USDA

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250

SEP - 7 2006

The Honorable Ken Salazar
U.S. Senate
702 Hart Senate Building
Washington, D.C. 20510

Dear Senator Salazar:

This is in further response to your letter of May 16, 2006, regarding your request for the Office of Inspector General (OIG) to investigate allegations about Department of Agriculture (USDA) involvement in Forest Service (FS) decisions pertaining to the Village at Wolf Creek, a proposed development of private land situated within the Rio Grande National Forest (RGNF) in southwestern Colorado.

In addition to your request, OIG received requests from Congressman John T. Salazar, a Colorado State legislator, and two Colorado-based advocacy groups to investigate allegations that USDA officials improperly interfered with FS deliberations on access issues regarding the Village at Wolf Creek property. The allegations of improper USDA pressure pertained to FS work on the Environmental Impact Statement (EIS) necessitated by the owners' request for access in the RGNF. Media reports raised inferences that USDA officials exerted improper pressure on FS personnel engaged in deliberations on Village at Wolf Creek issues.

OIG conducted an inquiry to review allegations that USDA officials interfered with or acted to improperly direct FS deliberations and decisions regarding the Village at Wolf Creek. OIG Investigations personnel interviewed the former FS official who had made public comments about alleged USDA involvement in FS' deliberations. OIG also interviewed USDA Office of the General Counsel (OGC) attorneys in the Department's Mountain Regional Office and its Washington, D.C., Headquarters. These attorneys handled the majority of work for USDA at the regional and national level on legal issues and requirements pertaining to the Village at Wolf Creek. Legal staff in OIG's Office of Counsel reviewed FS information on its EIS and special use authorization decision, reviewed statutes and FS regulations, and queried FS and OGC personnel about their involvement in USDA determinations regarding the Village at Wolf Creek.

I. *USDA Jurisdiction Regarding the Village at Wolf Creek*

As you know, the proposed Village at Wolf Creek development is a privately-owned, 287.5 acre parcel within the RGNF. The potential development of this property for residential and commercial purposes is within the jurisdiction of the local governing entity, the Board of County Commissioners for Mineral County. The Board approved the Village at Wolf Creek development via resolutions signed on October 26 and November 1, 2004.

USDA/FS does not have legal authority to determine whether the private property comprising the Village at Wolf Creek may be developed. USDA jurisdiction in this issue (as exercised by FS) is limited to determining what type of access through RGNF lands shall be afforded to the owners of this private property for its intended uses.[1] According to Federal law, FS is required to provide property owners with access to their private land holdings that are contained within National Forest System (NFS) land. Section 1323(a) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) states the following:

> "[S]ubject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary *shall provide* such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: " (Emphasis added.)

ANILCA requires FS to provide access to private property owners within NFS lands, and the agency can establish rules and conditions that property owners must comply with in order to minimize damage to NFS lands.[2] On March 15, 2006, in compliance with this statute and after completion of the Final EIS (FEIS), Forest Supervisor Peter Clark authorized two access roads and adjacent utility corridors in the RGNF to provide access to the proposed Village at Wolf Creek site. The owner's construction and use of the two access roads and corridors will be subject to environmental controls imposed by FS officials. FS has stated that approximately 2.8 acres of RGNF land will be disturbed by the access roads and utility corridors.

USDA affords interested parties an administrative process whereby they can appeal special use authorizations issued by Forest Supervisors.[3] Several interested parties appealed Supervisor Clark's decision. The appeals were decided by Deputy Regional Forester Greg Griffith on July 13, 2006. The Deputy Regional Forester found no evidence that Federal laws or FS policies were violated regarding the Village at Wolf Creek special use authorization and upheld the Forest Supervisor's decision. This administrative appeal was the final USDA determination on the special use permit issue and thus further challenges to this FS decision must be adjudicated in Federal district court.

II. *OIG Findings Regarding Allegations of Interference with Forest Service Regulatory Deliberations and Decisions*

Media entities in Colorado reported that the former FS National Winter Sports Coordinator (Winter Sports Coordinator) criticized the EIS that was produced as a result of the special use authorization process related to the Village at Wolf Creek. News reports said the official

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[1] Additionally, FS states that the scenic easement held by the Federal Government on the Village at Wolf Creek parcel contains continuing prohibitions against industrial development and hazardous materials, restrictions on building height, etc.

[2] See 36 CFR 251.110, et seq. "Adequate access means a route and method of access to non-Federal land that provides for reasonable use and enjoyment ... and that minimizes damage or disturbance to NFS lands and resources."

[3] See 36 CFR Part 215.

believed its flaws were due to "supervisors" exerting pressure to help the developers of the proposed project. Your letter said that the former FS official alleged that political pressure led to an improper limitation of the environmental review.

OIG agents interviewed the former Winter Sports Coordinator to ascertain his knowledge of and potential evidence concerning the allegations referenced in the media reports. The Winter Sports Coordinator was involved in FS deliberations during the approximate period of March 2003 to March 2004 to develop a letter describing the property owners' access rights. [4] The Winter Sports Coordinator also served as one of 14 members of the Regional Pre-decisional Review Team for the Village at Wolf Creek EIS.

The former Winter Sports Coordinator told OIG that he had no direct knowledge or evidence of any USDA officials exerting improper pressure or influence regarding the EIS. He said his direct knowledge regarding FS decisions involving the Village at Wolf Creek was limited to events associated with FS' March 2004 letter defining the property owners' existing access rights. Regarding media reports which conveyed the impression that he alleged the "improper pressure" affected the EIS, the former Winter Sports Coordinator said the reports were not accurate and he had no such direct knowledge. [5]

Thus, for the purposes of OIG's inquiry, the key FS-Village at Wolf Creek determinations were the Forest Supervisor's FEIS published in March 2006, his special use authorization decision made on March 15, 2006, and the Deputy Regional Forester's appellate decisions issued on July 13, 2006. The former Winter Sports Coordinator retired from the agency on September 30, 2005, six months before the first of those determinations.

As previously stated, OIG interviewed the OGC attorneys at the regional and headquarters levels who handled the majority of legal work related to Village at Wolf Creek issues during the approximate period of early 2003 through July 2006. The attorneys stated that they received no requests from USDA officials to afford the developers special treatment nor were they pressured to alter their legal analyses or reach a particular result on Village at Wolf Creek issues. OIG was advised that whenever the developer's representatives presented certain issues and requests directly to USDA officials in Washington, D.C., these officials would routinely refer the issues to OGC/FS personnel for resolution without attempting to influence their subsequent determinations.

Additionally, Forest Supervisor Clark – the FS official responsible for determining the extent of the property owners' access under Federal law and regulations – has publicly stated that he received no direction, influence, or pressure on his decision. Forest Supervisor Clark said his decision was based on the law, the EIS, public comment, and his professional judgment.

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[4] The final FS letter to the developers' representatives was dated March 11, 2004.

[5] While the Winter Sports Coordinator did reaffirm to OIG that he believed one element of the Draft EIS was not justifiable, FS and OGC advised OIG that the Final EIS addressed the issue in question. See Section III of this letter.

III. *The FS Environmental Impact Statement for the Village at Wolf Creek*

The FS EIS on the proposed development was published in March 2006. The RGNF Forest Supervisor is the Federal official responsible for making decisions regarding the environmental analysis for the special use authorization decision. As a result of internal deliberations and public comments received in response to the Draft EIS, the FEIS included a discussion of a No Action Alternative wherein the Village at Wolf Creek might be developed or might not be fully developed. FS advises that two sections of the FEIS ("Major Changes to the Draft EIS," Chapter I, pages 1-32; and Appendix A) present relevant FS analyses on this issue.

OIG has no statutory authority within USDA to perform an adjudicatory role with respect to challenges to an EIS issued by a USDA agency and we cannot opine on the credibility of legal arguments raised by various groups pertaining to the specific EIS in this case. We do note that in the aforementioned administrative appeal decisions and the FEIS itself, FS has provided extensive information and the statutory/regulatory foundations for its special use authorization and FEIS decisions.

Because the Deputy Regional Forester's July 2006 administrative appeal decisions represent the final USDA determinations on challenges to FS' special access authorization for the Village at Wolf Creek, parties desiring to further contest the decision (and its FEIS) must bring suit in an appropriate judicial forum. According to OGC, a suit is pending in the U.S. District Court for the District of Colorado, challenging FS actions regarding the Village at Wolf Creek and its owners' access rights in the RGNF.

IV. *Conclusion*

OIG's inquiry found no evidence of improper conduct or pressure regarding FS decisions pertaining to the Village at Wolf Creek parcel. Our interviews of key participants in relevant USDA deliberations and our review of related documents revealed no evidence that USDA/FS officials failed to comply with laws, regulations, and Departmental policies related to this proposed project. Further, our review of relevant information found that the allegation of improper political interference in the development of the FEIS was not substantiated.

Thank you for contacting OIG about this matter. A similar response is being sent to Congressman Salazar and a member of the Colorado State Legislature. Should you have further questions, please feel free to contact me at (202)720-8001, or have a member of your staff call Mr. Mark Woods, Assistant Inspector General for Investigations, at (202) 720-3306.

Sincerely,

Phyllis K. Fong

Phyllis K. Fong
Inspector General