

From: Whittekiend, David -FS <david.whittekiend@usda.gov>
Sent: Friday, January 22, 2021 2:12 PM
To: Alan Bachman <alan@mountainwestlaw.com>
Cc: Hotze, Rebecca (Bekee) - FS <rebecca.hotze@usda.gov>
Subject: RE: CCOA response letter - File Code: 2720; 5300

Enclosed is a letter in response to your letter regarding the Notice of Non-Compliance sent to the Cardiff Canyon Owners Association.

David Whittekiend
Forest Supervisor

Forest Service

Uinta-Wasatch-Cache National Forest

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**Caring for the land and serving
people**

From: Alan Bachman <alan@mountainwestlaw.com>
Sent: Thursday, December 10, 2020 6:33 AM
To: Whittekiend, David -FS <david.whittekiend@usda.gov>
Cc: WAYNE CRAWFORD <w.crawford@msn.com>; Cyle and Kelli Buxton <buxtoncompany@comcast.net>; Tyler Foutz <Tyler@mountainwestlaw.com>
Subject: CCOA response letter - File Code: 2720; 5300

Greetings:

Please find attached a letter that went sent by mail yesterday regarding your November 18, 2020 and November 20, 2020 letters.

Please also confirm receipt of this email.

Note that further communications to the Cardiff Canyon Owners Association (CCOA) should be directed to me at the Fetzer Booth law firm.

If you have an attorney working on this matter, please advise who the contact person is.

Best regards,

Alan S. Bachman

801-440-9785

Alan S. Bachman

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File Code: 2720; 5300
Date: January 19, 2021

Dear Mr. Bachman,

This responds to your letter of December 9, 2020, concerning the November 18, 2020 Notice of Noncompliance (NONC) issued by the Forest Service to the Cardiff Canyon Owners Association (CCOA). The Notice of Noncompliance was issued pursuant to 36 CFR §251.60 and 5 U.S.C. §558(c) to provide notice and opportunity to cure noncompliance with a Forest Service special use authorization prior to the Forest Service determining if action to suspend or revoke the special use authorization for noncompliance is warranted. A Forest Service special use authorization is not a contract, it is an authorization to use and occupy federal land under specified conditions, and certain procedural formalities are required, such as issuance of the NONC) to assure that your clients are afforded adequate due process. The purpose of the NONC is to afford the CCOA the opportunity to respond to the concerns presented in the Notice, and to make adjustments to avoid initiation of an action by the Forest Service to suspend or revoke the permit for noncompliance.

Notably your response does not deny the instances of noncompliance provided in the Notice, nor does it offer to cure the instances of noncompliance identified. The Cardiff Fork Road is closed to the public by a locked gate. The only keys to the gate are in the possession of the Forest Service and your client. There is no evidence that the gate or lock were broken or otherwise tampered with. Accordingly, it is reasonable to conclude that any evidence of motor vehicle use, or road maintenance with motor vehicles, is attributable to the CCOA.

The Forest Service permit only authorizes your clients to operate motor vehicles on the portions of the Cardiff Fork Road that are closed to the public as it crosses National Forest System (NFS) land, and limits motor vehicle use to over-snow vehicles in the wintertime. As indicated in the Notice, there is considerable evidence of motor vehicle use occurring off of the road in both winter and summer, and since your clients have the only other keys to the gate, and there is no evidence of tampering with the gate, it is reasonable to conclude that your clients are responsible for this unauthorized motor vehicle use on NFS land.

The CCOA is not authorized to perform maintenance on the road without prior Forest Service approval under any circumstances. While federal regulations at 36 CFR § 251.50(b) allows temporary occupancy of NFS land in emergencies to protect life or private property, there is no indication that road maintenance was necessary to protect life or private property. Moreover, this permit exemption only applies if authorization is nonetheless obtained at the earliest opportunity and requires that Forest Service conditions be followed. Your clients did not inform the Forest Service of the road maintenance, nor provide opportunity for the Forest Service to evaluate the road work and determine if there are conditions that need to be met.



The special use authorization allows only year-round motorized access over National Forest System on forest road #019 to private land owned by members of the Cardiff Canyon Owners Association (CCOA). Accordingly, it is required that any new members of the CCOA provide sufficient evidence showing that they own land in Cardiff Canyon that pertains to the CCOA permit. Upon verification by the Forest Service, the landowner will be included in CCOA's list of Authorized Permit Users issued non-commercial ingress and egress motorized access to their private property in Cardiff Canyon per the terms of the SUP.

When the lower gate is closed for winter, the CCOA is only authorized to use over-snow motor vehicles on NFS land on the road. There have been several instances where wheeled vehicles and trailers have been observed at the Doughnut Falls trailhead parking area in the winter, in violation of the terms of the permit. As indicated, we have received numerous complaints that the CCOA is damaging the lower road through the subdivision development in the winter by driving large trucks and trailers across it, and then getting stuck causing traffic to back up. Since the homeowners are responsible for maintaining the road to Forest Service standards and to maintain access to their homes, it is fairly obvious why damaging the road is not acceptable. The SUP states the members of the CCOA SUP need to park trucks and trailers on the highway, and only use OSV across the lower road (see stipulation 13 in exhibit B).

The permit to use the road on NFS land was issued on the condition that the CCOA would allow non-motorized public recreational use on their property. "No Trespassing" signs and other obstacles to public use are posted in many locations. We have discussed reasonable measures to confine that use to designated trails and limited areas of the private property, but to our knowledge such measures have not been implemented by the CCOA members. The CCOA annual permit fees are waived because of the reciprocal use agreement; therefore, it is reasonable that private property owners identify where the public can use their private property per the terms of the reciprocal use agreement and the CCOA special use permit.

Over the years, your clients have provided numerous documents to the Forest Service in support of various title claims to roads and rights of way across NFS land. As has been communicated in response to these submissions, we have seen no evidence to support such claims of either private or public road easements or rights of way across NFS land.

Finally, the NFS land in the area is open to non-motorized public recreation. We do not know what permits you are referring to concerning non-motorized recreational use of NFS land by the public.

We are encouraged to hear that your clients are interested in complying with the terms of the permit and applicable regulations. As you are aware, the permit expires by its terms on 05/31/2022. While we have no immediate plans to initiate action to suspend or revoke the

permit, compliance with the terms of the permit, and applicable laws and regulations, will be a consideration at the time the permit comes up for reissuance in May of 2022. 36 CFR § 251.54(e).

Sincerely,

X

DAVID WHITTEKIEND
Forest Supervisor

cc: Laura Briefer, Director, Department of Public Utilities; Teresa Gray, Bureau Manager,
Bureau of Water Quality and Hazardous Waste; Greg Baptist, Stormwater Inspection Supervisor,
Greater Salt Lake Municipal Services District