

MEMORANDUM

To: Board of County Commissioners
From: Dale Will, Director, Open Space and Trails Department
CC: Open Space and Trails Board
Meeting Date: January 12, 2010
In Re: Evaluation and Response to Two Shoes Land Exchange Proposal

EXECUTIVE SUMMARY

In response to the “Two Shoes Land Exchange” proposed last year by a private landowner, this memorandum seeks to review the public interests involved, with particular focus on the proposed privatization of lands on the north flank Mount Sopris in Pitkin County. We agree that the conservation of the proffered Sutey Ranch in Garfield County is highly desirable, and our review therefore is limited to some observations about alternative mechanisms for achieving this goal. Our primary focus is on Mount Sopris itself, where we recommend an alternative to the private proposal.

Our alternative was crafted to address the two primary concerns raised by the Open Space and Trails Board and Board of County Commissioners following a series of public meetings chronicled below. Those concerns are 1. the loss of public land on Mount Sopris, and 2. the disproportionate private benefit that would result. A full administrative review of these issues by the Bureau of Land Management and Forest Service could also shed additional light. However, as discussed below, the legislative approach preferred by Two Shoes would result in a truncated analysis, and limited opportunity for public involvement during implementation of and exchange.

To achieve a fair balance of public and private benefit, Two Shoes’ proposed acquisition of public lands on Sopris would be scaled back to 873 acres to allow the creation of an approximately 931 acre Potato Bill Creek Open Space, comprised of the upper 395 acres of the larger BLM parcel, combined with approximately 536 acres of remote Two Shoes lands, plus the 40 acre County Open Space heretofore acquired from the BLM. See Map entitled “Open Space Proposal.”¹ The resulting configuration would leave intact Two Shoes’ development approvals for 27 homes totaling 205,600 sq ft. The boundaries of the Potato Bill Creek Open Space were configured to encompass this scenic tributary canyon, to allow continuing public habitat management, and to address constraints on back country access to USFS lands on the northwest flank of Mount Sopris.

¹ All acreages in this memorandum are best estimates based on information provided by Two Shoes and on County GIS information.

INTRODUCTION



Mount Sopris watches the lower valley like some stately sentinel. Perhaps no other geographical feature in our valley is as significant to the community identity, or has spawned so many namesake organizations, businesses, publications, and real estate sales. Ute elder Clifford Duncan recently told a rapt audience at the Carbondale Library of the deep significance that this mountain, “Ma we kadurz”, had for his culture. The Mountain was a source of insight and healing, and was visited for “vision quests.”

Sopris achieves its greatest prominence when viewed from the north, where it rises 6,500 feet from the Crystal River, one of the most extraordinary massifs in our State. At an elevation of approximately 7,500 ft., the National Forest lands on the north flank give way to 1,268 acres held by the Bureau of Land Management (hereafter “BLM”), private lands assembled by Leslie Wexner (hereinafter “Two Shoes Ranch”), and a smaller parcel of County Open space. The BLM lands (hereinafter “BLM Sopris Parcels”) are comprised of a 28 acre parcel sandwiched between the USFS and Two Shoes Ranch, as well as a 1,240 acre parcel that begins at the USFS boundary and descends approximately four miles between private lands to within approximately 400 feet of Prince Creek Road (See Appendix A).

Following his purchase of the Turnbull (Bane Tracts) and Crystal Island Ranches, Mr. Wexner set his sights on the BLM Sopris Parcels that bisects the two Ranches, and for this purpose has retained the Western Lands Group (hereafter “WLG”) to assemble and lobby for a Congressionally approved federal land exchange. Prior to any conversation with either the Pitkin County Board of County Commissioners or the Open Space and Trails Board, in early 2008, he purchased the 520 acre Sutey Ranch in Garfield County in furtherance of this objective. Later that year, Two Shoes Ranch’s representatives also quietly negotiated a limited private access agreement and non-development guarantees with residents of the Prince Creek Subdivision, and a \$75,000 payment for improvements to the neighborhood water system. This agreement also provides that, at Two Shoes Ranch’s request, the homeowners will write letters in support of a land exchange.

In February of 2009, after at over a year of preparation, WLG then sought public support in an effort to introduce federal legislation to quickly effectuate an exchange. In an effort to secure Pitkin County’s support for such legislation, WLG has proposed an agreement whereby the County would similarly agree to support land exchange legislation in return for Two Shoes Ranch’s promise to place the BLM Sopris Parcels in a private conservation easement. This proposal has resulted in ongoing discussions with Pitkin County.

Since the proposal has been made public, some entities and individuals have agreed to support the exchange, notably the Red Hill Council, and Aspen Valley Land Trust. Conditional support was also secured from Garfield County, as discussed below. Others, including the Wilderness Workshop, Aspen Center For Environmental Studies, and Roaring Fork Conservancy have declined, despite continuous efforts by WLG's professional lobbyist.

BACKGROUND

The BLM Sopris Parcels:

Ironically, few of those supporting the exchange have visited the BLM lands in question, and many are uncertain exactly where they lie. When viewed from Carbondale, these lands are visible at the base of the mountain, reaching from immediately below the Nettle Creek couloir to upper Prince Creek. (See Appendix B: Photographs) The larger parcel is roughly the shape of a question mark "?", and winds approximately four miles from its boundary with USFS lands to the Prince Creek Subdivision. (See Appendix A: "Existing Conditions" Map.) Its width ranges from ½ mile at the USFS boundary, narrowing to ¼ mile in the middle, ½ mile below Thomas Creek, and back to 1 mile at the northern side.

As discussed below, in 1999, the Pitkin County Open Space staff took an exhaustive look for federal disposal parcels in preparation for its collaboration with the USFS in securing the Ryan inholding at Ashcroft. The County toured disposal candidates with BLM and USFS staff, who never suggested that the BLM Sopris Parcels could ever be privatized. Although the WLG claimed in March of last year that the BLM *had* identified the Sopris Parcels for disposal, they later retracted that assertion. It is a significant distinction as under the Federal Lands Management Policy Act ("FLMPA"), the BLM *cannot* sanction a conveyance of their lands unless they have first been identified for disposal by a duly enacted Resource Management Plan ("RMP"). The RMP does not identify the 1240 acres for disposal and puts it in the same category as 97% of the BLM lands in the region. These lands could be conveyed by the BLM only pursuant to an evaluation under NEPA, with due consideration for specific considerations outlined in the RMP. Among those considerations are whether the land is suitable for management by another Federal Department. Again, both BLM Sopris parcels are contiguous to National Forest Lands on Mount Sopris. Not surprisingly, the BLM therefore has not taken any position on the proposed exchange. Two Shoes Ranch's desire to legislate this would presumably bypass this FLPMA requirement of RMP review, and relieve the BLM of any obligation to analyze the merits and alternatives (See discussion of NEPA issues below). It has therefore fallen upon Pitkin County by default to look hard at the public values associated with the BLM Sopris Parcels.

In other interactions with County staff regarding the BLM Sopris Parcels, BLM actions have been consistent with its conclusion in 1999 that no disposal was contemplated. This has remained evident through County staff involvement in the BLM Resource Management Planning

process, and also in our collaboration with the BLM and USFS on the Crystal River Fuels Reduction project.

The BLM participated with the Forest Service and Open Space staff on the Crystal River Fuels Reduction project in 2004 and 2005. During this process, Dan Sokal represented the BLM, and agreed that the BLM Sopris Parcels would benefit from public investment in this work. Another BLM specific project included fuel reduction project near the Prince Creek Subdivision, with Brian Hopkins representing the Bureau. Such action was agreed to enhance the safety of nearby residences as well as enhancing habitat. These actions were again consistent the BLM's position during the formulation of the Ryan exchange that the BLM Sopris Parcels merited continuing management by that Agency.

In promoting the proposed disposal, WLG has argued that the Sopris Parcels lack practical public access. However, each parcel has significant contiguity with the National Forest, and might geographically be absorbed into that system. The 1,240 acre parcel shares a ½ mile wide boundary with this public land, while the Forest Service boundary with the 28 acre parcel is over ¾ mile wide within ½ mile of the Dinkle Lake Road. In addition, the 1,240 acre parcel shares a boundary with 18 adjoining private parcels, many of which have allowed access to hunters, hikers, and skiers on request. Nine of the 18 adjoining private parcels are presently owned by Two Shoes Ranch, which has development rights for 27 individual homes (See Appendix A: "Existing Conditions Map.") The northeast corner of this parcel also lies within 200 feet of the public road up Prince Creek.

An objective of the Crystal River Master Plan is to "Preserve access to recreational areas to meet the needs of the Crystal River Valley Planning" and to "(E)ncourage cross-country skiing, hiking, horseback riding, hunting and fishing, livestock grazing and other non- motorized uses on public lands, consistent with good conservation practices." To further these objectives, the Plan supports "the granting or purchase of conservation, fishing and trail easements in order to facilitate enjoyment of the natural resources by neighbors and visitors." In regard to the BLM, the Plan provides the following direction:

"The following are a list of issues to be addressed with the BLM:

5.10. *Encourage cross-country skiing, hiking, horseback riding, hunting and fishing, livestock grazing and other non- motorized uses on public lands, consistent with good conservation practices.*

5.11. *Manage the public lands within the Crystal River Valley in a manner that places the highest emphasis on protection and preservation of the natural environment, while maintaining passive recreational uses and livestock grazing. Encourage the U.S. Forest Service and the Bureau of Land Management to work with local agencies to achieve these local objectives.*

6.3. *Limit expansion of and/or development of additional campgrounds within the existing*

Crystal River Valley Planning Area and support preservation of existing public campgrounds.

6.7. Prohibit off-road motorized vehicle use on public lands.

7.3. Support the consideration of new non-motorized trails that provide connections between existing trails both within and outside the Crystal planning area.”

Nowhere in the Crystal River Valley Master Plan is there any suggestion is that privatization of the BLM Sopris Parcels would be desirable.

Similarly, the Emma Master Plan, which is contiguous with the Crystal Plan on the east side and includes upper Dinkle Lake Road, explicitly seeks to avoid federal land disposal by adopting a “no net loss” standard with respect to public lands;

“The Emma Caucus Area includes large land areas owned by the Federal Government (Bureau of Land Management - BLM), as well as other public lands owned by Pitkin County and the United States Department of Agriculture. Most of these public lands are currently zoned RS-30, which allows residential uses with lots as small as 30 acres. The Emma Caucus is very concerned that existing Federally-owned lands within the Caucus area boundaries are vulnerable to land exchange deals that could result in inappropriate residential development. Objective 3.3 of this Master Plan recommends “the establishment of policies, programs and relationships with the appropriate government agencies that would minimize the potential for the exchange of public lands within the Caucus Area and set a “no net loss” standard with respect to public lands.” (emphasis added.)

Consistent with the objectives of the Crystal River Valley Master Plan, the history of the Pitkin County Open Space Program has included the successful acquisition of public access across private property to adjacent federal lands. Examples of this include our trailheads at Perham Creek, and Arbaney Kittle, Nancy’s path onto the NE side of the Crown, a trail easement across the Dart property onto BLM lands in Wheatley Gulch, Coal Basin Road, Marion Gulch. No similar effort has yet been made to secure a public outlet on the north end of the larger BLM Sopris Parcel. However, if the lack of such access were an acceptable basis for federal disposal, many of these other areas would have been lost prior to our acquisition of access.

While public access onto and use of the BLM Sopris Parcels by hikers, hunters, and others does occur, we grant that solitude is abundant there and on the north slope of Mount Sopris generally. This area is traversed by a trail that can be accessed from the Dinkle Lake Road on the east, and was apparently developed for access to USFS grazing leases. The northwest flank of Sopris is particularly constrained due to existing private land boundaries. The Nettle Creek couloir has a following of backcountry skiers that includes Jim Cardamone and Mark Fisher. The Nettle Creek Road is gated, and public access out the bottom of the couloir now involves either

permission from an adjacent landowner or an arduous hike that deters many. Two Shoes' southern boundary already presents a barrier to public movement spanning three miles between the Prince Creek Road and the Crystal River, broken only by the half mile wide mouth of the larger BLM Sopris Parcel, and by the approximately 600 foot interface of the County Open Space acquired through the Ryan exchange as discussed elsewhere. (See Appendix B: "Getting Out Nettle Creek" photograph) If Two Shoes Ranch's present proposal is accepted without modification, the latter would become the *sole* public corridor out of this area. Although WLG has suggested that this creates adequate access to the National Forest, the route through the County Open Space (former BLM) lacks a public river crossing, and involves extremely steep slopes in the red rock band just above the river.

In sum, we agree that the public access on the north flank of Sopris is presently arduous due to existing private holdings on the lower slopes. However, rather than further limiting public access and recreation in this area, the situation suggests to Open Space staff a need to find additional portals into the area.

Evolution and Content of the Two Shoes Land Exchange Proposal:

On January 27, 2009, Two Shoes entered into a contract with the Prince Creek Subdivision in which it promised to provide continuing private access to the lower portion of the 1,240 acre BLM Sopris Parcel, to restrict this area from development (a 3,000 sq. ft. house, subsequently withdrawn, could be placed on the upper area), and to pay the homeowners \$75,000 for improvements to their water system.

Two Shoe's proposed land exchange was first presented to the Pitkin County Open Space and Trails Board on February 19, 2009, and the discussion continued into the meeting of March 12, 2009. The initial proposal consisted of the following elements:

- Two Shoes would acquire the 1,268 acre BLM Sopris Parcels, which WLG asserts would be appraised at roughly \$4.2 million. Two Shoes by this time had already agreed in the Prince Creek Agreement that development would be limited to a single 3,000 sq ft house.
- Two Shoes would acquire an equitable interest in the 195 acre BLM "Lady Belle" Parcel in Eagle County, to be conveyed to other private parties for partial recoupment of Wexner's investment in Sutey.
- The Darien Ranch would acquire 102 acres of USFS lands to develop a hydro-electric facility.
- Total public lands conveyed 1,565 acres.
- The BLM would acquire the 520 acre Sutey Ranch near Mushroom Rock which WLG stated would appraise at near the \$6.5 million purchase price of Two Shoes' acquisition the year before.
- The USFS would acquire a 1 acre trail head for the Lily Lake Trail.

- Total lands conveyed to the public 521 acres.

On March 24, Two Shoes modified the proposal with an offer to enter into a contract with Pitkin County to convey the said conservation easement to Pitkin County in a form similar to that of Crystal Island Ranch if the County would agree to support the exchange.

On April 7, 2009, Two Shoes requested Pitkin County's endorsement of the proposal at a Joint Meeting of the Commissioners and Open Space Board. This meeting was attended by AVLTT, several Red Hill proponents who urged support. Others questioned the disparity in acreages. The BOCC called for a site visit including Garfield County, the BLM and the DOW, which occurred on May 21, 2009. As follow up to the site visit, on May 26, 2009, Two Shoes agreed to propose legislative language requiring BLM to complete a Sutey Ranch Planning effort within three years of acquisition, and also allowing the BLM to enlist local government or non profit assistance in the management of the property.

On July 21, 2009, the Commissioners and Open Space Board held a further joint public meeting to discuss the proposal. Two Shoes agreed to eliminate any reserved development rights on the BLM Sopris Parcels, and further agreed that the trail on the north flank of Sopris, which may cross Two Shoes land, would either be accepted or rerouted onto public land. The Darien Ranch/ USFS elements of the exchange were dropped on the eve of the meeting. (According to one treatise on the subject, "Carving Up the Commons" by Janine Blaeloch of Western Lands Project, Congressional action is needed to effect a federal land exchange only where either two federal agencies or two states are involved; hence, with the Darien (USFS) elements withdrawn, Two Shoes could have turned to the BLM for an administrative review at this point.) To contrast to our "Existing Conditions Map," the result of the Two Shoes proposal on Mount Sopris is shown on the next map entitled "Wexner Proposal." This footprint has not changed. (See Appendix A: Maps)

On August 6, 2009, the Open Space Board calendared a continuing public deliberation of the proposal. On learning that the result would likely be negative, Two Shoes requested that the issue be tabled until the proposal could be revised.

On October 1, 2009, Two Shoes delivered a modified proposal which contained an offer of a \$950,000 cash "donation" to Pitkin County, to be allocated as follows: \$100,000 to the Emma Store restoration project, \$100,000 to Redstone Castle roof repair or other historic preservation projects in Redstone, and \$750,000 to Pitkin County Open Space and Trails program for land and trail projects.

On October 15, 2009, the Open Space Board discussed the revised Two Shoes proposal. Citing a continuing dissatisfaction with the net loss of public lands, and with its belief that the exchange would result in insufficient public benefit in view of the excessive economic benefit to a private party, the Board voted unanimously to recommend that the Board of County Commissioners oppose the proposal.

Economic Equity:

One major sticking point during the course of discussions on the Two Shoes Ranch proposal has been Pitkin County's uncertainty about the basic private versus public economic fairness of the proposed exchange. As shown on the accompanying current conditions map, Two Shoes Ranch currently owns 3,944 acres of contiguous lands on which he has vested development rights for **27 homes** with a combined floor area of **206,500 sq ft.** To the best of our knowledge, Mr. Wexner's investment to date in these holdings is over \$65,000,000. Although Two Shoes has now offered to accept the BLM Sopris Parcels with no new development, we believe that the acquisition would significantly enhance the value of these adjoining properties by privatizing over two square miles of common area for recreation, grazing, and other private use.

It is well known that Pitkin County has among the highest property values in the nation.² In our experience, there are several key contributors to the higher values; large home development rights on vast private acreages command a premium in this marketplace. This phenomenon is epitomized by a current \$28,500,000 listing for a 10,000 sq. ft. single family home in Wildcat Ranch which touts "Surrounded by 6,500 acres of privately held land... hiking, horseback riding and cross country skiing on over 40 miles of trails." (See Appendix C: Wildcat Real Estate Advertisement. The perception that private versus public open space optimizes property value is further evidenced by the willingness of the Prince Creek homeowners to trade the latter for the former in the agreement attached as Appendix D.) The addition of the 1,268 acres of BLM lands to the Two Shoes Ranch holdings would result in a similarly exclusive private subdivision comprising nearly 5,212 acres and create a contiguous boundary encompassing 97% of the west flank of Mount Sopris between the Dinkle Lake turn off and the Crystal River.

The valuation of economic benefit to adjoining lands is not a mandatory element of federal land exchange appraisals. The same is not true of conservation easement valuation, where there is a long established appraisal requirement to measure such economic benefits. Treas. Reg. § 170A-14(h)(3)(i) provides that:

"(I)f the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous... If, as the result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section."

Unfortunately, this rule is lacking in the federal land exchange process. The potential bias is particularly acute where the party seeking to acquire federal land has private access to it. The

² See, e.g., the Forbes Luxury Housing Index.

standard rule of the Uniform Appraisal Standards for Federal Land Acquisitions (commonly known as the “Yellowbook”) is to appraise the property at its highest and best use on the open market, without regard to the potential economic benefit to adjacent lands. Appraisal Institute Member (MAI) and Certified General Appraiser for Colorado Mike Nash, of Nash-Johnson Associates, Inc. confirmed to County staff that these standards create an incentive for private parties to assemble lands adjacent public lands prior to seeking their disposal, where their benefit will be higher than the federal appraisal. On another occasion, WLG staff agreed that the indifference of the federal exchange appraisals to the unique value of such lands to neighboring private lands is a weakness in the standards. Ironically, although the Aspen Valley Land Trust is mindful of the “enhancement” issue when valuing the donation of conservation easements, their staff have said Two Shoes Ranch’s potential economic benefit of securing the federal lands in this context “doesn’t matter.” We disagree.

WLG now submits that the federal appraisal manual *allows* the appraiser to consider “assemblage” value, and some examples were provided. An earnest consideration of “assemblage” might address our concern about the monetary equity of the Two Shoes proposal. WLG has also proposed legislative language that would require that any surplus value gained by Two Shoes under the appraisals would require cash equalization, which Congress might additionally earmark for reinvestment in this valley. However, the federal consideration of assemblage would be discretionary, rather than mandatory as with the above cited Treasury Regulations. Further, in a legislated exchange, the appraisal information is typically unavailable for public review until after the transaction is completed, and no-one would have standing to question the appraiser’s determination on this issue. (In contrast, in an administrative exchange, there would at least be public disclosure of appraisal information before land deeds are transferred, and within an appeal period of the proposed agency decision.)

Our own experience with federal appraisals in the Ryan exchange does not give great comfort. In that instance, a federal reviewer in South Carolina made judgments about various property attributes that, in our opinion, demonstrated a lack of insight into our actual market conditions. The resulting appraisals were accepted by OST staff only because they had the effect of finally requiring the USFS to compensate the County for securing the Ryan parcel on its behalf.

At no point have the proponents of this exchange revealed any written estimates of the full economic benefit Two Shoes Ranch would receive through the acquisition of the BLM Sopris Parcels. To date, WLG has similarly refused to share preliminary appraisal information on the BLM Land, Sutey, or the Lady Belle. Their offer of additional cash consideration suggest a belief that their economic benefit would exceed their costs given their anticipation of the federal appraisal process with the original proposal. We have considered undertaking our own appraisal effort with due regard for enhancement, as would be required in the treasury regulations quoted above. However, no such work has been undertaken to date. We continue to believe for the reasons stated above that any appraisal of the BLM Sopris Parcels that does not consider the

enhancement of value to Mr. Wexner's surrounding lands would drastically understate his economic benefit from the proposed exchange.

The Sutey Ranch:

By all accounts, the 520 Sutey Ranch merits conservation, and the Pitkin County Open Space Staff and Board fully support this objective. Unfortunately, mechanisms for achieving this goal which *do not* require disposal of the Mount Sopris lands have not been seriously explored. In contrast, we note that the Aspen Center for Environmental Studies was able to acquire the Rock Bottom Ranch in Garfield and Eagle Counties, utilizing private fund raising and support from Great Outdoors Colorado (“GOCO”). Similarly, the AVLT was able to assemble funding from GOCO, the federal Farm and Ranchland Protection Program, and Pitkin County Open Space and Trails to preserve the John Nieslanik Ranch in Garfield County. To date, Garfield County has not funded open space protection, although it recently pledged \$100,000 matching funds, along with the Town of Silt, in AVLT’s effort with GOCO to secure a 210 acres for a 50 acre river park and adjacent 160 acre agricultural open space on the Colorado River near Silt.³

On July 6, 2009 Garfield County wrote to Colorado’s Congressional delegation expressing conditional support for BLM’s acquisition of the Sutey Ranch, while deferring to Pitkin County regarding issues arising from the proposed disposal of the BLM Sopris Parcels.⁴ Specifically, Garfield County conditioned its support of BLM’s acquisition of Sutey on the following points:

- 1. Protecting and enhancing wildlife and plant species as a top priority, including seasonal or other closures of all or portions of the parcel to public use as may be determined appropriate in the planning process, to protect wildlife and plant communities;*
- 2. Utilizing existing roads, ways or other areas on the parcel to locate one or more non-motorized trails to connect to and access adjacent or nearby public lands;*
- 3. Utilizing water rights appurtenant to the parcel to benefit fish and wildlife species on the parcel and/or other nearby areas of environmental concern;*
- 4. Assessing the historic significance and feasibility of preserving the historic Sutey cabin near the east end of the parcel; and*
- 5. That the mineral rights will transfer from the Sutey property to the BLM along with the water rights and the rest of the property. Once the BLM acquires the property, Garfield County supports legislation that permanently withdraws all minerals from leasing, mining and disposal under the public land laws so they will be permanently off limits to development.*

³ Similarly, Pitkin County Open Space and Trails conserved both Jerome Park and Cold Mountain Ranch, which lie partially in Garfield County, utilizing Pitkin County Open Space and GOCO funds. AVLT has also been able to preserve many other ranches in Garfield County utilizing conservation easement tax incentives. For a full listing of lands conserved within the Roaring Fork watershed in Garfield County and adjacent areas in Pitkin and Eagle County, please see Appendix E.

⁴ In quote, the letter states “Garfield County understands the land exchange contains lands in another county, and would defer to that county on issues relating to lands within their jurisdiction.”

To date, the proponents have only partially addressed these conditions by stating that their legislative proposal would include a requirement that there be a BLM management plan, and by pledging \$50,000 toward that effort. The proponents have also stated that they cannot guarantee the ultimate content of any legislation. In addition, it is not clear that the BLM has the capacity to meet these conditions. By way of comparison, a recreation planning effort on the “Crown” has been indefinitely postponed due to the transfer of BLM personnel. According Red Hill advocates, access to the Sutey Ranch would be welcomed by as many as 55,000 visitors a year utilizing Red Hill. The Pitkin County Open Space program is currently assuming some of BLM’s recreation management responsibilities in our County, such as the Wingo boat ramp, due to the BLM’s stated lack of capacity to handle recreation management in that location. Based on Garfield County’s recent refusal to accept a free conveyance of the 960 acre Elk Meadows parcel above Four Mile Canyon, due to its own lack of land management capacity, it would appear unlikely that Garfield County would similarly assist the BLM administration of the Sutey Property.⁵

Although there are presently seasonal closures on BLM’s Red Hill area, BLM’s enforcement is neither well staffed nor funded. We are also not certain whether BLM has the wherewithal to continue the irrigation on the Ranch, protect agricultural or historic resources, or ensure the long term protection of the water rights. The BLM has yet to make any commitments in regard to these issues.

Lessons from the Ryan Exchange:

The Open Space Program was introduced to federal land exchanges at the behest of the United States Forest Service, which sought Pitkin County’s assistance in acquiring the 35 acre “Ryan” parcel, which lies between the historic Ashcroft ghost town and the Cathedral Lake Trailhead. Before agreeing to purchase the Ryan parcel, Pitkin County staff undertook an exhaustive review of all potential federal exchange properties. Open Space staff spent many hours with the BLM Lands Officer Vaughn Hackett, and with USFS Lands Officer Al Grimshaw, reviewing all the federal lands in Pitkin County that might otherwise be disposed of in the coming years. A primary challenge of the Ryan exchange was identifying enough eligible federal land to allow the County to recover the purchase cost of the Ryan parcel. The lack of such lands in fact stalled the exchange for several years, resulting in a much longer County administration of Ryan than

⁵ On June 11, 2007, the Garfield County Commissioners were offered a 960 acres Elk Meadows parcel of the Bershenyi Ranch as part of a PUD application on a nearby parcel. Despite a staff recommendation to accept this property as a start for a Garfield County Open Space program, the County Commissions declined due to their reluctance to provide any administrative support for such an asset. (See Appendix F_ e.g. May 2, 2007 Letter to the Editor) Some commitment by Garfield County to assist the BLM in the administration of could alleviate concerns here.

was originally anticipated. At no time during this process did any federal official ever suggest that the 1,268 BLM acres on Mount Sopris were eligible for disposal. In fact, the BLM specifically declined to discuss disposal of any lands except a 40 acre parcel near them. The *only* other federal lands made available were 6 acres on Smuggler Mountain and 8 acres near Difficult Campground. In addition to the Ryan Parcel, the USFS also acquired 18 acres of mining claims above Smuggler. Hence, 53 acres were conveyed to the federal government in exchange for 54 federal acres (3.6% of the scale of the lands now sought by Two Shoes Ranch), for a total exchange acreage of 107 acres, or about 5% of the scale of the 1,983 acre (1,463 public to private; 520 private to public) Two Shoes Ranch proposal. The acreage in the Ryan exchange that will ultimately go into private hands is 8 acres, or 0.5% of the lands that would become private under the Two Shoes Ranch Proposal. In completing the Ryan exchange, Pitkin County was made to believe that we had cleaned up all federal lands identified for disposal with open space values in Pitkin County. Ironically, WLG now suggest that the value of the BLM's 1,268 acres is similar to the value of the 8 acre Difficult Campground parcel. Had the former been offered to Pitkin County in lieu of the latter, it is highly likely the Ryan exchange would have been differently configured.

AN ALTERNATIVE TO THE TWO SHOES PROPOSAL:

In lieu of further analytical work on appraising private economic benefits, and in the spirit of a National Environmental Policy Act alternative analysis that would apply if the exchange were being proposed by the *BLM* in the public interest, staff were asked to look for an alternative that would address some of the issues raised by the Two Shoes Ranch proposal, 1.) Economic fairness and 2.) Loss of public lands within the Crystal and Emma Caucus Areas. In the proposal below, we are mindful of the ethos that is reflected in the County's Home Rule Charter seeking no net loss of open space. This ethos was made explicitly applicable to federal land exchanges in the Emma Master Plan. We seek to further the objectives of the Crystal River Master Plan by ensuring continuing public habitat management and enhancing public access into a scenic backcountry area.

To address both of these concerns, the Open Space Department recommends that the Board of County Commissioners require as conditions of their support and endorsement of Two Shoes acquisition of the BLM Sopris Parcels that it be modified as follows; first, decrease the amount of land lost to public use by creating an approximately 931 acre Potato Bill Creek Open Space that would be comprised of the upper 395 acres of the larger BLM parcel combined with 536 acres of adjacent and remote Two Shoes lands, plus the County Open Space heretofore acquired from the BLM, as depicted on the Map entitled "Open Space Proposal."⁶ In addition, a small 7 acre parcel presently used by mountain bikes along Prince Creek Road would be conveyed as public open space. Two Shoes prior offer to allow continuation of the Thomas Creek trail on the remote southern edge of the ranch would be modified to provide that the trail will remain in its

⁶ Acreages are estimates based on County GIS information.

current location, and that fencing will be modified to allow egress for equestrians and other recreationists on this route. Finally, Two Shoes will assist Pitkin County in securing a commitment from Garfield County to assist in the development of the management plan and administration of the Sutey Ranch, consistent with the legislative authority heretofore proposed.

Consolidation of public lands around Potato Bill Creek would allow a continuation of habitat management, fuels reduction, and dispersed back-county recreation, and will allow the Colorado Division of Wildlife to better manage wildlife populations and habitat. If closed by privatization, the BLM Sopris Parcels could provide a refuge for game species much like Wildcat and lead to habitat degradation on the former public lands. The northeast boundary of the proposed Potato Bill Creek Open Space was selected to include the entirety of Potato Bill Creek, a scenic, albeit rugged, riparian area with colorful sandstone strata reflecting south. (See Appendix B for photograph of Potato Bill Creek). This Boundary would also enhance the present interface with USFS lands, and provide a public access corridor as depicted on Appendix A Map 3 connecting the area under the Nettle Creek couloir down the most gradual of available routes to the confluence of Thompson Creek and the Crystal River, where an existing County Open Space Parcel affords the possibility of a public river crossing onto County land. This corridor was identified after careful review of aerial photographs and topographic information that reveal that this would enhance dispersed recreational access for hikers, hunters, mountaineers, and other backcountry enthusiasts.

The valuation of the lands we propose to acquire would presumably be constrained by exactly the same parameters that WLG has suggested constrain the 1,268 acres they pursue; the land is unirrigated and arduous to access for developed and other recreational uses. Some is currently stripped of development rights and all of it would become so sterilized as a result of a transfer to the Open Space and Trails program through the application of the County Home Rule Charter and any additional conservation restrictions agreed by the parties. We note further that none of the 206,500 sq ft of development entitlements currently held by Two Shoes Ranch would be limited by this proposal.

Finally, the comparison of acreages gained and lost by the public would be nearly equal. Under our alternative, Two Shoes would convey 1,055 acres to the public (including Sutey), while receiving 1,068 acres, including the Lady Belle Ranch which is to be sold to private parties in Eagle County. All the lands in the exchange would be permanently withdrawn from the threat of mineral extraction, and would be under permanent conservation easements prohibiting residential development, as is the case with the existing Two Shoes proposal. Our alternative would achieve a better balance of public and private benefits, while still allowing Two Shoes to connect its holdings into a single private acreage consisting of 4,274 acres.