



October 8, 2020

Mel Bolling
c/o Jay Pence, Teton Basin District Ranger
Teton Basin Ranger District
P.O. Box 777
Driggs, ID 83401

Re: Grand Targhee Master Development Plan Projects

Submitted online at <https://cara.ecosystem-management.org/Public//CommentInput?Project=58258>

Dear Forest Supervisor Bolling,

Thank you for the opportunity to provide scoping comments in response to the Notice of Intent for the Grand Targhee Master Development Plan Projects. Winter Wildlands Alliance (WWA) is a national non-profit organization whose mission is to promote and protect winter wildlands and quality human-powered snowsports experiences on public lands. Our alliance includes 34 grassroots groups in 16 states - including groups with a specific interest in this project such as Teton Backcountry Alliance, Teton Valley Trails and Pathways, and Wyoming Wilderness Association - and has a collective membership exceeding 130,000. Many of our members ski at Grand Targhee as well as in backcountry areas that would be impacted by the Proposed Action.

National Policies

The Ski Area Outdoor Recreation Enhancement Act (SAOREA) and Forest Service Manual (FSM) provide direction on what activities and developments are permissible concerning ski areas operating on Forest Service lands. Under SAOREA, "Each activity and facility authorized...shall (A) encourage outdoor recreation and enjoyment of nature; (B) to the extent practicable (i) harmonize with the natural environment of the National Forest System land on which the activity or facility is located; and (ii) be located within the developed portions of the ski area"¹ SAOREA also mandates that authorized activities and facilities shall encourage outdoor recreation and enjoyment of nature. As this DEIS is developed, we encourage the Forest Service to consider that not all activities that occur outside necessarily further the enjoyment of nature and to be discerning in determining what types of infrastructure fit within this restricted category.

Section 2343.11(2) of the FSM states that "Any expansion of a ski area permit boundary must be based solely on needs related to snow sports." We appreciate that the summer activities proposed by Grand Targhee Resort would occur only within the resort's existing Special Use Area permit boundary.

FSM §2343.14(1)e1 states that recreation and facilities at ski areas must harmonize with the natural environment of the site where they would be located by being visually consistent with or subordinate to the ski area's existing facilities, vegetation and landscape. Based on the maps provided with the scoping

¹ Ski Area Outdoor Recreation Enhancement Act §3



notice and on grandtargheeresorteis.org, it appears that many of the facilities and structures listed in the Proposed Action will visually dominate the landscape. The DEIS must include a viewshed analysis that considers how new infrastructure – including ski lifts, ski runs, restaurants, and other facilities – will be visible from the surrounding area. This viewshed analysis can help the Forest Service to determine whether any of the proposed new development is consistent with the ski area’s existing facilities, vegetation and landscape.

FSM 2343.14(1)g directs that activities and associated facilities at ski resorts increase utilization of snow sports facilities and not require extensive new support facilities, such as parking lots, restaurants, and lifts. The expansion plans in the proposed action require considerable new support facilities, including lifts, roads, and restaurants. This conflicts with FSM direction and must be addressed in the DEIS.

Special Use Permit Area Boundary Expansions

As you work with SE Group to develop the draft Environmental Impact Statement, we urge you to develop a wide range of diverse alternatives that will provide you with the necessary information to make a decision that is satisfactory for all stakeholders and respectful of the unique natural environment in which Grand Targhee Resort is located. At least one of these alternatives – beyond the no action alternative - should not include any expansion into South Bowl.

Backcountry skiers have long enjoyed public access to South Bowl. This area is accessed by skiers either by leaving the Grand Targhee Resort boundaries, or snowmobiling or skiing up Teton Canyon road. Because it is more remote than other popular backcountry areas in this area (such as Teton Pass), skiers can often find solitude and untracked snow in South Bowl even on perfect “powder days”. If the resort were to expand into South Bowl, longstanding public access would be lost. In exchange, access to South Bowl would be limited to those who pay to ski at the resort. The DEIS should include a discussion of the history and value of backcountry skiing in South Bowl. The DEIS should also discuss how each alternative would, or would not, affect this use and associated benefits.

The DEIS should also include at least one alternative beyond the no-action alternative that does not permit expansion into the Mono Trees area. While this area is not as popular with backcountry skiers as South Bowl, an alternative that does not include resort expansion into Mono Trees is necessary to understand the consequences (for other recreation uses as well as for wildlife) of permitting resort activities in this area so that the agency can make an informed decision. The Mono Trees area is particularly important for wildlife – including wintering moose - and the DEIS must address the consequences of converting this intact habitat into a ski area.

Backcountry skiing is the fastest growing segment of the snowsports industry. According to the Snowsports Industry Association (SIA), participation in backcountry skiing grew by 84,000 people between the winters of 2015/16 and 2016/17, while resort skiing *decreased* by 492,000 participants.² SIA’s reports also show that 1.354 million people went backcountry skiing or splitboarding in the United

² Snowsports Industries America 2017 Snow Sports Market Intelligence Report (Attachment 1). More recent data is not available. These numbers do not account for skiers and snowboarders who access the backcountry from lift-served terrain (3.210 million users in the 2016/2017 season).



States during the 2018/19 season.³ The Teton region is a world-famous backcountry destination and one can assume the percentage of skiers accessing the backcountry on the Teton Basin district is disproportionately higher than the percentage of skiers accessing the backcountry nationally. The DEIS should include an analysis that compares trends in backcountry skiing and splitboarding in the Teton region with trends in ski resort visitation. This analysis should include both an examination of these trends on the Teton Basin district as well as in the larger Teton region. As part of this DEIS, we also request that the Forest Service collect data to understand past and current backcountry use in the proposed expansion areas as well as model projected future use in these areas if elements of the Proposed Action are or are not implemented.

We are concerned that if the Proposed Action were to be implemented, expansion of Grand Targhee Resort will displace backcountry skiers and splitboarders who currently enjoy access to the Caribou-Targhee National Forest in both South Bowl and Mono Trees. Given the high level of backcountry recreation that occurs in these areas, particularly South Bowl, this displacement will likely lead to conflict with other users and user groups (including snowmobiling) elsewhere on the Teton Basin district or in the Teton region. This is a common concern with ski area expansions. For example, when the Forest Service approved an expansion plan for Lookout Pass ski area on the Montana/Idaho border, both snowmobile and backcountry ski advocates objected to the decision on the grounds that the Forest Service's decision shrunk the amount of terrain available to backcountry users, exacerbating existing use conflict.

We are also concerned about impacts the Proposed Action could have on the adjacent Jedediah Smith Wilderness. Currently, resort operations have a relatively low impact on backcountry users in the Wilderness. While the resort shares a boundary with the Wilderness, this boundary is primarily a very large cliff, limiting access points and audio and visual impacts from resort operations. The Proposed Action, however, includes a substantial increase in Wilderness land that would be bordered by the resort and this extended boundary would be along a less dramatic barrier. This could greatly increase audio and visual impacts in the Wilderness, which will affect backcountry recreationists and wildlife. The DEIS should include both viewshed and soundscape analyses as well as a discussion of these analyses to assist agency staff and the public in understanding possible impacts. These analyses should consider cumulative impacts from existing activities associated with the resort (including helicopter tours) in addition to impacts related to the alternatives in the DEIS.

The DEIS must also consider how the proposed expansion might increase backcountry ski use in the Jedediah Smith Wilderness. The South Bowl expansion would increase the amount of Wilderness bordered by the resort and facilitate several new/easy access points into the Jedediah Smith Wilderness (such as at the headwaters of Miles Creek and the ridge dropping into the North Fork of Teton Creek). Snowsports Industries America reports confirm what many who ski in the backcountry already suspect – backcountry use is far greater in areas that can be accessed from lift-served terrain (aka “sidecountry” areas).⁴ If more people skiing at Grand Targhee Resort as a result of the Master Development Plan

³ Snowsports Industries America 2018-2019 Participation Study (Attachment 2). More recent data is not available.

⁴ For example, see Snowsports Industries America 2017 Snow Sports Market Intelligence Report. Skiers and snowboarders who access the backcountry from lift-served terrain vastly outnumber other backcountry skiers and



projects (as appears to be the intent of these proposals), it is logical to assume that more people will be accessing the Wilderness from the resort. Likewise, it is logical to assume that if the ski resort expansion provides new opportunities for people to access the backcountry (via an elongated boundary and new access points), backcountry skiing and splitboarding in Wilderness areas that are newly adjacent to the resort will increase. The DEIS must analyze what impact this increased use – stemming from more skiers at Grand Targhee as well as from additional access opportunities - will have on opportunities for solitude as well as other impacts to Wilderness character. We fully support open gates at ski areas, and in fact would like the DEIS to include detailed plans for future backcountry access gates and policies at Grand Targhee Resort, but we are also cognizant of the impact our activities can have on things we value, such as Wilderness. Sometimes, the best way to manage these potential impacts is to not increase opportunities for easy access into sensitive areas, like the Jedediah Smith Wilderness. At the same time, considering that the South Bowl expansion would eliminate public access to longstanding and valued backcountry ski terrain, *if* the Forest Service were to approve this expansion the agency *must* stipulate that the resort allow access onto public lands adjacent to the resort (open gates). To do otherwise would further restrict existing access to lands currently utilized and valued by the backcountry ski community. The best solution, however, for preserving public access and protecting Wilderness character is to not permit expansion of Grand Targhee Resort into South Bowl.

Any ski resort expansion has long term effects on the public lands that are developed, as well as adjacent lands. These effects can outlive the resort itself. Meanwhile, our winters are changing rapidly – snowpacks are becoming less reliable and “skiable” snow is moving up in elevation. The DEIS must include climate and snowpack projections to help the Forest Service, the public, and the resort understand if the areas being considered for expansion will remain viable for winter sports far into the future. If projected temperatures and snowpack for these areas under scientifically-valid future climate scenarios are not amenable to supporting ski resort operations, then there is no reason to permit either expansion (into Mono Trees or South Bowl).

Finally, the DEIS must carefully consider how the Proposed Action and other alternatives will impact wildlife. Specifically, we are concerned that expanding the permit area boundaries will have negative repercussions for bighorn sheep, moose, mule deer, elk, and birds of prey. Each of these species (or groups of species) have unique sensitivities. For example, it is well documented that there is a mineral lick on the south side of Teton Canyon that is important for bighorn sheep, and that sheep are extremely sensitive to human disturbance. Resort activities in South Bowl will likely conflict with protection and management of the highly threatened Teton bighorn sheep herd. Bighorn sheep in the Jedediah Smith Wilderness could also be stressed and displaced by an increase in backcountry winter recreation stemming from new opportunities to access the Wilderness from lift-served terrain. Moose, elk, and mule deer who inhabit the proposed expansion areas could be displaced into less suitable habitat. Owls and other raptors, meanwhile, could be significantly impacted by increased light, noise, and habitat loss associated with the Master Development Plan projects. The Mono Trees area is quite close to an area of the forest that is closed to all human entry in winter to protect wildlife and we are concerned that ski resort operations in Mono Trees will have a detrimental effect on wildlife within the closure area. The DEIS must also address impacts to rare or threatened carnivores, such as grizzly bears, lynx, and

snowboarders (3.210 million people skied lift-access backcountry terrain versus 928,000 backcountry skiers who were not in lift-access terrain in the 2016/2017 season).

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wolverine. In particular, we are unsure of how the proposed expansions would comply with the Northern Rockies Lynx Amendment guidelines, as incorporated into the Caribou-Targhee Forest Plan.

There are surely other wildlife species that would be impacted by all, or some, elements of the Proposed Action and the DEIS must provide a thorough examination of all possible impacts as well as a range of alternatives providing options to limiting impacts to wildlife. Unlike many ski resorts, Grand Targhee is located adjacent to Wilderness and very near a National Park. It is also within the Greater Yellowstone Ecosystem. This is a special, and ecologically sensitive, place. For these reasons, the Forest Service must carefully consider how any changes in resort activities or new developments will affect wildlife and ensure that the final decision regarding this project does not harm the area's myriad wildlife species.

New Infrastructure

In addition to the proposed Special Use Permit area boundary expansion, we are also concerned about other elements of the Proposed Action, such as the proposed restaurant on the summit of Fred's Mountain. Driggs and Victor are Dark Sky Communities that take pride in preserving the visibility and integrity of the night sky in Teton Valley. A mountain-top restaurant, which would need to be lit at night for cleaning if not other reasons, would be visible for miles in all directions. This, and other new development at the ski resort would likely increase light pollution in Teton Valley and within the Jedediah Smith Wilderness. Backcountry skiers camping in the Jedediah Smith Wilderness would no longer be able to enjoy uninterrupted dark skies at night. The DEIS must include an analysis of how each alternative will impact dark skies in Teton Valley communities as well as on nearby National Forest and National Park lands.

FSM 2340.3(3) directs the Forest Service to deny proposals to construct facilities and services on National Forest lands if these facilities and services are available in the general vicinity. There are already 7 restaurants or other dining options at Grand Targhee Resort. While FSM 2343.4(1) does direct the Forest Service to authorize concessioners to provide food at temporary dining facilities that are part of a resort operation, the scoping notice does not adequately describe why additional facilities are necessary, nor is it clear how the proposed new on-mountain restaurants fit within the definition of a *temporary* dining facility. The DEIS must describe how each alternative does, or does not, comply with FSM 2340.3(3).

The scoping letter states that water for increased snowmaking associated with the expansion project will come from groundwater wells. We are concerned that this additional groundwater pumping could have a significant impact on aquifer levels. The DEIS must include an analysis describing how additional groundwater pumping will impact water resources and supply in Teton Valley. Before making a decision pertaining to an increase in snowmaking capacity, the Forest Service must analyze various options in addition to what the resort has proposed. The DEIS should include an alternative – beyond the no-action alternative - that does not increase snowmaking capacity at Grand Targhee Resort, as well as at least one alternative that increases snowmaking to a different level than what is included in the Proposed Action in order to determine whether additional snowmaking is sustainable, and if so, what amount of additional snowmaking is sustainable.



Forest Plan Amendments

Expansion of Grand Targhee Resort's Special Use Permit area boundary into South Bowl and Mono Trees would necessitate an amendment to the 1997 Targhee Forest Plan. We strongly discourage the Forest Service from amending its forest plan simply to accommodate a development proposal. Forest plans are intended to be long-term guiding documents for the forest, written with a holistic view of forest management. Forest plan revision is a lengthy public process that requires significant public buy-in and participation. Amending forest plans to reduce protections to accommodate the desires of a private company can undercut public trust in the Forest Service and willingness to participate in future forest plan revisions. Rather than approve actions that necessitate forest plan revision, we urge the Caribou-Targhee to adhere to its current forest plan and focus on the Master Development Plan projects within the current Special Use Permit boundary.

If the Caribou-Targhee National Forest proceeds with a forest plan amendment, the amendment is subject to the 2012 planning rule provisions at 36 C.F.R. part 219, and not the provisions of the 1982 planning rule under which the current forest plan was developed.⁵ In addition, any amendments will need to comply with the amendment provision of the 2012 planning rule, which outlines how to amend forest plans written under the 1982 rule.⁶ The proposed plan amendment in the Proposed Action would be directly related to the substantive requirements within §§ 219.8 through 219.11 of the 2012 Rule, and therefore the Forest Service must ensure that the amendment(s) satisfies these requirements. These requirements include providing for ecological sustainability by "maintain[ing] or restor[ing]": (a) "the ecological integrity of terrestrial and aquatic ecosystems and watersheds," including "structure, function, composition, and connectivity;" (b) air and water quality, soils and soil productivity, and water resources; and (c) "the ecological integrity of riparian areas," including their "structure, function, composition, and connectivity."⁷ Plans must also provide for: (a) "the diversity of plant and animal communities;" (b) "the persistence of native species;" and (c) "the diversity of ecosystems and habitat types."⁸ In providing for social and economic sustainability, plans must account for "[s]ustainable recreation; including recreation settings, opportunities, and access; and scenic character."⁹ The decision document for the plan amendment "must include . . . [a]n explanation of how the plan components meet [those substantive] requirements."¹⁰

In addition to its substantive provisions, the 2012 planning rule prescribes the process for a plan amendment. The process for amending a plan includes: preliminary identification of the need to change the plan, development of a proposed amendment, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan amendment. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the

⁵ 36 C.F.R. § 219.17(b)(2) (following a 3-year transition period that expired May 9, 2015, "all plan amendments must be initiated, completed and approved under the requirements of this part").

⁶ 36 C.F.R. § 219, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd527654.pdf

⁷ 36 C.F.R. § 219.8(a).

⁸ 36 C.F.R. § 219.9.

⁹ 36 C.F.R. § 219.8(b)(2).

¹⁰ 36 C.F.R. § 219.14(a)(2).



amendment and its likely effects.¹¹ All of these 2012 planning rule prescriptions would need to be complied with if the Caribou-Targhee were to revise the forest plan to accommodate Grand Targhee's expansion plans.

NEPA

Finally, we want to address the NEPA process itself. Since 1978, federal agencies have been required to follow Council on Environmental Quality (CEQ) regulations when implementing the National Environmental Policy Act (NEPA). Over the vocal objections of states, members of Congress, conservation, environmental justice, and public health organizations, and the general public, CEQ recently issued a new rule rewriting the entirety of its 1978 regulations.¹² The new CEQ rule upends virtually every aspect of NEPA and its longstanding practice, contradicts decades of court interpretations of NEPA's mandates, and undercuts the reliance placed on NEPA by the public, decision-makers, and project proponents. It does so by limiting the scope of actions to which NEPA applies, eviscerating the thorough environmental analysis that lies at the heart of the statute, reducing the ability of the public to participate in federal agency decision-making, and seeking to limit review of agency NEPA compliance.

The new CEQ rule directs agencies to revise their NEPA procedures to eliminate inconsistencies with the final rule by September 14, 2021. In the interim, if existing agency NEPA procedures are inconsistent with the revised CEQ regulations, agencies must follow the new CEQ rule.¹³ While the Forest Service proposed a significant revision of its part 220 regulations in June 2019,¹⁴ both the agency's existing regulations and its proposed new regulations are inconsistent with CEQ's final rule.

The legality of the new CEQ rule is being challenged in a number of federal lawsuits, including one brought by WWA as part of a diverse coalition of national and regional environmental justice, outdoor recreation, public health, and conservation organizations that rely on NEPA to protect their varied interests in human health and the environment.¹⁵

As of September 14, 2020, agencies are required to apply the final rule to *new* NEPA processes. However, agencies have discretion to continue applying the previous CEQ regulations¹⁶ to ongoing NEPA processes begun *before* September 14, 2020.¹⁷ With respect to this process, which was noticed on August 26, 2020, the Caribou-Targhee National Forest should not apply the final CEQ rule. Doing so will create significant confusion for the Forest and the public, legal liability, and harm to the public's interest.

¹¹ 36 C.F.R. § 219.5(a)(2)(ii); *see also id.* § 219.13(b)(1) (explaining that "[t]he responsible official shall . . . [b]ase an amendment on a preliminary identification of the need to change the plan").

¹² 85 Fed. Reg. 43,304 (July 16, 2020), codified at 40 C.F.R. Part 1500

¹³ *Id.* § 1507.3(a)

¹⁴ 84 Fed. Reg. 27,544 (June 13, 2019)

¹⁵ *Alaska Community Action on Toxics v. CEQ*, No. 3:20-cv-05199 (N.D. Cal. July 19, 2020); *see also Wild Virginia v. CEQ*, No. 3:20-cv-00045-NKM (W.D. Va. July 29, 2020); *Environmental Justice Health Alliance v. CEQ*, No. 1:20-cv-06143 (S.D.N.Y. Aug. 6, 2020).

¹⁶ 40 C.F.R. Part 1500 (1978)

¹⁷ 40 C.F.R. § 1506.13 (2020)



It would be highly inefficient for you to begin implementing the CEQ's sweeping changes in the absence of Forest Service-specific policies, procedures, guidance, and training. Layer on top of those inefficiencies the massive challenges with interpreting and applying the Trump Administration's significant and far-reaching rollback, and it is a recipe for chaos, wasted taxpayer dollars, and litigation. This is especially true because the final CEQ rule creates conflict with governing case law, agency regulations and guidance, and longstanding practices that the public, decision-makers, and the courts have relied on for the past four decades.

Given the highly uncertain fate of the final rule – with pending legal challenges and a potential change in administrations – the Forest Service and Grand Targhee Resort would be wise not to jeopardize or delay this ongoing decision-making processes by injecting additional and unnecessary uncertainty. In short, continuing to apply the 1978 regulations is the path to certainty, given your discretion to do so with respect to this process, which was clearly initiated before September 14, 2020.

We look forward to continuing to engage with you throughout this process, and to reviewing the draft EIS upon its publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen". The signature is fluid and cursive, with a large initial "H" and "E".

Hilary Eisen
Policy Director