

Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee

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May 28, 2020



Constance Cummins, Forest Supervisor
c/o Michael Jiménez, Project Leader
Superior National Forest
8901 Grand Avenue Place
Duluth, MN 55808

By E-mail to comments-eastern-superior@usda.gov

Chairman
Kevin R. Dupuis, Sr.

Re: Lutsen Mountain Ski Area Expansion Project

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dear Ms. Cummins:

Dist. I Representative
Wally J. Dupuis

The Fond du Lac Band of Lake Superior Chippewa (the "Band") has reviewed and provides the following comments in response to the scoping document notice which was published in the Federal Register on April 28th, 2020.

Dist. II Representative
Bruce M. Savage

The Band provides these comments pursuant to 36 CFR § 218.5 and as an "entity" as defined under 36 CFR § 218.2. The Band is a federally recognized Indian tribe with a reservation just south of the Superior National Forest (the "SNF"). Through the Treaty of 1854, the Band reserved hunting, fishing, and gathering rights throughout the 1854 ceded territory, which substantially overlaps with the SNF. See *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999). The Lutsen Mountains Corporation (LMC) has applied for a special use permit (SUP) for approximately 500 acres of SNF land adjacent to the Lutsen Ski Resort; these SNF lands described in the SUP application are located entirely within the 1854 ceded territory.

Dist. III Representative
Roger M. Smith, Sr.

Executive Director,
Tribal Programs
Miyah M. Danielson

Executive Director,
Tribal Enterprises
Terry Savage

The Band has significant concerns with the proposed reduction of lands available for use by Band members in exercising their treaty rights and questions whether it is appropriate to grant a SUP for the limited benefit of a few and to the detriment of the Band's treaty rights. The Band can exercise its treaty-reserved rights on most state and federal lands. This includes the SNF lands subjected to the proposed SUP applied for by LMC. The Band's ability to exercise those rights within those approximately 500 acres would be greatly reduced, if not totally eliminated, if the Forest Service grants the SUP as applied for by LMC or allows use of the land in a manner inconsistent with hunting, fishing, and gathering activities. Specifically, the clearing of lands, the erection of structures and chairlifts, and the cutting and building of roads and parking lots would significantly change the character of the land and

Ms. Constance Cummins
Lutsen Mountain Ski Area Expansion Project
May 28, 2020
Page 2

would prevent Band members from exercising their treaty rights in ways consistent with traditional and past practices. Moreover, it is clear from the Forest Service scoping document that any land within the SUP application will effectively become private property and will be unavailable to Band members to exercise their rights.

The Forest Service has failed to provide the Band with information necessary for the Band to make an informed and reasoned evaluation of the impact of the proposed expansion on the exercise of the Band's treaty rights. The Band asks the information to be provided as previously agreed before any comment period is closed.

The Forest Service and Band leadership met on October 11, 2019 to discuss several issues to include the LMC proposed expansion. During the meeting, the Forest Service committed to providing the Band with information necessary to better understand the impact of the possible proposed SUP. Specifically, the Forest Service committed to exploring and providing the following deliverables to the Band:

- Potential mitigations for the loss of project lands to exercise tribal treaty rights;
- Comments on whether specific areas of the SNF could be set aside for the exclusive use of band members to exercise treaty rights;
- A determination on whether funding could be made available to fund a Tribal cultural survey by the Band in concert with the project; and,
- Other information not germane to the LMC SUP but still important to the Band.

Thus far, the Forest Service has not given the Band any of the information which it had committed to providing. The Band fully expects to be able to participate in any discussions about the expansion of any major commercial development in the ceded territory; however, the Band is unable to effectively participate without being provided timely and pertinent information when requested. In the situation at hand, the Forest Service has asked for comments from interested parties without fulfilling its obligation to provide the information necessary to comment in a meaningful manner. Before the Forest Service moves forward with closing the comment period or taking objections to the proposed SUP, the Forest Service must provide the Band with the previously agreed upon information and extend the comment period.

If the Forest Service grants the SUP it will effectively reduce and further limit the amount of land available for Band members to hunt, gather, and fish and will speed the loss of an already diminishing resource under pressure through climate change and other challenges. The Forest Service must consider the cultural and financial impact to the Band of any loss of the critical and unique sugar maple bush encompassed in the proposed SUP.

Any reduction of forest land for commercial development will do nothing but speed the reduction of sugar maple bush in the ceded territory which is already under threat from climate change. The land available to the Band to exercise its treaty rights is a limited and finite resource which is under constant pressure from a variety of external factors, which include invasive species, disease and pests, changes in soil composition, overuse, and commercial development. However, of all the challenges the ceded territories face, climate change is likely the greatest single threat. Already, projections show over the next 50 years, the ceded territories are facing a significant increase in both temperature and precipitation across all seasons, with both factors having a significant impact on the biological character of the forest within the territory. Specifically, these changes will cause a northward shift of mixed hardwood forests and a likely reduction in the population of the sugar maple throughout the ceded territory. This change combined with the premature culling of healthy mature trees to make way for development within the area of the proposed SUP will only hasten the reduction of the sugar maple in the ceded territory and harm the Band's treaty rights.

The Band thinks it is appropriate for a cultural survey be conducted before the granting of any SUP within the ceded territories. Ojibwe peoples have gathered sap and prepared maple sugar for centuries, and both are intrinsically woven in the fabric of Ojibwe culture. Families gather and collect sap every spring and pass those skills necessary to collect and process the sap on from one generation to the next. This tradition does not just feed us but links us to those which came long before us and those which will come after us. I cannot overstate the importance to the Band of this cultural connection to both our past and our future. Maple sugaring was a skill in decline for many years, but the Band has seen a resurgence in interest and an increase in production of maple sugar by Band members. This renewed interest is a key part of the Band maintaining its cultural identity, an identity which is under constant threat from many external sources, not least of which is an inability to exercise traditional gathering. If the Forest Service moves forward with a SUP for LMC they must take in to account, the harm which will be done to the cultural identity of the Band and balance that harm against any short-term financial gain by the few owners of LMC.

The Band will be potentially hurt financially by the granting of the SUP. The proposed expansion area includes a 54-acre maple sugar bush which is productive and healthy. Maple sugar is not only a source of food for the Band and its members, but also a potential revenue or income source, particularly in this age of people recognizing the value of locally sourced and naturally produced products. Historically, gaming has generated much of the revenue necessary for the provision of basic services to Band members. However, with COVID-19 forcing the temporary closure of casinos it has become clear the Band must have other sources of revenue;

maple sugaring is a necessary component of diversifying the Band's revenue generating capacity. The Band is not simply in business for businesses sake or for profit; the Band generates revenue to serve Band members and provide for the health of the community. The Band cannot rely on others to provide for us, nor can we impose taxes to meet our obligations to our members. Maple sugaring has the potential to be a major income source for the Band and for enterprising Band members. Moreover, the area of proposed expansion is a healthy and productive forest with economic value to the Band and Band members. The Forest Service will likely further erode the ability of the Band to provide for its members if it grants the SUP to LMC. The Forest Service must consider both the short- and long-term economic impact on the Band and its members if it were to further reduce the land available to the Band to exercise treaty rights.

A SUP will permanently change the landscape and will forever and fundamentally change the character of the affected forest land. The infrastructure requirements for any proposed expansion of the ski area will be significant; waterlines, powerlines, parking lots, power infrastructure, etc. will be required and will not simply disappear if the ski area is abandoned in the future. This will result in a real long-term loss in value of forest for not only the Band and other native peoples, but a loss for the other communities as well. The overall economic value of the forest will be reduced, the aesthetic beauty of the natural forest degraded, and the Band's rights infringed upon.

The Forest Service has failed to consider whether any expansion of LMC property is necessary or economically viable. The Band contends there is no demonstrated need for the expansion, and instead LMC is simply seeking more land.

The Forest Service accepts LMC's claimed necessity for ceded territory to expand as correct without having required LMC to demonstrate 1) the proposed changes and SUP are actually necessary for the ski area's survival and competitiveness in the Midwest ski market, 2) LMC is unable to meet its survival and competitiveness goals through use of its current land; 3) the amount of land being asked for LMC is the minimal amount required to meet its survival and competitiveness goals; and, 4) the proposed expansion of the ski area is economically viable. The Band does not believe LMC has demonstrated any existential necessity for expansion of its current facility, and if the necessity does actually exist, LMC has failed to show it could not achieve its goals on the land it already possesses. Furthermore, LMC has proposed an arbitrary expansion without explaining or otherwise providing any market research which indicates the proposal is "right-sized" for the desired outcome, or even what the outcome is. Instead, LMC is pursuing a "We need more land, trust us" approach without adequately providing a real justification for their request. Unfortunately, this approach infringes upon lands upon which the Band has treaty rights, and the Band maintains any effort to diminish these rights must meet a higher standard.

Ms. Constance Cummins
Lutsen Mountain Ski Area Expansion Project
May 28, 2020
Page 5

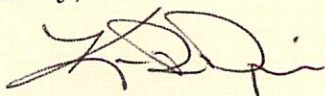
In the absence of evidence to the otherwise, it appears LMC has arbitrarily sought to increase the size of its facility in either a misplaced belief they will become competitive in an already difficult ski-resort market or to add value to their holdings in the event of a sale. The Band does not believe the market as it exists can support a ski-resort of the type proposed by LMC in its SUP request; indeed, anecdotal evidence in the media suggest financial difficulties in the ski industry which will likely be exacerbated by shorter, warmer winters. In addition, the Band has concerns as to whether there exists a sufficient population base in the Lutsen area to meet any employment needs an expansion would likely demand. The seasonal low-paying jobs which would be created would not be attractive to the local population; the expansion would simply benefit a few persons and would not be beneficial to the region. The Forest Service cannot in good conscience take LMC's claim on face value and must instead demand LMC demonstrate the need for the SUP and the need for land beyond what they already own. Only then, can the Forest Service balance the harm to the Band and the its members against the supposed benefits to LMC.

The Forest Service must take into account the state of the land currently under use by LMC within the Lutsen Ski Area; specifically, how problems which currently exist with erosion, water quality, and increased sediment loading in local creeks and other drainage would be further exacerbated by the clearing of important forest land.

The Band does not have confidence LMC will exercise the necessary environmental practices to ensure the protection of the surrounding environment. Erosion has been a long existing problem on the current ski resort property; any hillside clearing of forest and other terrain for the construction of ski hills will only add to the problem. Moreover, this clearing of forest land will likely contribute to increased run off into creeks and other drainage and reduced water quality in the surrounding waterways. The long-standing issues with Poplar Creek have only recently been addressed; the proposed expansion would only undo the progress which has been made in improving the water quality of the creek and surrounding waters. Given the present state of current LMC property, the Forest Service must consider the environmental impact of the proposed SUP and the ability of LMC to mitigate these impacts on both the affected and surrounding land.

Thank you for the opportunity to present these comments. I hope the Forest Service seriously considers the negative impact any expansion of a private ski resort onto the ceded territories will have on the Band and its members.

Sincerely,



Kevin Dupuis, Sr.
Chairman