

## Mount Evans amenity fee dropped for those not using facilities

By Jason Blevins *The Denver Post* *The Denver Post*  
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The U.S. Forest Service is dropping fees for Mount Evans visitors who don't use the parking lots and facilities along the country's highest paved road. After 15 years of charging every vehicle, hiker and cyclist, the Forest Service has agreed to charge only visitors who use three improved parking areas and interpretive sites.

The decision — reached late last week — settles a lawsuit filed by users who argued that the Forest Service did not have the authority to charge visitors who were accessing public lands without using the Mount Evans summit viewing platform, the Mount Goliath interpretive area and the Denver-owned Summit Lake Park.

"The Forest Service can no longer get money from people who weren't using those services," said Durango's Western Environmental Law Center attorney Matt Kenna, who argued the Mount Evans fee case before the 10th U.S. Circuit Court of Appeals last year and helped negotiate last week's settlement agreement.

The appeals court in August last year upheld a lower court ruling supporting the Forest Service's right to charge an "amenity fee," citing a technicality in the fee-challenge argument.

In February, the 9th U.S. Circuit Court of Appeals overturned a similar blanket fee charged by the Forest Service to all visitors at Arizona's Mount Lemmon, ruling that the agency incorrectly interpreted the 2005 Federal Lands Recreation Enhancement Act.

The act, which allows "amenity fees" for "high impact" recreation areas, prohibits the Forest Service from charging visitors who are simply passing through those areas without using improved facilities such as parking lots and restrooms.

"The statute thus distinguishes between merely recreating in an area and actually using an area's amenities," reads the appellate court's decision. "By ignoring the plain text, the forest service arrives at an interpretation that would enable an end-run around the clear statutory restrictions."

The agency is planning to build a through-lane that bypasses the Mount Evans welcome station along Colorado 5 and will install small fee-collection stations at each of the three improved sites.

About 169,000 people visited Mount Evans during the 2011 season.

Some visited using national parks passes. The site sold 38,861 three-day vehicle passes and 379 season passes. There were 14 season passes sold to medium tour-type vehicles and two for large vehicles. About 7,041 cyclists, motorcyclists, hikers and equestrians purchased \$3 personal three-day passes.

The fees generated about \$400,000 in 2011, said Paul Cruz, recreation program manager for the Arapaho and Roosevelt National Forests.

The Forest Service will now focus on the three developed sites, although if users begin parking on the road and trampling tender tundra, the agency may erect signs or fencing to limit impacts.

Colorado Department of Transportation spokeswoman Stacey Stegman said her department was not included in the settlement negotiations. However, Colorado 5 — a seasonal highway that typically opens in May and closes with the first significant snowfall — is "already having major problems with the edge of the road crumbling.

"If the road has eroded and it's unsafe, we are not going to allow parking alongside the road," she said.

Cruz said most visitors go to the improved sites, with about 80 percent traveling to the summit remains of the Crest House, where the agency has developed interpretive exhibits and a viewing platform. "We are going to focus our efforts to provide an experience to people who are motor-vehicle based because that is the dominant user type."

Cruz said it is difficult to predict whether the new fee structure — in place since Mount Evans reopened the day after Memorial Day — will reduce revenues. On Friday, he said early reports show revenue this year keeping pace with last year.

The Forest Service collects fees to pay for the amenities and services, and reserves some revenue for new construction and improved facilities, Cruz said.

"That was one of our issues with the fee program," said Kenna, who also argued the Arizona case. "It creates this feedback loop of bigger and fancier development that requires more fees. From our standpoint, if the Forest Service doesn't keep adding on development to these areas, that's OK with us."

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