by planning ahead and taking a consensus building approach, public support is improved and the time spent on individual proposals may be reduced.

One case in which negotiated development was implemented was for the planning of White Flint Mall, in Montgomery County, Maryland.<sup>19</sup> Federated Department Stores had already made an unsuccessful attempt to win support for a new mall in the suburban DC area when it hired a professional planner to act as a mediator, not merely among the company and the county, but the citizens of the county as well. Compensation and impact reduction actions were decided upon.<sup>20</sup> In some cases this meant deciding upon appropriate mitigation should a negative impact actually occur - such as a decline in property values or an increase in traffic. But in the end the company secured its rezoning and building permits, the county and the neighbors had their concerns addressed, and everyone ended up with a new mall that was more beneficial to all of the parties involved.<sup>21</sup>

Why don't more communities or project proponents engage in negotiated development? Perhaps because we in the United States are so used to our confrontational justice system that we do not look for the win/win solutions at first. Moreover, this history of lawsuits has led to distrust, even among parties who have never dealt with one another before, but know “that type”. As Peter Johnson of the Bonneville Power Authority remarked, “I viewed conflict with people outside the company as an annoyance I'd do almost anything to avoid. I had enough on my plate without environmentalists, politicians, special interests or the general public second-guessing my decisions and interfering with my operations.”<sup>22</sup> Anything, that is, except solicit their input before those decisions were made. Anything but share with them the information that could both help them make intelligent and helpful comments - and help them sue if those comments were not implemented verbatim. This fear on the part of project advocates, which is certainly not limited to private sector advocates, leads to dictatorial decision making, giving other interested parties the impression that the only way to make themselves heard is through the courts.

Because of this culture of distrust, negotiated development is something of a leap of faith, a radical departure, where a developer says, “I am interested in investing in your

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<sup>18</sup> Emrich, Wendy. 1985. pp. 190.

<sup>19</sup> Emrich, Wendy. 1985. pp. 190.

<sup>20</sup> Emrich, Wendy. 1985. pp. 190.

<sup>21</sup> Emrich, Wendy. 1985. pp. 190.

<sup>22</sup> Johnson, Peter T. 1993.

community, not just the physical structures I will build. Let's discuss how my investment can be most productive for both of us." This gesture shows that the developer is not only interested in the best overall result, but that the community will not take advantage of this trust to squeeze him for unreasonable extractions. The community, by participating in the ensuing discussions, says that they trust that the developer is sincere in his stated intentions. Trust builds on itself, making it easier and easier for parties to work together to mutually beneficial solutions. But trust must also start somewhere, usually with someone acting in a trustworthy manner prior to such behavior by other parties. Is this radical? Perhaps. But perhaps the better question is, is not the pay-off commensurate with the risk? Half-hearted extensions of trust, as we will see in the Snowmass case, are no more effective than blatant distrust and can be equally costly in time, money and opportunity.

### ***Conclusion***

Thus, we can see that utilizing cooperative authority in which all parties are treated as equals, and is facilitated by a neutral mediator with the ability to frame issues as win/win instead of win/lose can minimize the animosity and fractionalization of land use decision making, resulting in decisions which are made more efficiently, with a more comprehensive review of the potential impact and which garner greater stakeholder support. Making use of these techniques in a forward-looking negotiated planning process increases the likelihood of success during the review of any individual project.

## **Chapter 4 -The Snowmass Ski Area Expansion**

The case of the expansion of the Snowmass Ski Area involves a multitude of jurisdictions, issues and actors. In order to understand the assessment and permitting process for this development project, I will first discuss the context within which the project was proposed. The context involves both the geography and the history of the area, as well as those individuals and institutions which helped to shape the community. Having reviewed the context, I will then provide an overview of the expansion project as proposed, and the major points of contention it raised. These issues were air quality and transportation, wildlife habitat and summer use, water quantity and snowmaking and employee housing.

### ***The geography***

The Snowmass Ski Area, like many developed recreation areas on federal lands, falls within many political jurisdictions that impose restrictions and regulations upon how the area is used and developed. These regulatory bodies may have differing goals and objectives, processes and legislative mandates. These overlapping jurisdictions and competing governmental objectives can lead to a failure to review a project systematically, despite having spent much time, effort, money and emotion on the review. In reviewing the geographical context in which the Snowmass Ski Area is set, I will also look at the primary actors in each jurisdiction and some of the factors which have influenced their development philosophies.

### **White River National Forest**

White River National Forest (WRNF) is a 2.3 million acre forest in which 40,000 acres are within 11 ski area permit boundaries.<sup>1</sup> Over 25% of all skiing that occurs within National Forests happens in White River.<sup>2</sup> WRNF is headquartered in Glenwood Springs, Garfield County, Colorado, approximately 40 miles over the mountains from Snowmass Village. According to the WRNF mission statement, the area contains “a variety of ecosystems, producing benefits of local and national importance. Known for its skiing, scenery, wildlife and wilderness, the White River National Forest provides quality recreation experiences for visitors from around the world.”<sup>3</sup>

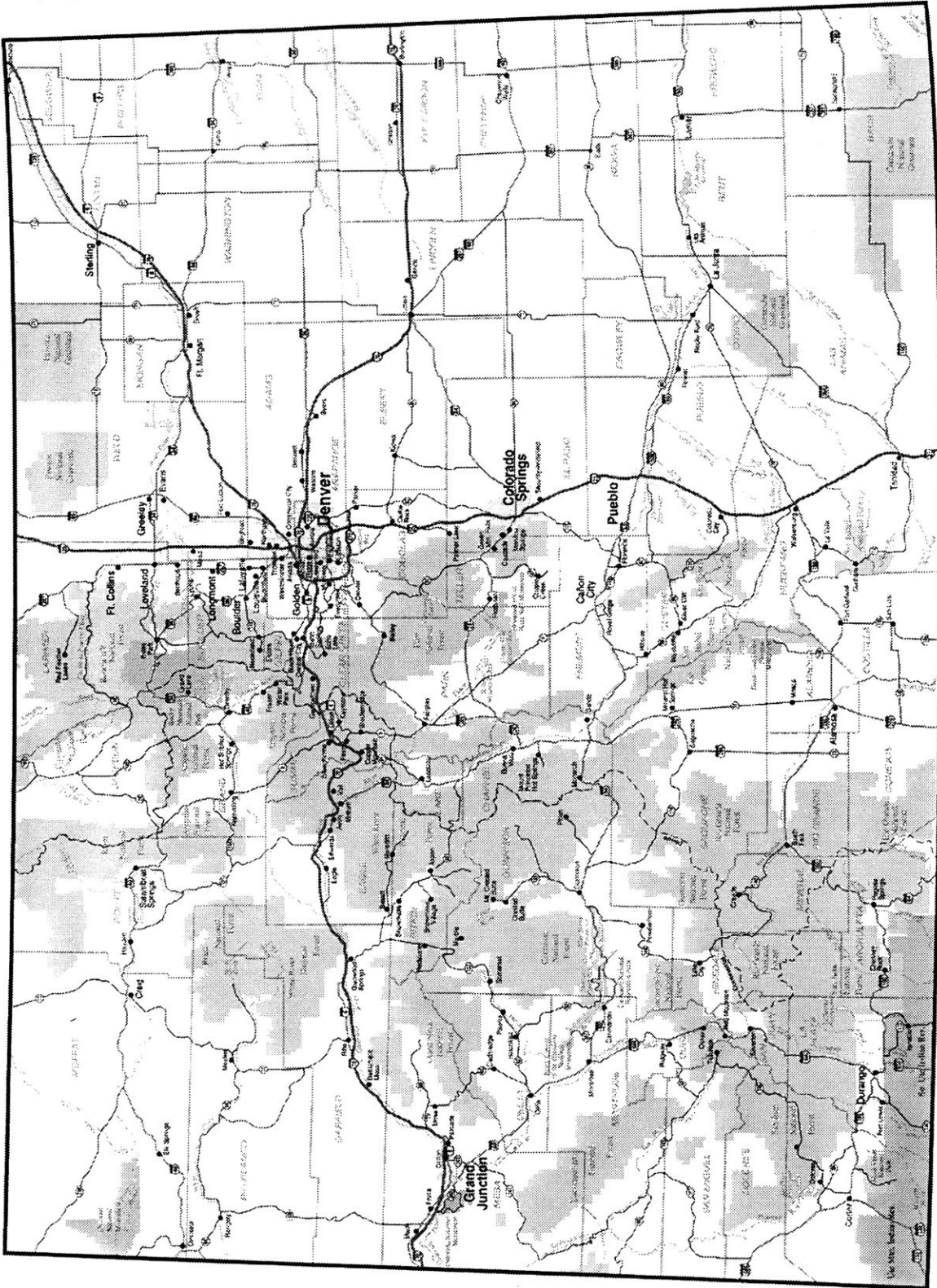
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<sup>1</sup> LaSalle, Veto J. Interview. January 11, 1996.

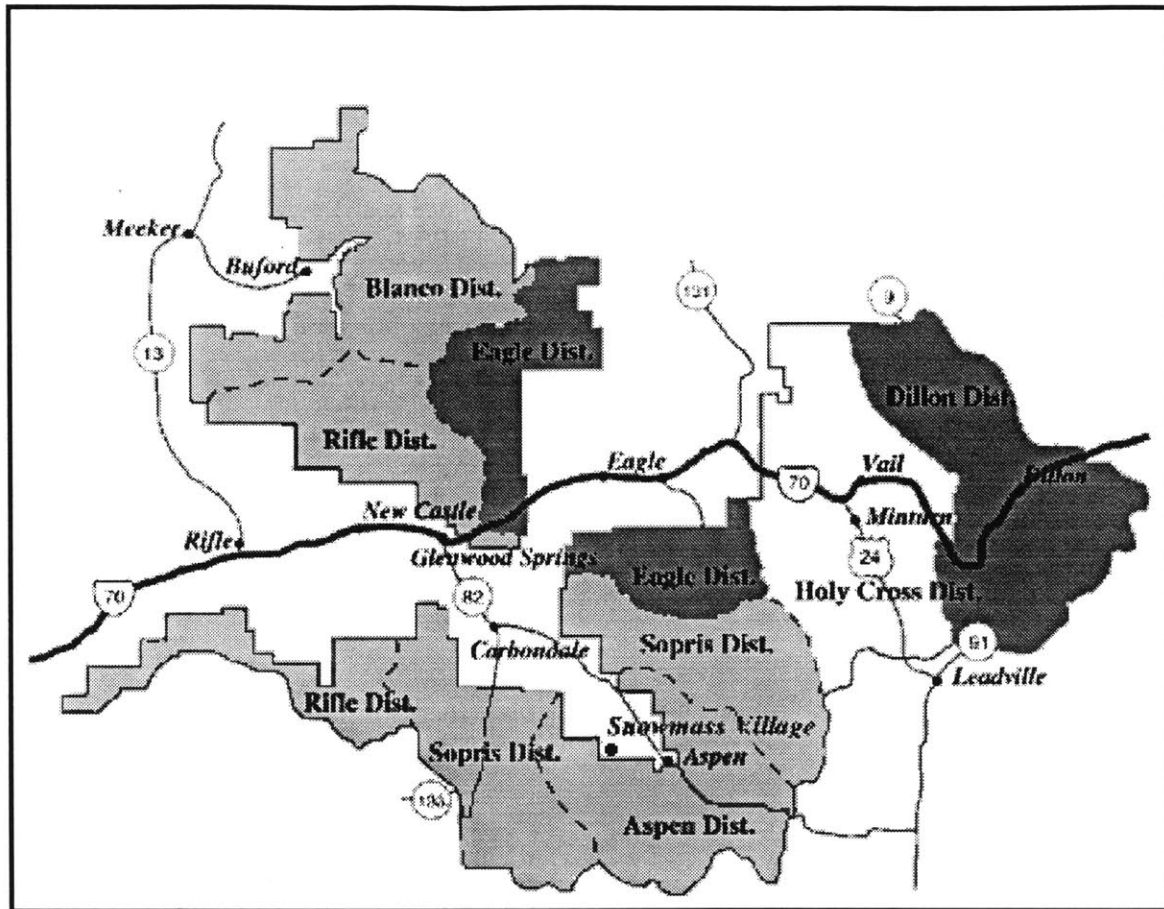
<sup>2</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>3</sup> United States Department of Agriculture, United States Forest Service, White River National Forest. Mission Statement. Washington, DC. US Government Printing Office. 1995.





**Figure 4-1 - State of Colorado, including National Forest Lands**  
 Source: *All About Colorado*. [http://www.aaco.com/co\\_map.html](http://www.aaco.com/co_map.html). Interactive Planet, Inc. 1996.



**Figure 4-2 - White River National Forest Ranger Districts and Surrounding Municipalities**

Source: *White River National Forest*. <http://www.aspenonline.com/Forest/index.html>. Aspen Interactive Media, Inc. 1995.

### **Town of Snowmass Village, Colorado**

The Town of Snowmass Village (TOSV) is an incorporated township within the state of Colorado and is home to approximately 1,090 people. Snowmass Village is a relatively new town, having been incorporated in 1978, almost 10 years after the founding of the ski area. Snowmass Village was founded largely in response to the anti-growth initiatives being pushed by the Pitkin County government, which had the power to zone and regulate the Snowmass area until TOSV was incorporated. The Town of Snowmass Village is governed by a mayor and a 6-member town council.

In 1977, the residents of the greater Snowmass area incorporated as the Town of Snowmass Village, largely in response to the anti-growth agenda of Pitkin County. Tensions between the new town and the county were high. However, as the ski area was in an unincorporated area of Pitkin County still, the County controlled the local

involvement in the review of the Burnt Mountain expansion.<sup>4</sup> In 1984, the Town of Snowmass Village negotiated an inter-governmental agreement with Pitkin County that allowed the Town to annex the Ski Area with the condition that the County would enjoy advisory status on all land use decisions that affected the Ski Area.

### **Pitkin County and the City of Aspen**

Pitkin County is home to the four ski areas of the Aspen Skiing Company: Aspen/Ajax Mountain, Aspen Highlands, Buttermilk/Tiehack and Snowmass. The county seat is the City of Aspen, where approximately 7,200 of the county's 12,000 residents live.<sup>5</sup> Pitkin County is governed by a Board of 4 elected County Commissioners. There is also a county manager and a volunteer county planning commission. The County's planning and community development department is shared with the City of Aspen. Following the incorporation of the Town of Snowmass Village, the County is entitled to be present at any meetings discussing the future of the Snowmass Ski Area, and has advisory status on any planning decisions affecting the ski area, through a 1984 Inter-governmental Agreement.

The history of Pitkin County is, in many ways, inextricable from its county seat of Aspen. Aspen was founded in 1879 by miners who had crossed the mountains from Leadville in search of new claims. But unlike so many mining boom towns, Aspen survived the bust, due mostly to investment by the President of Macy's Department Stores Jerome Wheeler, whose name is now enshrined on the town's Opera House, and lawyer/entrepreneur David Hyman, after whom the main commercial street in town is named.<sup>6</sup> Through the late 1800s, Victorian capital poured into the town, which swelled to over 12,000 inhabitants, making it Colorado's third largest city.<sup>7</sup> After the US demonitized silver in 1893, Aspen survived as the county seat and a local trade center, but by 1935, its population numbered only 700 residents.<sup>8</sup>

Following World War II, however, Aspen boomed again - this time as the skiing prospectors, led by the Army's 10th Mountain Division, moved into town. They bought up the remaining Victorian homes from those who had survived the silver bust. They added chalet-style homes on the mountains. They created Aspen the resort. The resort

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<sup>4</sup> Tippett, Jeff. Interview. January 3, 1996.

<sup>5</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>6</sup> Aspen Historical Society. A Brief History of Aspen. Aspen, CO. 1996.

<sup>7</sup> Hayes, Mary Eshbaugh. "What Next, Aspen?". Destination Magazine. Aspen. December 1994. RE9.

<sup>8</sup> Aspen Historical Society. A Brief History of Aspen. Aspen, CO. 1996.

started out as low-ski, half ski bum, half artist town. But like so many such towns, in all types of environments across the United States, this idyllic existence was a phase that led to discovery by those willing to pay top dollar to possess the place for themselves, and in so doing, changed the very nature of what they wished to possess.<sup>9</sup>

The 1970s and 1980s saw rampant growth in Aspen, as second home owners expanded, remodeled and bought the city's best homes. Condos sprung up. More and more locals moved down valley. The long-time, year-round residents, now very much in the minority, at last rebelled and imposed stringent anti-growth initiatives, from limiting the number of building permits per year, to down zoning large tracts of as yet unspoiled lands. Today, Aspen, and all of Pitkin County, struggle to balance the tourism and development that is their economic base with preserving the character of their town and local natural environment that have been the very things that have attracted so many to the area over the years.<sup>10</sup>

### **The Roaring Fork Valley**

The Roaring Fork Valley describes, generally, the area between Glenwood Springs and Independence Pass along State Highway 82. It encompasses portions of Garfield and Pitkin Counties and shares a public transportation system.

### ***History of Snowmass' Physical Development***

Baldy and Burnt Mountains were first scouted for potential ski development in the summer of 1957, when Fritz Benedict, an Aspen resident, skier and resort architect, met with Paul Hauk, the new supervisor of White River National Forest.<sup>11</sup> Within the year, Benedict took steps to purchase key tracts of land. He also formally joined forces with the Janss Investment Corporation, a real estate group owned by a pair of brothers and former world-class skiers. Summer 1958 saw the submission of the special use applications by the Janss team, with estimated basic facilities costs put at \$950,000.<sup>12</sup> By 1960, the Jansses had acquired almost 1,800 acres in and around the proposed boundary of the new ski area. This captured the attention of the nearby Aspen Skiing Company, who elected Bill Janss to their board of directors - a board chaired by Paul Nitze, the majority stockholder and Secretary of the Navy at the time. In August 1962, Aspen Skiing Company (ASC) filed an

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<sup>9</sup> Hayes, Mary Eshbaugh. December 1994. RE9.

<sup>10</sup> Hayes, Mary Eshbaugh. December 1994. RE9.

<sup>11</sup> Hauk, Paul. Snowmass Ski Area Chronology. United States Department of Agriculture, United States Forest Service. December 1978. pp. 1.

<sup>12</sup> Hauk, Paul. pp. 2-3.

application for the construction and operation of lifts on the Baldy-Burnt Mountain area. ASC bought a three-year option from the Jansses for the development of the mountain. With a total of 2860 acres owned, another 360 leased with an option to buy and a \$1 million investment already, the conditional special use permit was approved to cover 6,300 acres of Forest Service land. The annual use fee was set at \$200.00<sup>13</sup> ASC and the Jansses divided responsibilities for the development of the newly-dubbed Snowmass: ASC would construct, maintain and operate the lifts and related facilities, while the Jansses would plan and develop the “base village”. ASC would then annually pay the Jansses “20% of excess net income from mountain operations over 10% of ASC investment” until April 30, 2063. When Snowmass Ski Area officially opened in December 1967, with 5 lifts, 50 miles of trails, Stein Erikson heading up the ski school, \$10 million has been invested in the Base Village of 5 lodges, 120 condominium apartments and a retail/service mall. In 1968, the Jansses sold their interest, including the now almost 12,000 acres of land, in Snowmass to American Cement, who in turn sold the property to the Snowmass Land Company in 1977. The Jansses relinquished the special use permit in 1972. ASC applied for it the same day it was relinquished, and was granted it in 1973.<sup>14</sup> They have held the permit ever since.

### ***The Proposal***

On June 7, 1991, Bob Maynard and Fred Smith, the President and Vice President of Panning for the Aspen Skiing Company (ASC) respectively, announced that ASC would invest \$30 million in expanding and improving the Snowmass Ski Area.<sup>15</sup> This was to be a joint venture between ASC and the Snowmass Land Company (SLC). ASC maintains 4235 acres of skiable terrain in 4 ski areas, all within White River National Forest.<sup>16</sup> All areas are accessible on one \$52/day lift ticket - the most expensive lift ticket in the country.<sup>17</sup> Independently, three of the four areas made ski magazine’s top 100 resorts in the country: Aspen Highlands was 28th, Aspen Mountain, 10th and Snowmass, 7th.<sup>18</sup> SLC, ASC’s partner, has been the major developer of Snowmass Village, both residential and commercial, since 1977. During this review process, it was headed up by CEO/Owner Norman Perlmutter and President Kenneth Sontheim.

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<sup>13</sup> Hauk, Paul. pp. 5-6.

<sup>14</sup> Hauk, Paul. pp. 9-11.

<sup>15</sup> Trinker, Greg; “\$30 Million to be spent upgrading Snowmass”; Denver Post; June 8, 1991.

<sup>16</sup> Aspen Skiing Company. Four Mountain Trail Map. 1995-1996 Ski Season.

<sup>17</sup> “Editorial: High lift prices will only accelerate skier-visit decline.” The Aspen Times. August 19/20, 1995.

The original ski area proposal called for 325 acres of new terrain on Burnt Mountain, an adjacent mountain within the ski area permit boundary. A total of 970 additional acres, including 300 snowmaking acres, were proposed in the plan. Snowmaking would be able to provide 18 inches per acre of man-made snow.<sup>19</sup> The plan also included a new access area in the East Village section of Snowmass, which would be equipped with a 400-car parking lot and a high-speed detachable quad lift.<sup>20</sup> A net increase of two lifts and one gondola proposed to combine for an additional 3,730 skiers at one time (SAOT) - a 34% total increase.<sup>21</sup> Additionally, a new on-mountain restaurant (bringing the total to five) was to be added. This restaurant, along with the existing Cafe Suzanne, were to serve as interpretive facilities for summer use. Staging for hiking and mountain biking was proposed for summer use on Burnt Mountain.

In conjunction with the development of Burnt Mountain, SLC would be developing a 400 acre tract of land which they owned adjacent to the ski area. Though zoned for as many as 11,000 units, SLC proposed to build just 102 single family homes and 32 townhouses. These units would have access to the ski area via private ski in/ski out trails.<sup>22</sup>

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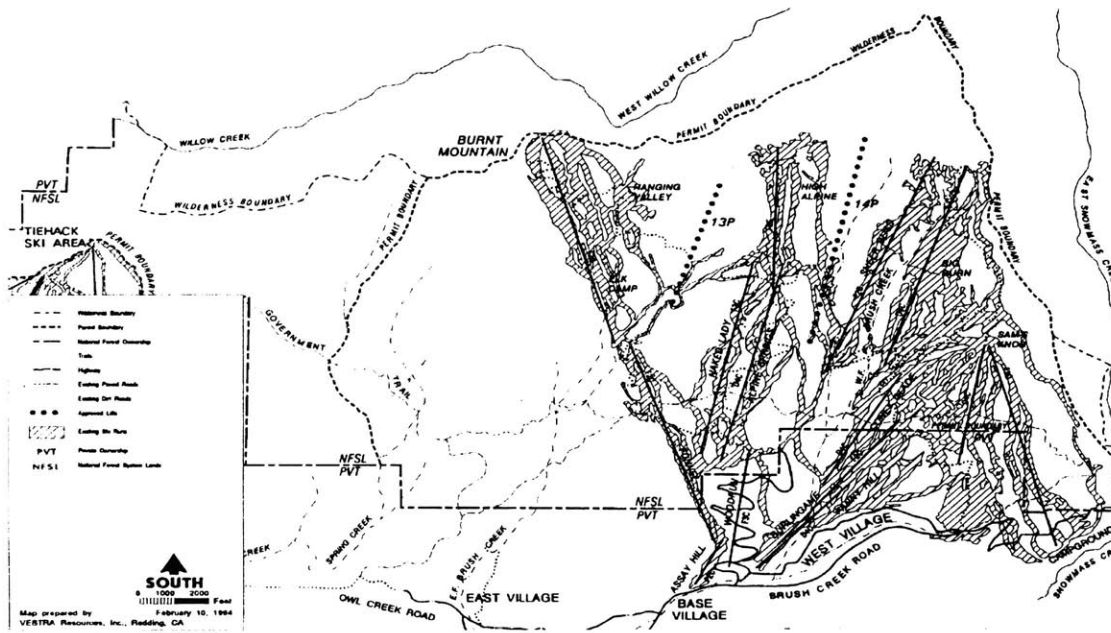
<sup>18</sup> "The Resort Report Card." Ski Magazine. October 1995. pp. 154-7.

<sup>19</sup> United States Department of Agriculture, United States Forest Service, White River National Forest. Snowmass Ski Area Final Environmental Impact Statement. Washington, DC. US Government Printing Office. (Snowmass Ski Area FEIS). 1994. II-27.

<sup>20</sup> Trinker; 1991.

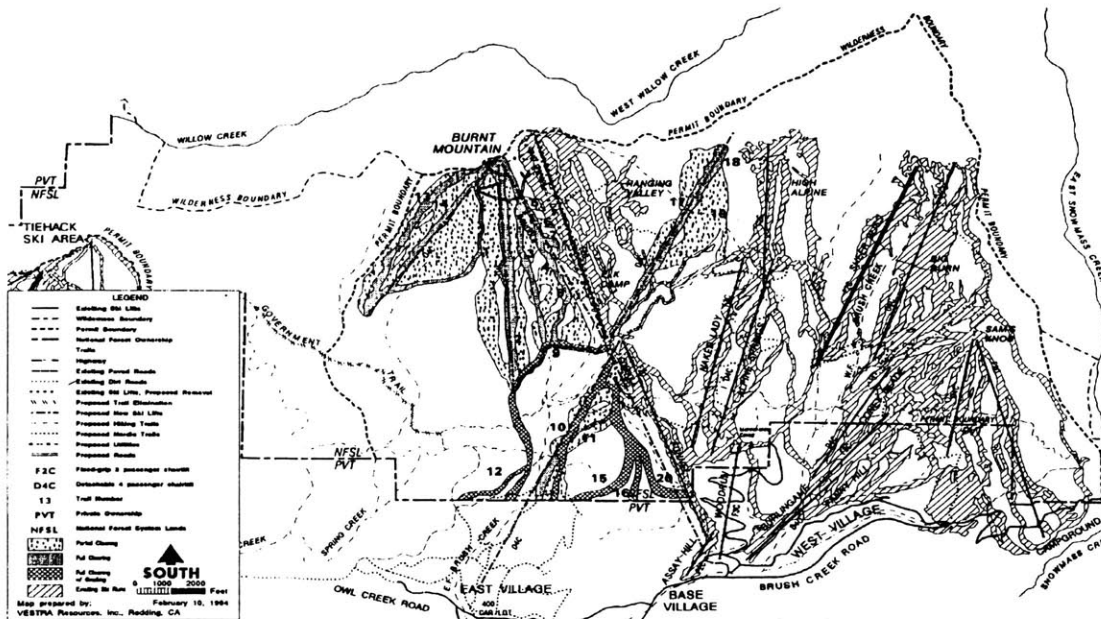
<sup>21</sup> Snowmass Ski Area FEIS. 1994. II-27.

<sup>22</sup> Sontheim, Ken. Interview. January 16, 1996.



**Figure 4-3 - Snowmass Ski Area Development, as of 1991**

Source: *Snowmass Ski Area FEIS*. 1994. 1-5.



**Figure 4-4 - Snowmass Ski Area with 1991 proposed expansion**

Source: *Snowmass Ski Area FEIS*. 1994. II-39.

## **The Issues**

While there were many implications of so large a recreational and residential development, there were four which dominated the discussions surrounding the expansion of Snowmass Ski Area. The three most prevalent issues were the impacts on the natural environment. These impacts could usually be categorized as one of three types of environmental issues: air quality, wildlife habitat and water quantity. These corresponded to three types of activities associated with the ski area development: transportation, summer use and snowmaking, respectively. The fourth issue was the provision of employee (low/moderate income) housing, which addresses some transportation issues, by reducing the number and distance of commuting trips necessary, but serves primarily a social equity function by ensuring that people can live in the communities in which they work.

### **Air Quality and Transportation**

One of the immediate issues arising from the planned development at Burnt Mountain was transportation and its effects on local air quality. Upwards of 4,000 new skiers at one time were not simply going to appear in Snowmass. One way or another, they were going to have to get there by motorized vehicles. Aspen and its metropolitan area were already designated by the Environmental Protection Agency (EPA) as a non-compliance zone for failure to meet the National Ambient Air Quality Standards (NAAQS) for particulates (PM-10). The State Implementation Plan drawn up to address such non-compliance zones "says that we won't increase vehicles."<sup>23</sup> Though the area has been "clean, basically" for three years, county planners were concerned that any increase in traffic between Aspen and Snowmass could push them over the limits once again.<sup>24</sup> This concern may have been misdirected, however, for as White River National Forest Supervisor Veto J. "Sonny" LaSalle points out, "[I]ts ironic that the primary cause of the air pollution is sand particles that they put on the roads, not from car exhaust and wood smoke in this case."<sup>25</sup>

### **Wildlife habitat and Summer Use**

Another major issue of concern was the impact on wildlife. The Snowmass Ski Area abuts Snowmass-Maroon Bells National Wilderness Area which exists untrammled by man for the preservation of its scenic value and for the benefit of the species that need such a pristine environment. However, most animal species do not stay within one area for

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<sup>23</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>24</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>25</sup> LaSalle, Veto J. Interview. January 11, 1996.



an entire year, and thus the condition of the immediately surrounding properties becomes a concern. As an indicator species, the Elk were focused on, as they had been known in the past to use the land at Burnt Mountain, particularly for summer habitat. Upon further examination, the elk have also been found to calf on Burnt Mountain on occasion. But science of determining both how much the elk use Burnt Mountain, and how much impact skiing on it will have on the herd was very much in debate. “Who knows, really? Even the experts can’t tell you. Yeah, well, a [cow] had her [calf] here last year, but who’s to say she will have her [calf] here next year?”<sup>26</sup> remarked former member of the Snowmass Village Town Council, Jeff Tippett. The parties were all convinced that whatever the elk might or might not use the mountain for during the summer, it was outside of their winter range. “The elk don’t use that area at ski time...[During the winter], they aren’t using that part of the mountain, so there’s no reason why the human animals shouldn’t use it and enjoy it,” said Town Councilman Doug Mercatoris.<sup>27</sup>

Obviously, wildlife impacts were significantly linked to summer use as well as the actual skiing development. Summer use was a very high priority for the Town of Snowmass Village (TOSV). Created as a skiing resort village, 25 years later, the town was looking to expand its seasonal economic base and become more of a year-round vacation spot. While there was already some summer use on Baldy Mountain, expanding and improving the activities available on the Forest Service land within the town was seen as highly favorable to a large portion of the town - from hoteliers and vacation home owners who were interested in raising their rates of occupancy during the off-season to merchants and restaurateurs who wanted the extra days of business. Mayor Jim Hooker spoke of his desire to see a year-round gondola to the top of Burnt Mountain, perhaps leading to a sit-down restaurant - both things that would make Snowmass Village more of a resort in its own right, rather than an auxiliary to Aspen.<sup>28</sup>

### **Water Quantity and Snowmaking**

Snowmaking has become an integral part of the skiing business. It can extend a November to March season a month or more. In order to facilitate the proposed 300 new acres of snowmaking at Snowmass, however, ASC needed water. The closest (and therefore cheapest source) is Snowmass Creek. The Colorado Water Conservation Board, which holds all surface water supplies not already managed by a designated water district (i.e. - Snowmass Water and Sanitation District) had set the minimum streamflow in Snowmass Creek at 12 cubic feet per second (cfs). This meant that no one could draw so

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<sup>26</sup> Tippett, Jeff. Interview. January 3, 1996.

<sup>27</sup> Mercatoris, Doug. Interview. January 10, 1996.

much water from the Creek that it dropped below this minimum flow, regardless of how much water was flowing through the Creek. If it was running at 20 cfs, then presumably, anyone could draw out 8 cfs. However, if it were running at 6.9 cfs, no one could draw anything. ASC estimated that it would need 5 cfs from the Creek in order to fulfill their snowmaking needs. ASC asked the Colorado Water Conservation Board (CWCB) to reconsider the 12 cfs designation, saying that they felt that the integrity of the stream could be preserved with less water. After examining the evidence originally presented to CWCB on the needs of mass Creek, the CWCB concluded that ASC was indeed correct. There had been an error in determining the original minimum streamflow. CWCB assigned Snowmass Creek a new minimum streamflow of 7 cfs - that is, 5 cfs below the previous minimum. Environmental opponents from around the area and around the country turned out to testify as to the detrimental effects that such a draw would have on the ecology of the stream, in particular several threatened species of fish. They contested both the new minimum level itself and the rights of the municipal water authority (which would ostensibly be providing the water) to sell water for snowmaking, saying that such a use was extraneous and not in the public interest.

### **Employee Housing**

For a development of this size, in terms of the new housing stock being produced and the net increase of jobs being created, both TOSV and Pitkin County required a substantial amount of employee housing. This is in recognition of the fact that land in both Snowmass Village and Aspen has become so expensive that employees of the ASC and the visitor service providers (retails shops, restaurants, etc.) frequently have to commute an hour or more each way to find housing they can afford. Not only does this create an equity issue, but it further exacerbates the air quality problems by adding more vehicle miles to the County. Snowmass Land Company had banked employee housing units from previous projects - that is, having built more than required elsewhere, they could count those excess units towards this project. ASC, on the other hand, had no units banked, and was already behind schedule for providing some from improvements in other parts of the County. Thus, how many units of SLC's banked could be used on the joint venture, how many units total would be required and where they would be was very much in debate.

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<sup>28</sup> Hooker, Jim. Interview. January 12, 1996.

### **Other Actors**

The Snowmass Ski Area expansion involved many actors already mentioned in this chapter: ASC, SLC, WRNF, TOSV, Pitkin County, and CWCB. In addition to these stakeholders, there were three other groups which played prominent roles in the assessment and review processes for this project: the Colorado Division of Wildlife, the Roaring Fork Transit Agency and various environmental non-governmental organizations.

### **Colorado Division of Wildlife**

The Colorado Division of Wildlife (DOW), while not a lead agency overseeing a permit review process nonetheless a very active player in the case. WRNF wildlife biologists worked closely with Colorado DOW scientists to determine wildlife impacts. The data used in the EIS prepared for WRNF was almost exclusively from DOW.

### **Roaring Fork Transit Agency**

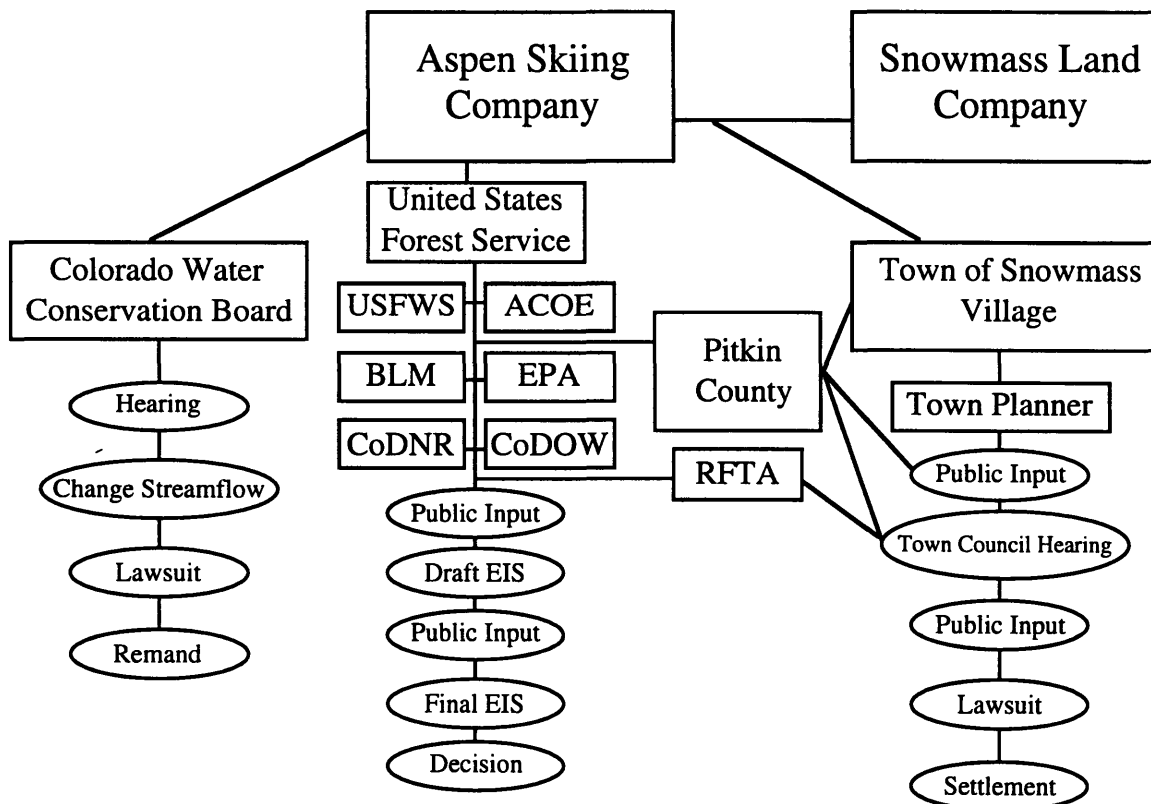
Because of the import of transportation issues in assessing the impacts of the proposed development, Dan Blankenship, General Manager of the Roaring Fork Transit agency (RFTA), was a key player in the assessment of impacts and determination of appropriate mitigation. As RFTA provides bus service for the entire valley, any transportation mitigation required either by TOSV or WRNF was likely to involve solutions paid for by ASC and/or SLC, but managed by RFTA.

### **Environmental Groups**

There were four environmental groups primarily involved in the review of the proposed development at Burnt Mountain. Friends of Burnt Mountain was spearheaded by Jack Hatfield, a member of the county planning commission, and later, the TOSV town council. Friends of Burnt Mountain is a broad-based organization which attempted to address all areas of environmental concern in the plan for the development. The Aspen Wilderness Workshop (AWW), a long-established Aspen environmental group, addressed many of the same issues as the Friends of Burnt Mountain, but pursued the snowmaking water rights with the most vigor. The Snowmass/Capitol Creek Caucus (SCCC), a group created specifically in response to the degradation of local water supplies through snowmaking, focused exclusively on the issues surrounding water rights and the impact of snowmaking on the natural environment. Finally, the Colorado chapter of the Sierra Club was also involved in the activities surrounding the development of Burnt Mountain. They primarily, however, acted as consultants to the local environmental organizations and did not attempt to snatch the leading role from any of the indigenous environmental groups.

## Chapter 5 - The Review Processes

To see this proposal come to fruition, the Aspen Skiing Company and the Snowmass Land Company had to go through three regulatory review processes - one local, one state and one federal (see figure 5-1). In this chapter, we will walk through the White River National Forest's, the Town of Snowmass Village's and the Colorado Water Conservation Board's review processes. For each, we will examine the sequence of events. We will then look in more detail at how each dealt with the four major points of contention introduced in Chapter 4: Air Quality and Transportation, Wildlife Habitat and Summer Use, Water Quantity and Snowmaking and Employee Housing. Though the players overlapped and some of the jurisdictional questions were muddled, each process had its own character and dynamic. The events in one necessarily influenced the events in the other two. Nonetheless, if we are to learn about institutional culture and processes from this case, it is important to examine the processes independently. Then we can begin to sort out what from these processes is worth preserving in any new system, and what needs to be eliminated.



**Figure 5-1 - Burnt Mountain Development Process**

### ***The Forest Service Review Process***

The Forest Service has a reputation in the environmental community to being the “bad guy” of federal land use regulation. Many feel that the Forest Service, forced by the National Environmental Policy Act to assess the impacts of the activities it permits on its lands, merely does so in the most cursory way. Where environmental impact statements (EISs) are produced, public comment on them is window dressing. The Forest Service, the perception is, will continue to do what it wants regardless.

Having been imbued with this vision of the Forest Service, when I arrived in Snowmass in January 1996, I came primarily to assess the Forest Service’s failure to make this process run smoothly. I knew that the project had gone through several rounds of litigation and acrimonious settlement hearings. Clearly, the Forest Service had botched yet another process. Even though on paper, it looked like they had done everything right, something had still gone wrong, undoubtedly due to their unwillingness to listen to the public.

I could not have been more wrong. My attitude not only reflected a poor understanding of how the various governmental processes dovetailed together, but also a serious bias, which may or may not be an appropriate stereotype of the rest of the Forest Service, but certainly did not do justice to the administration and staff at White River National Forest.

In 1991, the Aspen Skiing Company (ASC) announced its intention of spending \$30 million on the upgrading and expansion of the Snowmass Ski Area. In August, they filed their proposal with the White River National Forest (WRNF), setting into motion the environmental impact assessment procedure. ASC and WRNF had learned the hard way back in 1986 that a full environmental impact statement (EIS) would be needed for this project, instead of the procedurally simpler environmental assessment. In 1986, ASC proposed a similar expansion, which WRNF found to be of no significant impact, and therefore not needing a full EIS. The State of Colorado and the Colorado Wildlife Federation obtained an injunction against the development pending a judicial decision on the necessity of an EIS. The courts ruled that one was indeed merited for a project of this size. ASC began the EIS process, but three years later shelved the Burnt Mountain project indefinitely. They had spent seven years on a project that was a no-go. It was a mistake neither ASC nor WRNF intended to repeat.<sup>1</sup>

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<sup>1</sup> United States Department of Agriculture, United States Forest Service, White River National Forest. Snowmass Ski Area Final Environmental Impact Statement. Washington, DC. US Government Printing Office. (Snowmass Ski Area FEIS). 1994. I-3.

In November, a scoping meeting for the EIS was held. The team from WRNF made use of the information that they had gathered as part of the aborted 1986 process to draw up a preliminary list of issues for discussion and comment. Following the meeting, the revised list was circulated to both the media and some 300 interested parties - both individuals and organizations. In all, some 73 issues in 11 major topics were identified.<sup>2</sup>

Simultaneously, WRNF assembled its Interagency Task Force (ITF) - a team of professionals from other Federal, State and Local agencies involved or affected by the project. Those on the ITF were asked for technical advice on the scoping issues, as well as on the assumptions that would go into the data analysis. A variety of consultants and subconsultants were used to facilitate this process. The transportation consultants, notably, were the same ones which the Roaring Fork Transit Authority (RFTA) had themselves used in the past, establishing early a level of trust between the preparers and those contributing to the scoping. "We felt comfortable with them [the consultants] being on board," remarked RFTA General Manager, Dan Blankenship.<sup>3</sup>

After review of the feedback on the initial scoping, work groups, made up of interested members of the public, were established to flesh out those issues WRNF found to be the most controversial: socioeconomics, wildlife and transportation. In February 1992, the work groups met to explore possible alternatives to be investigated in the EIS. An open house was held following these work sessions to invite input on the issues, alternatives and potential mitigation measures that were to be addressed in the EIS.

Following a newsletter mailing to interested and affected parties in April 1992, WRNF held a May public workshop. In this instance, the focus was on the basic assumptions being made in the analysis, and on whether the revised proposed programs seemed to address the issues brought up during scoping.

In June 1992, Veto J. "Sonny" LaSalle came on board as the new Supervisor for WRNF. He inherited the consultants, the public participation process as it had occurred, and the adversarial history of the Snowmass Ski Area the moment he came on board.

In May 1993, the consultants finished the Draft EIS, which was then made available for public comment. Because of the amount of interest the draft generated, and in an effort to give all parties their chance to comment, the normal 45-day comment period was extended to 60 days. Even those comments received after the closing of the formal public comment period were included in consideration for changes to the EIS.<sup>4</sup>

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<sup>2</sup> Snowmass Ski Area FEIS. 1994. I-12.

<sup>3</sup> Blankenship, Dan. Interview. January 4, 1996.

<sup>4</sup> Snowmass Ski Area FEIS. 1994. A-1.

Above and beyond merely accepting public comment, WRNF made an effort to really work through many of the conflicts brought up. “[T]he Forest Service really took a lead role in terms of trying to coordinate with the affected agencies and local governments throughout the Roaring Fork valley,” said Blankenship.<sup>5</sup> Two open houses in May, 1993 were held to listen to the concerns and comments of the public. Additionally, two consensus building meetings were held with agency officials and various interest groups in July and August to explore possibilities for addressing everyone’s interests.<sup>6</sup> These meetings were the result of LaSalle’s tireless effort to bring the feuding parties together in finding a solution.

[WRNF] brought in a consultant that was skilled in bringing people together and we had a meeting in Snowmass of all of the players...and at the end of the session, the consultant said, if you’re ever going to reach agreement, its going to take far longer than any of you have to do that. Much more time. It was obvious that the participants did not want to spend anymore time together. They really didn’t. They stated their opinion, where they were coming from, they were fairly firm in that opinion, and they really didn’t want to spend any more time, they didn’t feel it was fruitful. In fact, some of them didn’t even want to finish the day.<sup>7</sup>

Though these meetings did not yield a solution, LaSalle was committed to trying to incorporate as many of the concerns of the parties into his decision as possible. The procedure to date had uncovered a lot of important issues that needed to, and could be, addressed in a way that all the parties needs were met. But there was such a history of animosity built up, which LaSalle, as the new kid on the block, did not share in, that it was nearly impossible to get beyond the posturing. If groups were unwilling to sit at a table with one another and discuss it, he would discuss it with them individually.

So I talked to as many people as I could on a one on one basis. I gathered information and then I, some of those people I revisited, and said, okay, I heard you say this, could you live with this? Kind of a thing. So I started modifying the earlier proposal, the earlier preferred alternative of the draft. I started bringing in things from all of the alternatives, asking people if they could live with them. And I did this personally, and it was one on one, or one to two or three or whatever. And from that I started building the framework of a selected alternative for the final.<sup>8</sup>

LaSalle used the draft, comments and discussions with the interested parties to build a decision that was composed of elements from alternatives studied in the EIS, but was not itself an alternative explicitly studied. To meet National Environmental Policy Act (NEPA) requirements, LaSalle was limited to using elements and combinations of elements which

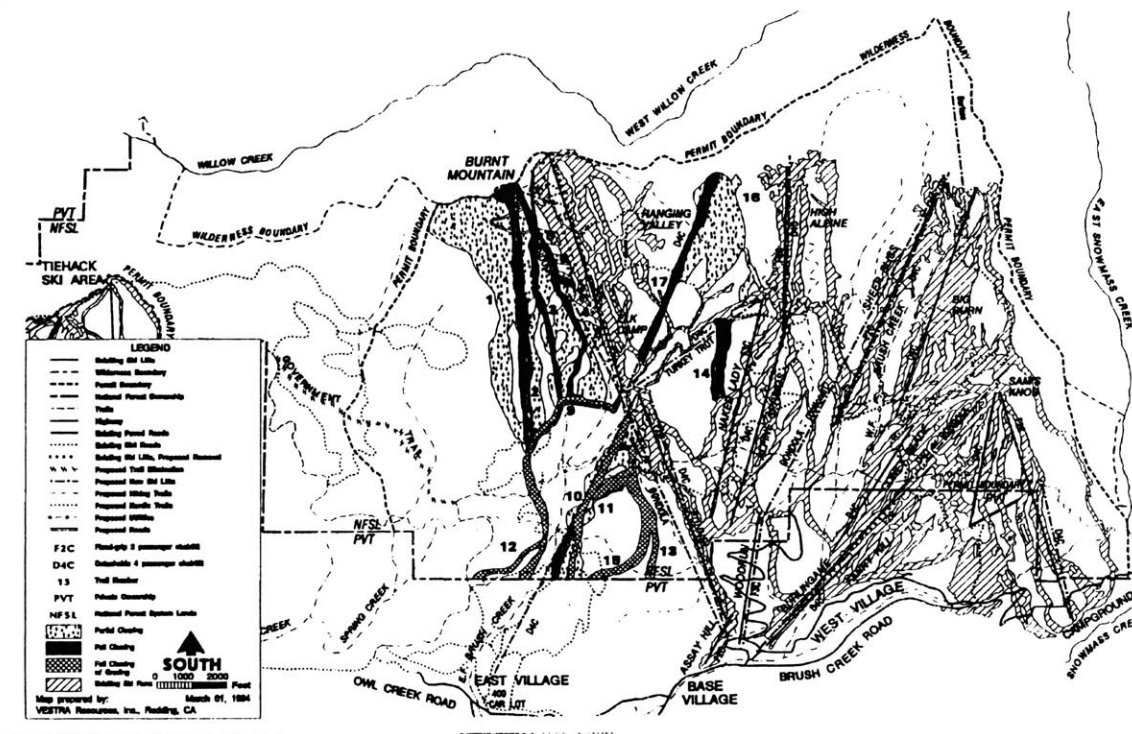
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<sup>5</sup> Blankenship, Dan. Interview. January 4, 1996.

<sup>6</sup> Snowmass Ski Area FEIS. 1994. I-12.

<sup>7</sup> LaSalle, Veto J. Interview. January 11, 1996.

were explored through the EIS process, but he did not allow that to restrict him to the 6 combinations of activities and mitigation measures set forth in the draft EIS. By picking and choosing from the elements, and shuttling back and forth between participants, both on the ITF and those representing non-governmental interest groups, LaSalle assembled a permitted alternative that he felt best represented the balance between the multitude of competing interests involved in the situation. “[W]hen they came out with the final document, I think, while people maybe still challenged some of the findings, by and large, I think that the Forest Service had done a pretty good job of trying to take into consideration everybody’s viewpoints and had tried to, had to try to,” said Blankenship.<sup>9</sup> At this point, the Forest Service’s role in the permitting, negotiations and approvals of the Burnt Mountain project was officially completed.



**Figure 5-2 - Approved Burnt Mountain Development**

Source: LaSalle, Veto J. March 1994. pp. 6.

<sup>8</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>9</sup> Blankenship, Dan. Interview. January 4, 1996.



## **How did the WRNF process address the key issues?**

### ***Air Quality and Transportation***

The Forest Service had little leeway on this issue. In order to ensure compliance with the Clean Air Act, WRNF could not permit any activities on its land which caused a net increase in vehicle miles traveled (VMT). The primary requirement that WRNF imposed upon ASC in this matter was that they demonstrate that “adequate mitigation measures are in place to ensure that there will be no net increase” in VMT in the nonattainment area.<sup>10</sup> WRNF required that ASC purchase and pay for the operation of six forty passenger buses as an interim measure to address the increase in traffic. But WRNF also proposed six other mitigation measures, some of which would be taken by ASC, but others by the Town, or the County or even the State. These included road improvements, extension of bus services, parking improvements, development of a light-rail system, and investigation of possible connections via gondola between the other ski areas.

### ***Wildlife Habitat and Summer Use***

WRNF had sole authority over the issue of summer use of the ski area . It was at their discretion when, if and how much summer usage would be permitted on Burnt Mountain,. As the primary wildlife concern was the maintenance of habitat, particularly of the summer range of the elk herd, the decision on summer use significantly impacted the decision on wildlife impact mitigation.

Recognizing both the tourism demand for summer use of the mountain, and the potential benefits to the local economy, WRNF felt it was important to increase the summer use of the ski area. However, they also felt that concerns brought up about the impact on the wildlife were considerable. In his comments on the Draft EIS, the Department of the Interior Regional Environmental officer stressed this concern:

“Some of the most significant impacts to wildlife would occur with increased summer use of Burnt Mountain.....[A]ll known calving habitat for the Maroon Bells-Snowmass Wilderness Elk herd is within the project area. Furthermore, over the past 25 years, approximately 3,100 acres of calving habitat have been lost.”<sup>11</sup>

This concern was re-iterated by the Town of Snowmass Village (TOSV), the Colorado Division of Wildlife (DOW) and numerous environmental groups. Even the mayor of the City of Aspen voiced his concern, saying, “We are not supportive of any proposed

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<sup>10</sup> LaSalle, Veto J. Snowmass Ski Area Record of Decision. United States Forest Service. Glenwood Springs, Colorado. March, 1994. pp. 24.

<sup>11</sup> Stewart, Robert J. Regional Environmental Officer, US Department of the Interior. To Carmine Lockwood. Comments on the Draft Environmental Impact Statement for the Snowmass Ski Area, White River National Forest. July 8, 1993.

development that provides for summer access onto Burnt Mountain due to the impacts to elk habitat.”<sup>12</sup> WRNF could not turn a deaf ear. But as much as Sonny LaSalle was committed to consensus building, he also knew the importance of making a scientifically justifiable decision. “I was asking the ...wildlife biologists...what would be the impacts. So it wasn’t just a socially accepted kind of a alternative or decision, it was one that was biologically defensible,” said LaSalle.

Having weighed both the wildlife concerns against the potential economic benefit from increased summer use, LaSalle came up with a compromise. The decision stipulated that there would be an increase in summer use - concentrated on Baldy, not Burnt, Mountain. While a range of activities, including mountain biking, would be permitted in the ski area, restrictions were put on which activities could occur on or near Burnt Mountain. There would be only hiking in that portion of the ski area, and much of the mountain would be closed completely to human access during those months when elk were believed to be using the area. The decision further required the relocation of one of the trails to facilitate this closure and re-routing during the summer months.

### ***Water Quantity and Snowmaking***

The officials at WRNF had a fine line to walk on snowmaking. Snowmaking has become an increasingly important component of the business of skiing. With only 20% of Snowmass’s commercial activity coming from summer recreation, lengthening the ski season would be extremely valuable to the local economy. Particularly in the fall, when snowfalls are poor and result in delayed openings three out of ten years, snowmaking can make or break the season.<sup>13</sup>

However, WRNF’s mandate only enabled them to make decisions about activities occurring within the national forest lands, and their ability to control, mitigate or even consider off-site impacts was somewhat limited. The water rights to Snowmass Creek, which all of the proposed alternatives named as the principal source of water for snowmaking, were held by the Snowmass Water and Sanitation District (SWSD). The minimum levels in the stream were regulated by the Colorado Water Conservation Board (CWCB). But the actual diversion would occur on national forest land.

The data analyzed in the EIS shows the impacts on the aquatic resources and habitat increasing with the amount of water drawn out. As this was no great surprise to any party, the question quickly became, what is an acceptable level of impact and are there ways of mitigating those impacts?

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<sup>12</sup> Bennett, John. Mayor, City of Aspen. To Veto J. LaSalle. Comments on Draft Environmental Impact Statement for Snowmass Ski Area. July 13, 1993.

In the end, LaSalle recognized that he was not going to have the final say on this matter. The Colorado Water Court system would be, by and large, figuring out what an appropriate minimum streamflow was for Snowmass Creek. Given that this issue was addressed, LaSalle decided to permit the diversions. However, he required water storage capacity and stipulated that any snowmaking done after December 31 of each year must be done with from storage, not from natural surface waters. Withdrawing water from Snowmass Creek after December 31 was found to have the most detrimental impact on the aquatic environment, as water levels were typically lowest at this time of the winter, and lowering them further could place the trout populations native to the Creek in serious jeopardy. Furthermore, LaSalle mandated ASC install a gauging system to measure how much water was being pumped out of the creek, and that those gauges be available for inspection by not only WRNF and SWSD but also the Division of Wildlife and the Colorado Water Conservation Board. Most importantly, all water pumping was to cease should Snowmass Creek drop below the CWCB's determined minimum streamflow.<sup>14</sup> "I recognized the authority of the Colorado Water Conservation Board in holding minimum in-stream flows on private land...and what I required was that the withdrawal for snowmaking had to comply with state law," said LaSalle.<sup>15</sup> Finally, LaSalle recommended that all the involved agencies and the ASC meet to review the results of the monitoring and determine if the impacts were as expected, or if a change in mitigation measures was merited.<sup>16</sup>

### ***Employee Housing***

While WRNF could consider the socioeconomic impacts of this development in the EIS, there was really very little they could do as far as requiring mitigation in this area. As important as they might feel employee housing was, requiring ASC to build units was out of their jurisdiction.

But this issue had been one identified in public sessions as one of the most important, one which the public wanted addressed by WRNF. The County expressed its concern that if ASC was not required to build more affordable housing in TOSV, not only would the burden of providing that housing be shifted to the rest of the County, cause of

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<sup>13</sup> LaSalle, Veto J. March, 1994. pp. 17.

<sup>14</sup> LaSalle, Veto J. March, 1994. pp. 19.

<sup>15</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>16</sup> LaSalle, Veto J. March, 1994. pp. 19.

the additional distance from the place of work of the residents, traffic would also be adversely affected.<sup>17</sup>

Rather than ignore the issue altogether, due to the fact that WRNF did not have authority to require anything in this realm, LaSalle chose to utilize his power to influence. He included socioeconomic considerations in his analysis, and in his mitigation actions. He recommended that TOSV “consider increasing the affordable housing criteria from 60 percent to 100 percent to improve the local employee housing situation.”<sup>18</sup>

### ***The Town of Snowmass Village Review Process***

The Town of Snowmass Village (TOSV) reviewed two proposals regarding development on Burnt Mountain. The first was from Aspen Skiing Company (ASC) and was identical to the proposal put before White River National Forest (WRNF). As the Snowmass Ski Area is within the incorporated boundaries of TOSV, but is on federal land, there is some question as to whether or not TOSV actually has the authority to regulate activity within the Ski Area. “We have been fairly adamant that the Forest Service activities aren’t exempt from local control,” says County Planner Francis Krizmanich. “Some things are exempt from review by basically Congressional act. But there’s nothing that we know of where Congress exempted the Department of Agriculture from local control.” However, rather than setting out to make this the test case of local sovereignty versus federal supremacy, ASC wisely decided to exhaust the administrative review processes available to them.

Simultaneously, TOSV reviewed the proposal of the joint venture between ASC and the Snowmass Land Company (SLC) for the East Village Planned Unit Development (PUD). There was no question that this portion of the development was entirely under the control of TOSV.

Because ASC and SLC made it clear that the two proposals were inextricably linked, that one was not financially possible without the other, stopping one meant stopping both. But TOSV did not have sole authority over the first proposal. In addition to the restrictions and conditions that the WRNF might put on any activity within the ski area, TOSV still had to contend with Pitkin County.

Pitkin County and TOSV are on opposite ends of the philosophy spectrum on issues of growth. Pitkin County, dominated by the City of Aspen, has been described as the classic drawbridge community: now that we are within the castle walls, pull up the

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<sup>17</sup> Tuite, Bill. Chairman, Pitkin County Board of County Commissioners. To Veto J. LaSalle. Comments on Draft Environmental Impact Statement for Snowmass Ski Area, White River National Forest. July 12, 1993. pp. 31.

<sup>18</sup> LaSalle, Veto J. \_March, 1994. pp. 24.

bridge. While this may not be entirely accurate, Pitkin County does impose remarkably stringent requirements on anyone wishing to build in the county. Its 500+ page zoning code details everything from general use categories to lighting and parking to employee generation and energy conservation standards. It has no fewer than 6 different sets of review procedures, which can be between one- and five-steps. As Bill Tuite, Chairman the Board of County Commissioners, wrote to Sonny LaSalle in the Board's comments on the Draft EIS:

“Pitkin County promotes controlled and balanced growth. As a community, we have learned that we cannot grow our way out of our problems. We recognize that our unique environment demands protection of important resource values. Pitkin County has adopted community plans and a land use code which guide our efforts in this regard.”<sup>19</sup>

All of this to say that Pitkin County is not interested in huge increases in its population - even it means simultaneous huge increases in its tax base. Pitkin County residents recognize the basic laws of supply and demand: keeping the supply of housing available in Pitkin County low keeps the relative demand (and the subsequent prices) high.

While the residents of TOSV appreciate high housing values as much as the next , they also recognize the value of being an autonomous community. Aspen has something of a competitive edge over TOSV because you never have to leave the town for any of your needs - recreational otherwise. This is increasingly true of TOSV, but it is still at a point in its growth where it is trying to achieve the critical mass to sustain the community independent of Aspen. Growth is not only a boon to public services (like buses) but also to the private provision of goods and services which depend upon a certain aggregation of potential customers in order to stay afloat. The TOSV town council, in its comments on the draft EIS noted that while it recognized the concerns related to the development, “Equally important are the interests of the general public, which desires access to public lands, and to the future of Snowmass Village as a viable and economically sustainable community.”<sup>20</sup> “[T]hey [Pitkin County] come from a different philosophical direction than do a preponderance of the residents of Snowmass with regarding growth,” noted Mayor Jim Hooker.<sup>21</sup>

In most land use regulations, as indeed would have been the case with the East Village had it been proposed independent of the ski area, these differences in philosophies would not have had much chance to be aired. Certainly, the County could in various ways

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<sup>19</sup> Tuite, Bill. Chairman, Pitkin County Board of County Commissioners. To Veto J. LaSalle. Comments on Draft Environmental Impact Statement for Snowmass Ski Area, White River National Forest. July 12, 1993.

<sup>20</sup> Snowmass Village Town Council. Resolution No. 27, Series of 1993. July 12, 1993. pp. 2-3.

make their opinion about a project known, but officially, it would have no role in the process. However, since involved the ski area, the County was entitled, as per an Inter-Governmental Agreement (IGA) signed as a condition of the Town's annexation of the ski area, to advisory status in the review of this proposed development.

To a large extent, TOSV knew this proposal was coming. According to some, they had triggered its coming down off the shelf when they invited ASC to participate in the town's 1990 planning process. "The community was concerned that the Ski Company wasn't making investments in the ski area...The Ski Company, quite wisely, saw this as 'Ah, this is our opportunity to get our Burnt Mountain approval,'" noted Snowmass Resort Association Vice President, and former Town Council member, Jeff Tippett.<sup>22</sup>

This did not mean that the proposal met with uniform approval, even within TOSV. The Friends of Burnt Mountain, headed up by Pitkin County Planning Board member (and later Town Council member) Jack Hatfield, sprang up from within the ranks of TOSV's own residents. The Friends echoed many same concerns that the County brought up, but was able to do so from the stand point of town residents demanding their right to be heard, instead of another municipal body imposing its will.

TOSV began review of the conceptual plans for both the Ski Area and the East Village PUD in mid-1991. Approval for the conceptual plan for the Ski Area was granted relatively expediently in October, 1991. The East Village PUD engendered more controversy and it was nearly a year later that its conceptual plan was granted approval.

The East Village PUD languished so long in its conceptual phase due to the fact that approving it was forced to a referendum on a zoning amendment. The Friends of Burnt Mountain spearheaded a petition to change the zoning on the parcel such that not only could the parking lots needed not be laid at the skiing portal, but the Snowmass Land Company would be limited to building 65 single family homes - down from the 175 homes and townhomes and from the more than 1,000 units the property was zoned for at the time. "We are trying to save Snowmass Village from making a big mistake," said Hatfield at the time.<sup>23</sup> Over 75% of TOSV's registered voters turned out for the April election. The measure to down-zone the property was defeated by a vote of 425 to 326. Though irritated by the extra time invested in the referendum process, SLC owner Norman Perlmutter commented after the election that SLC was "very open to change. Our plan may

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<sup>21</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>22</sup> Tippett, Jeff. Interview. January 3, 1996.

<sup>23</sup> Quoted in Gardner-Smith, Brent. "Burnt Mountain battle sings Snowmass plan." Denver Post. December 28, 1991.

not be perfect, but we will try and find the best reasonable solution.”<sup>24</sup> The Friends of Burnt Mountain gave no apologies for their campaign - nor any indication that their opposition would abate. “We did what we felt was right and we didn’t back off,” said Hatfield.<sup>25</sup>

Having survived both conceptual review and a referendum, the plans still had to secure approval of the Town Council before construction could begin. This meant another two years plus of meeting and hearings. What was brought out in WRNF public work session houses rehashed on the floor of the TOSV town council meetings. Despite accusations to the contrary, TOSV Mayor Jim Hooker says all negotiations with the ASC were done in public session. “I don’t think anybody who felt like they had something to say over this felt like they were cut off or cut short in any way whatsoever. It was definitely not - it was not a fast track, in any manner,” said Hooker.<sup>26</sup> Some felt that perhaps too much time was invested in venting the same concerns over and over again. “There does come a point in time whether you’re the town government ...or the federal government or whatever, where you have to say we have heard the evidence, we have heard enough evidence. We need to make a decision,” remarked town council member Doug Mercatoris.<sup>27</sup>

The Town Council passed Ordinances No. 6 and 9 of the Series of 1994 approving Village and the Burnt Mountain expansion, respectively. However, this was not the end of the process, for, as the TOSV failed to address some of the County’s concerns, the County Commissioners filed a lawsuit against the TOSV for breach of the IGA, for allegedly having conducted secret meetings with ASC about the development. ASC was named as a co-defendant and the suit was accompanied by an injunction prohibiting the commencement of construction.<sup>28</sup> “The town has never sued the county. The county likes to sue the town,” commented former Town Councilman Jeff Tippett, voicing the bitterness of many TOSV residents who have on more than one occasion had to pay for both sides of litigation in such disputes.<sup>29</sup>

To further complicate matters, the same week the lawsuit was filed, Jack Hatfield, Chairman of the Friends of Burnt Mountain and Pitkin County Planning and Zoning (P&Z) Commissioner, was elected to TOSV Town Council. The Pitkin County commissioners

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<sup>24</sup> Quoted in Gardner-Smith, Brent. “Anti-growth initiative defeated in Snowmass.” Denver Post. April 15, 1992.

<sup>25</sup> Quoted in Gardner-Smith, Brent . April 15, 1992.

<sup>26</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>27</sup> Mercatoris, Doug. Interview. January 10, 1996.

<sup>28</sup> Burns, Cameron. “Hope Lingers for ‘95 Burnt Mtn. Work.” The Aspen Times. November 19, 1994.

<sup>29</sup> Tippett, Jeff. Interview. January 3, 1996.

were left with a dilemma. It had been their policy to remove P&Z members when they were elected to other offices, but Hatfield's voice on the TOSV Town Council would be critical in advocating their concerns about the Burnt Mountain expansion. Though three of the five County Commissioners publicly said that they believed Hatfield should step down, no move was made to force him out of his position on P&Z.<sup>30</sup>

By December, the ASC was fed up. They filed a lawsuit asking for judiciary nullification of the IGA, saying that the County was merely using it to force TOSV into its no-growth policy by making unreasonable, inflexible demands. Within a month, municipal legal costs had already reached over \$50,000, not counting staff time.<sup>31</sup>

By January, the parties were ready to try to sit down and work things out - along with the parties to the lawsuits filed against ASC over snowmaking. Representatives from ASC, SLC, TOSV, Pitkin County, Snowmass Water and Sanitation District (SWSD), the Aspen Wilderness Workshop (AWW) and Snowmass Capitol Creek Caucus (SCCC) met for settlement negotiations. As WRNF was not a party to any of the lawsuits, and it had completed its review and permitting of the development, WRNF did not participate in these negotiations.<sup>32</sup> SLC entered into ASC's countersuit specifically so that they could participate in the settlement negotiations.<sup>33</sup> The parties met on several occasions through April 1995, when they managed to reach agreement with all of the governmental parties, though neither of the environmental groups signed the settlement agreements. Once these agreements were signed, the Town of Snowmass Village had completed its permitting and review of the Burnt Mountain development.

## **How did the TOSV process address the key issues?**

### ***Transportation and Air Quality***

For the most part, TOSV required the same transportation mitigation measures as did WRNF. There were, however, a few points on which additional measures were stipulated as a condition of the permit. TOSV, like WRNF, recognized that this project had the potential to cause additional pollution. These increases, they said, would be largely due to road sanding during the winter months, and as such, would be highly localized and would not have a significant impact on the air in Pitkin County.<sup>34</sup>

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<sup>30</sup> "Jack's Dual Dilemma" *The Aspen Times*. November 24, 1994.

<sup>31</sup> "Taxpayers angered as legal costs mount higher." *The Aspen Times*. December 24, 1994.

<sup>32</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>33</sup> Sontheim, Ken. Interview. January 16, 1996.

<sup>34</sup> Snowmass Village Town Council. Ordinance No. 9. Series of 1994.



Nonetheless, to protect local air quality and address congestion, TOSV did require several transportation measures. ASC was required to pay, in whole or in part, for twelve different road improvements, constructions, or traffic mitigation measures. Further, while they were parking lots at East Village, TOSV stipulated that the Town must retain complete regulatory authority over them. Should TOSV at any time in the future deem it appropriate, ASC could be required to remove part or all of the parking at East Village. TOSV reiterated WRNF's mandate that ASC provide Roaring Fork Transit Agency (RFTA) with six new buses, but added that monitoring of the service level be installed and levels established at which point an additional 3 buses would be required. Additionally, to fund TOSV's local transit system, ASC was required to contribute per skier visit (plus provide season ski passes for all local transit personnel).<sup>35</sup>

All of these conditions were imposed through the passage of TOSV Ordinance No. 9, Series of 1994. Though the lawsuits following its passage threw its validity into question, the terms of the settlement agreement prohibited the County from challenging or contesting the ordinance, "so long as the conditions of Ordinance 9 are satisfied."<sup>36</sup>

### *Wildlife Habitat and Summer Use*

Summer use and wildlife impacts, occurring almost exclusively on WRNF land, didn't give TOSV much leeway to be less stringent, without getting into a battle with WRNF over jurisdiction. Furthermore, Pitkin County had made it clear that they considered preservation of these wildlife habitats important. As much as TOSV might like to give ASC free reign for summer recreation development, it was not politically feasible.

TOSV required primarily that ASC comply with the terms set forth in the WRNF Record of Decision as regarding wildlife impact mitigation. They did go above and beyond this, however, and conditioned their approval on the contribution of \$250,000 towards habitat conservation, in the form of land acquisition and/or easements.<sup>37</sup>

At the same time, TOSV made it clear that they wanted to see summer use of the area dramatically increased. They required a detailed summer operations plan to be submitted for review and approval. They agreed that while ASC would be required to provide visitor amenities, such as restrooms and drinking fountains, TOSV would be responsible for the maintenance of these facilities during the summer months.<sup>38</sup>

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<sup>35</sup> Snowmass Village Town Council. Ordinance No. 9. Series of 1994.

<sup>36</sup> General Settlement Agreement. Board of County Commissioners v. Town of Snowmass Village, Board of County Commissioners v. Snowmass Water and Sanitation District. April 6, 1995.

<sup>37</sup> Snowmass Village Town Council. Ordinance No. 9. Series of 1994.

<sup>38</sup> Snowmass Village Town Council. Ordinance No. 9. Series of 1994.

Again, as the county accepted the terms of Ordinance No. 9 under the settlement agreement, these provisions all withstood the legal challenge.<sup>39</sup>

### ***Water Quantity and Snowmaking***

Snowmaking was an issue of critical importance to TOSV. Snowmass had virtually no snowmaking facilities, making it difficult for them to compete with other areas either early in the season, or in years where overall snowfall was poor. In December 1995, which only saw 9 inches of snowfall before Dec. 30, many residents were lamenting the fact that the snowmaking was not yet online. With the tremendously high moisture winter we had last winter and the high moisture summer last summer, the stream flow in Snowmass Creek has never dropped down to the point where Water and San could start measuring it. And they start measuring it at 17 cfs. So, this would have been a nice year to have had those machines cranking out there,” said Mayor Jim Hooker.<sup>40</sup>

TOSV was so intent on assuring that ASC could install the snowmaking that they needed, they exempted ASC from several of the requirements WRNF had imposed upon them. It is not clear which decision would take precedent, should ASC decide to only meet the requirements stipulated by the TOSV, instead of complying with the full extent of the WRNF Record of Decision. While TOSV still supported the proposed monitoring program, they did not ask ASC to coordinate their withdrawals from Snowmass Creek with Snowmass Water and Sanitation District, which WRNF had required, so as to ensure that those withdrawals would not coincide. Furthermore, TOSV did not require additional water storage facilities. Most notably, however, was that TOSV exempted ASC from any additional mitigation, even if monitoring should show greater than expected impacts to the aquatic environment.<sup>41</sup>

These exemptions attracted the ire of both the environmental community and the county. The settlement of the lawsuits filed by the Aspen Wilderness Workshop (AWW), Snowmass Capitol Creek Caucus (SCCC) and Pitkin County against TOSV, ASC, and the Snowmass Water and Sanitation District (SWSD) was separated from the General settlement, as AWW and SCCC had no legal standing in any other issues. The water settlement included provisions on water conservation, from installation of water-saving toilets to public awareness campaign were stipulated. However, as regards snowmaking, the parties to the settlement agreed to abide by the Colorado Water Conservation Board’s (CWCB) minimum streamflow requirements, and to jointly contribute to an environmental

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<sup>39</sup> General Settlement Agreement. Board of County Commissioners v. Town of Snowmass Village, Board of County Commissioners v. Snowmass Water and Sanitation District. April 6, 1995.

<sup>40</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>41</sup> Snowmass Village Town Council. Ordinance No. 9. Series of 1994.

protection fund for the protection of Snowmass Creek, which could be tapped into no earlier than ten years hence.<sup>42</sup>

AWW and SCCC both refused the agreement. AWW was pursuing a lawsuit to invalidate snowmaking as a municipal water use, while SCCC was seeking to have the new minimum streamflow overturned. Signing the agreement would have required both to drop their suits, leaving the minimum level at 7 cfs, and snowmaking would still be a valid use. Furthermore, as no remedy to environmental degradation would be forthcoming until at least 2005, both groups were concerned that any actions taken would be too little too late. Thus, though with the signing of the Water Settlement Agreement the process came to a close for most parties, AWW and SCCC continued to pursue ASC, TOSV and SWSD through the courts. Colorado State Court found in January, 1996 that snowmaking is a legitimate municipal water use. As of May, 1996, no decision had yet been rendered on the appropriate minimum streamflow level for Snowmass Creek.

### ***Employee Housing***

TOSV is not a cheap place to live. The homesites at East Village sold out within 2 months at an average price of \$860,000 per lot, or \$422,000 per acre - with no structures constructed.<sup>43</sup> Employee, or affordable housing, promised to be yet another battle, as Aspen and Pitkin County forced TOSV to share the burden of providing lower cost housing in the area. "The economic viability of our valley is tied to the provision of affordable housing," stated Aspen Mayor John Bennett in his comments on the Draft EIS.<sup>44</sup>

TOSV was responsive to these concerns. They required not only that the project meet their normal housing requirements, but that ASC build an additional 1,936 square feet of employee housing. Additionally, ASC is required to build all of the employee housing associated within the TOSV corporate boundaries. Should an audit of the actual number of employees associated with the development one year after its completion show a shortfall in the provision of employee housing, ASC would be required to construct additional units. The rental rates would be required to be comparable with those of employee units owned by TOSV.<sup>45</sup>

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<sup>42</sup> Water Settlement Agreement. Board of County Commissioners v. Town of Snowmass Village, Board of County Commissioners v. Snowmass Water and Sanitation District. April 6, 1995.

<sup>43</sup> Two Creeks Price List. Snowmass Land Company. April 17, 1995.

<sup>44</sup> Bennett, John. Mayor, City of Aspen. To Veto J. LaSalle. Comments on Draft Environmental Impact Statement for Snowmass Ski Area. July 13, 1993.

<sup>45</sup> Snowmass Village Town Council. Ordinance No. 9. Series of 1994.

These requirements met with the approval of Pitkin County, and as were contained Ordinance 9, were accepted through the terms of the General Settlement Agreement.<sup>46</sup>

### ***The Colorado Water Conservation Board Review Process***

Though there were lots of state agencies involved in the review of the Burnt Mountain expansion, the Colorado Water Conservation Board (CWCB) was the only one that could exercise its authority and prevent a specific, significant portion of the expansion from going forward. The CWCB only had the authority to stop the snowmaking portion of the project. Though, as Chris Hingst, a ASC planner, noted, “The water is very important, but not enough to prohibit the project.”<sup>47</sup>

In order to add the 310 acres of snowmaking that they felt was necessary for the upgrade of Snowmass Ski Area, ASC needed “was some water owned by all Coloradans.”<sup>48</sup> The CWCB was established to facilitate the “protection and development of the waters of the state....for the benefit of the present and future inhabitants of the state.”<sup>49</sup> In 1976, the CWCB obtained the rights to maintain enough water in Snowmass Creek to sustain a healthy trout population.<sup>50</sup> It was for this purpose that the minimum streamflow level was set, at 12 cubic feet per second (cfs).

In September of 1992, ASC approached the CWCB to ask for a change in the minimum streamflow levels. It was their belief that the current standard was higher than necessary, that in order to protect the trout population, less water was needed in the winter than during the summer spawning season. The CWCB found that, indeed, an error had been made in the original calculations and that instead of the full 12 cfs, only 7 cfs were needed in the wintertime. This decision sparked controversy and anger throughout the state. People were skeptical about the “math” that ASC and CWCB were engaging in. “The trout would do just fine if wintertime streamflows were cut back about 40 percent, they said. Of course, this also was the exact amount of water that Aspen Ski Co. wanted....What a coincidence!” wrote Mark Obmascik for the Denver Post. The very next day after CWCB lowered the minimum streamflow, they were sued by both the Aspen Wilderness Workshop (AWW) and the Snowmass-Capitol Creek Caucus (SCCC). ASC

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<sup>46</sup> General Settlement Agreement. Board of County Commissioners v. Town of Snowmass Village, Board of County Commissioners v. Snowmass Water and Sanitation District. April 6, 1995.

<sup>47</sup> Quoted in “Court puts crimp in resort expansion.” Denver Post. June 20, 1995. B3:1.

<sup>48</sup> Obmascik, Mark. “High-priced fight over Snowmass water taking shape.” Denver Post. September 26, 1992.

<sup>49</sup> Law quoted in Knight, Al. “Snowmass Creek decision isn’t about good versus evil.” Denver Post. July 9, 1995. E1:2.

<sup>50</sup> Obmascik, Mark. “High-priced fight over Snowmass water taking shape.” Denver Post. September 26, 1992.

entered the suits as codefendants with the CWCB, so as to be legally entitled to participate in the proceedings. The AWW suit challenged the right of the CWCB and of the Snowmass Water and Sanitation District (SWSD) to sell water for snowmaking, saying that it was not a legitimate public use. The SCCC suit, on the other hand, challenged the streamflow reduction itself, saying that the process by which the change was made was not in accord with the body's statutory obligations, and therefore the 12 cfs level must be upheld, at least until such a time that the level is reviewed properly. An injunction was issued to prevent the reduced streamflow level from taking effect until the cases were decided.<sup>51</sup>

The suits took the skiing community by surprise. "For most skiers, who tend to be environmentalists themselves, this hits a little close to home....But snowmaking takes a lot of water out of rivers and streams, in some cases depleting them to dangerously low levels," remarked Lewis Milford of the Conservation Law Foundation.<sup>52</sup> No one disputed the significance of snowmaking in the skiing industry today, but the environmental groups were not going to "let Snowmass Creek be sacrificed for the sake of larger profits for business," according to SCCC spokeswoman, Sue Helm.<sup>53</sup>

The lawsuits languished in court for more than two years. In the meanwhile, the groups tried to influence the other permitting authorities to condition their approval upon higher streamflow levels. Both refused to - deciding instead to require ASC to meet whatever minimum streamflow levels were stipulated by the state. "[We required that], if in the process of making snow, the established minimum stream flow is violated, snowmaking will cease immediately. Now, the big question for us is what's the established minimum stream flow?" said TOSV mayor Jim Hooker.<sup>54</sup>

Settlement negotiations began in late fall of 1994 for the lawsuits filed by Pitkin County, AWW and SCCC against TOSV, SWSD and ASC. If all the lawsuits could be settled at once, so much the better. Talks proceeded through November and December. By January, it was clear that the major sticking point for the parties was the issue of snowmaking. The highest streamflow being advocated as necessary was 9.2 cfs, the lowest 4 cfs.<sup>55</sup> "[N]obody over here is the least bit interested in trashing Snowmass Creek. The argument goes on and on and just at what level is it trashed? We think that there is a preponderance of reports...that support the 7 cfs figure," said Hooker.

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<sup>51</sup> Lavery, Rob. "Aspen ski plan delayed." Denver Post. September 25, 1992.

<sup>52</sup> Quoted in Johnson, Dirk. "The Battle Over Artificial Snow." The New York Times. November 14, 1994. A12:1.

<sup>53</sup> Quoted in Lavery, Rob. "Aspen ski plan delayed." Denver Post. September 25, 1992.

<sup>54</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>55</sup> "Burnt Mountain Talks: Water Remains Key." The Aspen Times. January 7, 1995.

By the middle of January, it appeared that a compromise had been reached. County Commissioner Mick Ireland said, "I'm optimistic we're going to resolve these major issues. Everybody is bending a lot to make this happen."<sup>56</sup> There was talk of watershed protection measures, of water rationing and conservation, of sharing water resources.<sup>57</sup> In early February, the wording of the settlement agreement, as tentatively agreed upon by the parties, was released. Notably absent were any specific minimum streamflow levels. The settlement deferred to the authority of the US Army Corps of Engineers and the CWCB. Not surprisingly, the agreement was met with criticism. "In foregoing specific streamflow levels, local politicians have put the questionable values of expediency and convenience over the needs of the creek's environment," wrote the editors of The Aspen Times following the announcement.<sup>58</sup> ASC and TOSV announced victory -both for themselves and the environment. "It's a marvelous example of what people can accomplish with mutual interests," said ASC President Bob Maynard.<sup>59</sup>

But when the ink dried on the agreement in April 1995, there were two signatures missing. Neither AWW or SCCC accepted the settlement. Besides the omission of a definitive streamflow level, the agreement, which had originally contained language that would allow for a complete re-assessment of the mitigation measures in 10 years, the final agreement restricted this "re-opening." Re-opening would allow for a reassessment of the effectiveness of the mitigation measures being applied to the aquatic environment 10 years hence. AWW and SCCC felt that, should this reassessment find that significant degradation to Snowmass Creek was occurring, snowmaking should cease or be cut back, at least until a more rigorous and proven method of mitigation could be developed. While the settlement's version of re-opening stipulated that additional measures might be added after 10 years, the agreement made it clear that snowmaking would continue at the approved levels, even if they concluded that the activity was having a detrimental effect on the Creek. To the environmentalists, this was unacceptable, particularly because signing the agreement precluded them from ever challenging the development or the streamflow levels in court.<sup>60</sup>

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<sup>56</sup> Quoted in Burns, Cameron M. "Burnt Mtn. Deal is Now a Matter of Water, Wording." The Aspen Times. January 14/15, 1995.

<sup>57</sup> Cameron M. "Burnt Mtn. Deal is Now a Matter of Water, Wording." The Aspen Times. January 14/15, 1995.

<sup>58</sup> "Editorial: Snowmass Creek needs more specific protection." The Aspen Times. February 11/12, 1995.

<sup>59</sup> Quoted in Smith, Kent. "Snowmass resort cuts deal toward expansion." Denver Post. February 8, 1995. B5:4.

<sup>60</sup> "The Week That Was: Snowmass-Capitol Creek Caucus Members explain actions, stands on Snowmass Creek." The Aspen Times. May 20/21, 1995.

In June, 1995, the Colorado Supreme Court struck down the CWCB's decision to lower the streamflow and sent the matter to Water Court. The Supreme Court found that once a minimum streamflow level was set, they can only be changed by filing an application for a change with the Water Court, who would then hold the appropriate hearings and render a decision. CWCB, they ruled, could not alter these levels upon the request of ASC.<sup>61</sup> With this decision rendered in June, there was little hope that ASC could have snowmaking operational in time to reap the benefits of an extended fall season. Despite TOSV's requirement that snowmaking be expanded with the commencement of all other expansion and upgrade activities, TOSV waived the requirement and allowed ASC to begin construction of its new lifts and runs. As Mayor Jim Hooker points out, ASC was not the only party to be disappointed by the prohibition of snowmaking for another season.

[W]e waived that because of the legal impediments that were there regarding the snowmaking. Although, there's a lot of people that pointed out this year with the tremendously high moisture winter we had last winter and the high moisture summer last summer, the stream flow in Snowmass Creek has never dropped down to the point where Water and San could start measuring it. And they start measuring it at 17 cfs. So, this would have been a nice year to have had those machines cranking out there."<sup>62</sup>

Even their opponents understand why TOSV waived the requirements, that it is not ASC trying to weasel out of their end of the bargain, but rather TOSV recognizing that they cannot do anything if they wanted to right now. This season, with its extremely low early snowfall, proved the point. "I kind of have to believe that the Ski Company would have done snowmaking ...I believe the Ski Company wants to solve that problem," said former town council member Jeff Tippett.<sup>63</sup> Colorado Water Court said that they could reasonably expect a ruling on the streamflow levels by the end of March - too late for the 1995/96 season, but early enough to prepare for the 1996/97 one.

On January 5, 1996, the AWW suit was decided by the Water Court. Judge Thomas W. Ossola ruled that snowmaking was a legitimate municipal water use. The decision limited snowmaking to between October 15 and December 31 of each year, saying that no evidence had been presented for snowmaking beyond December 31 either way. He did not rule out the possibility that, should such evidence be brought forth, rights for snowmaking could be extended to a later date. However, Judge Ossola also ruled that regardless of the total streamflow in the Creek at the time or the time of year, total intake for

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<sup>61</sup> Burns, Cameron M. "Snowmass Creek flows to water court." The Aspen Times. June 23/24, 1995.

<sup>62</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>63</sup> Tippett, Jeff. Interview. January 3, 1996.

the purpose of snowmaking was limited to 6 cfs.<sup>64</sup> But this decision was not regarded as a total loss by the environmental community. “The [Snowmass-Capitol Creek] Caucus has never opposed snowmaking. We know there are times it is needed. But we are concerned how it is done and about the amount of water taken,” said SCCC spokeswoman Sue Helm.<sup>65</sup> “It’s a win-win decision for both the environment and the resort,” according to chairman of Friends of Burnt Mountain, Jack Hatfield.<sup>66</sup>

The Colorado Water Conservation Board’s process shows the greatest divergence from an optimal review scenario. Having land use decisions resolved in court, rather than through a consensus building process, like LaSalle employed for WRNF’s decision, or through direct negotiations, which settled the TOSV process, results not only in a high degree of participant dissatisfaction with the process and the outcome (since one party must lose in court), but it also drags the process on far longer than other methods. Despite the fact that the mandated process requires Water Court to make decisions regarding minimum streamflow, the fact that this decision had to go through the State Supreme Court to end up there speaks of a failure in the system. The original decision to lower the levels, made by the CWCB and subverting the required process, created a situation in which the environmental groups, despite being involved in negotiations, always had the option to sue on the basis of process, if nothing else, if things did not go their way. This original decision and process subversion corrupted the entire rest of the process, creating one which was horribly ineffective, particularly in its inefficiency. Nearly five years after the Burnt Mountain expansion was first proposed, Snowmass is still awaiting the final decision on what the minimum streamflows in Snowmass Creek will be.

### ***Conclusion***

In the end, WRNF decision dictated the wildlife habitat issues by limiting summer uses and the areas available for summer use. TOSV took charge of the employee housing issue, which, though there is still debate about where the units will be built, did impose a required number of units on the developers. CWCB and Colorado Water Court will ultimately decide those issues relating to water quantity and snowmaking, which the State Supreme Court has already found is an acceptable municipal water right. Indeed, the only aspect of this decision which was truly a joint one was the transportation/air quality mitigation measures imposed by both TOSV and WRNF, most of which revolved around

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<sup>64</sup> Pokrandt, Jim. “Judge awards water right for snowmaking.” Snowmass Sun. January 10, 1996.

<sup>65</sup> Quoted in Pokrandt, Jim. “Judge awards water right for snowmaking.” Snowmass Sun. January 10, 1996.



the provision of additional rider capacity for the regional transit authority, RFTA. Nonetheless, both TOSV and WRNF addressed far more issues than this in making their decisions. Through recommendations and comments, they made their opinions known and justified on those impacts that might occur outside of their jurisdiction. And while they each clung fiercely to their own authority, they were also quick to respect that of other governmental bodies where it was clear. This institutional framework of authorities created both barriers and facilitators to effective review.

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<sup>66</sup> Quoted in Pokrandt, Jim. January 10, 1996.

## **Chapter 6 -Assessment of Review Processes**

The saga of the review of Snowmass Ski Area is certainly an interesting - perhaps even entertaining - one. The question is, however, what can we learn from it? By looking at this case, we hope to improve our understanding of the processes and the things that affect them, so that we may build a better system. In assessing the process, it is important to what made this an effective or ineffective review process. As discussed in Chapter 3, effective review and permitting can be described in terms of efficiency, comprehensiveness, and stakeholders' satisfaction with the process and the product. The Snowmass process was certainly far from efficient. The amount of duplication in the review and the adversarial nature of much of the interactions led to four year ordeal. In one sense, the process was comprehensive. All of the major issues were addressed at one time or another. More importantly, however, they were not addressed as a whole. While the stakeholders seemed satisfied with the White River National Forest decision and process, numerous parties felt ignored and left out of the Town of Snowmass Village's and the Colorado Water Conservation Board's decision making process, and were, not surprisingly, dissatisfied with the result. This shows a mix of effective and ineffective elements in the overall review of the Snowmass Ski Area expansion. These elements can be characterized as the barriers and facilitators to effective review. The three primary barriers in the case were the length of the process, the philosophical differences/historical animosity between the actors and the ambiguities about jurisdiction. The facilitators I have found were the public input and Sonny LaSalle, the supervisor of White River National Forest.

### ***Barriers to Effective Review***

#### **Exhaustion**

One of the primary problems with the review of the development at Snowmass Ski Area was the sheer length of the process. From the time Aspen Skiing Company (ASC) and Snowmass Land Company (SLC) announced their plan to develop in 1991 to the settlement of all of the issues, except water rights, was almost four years. Moreover, there is still no decision on the minimum streamflow of Snowmass Creek, almost five years after the proposal was first put forward. The number of hours put into the process seemed to all of the parties to be far more than desirable, that the process had become a battle of wills, who would give up first. Town of Snowmass Village (TOSV) Mayor Jim Hooker

described the process as “interminable,”<sup>1</sup> while Councilman Doug Mercatoris commented that , “If anything, the process is more time consuming than necessary. There - you tend to hear the same evidence over and over and over again. This process has been very, very time consuming. Its probably one of the longest ones in the country.”<sup>2</sup>

The comment that evidence was heard over and over again is one that was re-iterated in a couple of different contexts. On the one hand, it refers to the evidence being repeated on multiple occasions in the same review, such as at two or more TOSV Town Council meetings. On the other hand, it also refers to the same evidence being presented in more than one review, such as both at the White River National Forest (WRNF) environmental impact statement (EIS) process and in court with the Colorado Water Conservation Board (CWCB).

There is mixed feeling about the value of so lengthy a process. Only by investing the time and effort can one hope to really do a comprehensive review, and give sufficient time and attention to public input. Few begrudged the governing bodies the right for a thorough review. “I think the Burnt Mountain process took longer than it should have, but any time you’re dealing with the public trust, it needs to be done in a manner in which everyone is satisfied that everything has been addressed,”<sup>3</sup> noted Pitkin County planner Francis Krizmanich. However, several people argued that, in fact, the very length of the process drove more people away than it included. The citizen activists, for whom this issue was not their source of income, were worn down and exhausted by the process. “It was really hard to...get up a public mobilized to deal with two of those critical issues when they had already been...ignored.”<sup>4</sup> The professionals involved were no less wearied by the process.. Devoted to a thorough review, Sonny LaSalle was for some time consumed by the process. “I don’t know how to tell you how much time I personally spent in meeting with all the people externally, meeting with the people internally, meeting with our attorneys, meeting with specialists out of the regional office,”<sup>5</sup> he reflected.

### **Ambiguity of Jurisdiction**

Looking at just the primary issues of contention in this case, every issue was addressed by at least two bodies. The body may have deferred to another, or recommended action, but every issue was mentioned in at least two reviews. This is

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<sup>1</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>2</sup> Mercatoris, Doug. Interview. January 10, 1996.

<sup>3</sup> Mercatoris, Doug. Interview. January 10, 1996.

<sup>4</sup> Hatfield, Jack. Interview. January 10, 1996.

<sup>5</sup> LaSalle, Veto J. Interview. January 11, 1996.

without even looking at the multitude of other agencies offering input who could (or tried to) assert rights to a more active role.

Since no agency had authority over every issue the project brought up, every agency tried to address as many as they could to review the project in its entirety. So far, the variations (small though they are) have not caused any major repercussions. However, that is largely due to the fact that the applicant (ASC) is willing, in this case, to abide by the most restrictive decision. None of the parties in this case would be wise to count on this always being the case.

The confusion and competition arising from these overlapping jurisdictions was not lost on the participants. "It's real difficult because you do have in this case a mix of entities:...National Forest lands, you have an incorporated town that you know has to deal with the brunt of the impacts but then the county you know also suffers multiple off-site impacts,"<sup>6</sup> said County Planner Krizmanich. Instead of adopting a cooperative authority model, such as was discussed in Chapter 3, this ambiguity led to the governmental entities asserting their sovereignty over issues, sometimes creating conflict with other governmental bodies which considered a particular issue within their jurisdiction.

The issue of the chain of command among the agencies was also a rather confusing one. Each thought that they were entitled to ultimate authority over at least some of the issues in the case, but who had such authority, over anything but water rights, was never established. Krizmanich noted that this is an on-going tension in the area:

"Are Forest land activities exempt from local control? Huge issue, comes up all the time, never gets resolved. Every time we go to court with somebody who's done something on the Forest, a bunch of Forest Service personnel tend to show up to listen. But, you know, its like they're hoping that somebody else will take us to task. But so far we've sort of prevailed with our opinion. But its opinion on both sides, because I know of no definitive answer to that."<sup>7</sup>

This ambiguity leads to posturing by all of the agencies. "So you've got kind of all these outside players...involved and looking over Snowmass' shoulder as they were reviewing this humungous development,"<sup>8</sup> said Roaring Fork Transit Agency (RFTA) general manager, Dan Blankenship. The image of the supervisory figure hovering over the review illustrates the kind of parental attitude the other agencies took toward TOSV. Like any teenager being so treated, much of TOSV resented not being allowed to handle matters on their own.

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<sup>6</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>7</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>8</sup> Blankenship, Dan. Interview. January 4, 1996.

This parental attitude emphasizes the importance of equality among the governing bodies. As noted in Chapter 3, many inter-governmental procedures are stalled or stalemated because one entity feels that they are being treated as a subordinate form of government, while they feel they have as much right to regulate and restrict a particular activity as does the “superior” government. This was most clearly a source of on-going conflict between TOSV and Pitkin County, and to a lesser degree, between Pitkin County and WRNF. TOSV was incorporated in order to get out from under the thumb of Pitkin County, and yet, when it came to the Ski Area, it seemed that Pitkin County did not regard them as a peer government, capable of regulating such a project responsibly on their own. Likewise, Pitkin County feels that it deserves greater level of control over the federally owned lands within their boundaries and resent the fact that it seems that policies from Washington dictate major local land use decisions. These turf wars contribute to the fractional view of the issues surrounding development, leading to duplication and lengthening of assessment processes and . Additionally, the animosity they create leads to a greater probability that one or more parties will find the resultant decision unacceptable.

Furthermore, because this ambiguity exists, all parties try to use it to their advantage, while still not restricting their own authority. This is particularly evident is looking at the reactions to WRNF’s addressing off-site impacts associated with the development. Much of the environmental impact that was to occur from this project was not going to be within WRNF, and thus WRNF did not have the authority to require mitigation measures for many issues. However, they did recommend mitigation and even mentioning and assessing potential off-site impacts was a departure from normal Forest Service EISs. To some, this was a major victory, a step towards projects being considered in their entirety. To others, this was a threat to sovereignty. The Colorado Division of Wildlife mentioned in their comments on the Draft EIS: “Regarding the Forest Service’s ability to require off-site impact mitigation, we consider off-site impacts to wildlife which also use National Forest System Lands (NFSL) to be “impacts on NFSL.” We don’t think this is made clear.”<sup>9</sup> Should those impacts have been considered off-site, the DOW would have had at least some of the responsibility for the review and permitting, but as on-site impacts, they were merely consultants. Pitkin County, whose role was officially limited to an advisor in both the WRNF and the TOSV process, expressed its irritation at WRNF’s recommendations which called for Pitkin County to adhere to their own laws in order to mitigate the effects on them of a project over which they had no direct control. “Pitkin

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<sup>9</sup> Caskey, Robert H., Regional Manager, State of Colorado, Department of Natural Resources, Division of Wildlife. To Carmine Lockwood. Comments on the Draft Environmental Impact Statement for the Snowmass Ski Area, White River National Forest. July 9, 1993.

County finds it contradictory for the Forest Service to ‘encourage’ Pitkin County to strictly adhere to the 1041 land use code regulations...when the Agency Preferred Alternative proposes development in conflict with these local laws.’<sup>10</sup>

In addition to the three lead agencies who were battling for eminence among themselves, Pitkin County was wrangling for a spot at the table. Its role as defined by the Inter-Governmental Agreement (IGA) with TOSV gave them advisory status on the review of any plans for the Ski Area (though not the real estate development). But advisory status could be interpreted in any number of ways. One could argue that every individual who showed up at a town council meeting was an advisor, and that Pitkin County was really entitled to no more than that. Contrarily, Pitkin County could contend that their role was like that of a planning board when it advises the Town Council: the Town Council must be able to strongly justify not following its recommendations. The IGA is noticeably vague on what exactly constitutes an advisory role, and as this was the first major expansion at the Snowmass Ski Area since its inception, there was no prior practice established to draw upon. This conflict between the two entities is not likely to go away as long as it is on the books and ASC wants to make any improvements to the Snowmass Ski Area.

### **Philosophical Differences and Historical Animosity**

The primary reason that this ambiguity of jurisdiction is such a point of contention is that the parties involved do not trust each other, either to present a good plan, or to do a thorough review and mitigation plan. This is due in part to major philosophical differences between the entities (both governmental and non) and to years of built-up animosity between individuals, as well as organizations. As we noted in the examples of Leesburg, Virginia and the Foothills Water Treatment Facility in Denver, Colorado, such emotional and negative personal interactions have the ability to delay or derail constructive dialogue both amongst regulators and between regulators, the public and the applicant. This animosity contributes to an ineffective process through this delay, as well as through the likelihood that the process and/or the product of such discussions will be wholly unsatisfactory to one or more of the parties.

There was no love lost between TOSV and Pitkin County. It was clear to all involved that TOSV and Pitkin County did not see eye to eye on this development, but unlike other major growth projects, Pitkin County was entitled to participate in the review of this one. Said Krizmanich, “The only reason probably that they [TOSV] did work with

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<sup>10</sup> Tuite, Bill. Chairman, Pitkin County Board of County Commissioners. To Veto J. LaSalle. Comments on Draft Environmental Impact Statement for Snowmass Ski Area, White River National Forest. July 12, 1993.

us [Pitkin County] was because we had a legal agreement that we had previously done and they were required to work with us as part of that.”<sup>11</sup> Sonny LaSalle tried to force them to work together through making them partners in the transportation/air quality mitigation, saying that if the two could not reach agreement, he would permit ASC to go forward without transportation mitigation.<sup>12</sup> Even though they were able to agree on a transportation mitigation program, though, the combative nature of the relationship did not diminish. It eventually culminated in Pitkin County suing TOSV and turning their turf war to litigation.

ASC had its share of regular combatants as well. Though “in many cases, it felt like the Ski Company and the Town were sitting on one side of the table,” as Mayor Hooker commented,<sup>13</sup> there were many other parties at the table with whom to argue. RFTA General Manager Dan Blankenship has worked hard to improve his agency’s relations with ASC during his tenure there, but was acutely aware that not everyone approved of his treating ASC as partners.

“There are just people out there, for whatever reason, that dislike the Ski Company or they distrust their motives, although the Ski Company, if they weren’t here, this would somewhat become a ghost town and many of us would be forced to move away. But it just isn’t a good idea to do that because in a year or two the Ski Company could be a huge, huge player in an overall transportation system and why alienate them? Why not try to include them and work with them?”<sup>14</sup>

But despite these allies, ASC faced major opposition and animosity from both Pitkin County and the environmental activists. Agreement, it is safe to say, will never be reached as to who is to blame for the lack of trust between these groups. That there is no trust seems to be one of the few areas on which there is uniform agreement. “The Ski Company is as much a player in this baggage carrying scenario as anybody else.... But they have their personal opinions about individuals in other groups just like members of other groups have their personal opinions about members of the Ski Company,” noted Sonny LaSalle.<sup>15</sup>

Though WRNF may be among the more locally-popular national forests in the system, they also had some baggage to overcome, if only due to the image of the national Forest Service. “There was distrust ...that they would like to make use of natural resources and get resources for the Forest Service that help to pay the freight there. And so there’s

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<sup>11</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>12</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>13</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>14</sup> Blankenship, Dan. Interview. January 4, 1996.

<sup>15</sup> LaSalle, Veto J. Interview. January 11, 1996.

this kind of suspicion that maybe the Forest Service is going to try to slide this thing through.”<sup>16</sup>

The processes, negotiations and communications were characterized by this suspicion, founded decades ago, but still very fresh, if only in the minds of the participants. Sonny LaSalle, new to the area during the process, was struck by the level of historical animosity:

[T]hese people up there in Aspen are very unique, they’ve been working together, some of them have been working together and hating each other for 20 plus years. So the amount of baggage that people were carrying had almost nothing to do with the merits or lack of merit of the proposal, it had to do with I don’t like you, I have never liked you, you are the big Ski Company, you try to run this town, you are the rabid environmentalist....Those are the kind of relationships I encountered up there.”<sup>17</sup>

LaSalle in fact called in a professional mediator to try to address some of these issues. It was the opinion of the professional that even beginning to make headway on the problems that these people and groups had built up would require far more time than any of the parties was willing to spend together working on it.

No doubt historical animosities make it difficult to begin a consensus building process, as a certain amount of good faith and trustworthiness must be exhibited in negotiations for progress to be made. However, acting in a trustworthy manner in the first place, by keeping promises and being up front about goals and values, may be a key step in building trust. In the short term, it is this trustworthy behavior that could facilitate multi-party planning.

Despite all of these seemingly intractable problems, however, there were aspects of the Burnt Mountain process that facilitated an effective review of and dialogue about the development.

## ***Facilitators of Effective Review***

### **Public Input**

The multitude of processes and entry points had at least one very positive effect: it enabled a huge amount of public involvement. Those persistent enough could make their case again and again, before board after board. They could attend scoping meetings and charettes. They could speak at committee and council meetings. They could send in formal

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<sup>16</sup> Blankenship, Dan. Interview. January 4, 1996.

<sup>17</sup> LaSalle, Veto J. Interview. January 11, 1996.



comments. They could lobby and bargain. And should that fail, they could sue and participate in settlement negotiations. While this amount of public input no doubt contributed to the length of the process, its overall impact was to make the process more efficient and effective. As public input was taken more into consideration in decisions, stakeholder acceptance of the process and product grew significantly. Environmental groups, citizens, and other governmental agencies all exerted their influence where they did not enjoy authority to guide the decisions to more mutually beneficial solutions.

Each agency treated the public input differently, but each heard it. “I think everybody that felt that wanted to be involved, were....Everybody else, boy, they got, they had their say, whether it was through what they passed in an ordinance, or tried to pass, they had their say,”<sup>18</sup> said LaSalle. There seemed to be consensus that indeed, WRNF did an extremely thorough job of giving everyone a chance to be heard. From the Friends of Burnt Mountain to the Snowmass Land Company, participants claimed that they had been given the opportunity to be heard on the project. As SLC President Ken Sontheim noted, this was a wise strategy for WRNF, given the level of emotions associated with the project:

“In terms of the Forest Service process, we found the EIS, from our perspective, the Environmental Impact Statement process and review by the relevant review agencies, and their process to be very fair, open and very thorough. Because of the controversy surrounding this area, I think the Forest Service did a good job in trying to obtain as much in all public comment as possible. So that they could in the end when the decision needed to be made, they could take in all relevant testimony as well as public input and ideas in order to come up with a plan that was sensitive to as many needs as you can.”<sup>19</sup>

What was less clear was what impact this comment had. Some participants felt that they were given a very real chance to shape the decision WRNF eventually rendered. RFTA’s Dan Blankenship said that, “the Forest Service was very sensitive to any valid concerns that we could raise. If we could show them, hey, this is wrong, we don’t agree with this and this is why, they would take it back and they would re-work it.”<sup>20</sup> The Friends’ Jack Hatfield even noted that this “NEPA [National Environmental Policy Act] process certainly ...[gave] adequate opportunity for comment and influence.”<sup>21</sup>

But County Planner Francis Krizmanich takes exception to this. From his perspective, all the public comment they could must mean little. “It’s not that we don’t give input, it’s that they are not required or don’t have to listen to that input. ...The biggest misconception with an EIS is that people expect action out of that document when all it is is

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<sup>18</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>19</sup> Sontheim, Ken. Interview. January 16, 1996.

<sup>20</sup> Blankenship, Dan. Interview. January 4, 1996.

<sup>21</sup> Hatfield, Jack. Interview. January 10, 1996.

a disclosure document.”<sup>22</sup> To him, the fact that the process afforded the public, in Councilman Doug Mercatoris’ words, “more than adequate time,”<sup>23</sup> means little since there is no requirement for changes based on that input.

This complaint of not being heard was far more common of the TOSV process. Hatfield said of it that “you were never heard. Unless you were a business person, a real estate person or worried about getting sued.”<sup>24</sup> But TOSV Mayor counters that “any time somebody takes a position, voices it and their position is not followed up on, will say they’re not heard.”<sup>25</sup>

On the whole, it appears that the issues raised through public input were addressed in the decisions made. On some issues, this was clearly forced by lawsuits, but others, particularly wildlife and transportation, the public’s input was directly incorporated into the decisions rendered.

### **Sonny LaSalle**

As is evident from the previous discussion, Forest Supervisor Sonny LaSalle invested a great deal of time and effort into not only reviewing this project, but figuring out creative solutions to the concerns brought to him and mediating between the parties. In so doing, not only did he come up with a widely commended decision, but he gained the respect of the parties involved. He took upon himself the role of the mediator in crafting a decision for WRNF (which would have implications for those decisions made by other agencies). He tried to take a series of issues and positions presented by stakeholders and turn them from individual win/lose scenarios into one comprehensive win/win solution.

Both the strategy of using a neutral to gain consensus and framing issues as win/win have been found, as discussed in Chapter 3, to be crucial to creating a more effective review process. Primarily, they serve to promote stakeholder satisfaction with the outcome of the process, as well as with the process itself. Framing the issues as one whole scenario, instead of many small battles, also contributes to a comprehensive review of a project.

People from the spectrum of positions appreciated the situation LaSalle was in and applauded how he handled it. Mayor Jim Hooker, one of the projects staunchest supporters, was impressed with LaSalle’s maneuvering. “He’s a good guy. I think he’s very good at his job. There’s some real toe-dancing there. Its a real political job ...But did an absolutely bang-up job and held tons and tons of public hearings and the door was

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<sup>22</sup> Krizmanich, Francis. Interview. January 5, 1996.

<sup>23</sup> Mercatoris, Doug. Interview. January 10, 1996.

<sup>24</sup> Hatfield, Jack. Interview. January 10, 1996.

always open there.”<sup>26</sup> Jack Hatfield, of the Friends of Burnt Mountain and a vocal opponent, said “Sonny’s thing was, “well, if you make everyone mad, you’ve probably come up with an acceptable compromise.” At heart, he’s a good man. He’s in a tough position....I think he came out with a tremendous decision.”<sup>27</sup>

LaSalle himself tried to see his role as that of a mediator. He went back and forth, meeting with individuals and groups, working and re-working options that his staff had shown to be biologically defensible. In the case of the transportation mitigation plan, he specifically crafted it to make TOSV and Pitkin County have to work together. And even on issues he did not have direct control over, he tried to use his influence with ASC to encourage them to consider the concerns being voiced. “I did find myself suggesting often, you have to listen to what these people are telling you. If you don’t listen, I will listen. If you don’t listen, you’re not going to be on the same page I’m on and you need to be hearing what people have to say,” he noted.<sup>28</sup>

LaSalle escaped the Burnt Mountain process with the grudging admiration of the vast majority of participants. Whether he can maintain this popularity when the next ski area improvement review comes up in Pitkin County remains to be seen. For this process, however, he was instrumental, if not essential, in finding acceptable alternatives. Said Jack Hatfield of the WRNF process, “I believe the most important thing about the NEPA process is the integrity of the people conducting the NEPA process....It always boils down to, no matter what process, the integrity and the values of the person conducting the review.”<sup>29</sup> Apparently, LaSalle was able to impress all of the parties with his integrity.

## **Conclusion**

Thus, while the Snowmass process may have been inefficient in the aggregate, there are elements of it which are worth preserving in an amended process. Having a official such as LaSalle who was committed to consensus building and personally acting as a mediator made the process more efficient and contributed to the overall satisfaction of the parties involved. Likewise, the WRNF public involvement in the review process ensured both greater satisfaction and a more comprehensive review. It is, of course, not in the interest of effectiveness to repeat those elements which acted as barriers, such as creating an adversarial, exhausting process in which authority is ambiguous. In addition to the

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<sup>25</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>26</sup> Hooker, Jim. Interview. January 12, 1996.

<sup>27</sup> Hatfield, Jack. Interview. January 10, 1996.

<sup>28</sup> LaSalle, Veto J. Interview. January 11, 1996.

<sup>29</sup> Hatfield, Jack. Interview. January 10, 1996.

positive elements found in the Snowmass case, there are also models and ideas, such as negotiated planning and cooperative authority, which we saw in our review of other cases to have a positive impact on efficiency, which were not present in the Snowmass process. Combining some of these concepts with the facilitating elements from the case suggest a new method of review for such cross-jurisdictional development projects may promote a more effective assessment and permitting process.

## **Chapter 7 - Recommendations and Conclusions**

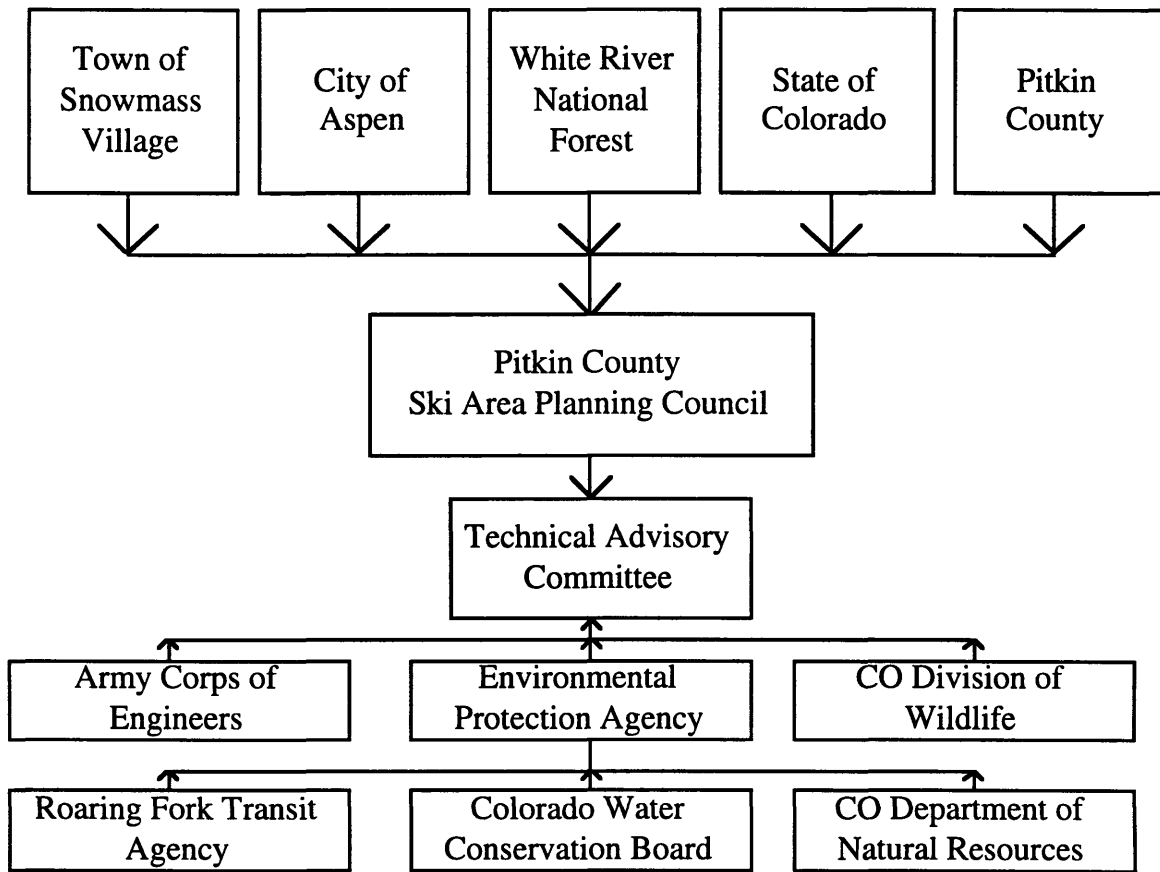
So what will be effective in Snowmass? What will it take to create a review process that is efficient, complete and creates a product satisfactory to its stakeholders? While this particular review is nearly completed, it will undoubtedly not be the last time such issues and conflicts are brought up. Should Aspen Skiing Company (ASC) want another expansion, should more ski-in/ski-out condos need approval, should the issue of commercial development at East Village be revisited, or even just lift upgrades needed, these parties will be sitting down at the table again to talk about the future of the community and its relationship to the ski area's development.

This is not a problem, or set of problems, exclusive to Snowmass. Pitkin County and Aspen face these sort of issues with each of the three other ski areas as well, as do other towns and counties throughout Colorado and much of the Rocky Mountains. Indeed, throughout the Western US, there are communities whose development and land use decisions require the involvement of three or more levels of government. Therefore, proposing a mechanism of dealing with this issues on a continuing, non-confrontational basis is of value, not just to the Town of Snowmass Village (TOSV) but to communities throughout the western United States.

Our goal, then, is to build a new model of an effective assessment and permitting process. This model should improve the efficiency, the comprehensiveness and the public support of the process and the product. It should build upon those elements we have found to be facilitators of effective review, and minimize those who have found to be barriers. Moreover, in forming this model, we should utilize those lessons learned from other experiences in cooperative inter-government decision making, such as were discussed in Chapter 3.

In order to achieve this, I am proposing an integrated permit review process which operates under a new set of decision making rules. The model I have developed is called the Pitkin County Ski Area Planning Council (SAPC). This body, by consolidating the review processes and allowing for one comprehensive look at the impacts of any ski area associated development, would stream-line the process, provide many opportunities for public involvement and put permit-granting authority under one body for the entire project. Furthermore, SAPC would use a consensus building process which would emphasize the importance of cooperative action by the involved governmental bodies and their constituencies. These attributes would all lend to the effectiveness of the new process by making it more efficient, more capable of assessing impacts in a comprehensive manner and foster greater stakeholder support for the process and product.. Building on the

concepts of cooperative authority and negotiated development, the SAPC would give the community a formal way of proposing improvements to ASC, as well as the visa versa. It would facilitate regional planning and enable both the community and ASC to look at the four ski areas as the intimately related development areas they are. This ultimately could have the result of greater preservation of open space, increased share of the skier market, controlled growth, and improved water and air quality.



**Figure 7-1 - Pitkin County Ski Area Planning Council**

## ***Pitkin County Ski Area Planning Council***

### **Members and Authority**

The Pitkin County Ski Area Planning Council (SAPC) would be made up of three representatives each from Pitkin County, Town of Snowmass Village (TOSV), City of Aspen, State of Colorado and White River National Forest (WRNF). All members would be appointed, by the Pitkin County Board of County Commissioners, the Snowmass Village Town Council, the Aspen City Council, the Governor of Colorado or the White River National Forest Supervisor, as appropriate. Of the three representatives per member governmental entity, one must be selected to represent environmental interests, one to represent development interests and one which the appointing body can select completely on its own criteria. Approval would be non-binding, and all participating governmental bodies would be free to exercise their legislative mandates. All projects must secure 13 of 15 votes for approval.

This high threshold for passage is important for several reasons. First of all, it emphasizes the fact that the impacts from this development do not recognize the political boundaries and jurisdictions, and to achieve an integrated review, the cooperation of all is necessary. It further leads to greater stakeholder satisfaction with the process and product, as to gain consensus, it would be essential to ensure the support of at least one representative from each of the five member governmental bodies in order to approve a project. Additionally, it recognizes the fact that if the process were to continue as it is currently set up, these governmental bodies have the ability to stop projects without the consent of the others. This is especially important with regard to the participation of White River National Forest (WRNF). As the primary federal agency involved in the review and permitting of the Pitkin County Ski Areas, they have certain statutory and policy obligations to fulfill. Thus, they would be unlikely to participate in any such process which did not give them the ability to veto a project which would be in violation of regulations or laws set in Washington.

Giving veto power to one body, however, would ensure that the participants in the SAPC would not be equals on it. As we have seen, both through the Snowmass case, and those discussed in Chapter 3, this equality is crucial to stakeholder satisfaction with the process and product. To a lesser extent, it also impacts the efficiency of the process, as time is wasted in posturing and resentment instead of spent in productive discussions. Thus, having granted veto power to one of the participants, we must require all five member governments to grant at least one yes vote to a project to ensure equality.

Obviously, prior to the institution of this process, this power was not enjoyed by Aspen for projects occurring in Snowmass Village, and visa versa. Granting each other this authority over each other's jurisdictions serves two purposes. It gives both communities an incentive to truly cooperate and recognize as legitimate each others interests. The fact that they can both veto each other's projects can motivate them to act in such a way as to not have their projects vetoed. Furthermore, it evens out the current situation, where Pitkin County, dominated by interests in Aspen, can second-guess such decisions made by TOSV, but TOSV has no control over such decisions in Aspen.

These five governmental bodies have been selected because, ultimately, they each have a major interest in the activities of all four of the ski areas of Pitkin County. White River National Forest counts the Aspen ski areas as 4 of the 11 they administer. Together, they also comprise the largest area devoted to skiing in the forest, and are therefore crucial to the appropriate management of the whole forest. The State of Colorado, which sees about 11 million skier visits annually and over \$2.5 billion in skiing-related revenues, also has a strong interest in the appropriate management of the ski areas. Particularly because of the pressures on the state's natural resources from the aggregate of its ski areas, it is important to have a state-wide view represented on the SAPC. As the level of government responsible for the regulation of much of the public surface water supplies, the State's cooperation is, in this age of snowmaking, increasingly important. Putting Aspen, TOSV and Pitkin County all on the council serves to represent the diversity of interests within the county. Aspen and TOSV are both host communities to the ski areas. However, there are many other areas within Pitkin County which are impacted in one way or another by ski area development in a more localized way than the state or forest at large.

All representatives on the SAPC are to be appointed, either by their municipal board, the WRNF supervisor or the Governor of Colorado. One representative from each body must be appointed to represents environmental interests. These representatives serve the purpose of giving environmental concerns a meaningful spot at the negotiating table prior to litigation, instead of restricting their input to public comment activities. Likewise, one representative from each member jurisdiction must be appointed to represent the development community. This ensures that those reviewing development projects include those who understand the abilities and limitations of a project proponent. Furthermore, these representatives provide a balance against the environmental interests and necessitate that a truly feasible and environmentally sensitive decision is reached. The third representative can represent those interests the government member feels are of greatest concern - whether it is to double the representation of the development community, or add an affordable housing advocate, or a union representative is entirely up to the appointing



body. It is our goal to involve these competing interests early and meaningfully in the process, so as to promote greater stakeholder satisfaction and comprehensiveness in the review. Furthermore, in so doing, extraneous lawsuits can be avoided, thereby making the process more efficient. In this way, providing representation for the major known competing interests in this type of decision contributes to the overall effectiveness of the process.

SAPC would have jurisdiction over any projects occurring within or immediately adjacent to any of the four ski areas within Pitkin County, or within or immediately adjacent to any newly created ski areas within Pitkin County. All development associated with, or improvements to, a ski area would be subject to review and approval by the SAPC. This includes not only expansions or upgrades of the ski areas themselves, but also any adjacent residential or commercial development proposed, whether by ASC or any other body.

While some may be hesitant to include commercial and residential development review under the powers of the SAPC, I would argue that these associated uses are an integral part of the way in which a ski area develops and what impacts it has. A ski area with no parking lot, no commercial development and ski-in/ski-out condos has significantly different impacts on the economy and the environment than would a ski area with no associated residential component, small commercial development and a large parking lot. However, a review that only looked at the ski area would not be able to recognize this difference. Comprehensive review of all ski-associated development is going to be key to rebuilding trust within this community. Without it, there is always a feeling that the developer has something up his sleeve, that he is not telling the community what the whole story is. As Ken Sontheim, President of the Snowmass Land Company (SLC), pointed out, one of the major problems with past attempts at developing Burnt Mountain was that ASC came for approvals separate from the residential component.

“Without a comprehensive review, what you get is distrust and a feeling of frustration and of fear of the unknown and as a result, you didn’t have any progress. This time...you had both the ski area operator and the private landowner willing to fully develop and explore and process their applications simultaneously before the public review agencies, and that I think allowed for, was one of the reasons for a positive outcome.”<sup>1</sup>

This is a good beginning to build on, but there is clearly a long way to go before trust is firmly established between the warring factions in Pitkin County. But giving the developers a forum in which to illustrate good faith could facilitate the confidence building process.

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<sup>1</sup> Sontheim, Ken. Interview. January 16, 1996.

The SAPC would be in charge of the primary process necessary for any such development activities, and its approval would be non-binding to the participating governmental bodies. One may question the function of a non-binding decision making process. As we have noted in Chapter 3, the influence of a cross-jurisdictional decision making body can extend far beyond its actual powers. In this case, each of the participating governmental authorities would still retain their legislated mandates and powers. The Corps of Engineers would still be responsible for wetlands, the Colorado Water Conservation Board would still be responsible for regulating surface waters in the state, and so on. However, having gone through such a comprehensive review, where their recommendations and analyses are the premises for the decisions made by the members, a non-member body would be hard pressed to justify not adopting the proposal as set forth in the SAPC decision. A member body would have even more difficulty, as they would have had to vote yes at least once on the approved decision. But by keeping the decision non-binding, no agency actually has to cede its authority to another. No one relinquishes their legislative responsibilities or powers. They simply engage in a more comprehensive and integrated approach to decision making. Furthermore, should the various agencies individual decisions later be challenged in court, the presumption of validity would be even greater than it currently is, due to the growing respect the Court has for planning and inter-governmental cooperation. Designing the decision to be non-binding maintains the parties' autonomy while giving them some measure of equality within the context of the decision.

The importance of member equality cannot be over-emphasized. Whether they like it or not, all of these jurisdictions are involved in and affected by the development of the four Aspen ski areas, and they are in it together. These ski areas are ecologically and economically tied together. If one government tries to assert its interest to the detriment of the whole, it ultimately hurts only itself, for without a healthy whole, no one part can remain healthy. If the involved governments continue down the path of self-assertion, trying to prove pre-eminence, they will continue to have combative decision making which will not serve anyone well. In order to achieve comprehensive, stakeholder-supported planning and decision making for the ski areas, the members of the SAPC must treat each other as equal partners.

Of course, there are some parties for whom adversarial decision making has been, and may continue to be, the most expedient means to a specific decision result. This has shaped the history of environmental policy making. Where industry and government have fallen down, they have been legally challenged and held accountable. This process does not attempt to eliminate this, sometimes productive, option. Instead, it seeks to involve all

interests in such a way as to eliminate the need for many of these lawsuits, to minimize the number of frivolous challenges, and to integrate these concerns into the whole decision from the start, instead of tacking them on at the end. However, should this process fail in the eyes of the environmental community, they should not feel as though legal action is not an option. The Court is apt to weigh their argument against the involvement of the environmental community in the process, but if there has indeed been an abuse, there is no reason why this should not be remedied through the court system.

The Northwest Power Planning Council has set a precedent for an inter-governmental planning body which is empowered to supersede federal supremacy. The SAPC is on perhaps even firmer ground, however. By including the federal agency on the SAPC, the new body would be making its decision cooperatively with the other governmental actors and would still have the ability to veto any land use decisions which ran counter to federal law, regulation or policy.

This raises the issues of what happens when a development proposal is vetoed by one of the members of the SAPC. The first step would be for the applicant to appeal to the vetoing member's governing entity, i.e. the USFS Regional Administrator (where WRNF decisions are appealed), the Governor of Colorado, the Pitkin County Board of County Commissioners, the Aspen City Council or the Snowmass Village Town Council. Since decisions are non-binding, even elements of an approved decision can be appealed to the body which has specific jurisdiction over that issue. Allowing for appeals to the appropriate governing bodies essentially gives the member government a second chance at cooperation before the decision goes to court. Ultimately, dissatisfied parties will always have the option to sue. By creating this institutional structure and appeal mechanism, it is hoped that occasions where stakeholders feel that this is their best option will be minimized.

This amicable development assessment and permitting process would be further facilitated by granting the SAPC the ability to engage in planning for the aggregate of the four ski areas. In this way, the SAPC could illustrate to the development community its collective vision for the whats, whens, wheres and hows of growth to be associated with the ski areas. Such a tool would be useful both to the communities themselves, in predicting future infrastructure needs, as well as to developers, who could use these plans to assess development opportunities. This master planning process would contribute to the overall efficiency of reviews by anticipating impacts and directing development. It would also enhance the comprehensive nature of reviews by ensuring that development will be looked at in the larger context of future plans for the region.

### **Technical Advisory Committee**

The Technical Advisory Committee (TAC) would assist the SAPC in assessing and reviewing the potential impacts and necessary mitigation measures for any projects under the SAPC's jurisdiction. This committee, made up of agencies who have either some kind of permit-granting authority over ski area and/or related projects (such as the Army Corps of Engineers) or those who would be called upon to assist in mitigation implementation (such as the Roaring Fork Transit Agency). These agencies would still be able to wield their influence over such decisions by providing the SAPC with formal recommendations based on their analyzes. As discussed in Chapter 3, bodies which are independently credible lend credibility to such a planning council, if the planning council follows the recommendations of these bodies, thereby allowing the members of the TAC to influence the SAPC without needing a vote on it,.

### **Mediator**

The SAPC would need agree in advance on a list of potential professionals who could act as mediators in the review or planning process. As we have seen, neutrals can play a very important role in inter-governmental negotiations and joint decision making. In the Snowmass case, Sonny LaSalle tried to take on this role himself, with a considerable degree of success. While what LaSalle has done, and continues to do, is admirable and constructive, it perpetuates the role of WRNF as the lead agency in these decisions. If all the governments are to truly be partners in these decisions, it is necessary to turn this role over to someone whose only formal allegiance is to the SAPC and not to one of its members.

Finding and selecting potential mediators may be something of a challenge, since Colorado does not have a state office of mediation that could provide a list of professionals from which to select. Therefore, it is for the SAPC to develop such a list. I would recommend that, as the first order of business for the SAPC, they put out a request for services for a mediator. This would include a description of the SAPC, a description of duties of a mediator in this context and a rate at which the mediator will be paid (thus eliminating this as a selection issue). All of those interested would then submit an application to the SAPC. The SAPC would then solicit the help of legal professionals, such as a retired district judge, the state attorney general's office, officials from the Colorado Bar Association, etc. to draw up a list of 10-15 mediators qualified to fulfill the role needed by the SAPC. This list may be whittled by the members later. The important thing is to find a list of several mediators, each of whom would be acceptable to all members of the SAPC. Thus, when one is needed, any one of them may be selected and scheduling conflicts are minimized. Developing a databank of potential mediators could in

itself be a major boon to the state of Colorado, for it begins to develop a model within the state for a state-wide mediation program, which so many states have found to be an effective method of dispute solving.

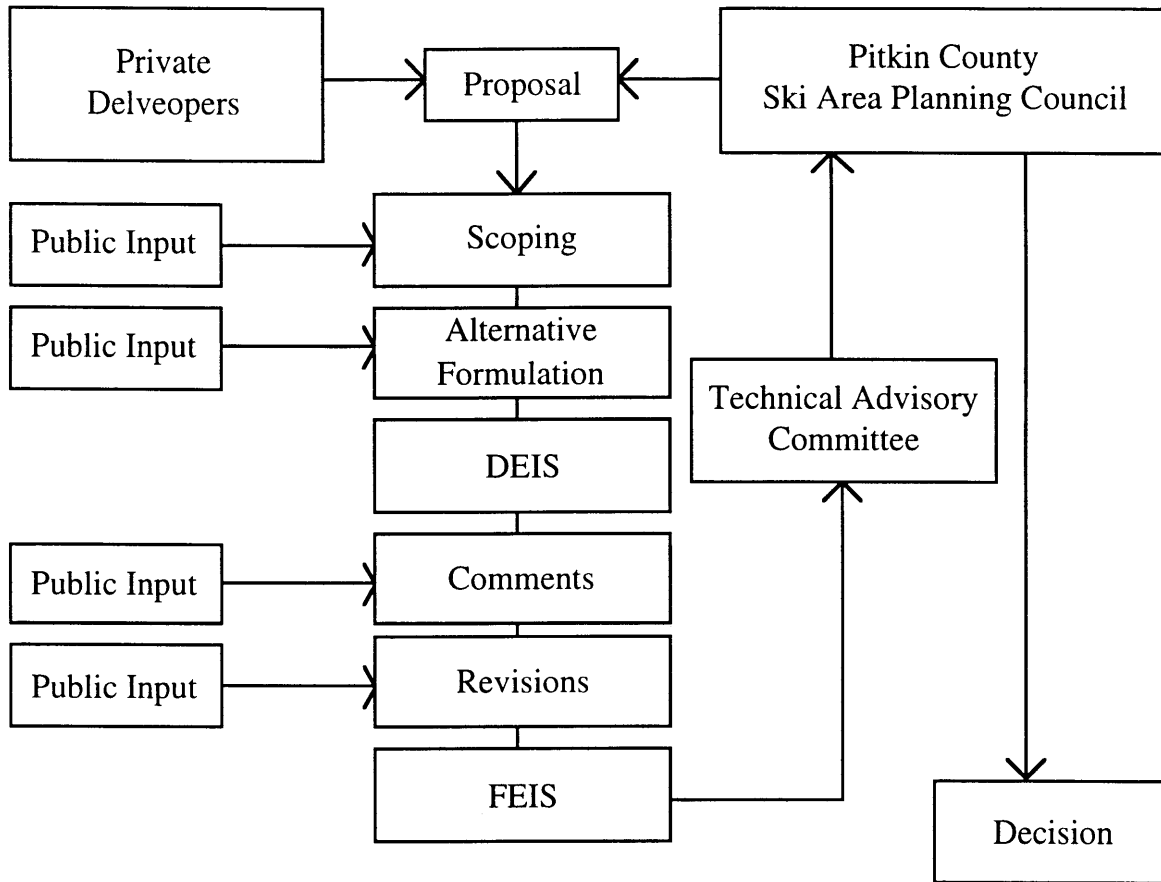
## **Process**

The goals of the creation of the Pitkin County Ski Area Planning Council are to stream-line the development planning process, to provide opportunities for more meaningful public involvement in that process, to allow either the developer or the SAPC to initiate development planning and to facilitate development decisions which are beneficial to all of the entities involved.

Much of the achievement of these goals will be dependent upon not the creation of the body itself, but of the process by which it will make development decisions. If the SAPC were formed, and yet their review process did not provide for adequate public involvement, the SAPC would be less able to make informed, publicly supported decisions than the authorities prior to its formation.

Therefore, I am proposing a planning process based on the NEPA process followed by WRNF in the Snowmass case. This process, not only met the federal guidelines, but was also met with fairly widespread approval by participants. It balances the technical expertise of the TAC with the issues and opinions of the general public, vesting final decision making power with the 5-member SAPC. It allows the SAPC to control ski area planning in Pitkin County, not just react to individual proposals. Ultimately, it allows for faster, more amicable, and more complete review of all ski-related development occurring in the county.

As the following figure illustrates, the steps taken by this process are very similar to the NEPA process. When a project is proposed, or a planning effort undertaken by the SAPC, it first goes to scoping to establish what the issues and impacts need to be analyzed. This would be done, as in the Snowmass case, with extensive public and technical input, through charettes, public forums, open houses and such. Having established potential areas of concern, alternatives would be formulated, again with public and technical input, but also in consultation with the applicant. This direct interaction between the applicant and the public is necessary both to build trust between the two as well as to ensure that the process does not approve a project which is the applicant is not capable of implementing.



**Figure 7-2 - The SAPC Review Process**

Once the alternatives have been formulated, the TAC and the SAPC's staff (and any necessary consultants) would assemble a draft environmental impact statement. This would include impacts not just to the area's natural resources, but also to the built and economic environment. The draft EIS would show how the impacts differ from one alternative to another and illustrate where trade-offs are made between one impact or another. It would, furthermore, explicitly state the assumptions being made in the analysis. The assumptions should have been formulated through the scoping process, but stating them explicitly in the document enables the public to ensure that their input has been taken into account in the analysis.

At this point, the SAPC would take comments on the draft EIS, both in writing and through public forums and charrettes. Revisions to assumptions and alternatives would be suggested, questions about conclusions raised, and opinions about trade-offs voiced.

Following the public comment period, the TAC and SAPC staff would put together the final EIS. At this time, the TAC would make a recommendation to the SAPC as to which alternative should be permitted, if any. The SAPC would then convene to consider

the final EIS and the recommendation of the TAC and formulate a decision, with the help of the mediator.

While consensus is the goal of the meeting of the SAPC, in order to avoid endless stalling, we must create a structure that allows for an end to discussion and forces a decision. Clearly, it is desirable to allow enough time for the representatives to sit around the table and mark up the recommendations from the TAC. The representatives should be able to go through several rounds of discussing the acceptability and impacts of revisions to the decision. But, at some point, there must be a decision, or some representative could hold up the process beyond the project's point of viability. In my estimation, five three-hour meetings of the SAPC should be enough to hammer out any difficulties which can be addressed in any given project, provided there is adequate time between meetings (not more than a week) and a mediator is used. However, should 11 of 15 members feel that more time is necessary and productive, they should be allowed to vote to extend discussions, but not by more than 2 additional sessions. No later than the end of the seventh session, a vote should be called and the project approval granted or denied. This number of sessions is merely a guideline which seems reasonable. Perhaps more time is warranted, perhaps less. The key factor here is to make it definitive. It is not fair to the representatives or the project proponent to have the process be of indeterminate length. At the end of seven weeks, if a project cannot garner support from 13 of 15 members, the SAPC will deny approval. Since this decision is non-binding, there are other courses of action available to the project proponents, but without a time constraint on the consensus building process, it can be rendered functionless merely by keeping it from ever reaching resolution.

This whole process is likely to take 18-24 months, and therefore, while it is a highly desirable and beneficial process, it would not make sense for small projects. This process would be triggered by a proposal's size, measured by cost or amount of land or location. If a project was below a certain threshold, the SAPC would have the authority to act on it with a minimum number of public meetings.

However, it is important to insure against all development being done piecemeal, so as not to trigger the more extensive review process. This can be achieved by undertaking a master planning process as one of the first tasks of the SAPC. All smaller projects then could be reviewed for compliance with the master plan, which would already have been assessed for its impacts.

## **Conclusions**

The professional mediator called in to assist the players in the expansion of Snowmass Ski Area said that in his considered opinion, “if you’re going to ever going to reach agreement, its going to take far longer than any of you have to do that. Much more time.”<sup>2</sup> That may be true for any one decision, but the fact is, the participants in the Burnt Mountain case have played out, and will continue to play out this same scenario again and again. It may seem like no one can afford to put the time into the process, but in the long run, they cannot afford not too. Without it, more time, more money will be lost to increasingly adversarial decision making. Growth will continue in a restricted, but not controlled, manner, as it is prevented where it can be stopped and occurs where it can, without regard in either case to where development would truly benefit the community at large.

The Snowmass Burnt Mountain case had many of the trappings of a typical inter-governmental environmental reviews. The confusion, the repetition, and the animosity are all characteristic not uncommon in inter-government reviews - which frequently become inter-governmental disputes. As in the case of the Bonneville Power Authority and the Northwest Power Planning Council, there was a question about federal versus more localized decision making authority. As in the Loudoun County, VA case, two municipal bodies, with differing views of each other’s relative importance to the location in question, had to grapple with issues of representation and equality in addition to reaching a land use decision. Sonny LaSalle tried to play the role of mediator, which was so crucial in many of the cases examined.

Many of these problems found in the Snowmass case can be addressed through application of what we have learned from other cases. Stream-lining the process, vesting authority in one body and installing a permanent neutral would all go a long way towards a more efficient, more amicable process in the future. The process might result in exactly the same development, but if all we gain is time and fewer grudges to have to work through and around next time, this is itself worth the changes.

The SAPC creates a more effective assessment and permitting process. By removing the false boundaries imposed upon jurisdictions, a comprehensive look at the impacts of development is facilitated. Duplication of process and information is removed by integrating the review processes, making the process more efficient. By taking a consensus building approach, time is saved and stakeholder support fostered. By guarding the equality of the members of the SAPC, we reduce the time spent bickering over

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<sup>2</sup> LaSalle, Veto J. Interview. January 11, 1996.



sovereignty, and, by creating a more amicable process, there is an increased probability that the members will be supportive of both the process and the product. By employing a neutral to act as mediator, we both enable the diffusion of historical animosities and the more constructive handling of future conflicts.

Certainly, no process, no new body will ever satisfy everyone. If the proposed Ski Area Planning Council, after all of its public input and technical advice, had approved the lowering of streamflow levels in Snowmass Creek, they most likely would still have been sued by one or another of the environmental groups. Should the environmental representatives on the SAPC veto a project, and the agencies acting independently approve it, the environmental groups could still pursue a legal remedy to their grievances. Indeed, even if every such group were given a vote on the SAPC, there is still a chance that the body would be sued for failing to meet someone's needs in their entirety. Groups may go through the entire SAPC process, look at the outcome and decide to take their chances in court.

Ultimately, however, whether or not they win the case in court, groups which plan on taking this path are destined to lose the war. Not having engaged in the joint-effort in good faith, their credibility would be greatly diminished the next time they came to participate. Why bother trying to meet the needs of someone who is going to sue you anyway for failing to give them everything they want? The courts, which are increasingly recognizing the merits and validity of regional planning efforts, may be reluctant to overturn decisions made through such a representative, participatory process, particularly when the plaintiff was not only a participant in the process, but there is evidence that an effort was made to accommodate those concerns they voiced.

Snowmass and Pitkin County are not unique, despite what some would have us think. The issues of growth, of impacts which cross jurisdictional boundaries, of past animosities and distrust are found throughout the country and around the world. No one process, one proposal or one body is going to instantly solve any of these problems. Doing so will take commitment to the joint decision making process from all involved. It will take acting in a trustworthy manner in order to build trust. It will take time and patience, a willingness to listen and to be flexible. These skills and traits, the most important parts of making long-term changes towards a more effective decision making process, are also the ones that we cannot teach through words alone. For these characteristics, there is no substitute for teaching by example.

# -INDEX-

## —A—

Air Quality 7, 32, 34, 36, 41, 48, 49, 63, 70  
 Aspen Skiing Company (ASC) 27, 28, 29, 33,  
 34, 35, 36, 37, 41, 43, 44, 46, 47,  
 48, 49, 50, 51, 52, 53, 54, 55,  
 58, 60, 62, 63, 67, 69, 70, 73  
 Aspen Wilderness Workshop (AWW) 35, 48, 50,  
 51, 52, 53, 54, 55  
 Aspen, City of 5, 7, 10, 27, 28, 29, 32,  
 33, 34, 35, 36, 37, 42, 44, 45, 47, 48, 50,  
 51, 52, 53, 54, 55, 58, 64, 69, 71, 72, 74, 75

## —B—

Blankenship, Dan 35, 38, 39, 40, 60, 63, 64, 65  
 Bonneville Power Authority (BPA) 16, 22, 80

## —C—

Colorado Water Conservation Board (CWCB) 7, 33, 35,  
 36, 42, 43, 50, 52, 54, 55, 56, 58, 59  
 Cooperative Authority 13, 60, 68, 70  
 Crisis Planning 21

## —D—

Department of Natural Resources, Colorado (DNR) 6, 61  
 Division of Wildlife, Colorado (DOW) 6, 7, 35, 41,  
 43, 61

## —E—

Employee Housing 34, 36, 43, 44, 51  
 Environmental Impact Statement 35, 37, 38, 39, 41,  
 42, 43, 44, 45, 51, 59, 61, 62, 65, 78  
 Environmental Protection Agency (EPA) 6, 7, 32  
 Equality 13, 14, 15, 61, 71, 74, 80

## —F—

Foothills Water Treatment Complex, Denver,  
 Colorado 17, 19, 62  
 Friends of Burnt Mountain 35, 46, 47, 56, 65, 67

## —H—

Hatfield, Jack. 35, 46, 47, 56, 59, 65, 66, 67  
 Helm, Sue. Spokeswoman for SCCC. 53, 56  
 Hooker, Jim. Mayor of Aspen. 33, 34, 45, 47, 50, 53,  
 55, 59, 63, 66, 67

## —I—

Inter-Agency Task Force (ITF) 6, 7, 38, 40

Inter-Governmental Agreement (IGA) 46, 47, 48, 62

## —J—

Janss Investment Corporation 28  
 Joint Decision Making 13, 14, 16, 21, 76, 81

## —K—

Krizmanich, Francis. Pitkin County Planner. 27, 32,  
 44, 59, 60, 62, 63, 65, 66

## —L—

LaSalle, Veto J. (Sonny). WRNF Supervisor. 24, 32,  
 38, 39, 40, 42, 43, 44, 45, 48, 51, 56,  
 58, 59, 62, 63, 64, 65, 66, 67, 76, 80  
 Leesburg, Virginia 15, 17, 19, 20, 21, 62  
 Loudoun County, Virginia 15, 19, 20, 80

## —M—

Maynard, Bob. President of ASC. 29, 54  
 Mercatoris, Doug. Councilman, TOSV. 33, 47, 59, 66  
 Montgomery County, Maryland 22

## —N—

National Environmental Policy Act (NEPA) 9, 37, 39,  
 65, 67, 77  
 National Forest System Land (NFSL) 61  
 Negotiated Development 21, 22  
 Northwest Power Planning Council (NPPC) 13, 16, 75,  
 80

## —P—

Planning and Zoning Commission, Pitkin County  
 (P&Z) 10, 47

## —R—

Record of Decision (ROD) 49, 50  
 Roaring Fork Transit Agency (RFTA) 7, 35, 38, 49, 60,  
 63, 65, 76

## —S—

San Juan National Forest, Colorado 18, 19, 20  
 Ski Area Planning Council (SAPC) 69, 70, 71, 72, 73,  
 74, 75, 76, 77, 78, 79, 80, 81  
 Smith, Fred. Vice President for Development, ASC. 29  
 Snowmaking 30, 32, 33, 35, 36, 42, 43, 48, 50, 51,  
 52, 53, 54, 55, 56, 72  
 Snowmass Capitol Creek Caucus (SCCC) 35, 48, 50,  
 51, 52, 53, 54, 56

Snowmass Land Company (SLC) 29, 30, 34, 35, 36,  
44, 46, 48, 51, 58, 65, 73  
Snowmass Resort Association (SRA) 46  
Snowmass Village, Town of (TOSV) 1, 2, 7, 8, 10, 24,  
26, 27, 29, 33, 34, 35, 36, 41, 44, 45, 46, 47,  
48, 49, 50, 51, 53, 54, 55, 56, 58, 59, 61, 62,  
66, 67, 69, 71, 72, 75  
Snowmass Water and Sanitation District (SWSD) 33, 42,  
43, 48, 49, 50, 51, 52, 53  
Sontheim, Ken. President of SLC. 29, 30, 48, 65, 73  
Summer Use 30, 32, 33, 36, 41, 42, 49

—T—

Technical Advisory Committee (TAC) 76, 77, 78  
Tippett, Jeff. Former Councilman, TOSV. Vice  
President of SRA. 27, 33, 46, 47, 55

—U—

U.S. Army Corps of Engineers (ACOE) 6, 7, 54, 76  
United States Forest Service (USFS) 5, 6, 7, 8,  
18, 20, 24, 28, 29, 33, 37, 39,  
40, 41, 44, 60, 61, 63, 65, 75

—W—

White River National Forest (WRNF) 2, 5, 24, 26,  
28, 29, 32, 35, 36, 37, 38, 39, 41, 42, 43, 44,  
45, 48, 49, 50, 56, 58, 59, 61, 62, 63, 65, 66,  
67, 71, 72, 75, 76, 77  
Wildlife Issues 6, 7, 9, 24, 32, 33, 35, 36, 37,  
38, 41, 42, 43, 49, 61, 66

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## **Appendix B - Acronyms**

ACOE -	U.S. Army Corps of Engineers
ACRA -	Aspen Chamber Resort Association
ASC -	Aspen Skiing Company
AWW -	Aspen Wilderness Workshop
BLM -	U.S. Bureau of Land Management
cfs -	cubic feet per second
CWCB -	Colorado Water Conservation Board
DNR -	Colorado Department of Natural Resources
DOW -	Colorado Division of Wildlife
DEIS -	Draft Environmental Impact Statement
EIS -	Environmental Impact Statement
EPA -	U.S. Environmental Protection Agency
FEIS -	Final Environmental Impact Statement
IGA -	Inter-Governmental Agreement
ITF -	Inter-Agency Task Force
NEPA -	National Environmental Policy Act
NFSL -	National Forest System Land
NPPC -	Northwest Power Planning Council
P&Z -	Pitkin County Planning and Zoning Commission
RFTA -	Roaring Fork Transit Agency
ROD -	Record of Decision
SAOT -	Skiers at One Time
SAPC -	Ski Area Planning Council
SCCC -	Snowmass Capitol Creek Caucus
SLC -	Snowmass Land Company
SRA -	Snowmass Resort Association
SWSD -	Snowmass Water and Sanitation District
TAC -	Technical Advisory Committee
TOSV -	Town of Snowmass Village
WRNF -	White River National Forest
USFS -	United States Forest Service

## **Appendix C - Snowmass Timeline**

### **1957**

Fritz Benedict (skier and architect), Paul Hauk (White River National Forest supervisor) discuss possible ski area development at Baldy and Burnt Mountain

### **1958**

Janss Investment Corp. submits special use permit application

### **1960**

Bill Janss elected to the Aspen Skiing Company Board of Directors

### **1962**

ASC buys option to develop Baldy-Burnt, applies for lift construction and operation permits

### **1964**

Conditional special use permit granted to the Janss Investment Corporation.

### **1967**

Snowmass Ski Area officially opens

### **1968**

Jansses sell Snowmass to American Cement

### **1970**

The National Environmental Policy Act, requiring environmental impact assessments and public comment for all federal projects or projects on federally-owned lands, is passed.

### **1972**

Jansses relinquish the Ski Area Permit, which is transferred to the Aspen Skiing Company the same day.

### **1977**

American Cement sells Snowmass interest to the Snowmass Land Company, Ltd.

### **1978**

Town of Snowmass Village incorporated  
First presentation of proposed Burnt Mountain expansion to TOSV Council

### **1981**

USFS begins Environmental Assessment (EA) for new Master Development Plan (MDP)

### **1982**

ASC amends approved MDP for improvements on existing area

**1983**

USFS approves amendments, expansion to be contingent on impacts of improvements

**1984**

A draft EA written for amended area

**1985**

Decision of No Significant Impact, Injunction filed pending suit by State of Colorado and CO Wildlife Federation

**1986**

Court rules an EIS should be prepared, Work on EIS begins

**1989**

ASC decides to suspend work on Burnt Mountain indefinitely

Dan Blankenship becomes General Manager of the Roaring Fork Transit Authority

**1990**

TOSV begins planning process, invites input by ASC

**1991**

ASC announces plans for \$30 million expansion of Snowmass Ski Area onto Burnt Mountain

August - Proposal filed with White River National Forest

November - Initial EIS scoping meeting held

**1992**

February - Review of scoping issues and alternatives; Open House held to solicit public input

April - Newsletter circulated on progress

April 14 - Special election held in Snowmass Village on zoning amendments allowing East Village development. The amendment passed 4225 to 326.

May - Public workshop on EIS held

June - LaSalle replaces Hoots as Forest Supervisor

Sept. 16 - Colorado Water Conservation Board reviews the minimum streamflows for Snowmass Creek at the request of the ASC. The minimum flows are lowered from 12 to 7 cubic feet per second.

Sept. 25 - Snowmass/Capitol Creek Caucus and Aspen Wilderness Workshop get a temporary restraining order from Colorado water court to prevent the ASC from drawing off the additional water for snowmaking until the full impact could be assessed.



### **1993**

March 25 - The Crown family, long the majority share holder in the ASC, buy out the rest of the company

May 7 - Public comment period on EIS begins

June - ASC expands plan to include linkage of Snowmass and Buttermilk ski areas, Price tag up to \$40 million.

July 13 - Public comment period closed

### **1994**

March 8 - LaSalle approves plan conditional upon completion of a new EIS. Project has now been in the makings for 16 years and a total of \$3 million invested already.

August - Continental Airlines announces it will stop service to Pitkin County Airport

October 17 - Snowmass Village approves project

November 14 - New York Times runs a story on the legal battle of the water rights.

November 16 - Pitkin County files suit against Snowmass Village for approving the expansion and request an injunction against development. The suit is based upon a contention by the county that, contrary to a 1984 Intergovernmental agreement, Snowmass Village engaged in "secret" negotiations with the ASC regarding the expansion and mitigation measures without the knowledge or presence of the county.

November 24 - Jack Hatfield, a member of the County Planning Board is elected to Snowmass Village Town Council.

December 10 - ASC sues Pitkin County, asking the judge to throw out the Intergovernmental Agreement.

December 17 - Town and ASC meet with Corps of Engineers to discuss wetlands disturbance

December 24 - Snowmass Village council decides on a compromise design for Loop Road for the East Village, Residents express anger to County over lawsuit (where they are paying for both sides litigation costs)

### **1995**

January - Settlement negotiations begin between ASC, Snowmass Land Company, USFS, Pitkin County, Snowmass Village, Aspen and Snowmass/Capitol Creek Caucus. Streamflows emerge as the most contentious issue.

February 4 - Aspen Wilderness Workshop files suit against the ASC and the Water Conservation Board for "illegally" lowering minimum streamflow levels. Pitkin County files a second suit against the ASC and the Snowmass Water and Sanitation District for violating a 1978 agreement.

February 9 - Settlement (with most parties) is reached. All of the suits filed by the county (and their countersuits) are dropped. AWW and Snowmass/Capitol Creek Caucus continue to pursue theirs.

March - Forest Service approves a limited amendment to the approved MDP allowing the ASC to proceed with development on some aspects of the plan before the revised MDP is filed. Ground is broken for the Two Creeks area of Snowmass.

April - ASC pulls out of Colorado Ski Country USA (their industry coalition)

May - SCCC explains that they did not endorse the settlement because it did not allow for reassessment of the Creek's health in 10 years.

June - Water Court rules that the lowering of minimum streamflow needs to be decided in Water Court, not by the Water Conservation Board.

October - ASC and SLC file plan for new Base Village development in Snowmass.

## **Appendix D - Mission Statements of Participating Agencies**

### ***The United States Forest Service***

Mission: Caring for the Land and Serving People

The phrase, "CARING FOR THE LAND AND SERVING PEOPLE," captures the Forest Service mission. As set forth in law, the mission is to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of people: It includes:

- Advocating a conservation ethic in promoting the health, productivity, diversity, and beauty of forests and associated lands.
- Listening to people and responding to their diverse needs in making decisions.
- Protecting and managing the National Forests and Grasslands so they best demonstrate the sustainable multiple-use management concept.
- Providing technical and financial assistance to State and private forest landowners, encouraging them to practice good stewardship and quality land management in meeting their specific objectives.
- Providing technical and financial assistance to cities and communities to improve their natural environment by planting trees and caring for their forests.
- Providing international technical assistance and scientific exchanges to sustain and enhance global resources and to encourage quality land management.
- Helping States and communities to wisely use the forests to promote rural economic development and a quality rural environment.
- Developing and providing scientific and technical knowledge aimed at improving our capability to protect, manage, and use forests and rangelands.
- Providing work, training, and education to the unemployed, under-employed, elderly, youth, and disadvantaged in pursuit of our mission.

### ***United States Fish and Wildlife Service***

The mission of the U.S. Fish and Wildlife Service is to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people.

### ***United States Army Corps of Engineers***

Mission: Civil and Military

To manage and execute engineering, construction, and real estate programs for the US Army and Air Force, and for other federal agencies and foreign governments as assigned; to supervise research and development in support of these programs; to manage and execute Army installation support programs; to develop and maintain capability to mobilize in response to national security emergencies, domestic emergencies, and emergency water planning programs; and to support Army space initiatives.

Under the direction and supervision of the Secretary of the Army, through the Assistant Secretary of the Army (Civil Works), the Commander has responsibility for investigating, developing and maintaining the nation's water and related environmental resources; constructing and operating projects for navigation, flood control, major drainage, shore and beach restoration and protection, related hydropower development, water supply, water quality control, fish and wildlife conservation and enhancement, and outdoor recreation; responding to emergency relief activities directed by other federal agencies; and

administering laws for the protection and preservation of navigable waters, emergency flood control and shore protection.

***United States Bureau of Land Management***

The Bureau of Land Management administers public lands with a framework of numerous laws. The most comprehensive of these is the Federal Land Policy and Management Act of 1976 (FLPMA). All bureau policies, procedures and management action will be consistent with FLPMA and the other laws that govern use of the public lands.

It is the mission of the Bureau of Land Management to sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations.

***Colorado Division of Water Resources***

To serve the water resource needs of the public and to distribute, conserve, protect, develop, and maximize the beneficial use of the state's present and future water supplies.

## **Appendix E - Relevant Federal Laws**

**CITE**        **16 USC Sec. 528**

**EXPCITE**    **TITLE 16 - CONSERVATION**

**CHAPTER 2 - NATIONAL FORESTS**

**SUBCHAPTER I - ESTABLISHMENT AND ADMINISTRATION**

**HEAD**    *Sec. 528.*

Development and administration of renewable surface resources for multiple use and sustained yield of products and services; Congressional declaration of policy and purpose

**STATUTE**

It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title. Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests. Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests.

**SOURCE**

(Pub. L. 86-517, Sec. 1, June 12, 1960, 74 Stat. 215.)

**MISC. SHORT TITLE**

Section 5 of Pub. L. 86-517, as added Pub. L. 94-588, Sec. 19, Oct. 22, 1976, 90 Stat. 2962, provided that: "This Act (enacting this section and sections 529 to 531 of this title) may be cited as the 'Multiple-Use Sustained-Yield Act of 1960'."

**CITE**        **16 USC Sec. 529**

**EXPCITE**    **TITLE 16 - CONSERVATION**

**CHAPTER 2 - NATIONAL FORESTS**

**SUBCHAPTER I - ESTABLISHMENT AND ADMINISTRATION**

**HEAD**        *Sec. 529.*

Authorization of development and administration consideration to relative values of resources; areas of wilderness

**STATUTE**

The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of sections 528 to 531 of this title.

**SOURCE**

(Pub. L. 86-517, Sec. 2, June 12, 1960, 74 Stat. 215.)

**TRANS TRANSFER OF FUNCTIONS**

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with provisions of sections 528 to 531 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Sec. 102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

**CITE 16 USC Sec. 530**

**EXPCITE TITLE 16 - CONSERVATION**

**CHAPTER 2 - NATIONAL FORESTS**

**SUBCHAPTER I - ESTABLISHMENT AND ADMINISTRATION**

**HEAD Sec. 530.**

Cooperation for purposes of development and administration with State and local governmental agencies and others

**STATUTE**

In the effectuation of sections 528 to 531 of this title the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the national forests.

**SOURCE**

(Pub. L. 86-517, Sec. 3, June 12, 1960, 74 Stat. 215.)

**TRANS TRANSFER OF FUNCTIONS**

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with the provisions of sections 528 to 531 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and

Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Sec. 102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

**CITE**        **16 USC Sec. 531**

**EXPCITE**    **TITLE 16 - CONSERVATION**

**CHAPTER 2 - NATIONAL FORESTS**

**SUBCHAPTER I - ESTABLISHMENT AND ADMINISTRATION**

**HEAD**        **Sec. 531. Definitions**

**STATUTE**

As used in sections 528 to 531 of this title the following terms shall have the following meanings:

(a) "Multiple use"

means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) "Sustained yield of the several products and services"

means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

**SOURCE**

(Pub. L. 86-517, Sec. 4, June 12, 1960, 74 Stat. 215.)

**CITE 42 USC Sec. 4331**

**EXPCITE TITLE 42 - THE PUBLIC HEALTH AND WELFARE**

**CHAPTER 55 - NATIONAL ENVIRONMENTAL POLICY**

**SUBCHAPTER I - POLICIES AND GOALS**

**HEAD**

Sec. 4331. Congressional declaration of national environmental policy

**STATUTE**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may -

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.



**CITE 16 USC Sec. 1531**

**EXPCITE TITLE 16 - CONSERVATION**

**CHAPTER 35 - ENDANGERED SPECIES**

**HEAD**

Sec. 1531. Congressional findings and declaration of purposes and policy

**STATUTE**

(a) Findings

The Congress finds and declares that -

- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
- (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;
- (3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;
- (4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to -
  - (A) migratory bird treaties with Canada and Mexico;
  - (B) the Migratory and Endangered Bird Treaty with Japan;
  - (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
  - (D) the International Convention for the Northwest Atlantic Fisheries;
  - (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;
  - (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora;and
- (G) other international agreements; and
- (5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) Purposes

The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

## ***CITE 16 USC Sec. 1538***

### **EXPCITE TITLE 16 - CONSERVATION**

#### **CHAPTER 35 - ENDANGERED SPECIES**

##### ***HEAD***

Sec. 1538. Prohibited acts

##### ***STATUTE***

###### **(a) Generally**

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to -

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to -

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

###### **(b) Species held in captivity or controlled environment**

(1) The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final

regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a)(1) of this section shall not apply to -

(i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) Violation of Convention

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if -

(A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

(d) Imports and exports

(1) In general

It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business -

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Requirements

Any person required to obtain permission under paragraph (1) of this subsection shall -

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records

required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) Regulations

The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) Restriction on consideration of value or amount of African elephant ivory imported or exported In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) Reports

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 1533 of this title as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) Designation of ports

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc-4(d) (FOOTNOTE 1) of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

## **Appendix F - Relevant Colorado State Laws**

### ***CITE Colorado Regular Statute 29-20-104.***

#### **EXPCITE Powers of local governments.**

(1) Without limiting or superseding any power or authority presently exercised or previously granted, each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

- (a) Regulating development and activities in hazardous areas;
- (b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;
- (c) Preserving areas of historical and archaeological importance;
- (d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;
- (e) Regulating the location of activities and developments which may result in significant changes in population density;
- (f) Providing for phased development of services and facilities;
- (g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and
- (h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

### ***CITE Colorado Regular Statute 30-11-101.***

#### **EXPCITE Powers of counties.**

(1) Each organized county within the state shall be a body corporate and politic, and as such shall be empowered for the following purposes:

- (a) To sue and be sued;
- (b) To purchase and hold real and personal property for the use of the county, and acquire lands sold for taxes, as provided by law;

(c) To sell, convey, or exchange any real or personal property owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; and to lease any real or personal property, either as lessor or lessee, together with any facilities thereon, when deemed by the board of county commissioners to be in the best interests of the county and its inhabitants;

(d) To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers. Any such contract may by its terms exceed one year and shall be binding upon the parties thereto as to all of its rights, duties, and obligations.

(e) To exercise such other and further powers as may be especially conferred by law;

(f) To develop, maintain, and operate mass transportation systems, which power shall be vested either individually in the board of county commissioners or jointly with other political subdivisions or governmental entities formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S.; except that this provision shall not apply to any county or portion thereof encompassed by the regional transportation district as formed pursuant to the provisions of article 9 of title 32, C.R.S. Counties, by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title, shall have the authority: To fix, maintain, and revise passenger fees, rates, and charges, and terms and conditions for such systems; to prescribe the method of development, maintenance, and operation of such mass transportation systems; and to receive contributions, gifts, or other support from public and private entities to defray the operating costs of such systems.

(g) To provide for the payment of construction, installation, operation, and maintenance of street lighting by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title and to assess, either in whole or in part, the cost of constructing, installing, operating, and maintaining such street lighting against the property in the vicinity of such street lighting in proportion to the frontage of the property abutting the road, street, or alley where such street lighting is so constructed, installed, operated, and maintained;

(h) To enter into contracts with the executive director of the department of corrections pursuant to section 16-11-308.5, C.R.S., for the placement of persons under the custody of the executive director in county jails or adult detention centers;

(i) To dispose of abandoned personal property acquired by an elected county official or county employee in performing official duties. Said personal property may be disposed of only after the exercise of due diligence to determine the owner of such personal property. Such personal property may be sold, discarded, or used for county purposes as the board of county commissioners deems to be in the best interests of the county.

***CITE Colorado Regular Statute 30-28-102.***

**EXPCITE Unincorporated territory.**

The boards of county commissioners of the respective counties within this state are authorized to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this part 1.

***CITE Colorado Regular Statute 30-28-103.***

**EXPCITE County planning commission.**

(1) The board of county commissioners of any county within the state is authorized to appoint a commission of not less than three and not more than nine members, to be known as the county planning commission; except that, in counties of the state having a population of fifteen thousand or less desiring to establish a commission, the board of county commissioners may constitute the commission, or the board of county commissioners may appoint a separate body to serve as the county planning commission.

(2) Each of such members of the commission shall be a resident of the county. The term of appointed members of the commission shall be three years and until their respective successors have been appointed, but the terms of office shall be staggered by making the appointments so that approximately one-third of the members' terms expire each year. Members of the commission on July 1, 1977, shall serve the remainder of the terms for which they were appointed. Thereafter, members shall be appointed pursuant to this subsection (2).

(3) The members of the commission shall receive such compensation as may be fixed by the board of county commissioners, and the board of county commissioners shall provide for reimbursement of the members of the commission for actual expenses incurred. The board of county commissioners shall provide for the filling of vacancies in the membership of the commission and for the removal of a member for nonperformance of duty or misconduct. The board of county commissioners may appoint associate members of such commission, each of whom shall be a resident of the county, and, in the event any regular member is temporarily unable to act owing to absence from the county, illness, interest in any matter before the commission, or any other cause, his place may be taken during such temporary disability by an associate member designated for that purpose.

***CITE Colorado Regular Statute 30-28-105.***

**EXPCITE Regional planning commission.**

(1) The governing body or, in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, together with the boards of county commissioners of any counties in which such municipality or group of municipalities is located or of any adjoining counties; or the governing bodies or, in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, acting independently of the boards of county commissioners in which such municipality or group of municipalities is located; or the boards of county commissioners of any two or more counties may cooperate in the creation of a regional planning commission for any region defined as may be agreed upon by said cooperating governing bodies or officials or boards limited to a region within the jurisdiction of said cooperating governing bodies.

(2) The number and qualifications of members of any such regional planning commission, their terms, and the method of their appointment or removal shall be such as may be determined and agreed upon by said cooperating governing bodies or officials and boards; but each participating county or municipality shall be entitled to at least one voting representative. The regional planning commission shall elect its chairman, whose term shall

be one year, with eligibility for reelection. The commission may create and fill such other offices as it may determine.

(3) Any board of county commissioners or other county officials or the chief executive officer of any municipality, from time to time, upon the request of the commission and for the purpose of special surveys, may assign or detail to the commission any members of staffs of county or municipal administrative departments or may direct any such department to make for the commission special surveys or studies requested by the commission.

(4) The proportion of the expenses of the regional planning commission to be borne respectively by any governing body cooperating in the establishment and maintenance of the commission shall be such as may be determined and agreed upon by the cooperating bodies or officials or boards, and they are authorized to appropriate or cause to be appropriated their respective shares of such expense.

(5) Within the amounts duly appropriated or otherwise received, the regional planning commission has the power to appoint such clerical and stenographic employees and such technically qualified staff as are necessary to do the work of the commission. The regional planning commission has the further power to contract for such other services, facilities, and personnel as it may require within its means, including the services of professional planners and other consultants.

(6) The regional planning commission is specifically empowered to receive and expend all grants, gifts, and bequests, specifically including state and federal funds and other funds available for the purposes for which the commission exists, and to contract with the state of Colorado, the United States, and all other legal entities with respect thereto. The regional planning commission may provide, within the limitations of its budget, matching funds wherever grants, gifts, bequests, and contractual assistance are available on such basis.

(7) A regional planning commission shall be a body politic and corporate, with power to sue and be sued. It shall be liable on its undertakings, contractual or otherwise. The individual members thereof and the cooperating governing bodies or officials and boards shall not be liable on the undertakings of the commission, contractual or otherwise, regardless of the procedure by which such undertakings, or any of them, may be entered into.

(8) The regional planning commission has the power to adopt articles to regulate and govern its affairs, whether as an incorporated association or otherwise, in the performance of the regional planning functions as defined by statute; such articles shall contain rules pertaining to the transaction of the commission's business. The regional planning commission shall keep records of its resolutions, transactions, contractual undertakings, findings, and determinations, which records shall be public records. The regional planning commission has and shall exercise all powers necessary or incidental to exercise fully the powers and authority conferred in this section.

(9) A regional planning commission may, to the extent provided for in a resolution adopted by a board of county commissioners, perform the functions of a county planning commission as provided for in this part 1.

(10) Nothing in this part 1 shall preclude participation by any county or municipality in more than one regional planning commission.



***CITE Colorado Regular Statute 30-28-106.***

**EXPCITE Adoption of master plan - contents.**

(1) It is the duty of a county planning commission to make and adopt a master plan for the physical development of the unincorporated territory of the county.

(2) (a) It is the duty of a regional planning commission to make and adopt a regional plan for the physical development of the territory within the boundaries of the region, but no such plan shall be effective within the boundaries of any incorporated municipality within the region unless such plan is adopted by the governing body of the municipality for the development of its territorial limits and under the terms of paragraph (b) of this subsection (2).

(b) Any plan adopted by a regional planning commission shall not be deemed an official advisory plan of any municipality or county unless adopted by the planning commission of such municipality or county.

(3) (a) The master plan of a county or region, with the accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the county or regional planning commission's recommendations for the development of the territory covered by the plan and may include: The general location, character, and extent of streets or roads, viaducts, bridges, parkways, playgrounds, forests, reservations, parks, airports, and other public ways, grounds, places, and spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, sanitation, transportation, communication, heat, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, or terminals; methods for assuring access to sunlight for solar energy devices; the general character, location, and extent of community centers, townsites, housing developments, whether public or private, and urban conservation or redevelopment areas; the general location and extent of forests, agricultural areas, flood control areas, and open development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, flood control, or the protection of urban development; and a land classification and utilization program.

(b) Any master plan of a county or region which includes mass transportation shall be coordinated with that of any adjacent county, region, or other political subdivision, as the case may be, to eliminate conflicts or inconsistencies and to assure the compatibility of such plans and their implementation pursuant to this section and sections 30-11-101, 30-25-202, and 30-26-301.

(c) The master plan of a county or region shall also include a master plan for the extraction of commercial mineral deposits pursuant to section 34-1-304, C.R.S.

(d) The master plan of a county or region may also include plans for the development of drainage basins in all or portions of the county or region. When county subdivision regulations require the payment of drainage fees, as provided in section 30-28-133 (11), the master plan shall include the plan for the development of drainage basins.

***CITE Colorado Regular Statute 30-28-107.***

**EXPCITE Surveys and studies.**

In the preparation of a county or regional master plan, a county or regional planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the territory within its jurisdiction. The county or regional master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county or region which, in accordance with present and future needs and resources, will best promote the health, safety, morals, order, convenience, prosperity, or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry, and other purposes as will tend to create conditions favorable to health, safety, energy conservation, transportation, prosperity, civic activities, and recreational, educational, and cultural opportunities; will tend to reduce the wastes of physical, financial, or human resources which result from either excessive congestion or excessive scattering of population; and will tend toward an efficient an economic utilization, conservation, and production of the supply of food and water and of drainage, sanitary, and other facilities and resources.

***CITE Colorado Regular Statute 30-28-131.***

**EXPCITE Planning commission responsibilities in a common geographic area.**

The regional planning commission shall have primary responsibility for those broad plans described in section 30-28-106 (3) and surveys and studies described in section 30-28-107 which clearly affect the physical development of two or more governmental units. The district, county, or municipal planning commission shall have primary responsibility for all other plans, surveys, and studies and implementation thereof in zoning, subdivision, housing, recreation, transportation, public works, health and safety, and other similar subjects.

***CITE Colorado Regular Statute 30-28-132.***

**EXPCITE Concurrent planning jurisdiction - authorized agreements and contracts.**

(1) In any instance where a regional planning commission is unable to perform on time and in sufficient detail a plan or survey or study which is its primary responsibility and where such plan or survey or study has been requested and is urgent for the development of a district, county, or municipality, then, upon formal notice to the regional planning commission, the local commission may proceed to make such plan or survey or study for its own area. In such instances, the regional planning commission may adopt such plan or survey or study as part of its regional plan and may take primary responsibility for the expansion of the study or plan into other jurisdictions.

(2) A regional planning commission may agree or contract with any governmental or quasi-governmental body within the region to make any plan or survey or study for such

governmental or quasi-governmental body, irrespective of whether such plan or survey or study is the primary responsibility of such regional planning commission.

(3) A regional planning commission may agree or contract with any constituent government to have it make any plan or survey or study which is the primary responsibility of the regional planning commission.