



October 9, 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 this opportunity to provide comments regarding the Grand Targhee Master Development Plan projects. Please accept the following comments on behalf of the Wyoming Wilderness Association, a nonprofit education, stewardship and advocacy organization dedicated to protecting Wyoming's public wildlands. Our organization represents nearly 6,000 members and supporters from across Wyoming and the United States. This community is made up of conservation and outdoor enthusiasts including skiers, hikers, horsemen, hunters, anglers and motorized and mechanized recreationists who value Wyoming's public wildlands. WWA is involved in statewide efforts to protect the last remnants of wilderness-quality lands and voice the importance and value of these wild places. We have been involved with Grand Targhee development decisions in the past due to its proximity to the Jedediah Smith Wilderness area, and appreciate your consideration of our comments regarding the current project components.

Despite a myriad of valid concerns spanning from the possible displacement of backcountry skiers from South Bowl, to the impacts to wildlife e.g. lynx¹ and bighorn sheep from new ski trails, lift construction, and an increase in users; Wyoming Wilderness Association will focus our comment on just three major issues most directly related to our mission of protecting Wyoming public wildlands:

1. Impacts to the Jedediah Smith Wilderness as a result of the proposed South Bowl expansion
2. Inappropriate intentions to amend the 1997 Revised Caribou-Targhee National Forest plan
3. Inefficiency of applying the new CEQ NEPA changes to this process

We respect the need of a ski resort to remain viable, and appreciate that Grand Targhee Resort is truly an asset within the Teton Valley community. We believe that a plan can be developed that both respects the wildlands and wildlife surrounding the resort, and that also meets the needs of the resort itself.

¹ [Winter recreation and Canada lynx: reducing conflict through niche partitioning](#)

Impacts to the Jedediah Smith Wilderness as a result of the proposed South Bowl expansion.

We understand that the Wyoming Wilderness Act of 1984 in designating the Jedediah Smith Wilderness explicitly states the prohibition of buffer zones:

“Congress does not intend that the designation of wilderness areas in the State of Wyoming lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from within any wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.”²

One could assume this as a green light for Grand Targhee Resort to expand freely up to the boundary of the Jedediah Smith. We defend however, that the concern here is not one regarding buffer zones, but instead the impacts to the Jedediah Smith’s wilderness character. Degradation to opportunities for solitude, primitive recreation and physical and mental challenge will result from an increase in use of and access to the Wilderness as provided by the South Bowl expansion, including the ski lift and snowcat project components. Skiing in and of itself is a celebrated form of primitive recreation, and when Wilderness is accessed via human power for the purpose of skiing, the law is being upheld. However, when these protected lands are accessed by lift or snowcat, this clear management parameter, that reserves these lands for primitive recreation, is neglected. Recall that explicitly stated in the Wyoming Wilderness Act of 1984 is the Forest Service’s responsibility to manage the Jedediah Smith Wilderness as to preserve these qualities for all Americans, and not turn a blind eye to this responsibility for the benefit of a private ski resort (a commercial enterprise) and its paying customers:

“The purposes of this Act are to -- designate certain National Forest System lands in Wyoming for inclusion in the National Wilderness Preservation System in order to preserve the wilderness character of the land and to protect watersheds and wildlife habitat, preserve scenic and historic resources, and promote scientific research, primitive recreation, solitude, physical and mental challenge, and inspiration for the benefit of all of the American people.”³

It is also apparent, when first snowcats and then new ski lifts bring Grand Targhee paying customers to the designated locations as outlined in the winter use maps for the South Bowl expansion, that these paying customers will exit the boundaries of the ski resort and in doing so access a commercial experience within lands protected as Wilderness, easily returning to the motorized convenience of a lift or snowcat to repeat the experience due to the purchase of such services. The access of the Wilderness via the resort’s commercial lift and snowcat services would also conflict with other clear management outlined in the Wilderness Act of 1964 that prohibits *commercial enterprise* from occurring within any Wilderness area:

“Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act.”⁴

² 1984 Wyoming Wilderness Act, Sec. 504.

³ 1984 Wyoming Wilderness Act, Sec. 102. (b)(1)

⁴ 1964 Wilderness Act, pg. 5

Opportunities for solitude, as well as opportunities for primitive recreation, and physical and mental challenge, are currently preserved within the Grand Targhee Special Use Permit (SUP) boundaries as they exist today. Expanding into South Bowl, would bring the boundary of the resort adjacent to the boundary of the Wilderness (without natural barriers like the substantial cliff currently protecting the adjacent Wilderness along the backside of the resort), and would put new, undue pressure on the Jedediah Smith Wilderness, as well as the Caribou-Targhee National Forest staff resources in place to protect the wild character there. An increased human presence and an ease of access to areas within the Wilderness that have not been easily accessed before, pose a tremendous threat to these lands. Recent Snowsports Industries America reports show that backcountry use is far greater in areas that can be accessed from lift-served terrain, also known as side-country.⁵ The intended result of the current Master Plan is to increase the number of paying customers at the resort. Draft SUP expansions will increase opportunities for people to access the backcountry via the new boundaries that have been proposed. As side country use trends continue to grow, an increase in resort users paired with an increase in access to the side country at Grand Targhee, will mean a notable influx of winter recreationists into the adjacent Jedediah Smith Wilderness. More users mean greater impacts to the wilderness character.

In the preparation of your Draft Environmental Impact Statement (DEIS) please include a comprehensive analysis of how this influx of users would impact the wilderness character you are tasked with maintaining. We also ask that you include a detailed description of what enforcement strategies you are prepared to carry out to ensure this increased opportunity to access the Wilderness from the resort does not result in degradation to the wilderness character that is the right of the American people to enjoy for generations to come. We also ask that you create at least one alternative, in addition to the No Action Alternative, that does not include the South Bowl expansion, as this is seemingly the only way that the Forest Service will properly uphold your obligation to maintain the Wilderness character of the Jedediah Smith Wilderness.

Inappropriate intentions to amend the 1995 Revised Caribou-Targhee National Forest plan.

In addition to the anticipated impacts to the Wilderness that the South Bowl expansion would cause as described previously, expansion of Grand Targhee Resort's SUP area boundary to include South Bowl and Mono Trees would also require amendments to the 1997 Caribou-Targhee Forest Plan. WWA urges the Forest Service to not amend its forest plan to accommodate a development proposal. Forest plan revision is an arduous process that demands public involvement and trust. The outcome of this process is a forest plan drafted with the greatest good in mind, and a shared understanding that the plan will be upheld by the Forest Service for the long-term. Reducing protections via forest plan amendments at the request of a private developer, could damage public trust in the Forest Service, and disenfranchise the public from good faith participation in future revision efforts. So, please do not amend the forest plan at this time, instead adhere to its current guideline and base the Master Development Plan projects within the current Special Use Permit boundary.

If you disregard these concerns and move forward with the necessary amendments for expanding the SUP boundary, ensure you follow closely the 2012 planning rule provisions at 36 C.F.R. part 219. The 1982 planning rule under which the current forest plan was developed, is no longer valid.⁶

⁵ 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 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).

⁶ 36 C.F.R. § 219.17(b)(2) (following a 3-year transition period that expired May 9, 2015, "all plan amendments

All amendments will also need to comply with the amendment provision of the 2012 planning rule, which outlines how to amend forest plans written under the 1982 rule.⁷ 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.”⁸ 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.”⁹ In providing for social and economic sustainability, plans must account for “[s]ustainable recreation; including recreation settings, opportunities, and access; and scenic character.”¹⁰ The decision document for the plan amendment “must include . . . [a]n explanation of how the plan components meet [those substantive] requirements.”¹¹

The 2012 planning rule also lays out a clear process for plan amendments like those the current proposed Master Plan would necessitate. This 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 amendment and its likely effects.¹² 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. However, if the current SUP boundaries are respected, leaving the expansion into South Bowl and Mono Trees until the next Forest Plan revision takes place, these additional steps would be avoided, as would all of the concerns we outlined in the first section of this comment.

Inefficiency of applying new CEQ NEPA changes to this process. Federal Agencies have been required to follow Council on Environmental Quality (CEQ) regulations when implementing the National Environmental Policy Act (NEPA) since 1978. Recently the NEPA rule has undergone significant changes that the Wyoming Wilderness Association and many of our partners strongly opposed. The new CEQ rule is now being challenged in a number of federal lawsuits based on its legality, including one brought by our partners at the Winter Wildlands Alliance. The suit was brought by a diverse coalition of national and regional environmental justice, outdoor recreation, public health, and conservation organizations that rely on NEPA to protect public health and public

must be initiated, completed and approved under the requirements of this part”).

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

⁸ 36 C.F.R. § 219.8(a).

⁹ 36 C.F.R. § 219.9.

¹⁰ 36 C.F.R. § 219.8(b)(2).

¹¹ 36 C.F.R. § 219.14(a)(2).

¹² 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”).

lands.¹³ It is our hope that these challenges will be successful, that the CEQ changes are overridden, and the NEPA process restored.

Only by ignoring outcry from groups like ours, and also by states, members of Congress, conservation, environmental justice, and public health organizations, and the general public, were the new CEQ changes adopted.¹⁴ As a result, the scope of actions to which NEPA applies is now limited, and thorough environmental analysis that once defined the procedural law has been eliminated, reducing the ability of the public to participate in federal agency decision-making, while limiting review of agency NEPA compliance. These new CEQ changes remove its functionality in decision making, and contradicts decades of court interpretations of NEPA's mandates. Agencies are currently *required* to apply the final rule to new NEPA processes as of September 14, 2020. With that said, agencies have *discretion* to continue applying the previous CEQ regulations¹⁵ to ongoing NEPA processes that began prior to September 14, 2020.¹⁶ Fortunately, the current process regarding the Grand Targhee Master Plan, was noticed on August 26, 2020. This means that the Caribou-Targhee National Forest can and should choose not to use the final CEQ rule.

The future of this final rule is highly volatile– from the presented legal challenges, to a potential and looming change in the administration, both the Forest Service and Grand Targhee Resort would be wise not to jeopardize or delay ongoing decision-making processes by injecting additional and unnecessary uncertainty. Please choose to comply with the 1978 regulations with respect to this process, which was clearly initiated before September 14, 2020. We appreciate your willingness to consider the choice, and choose the path forward that is most certain for you, and fair to the public who are closely monitoring this Master Development Plan process.

In closing, we are optimistic that a plan can be developed that respects the wildlife and wildlands that stand to be impacted by development, and appreciate your consideration of our scoping comments. We plan to continue our engagement as this process evolves, and look forward to reviewing and commenting on the Draft EIS once it has been published. Thank you for your work to create a balanced Master Plan for the future of Grand Targhee Resort.

Respectfully,

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¹³ *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).

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

¹⁵ 40 C.F.R. Part 1500 (1978)

¹⁶ 40 C.F.R. § 1506.13 (2020)