### September 14, 2022

### Kurt Steele, Forest Supervisor;

### and Shelli Mavor, Project Lead

### Flathead National Forest

### Sent via: https://www.fs.usda.gov/project/?project=61746

### Dear Mr. Steele and Ms. Mavor,

### Please accept the following comments on the proposed Holland Lake Lodge Special-Use Permit expansion on behalf

### of the Council on Wildlife and Fish and the Alliance for the Wild Rockies.

### **National Environmental Policy Act (NEPA)**

### What the Flathead National Forest is proposing under the NEPA exemption -- “Categorical Exclusion (CE)” – is to evade the non-discretionary, mandatory “hard look,” which is the proper method of environmental analysis in this case. Using the CE as a “loophole” in this instance is totally inappropriate, and unlawful under NEPA’s CE provisions.

### A massive expansion of the Holland Lake Lodge, and surrounding facilities does not fit the description or the category:

###  *Construction, reconstruction, decommissioning, or disposal of buildings, infrastructure,*

###  *or improvements at an existing recreation site, including infrastructure or improvements*

###  *that are adjacent or connected to an existing recreation site and provide access or utilities*

###  *for that site. Recreation sites include but are not limited to campgrounds and camping areas,*

###  *picnic areas, day use areas, fishing sites, interpretive sites, visitor centers, trailheads, ski*

###  *areas, and observation sites. Activities within this category are intended to apply to facilities*

###  *located at recreation sites managed by the Forest Service and those managed by concessioners*

###  *under a special use authorization.* 36 CFR 220.6(e)(22).

### This categorical exclusion was intended for small projects such as:

### (i) Constructing, reconstructing, or expanding a toilet or shower facility;

### (ii) Constructing or reconstructing a fishing pier, wildlife viewing platform, dock, or other

### constructed feature at a recreation site;

### (iii) Installing or reconstructing a water or waste disposal system;

### (iv) Constructing or reconstructing campsites;

### (v) Disposal of facilities at a recreation site;

### (vi) Constructing or reconstructing a boat landing;

### (vii) Replacing a chair lift at a ski area;

### (viii) Constructing or reconstructing a parking area or trailhead; and

### (ix) Reconstructing or expanding a recreation rental cabin.

### Massive razing, reconstruction and expansion of the entire 15-acre Holland Lake Lodge and recreation complex is no small project. While a few of these items are included in the large the scale and scope (Cumulative Effects/Connected Actions) of the proposal does not conform to the intent or letter of NEPA’s categorical exclusion provision.

This is also likely, in the “foreseeable future,” to expand recreational use in surrounding areas, which will adversely impact wildlife and fish, and the quality of the recreational experience. Threatened and endangered species are likely to be among the wildlife species feeling the added human pressure and stress of helicopter overflights accessing the Holland Lake Lodge complex, well beyond the 15-acre site of the special-use permit. These “connected actions” and “cumulative effects” must be analyzed in an EIS due to the obvious “significance” of the lodge expansion, plus the direct and indirect adverse impacts to the surrounding landscape, aquatic features and riparian areas. What is being proposed may significantly, and adversely, affect the human environment, fish and wildlife and their secure habitat, and every living organism in the surrounding area.

As in [*Conner v. Burford,* 605 F.Supp. 107 (D.Mont.1985)](https://scholar.google.com/scholar_case?case=813886437118455417&hl=en&as_sdt=6,27&as_vis=1), where the court reasoned that NEPA requires a comprehensive EIS at the lease sale stage to project and analyze the cumulative effects of successive, interdependent steps culminating in oil and gas development and production, this project obviously has more to it down the road than meets the eye. It too is the first step in a succession of interdependent steps culminating in a destination recreation complex with a multitude of hyped and expanded uses and irreversible environmental impacts that must be analyzed in a thorough cumulative effects analysis. In addition, in *Connor,* the court ruled that the biological opinions of the FWS were inadequate to satisfy the ESA because they failed to address the effects of oil and gas activities beyond the lease sale phase. *See also*: Conner v. Burford 848 F.2d 1441 (9th Cir. 1988).

In [*Thomas v. Peterson,* 753 F.2d 754, 757 (9th Cir.1985)](https://scholar.google.com/scholar_case?case=7684899048785605771&hl=en&as_sdt=6,27&as_vis=1)) the court feared, "a piecemeal invasion of the forests would occur, followed by the realization of a significant and irreversible impact."  The court reasoned this failure would lead to a piecemeal evaluation of the project consequences and a progressive "chipping away" of important habitat. *Id.* at 109.

### Cumulative effects analysis is a non-discretionary duty under the provisions of NEPA involving circumstances precisely like this. This proposal involves so much more than the purported “…upgrade or replace existing structures…” being presented to the public. Increased human impacts on-site, on and in the lake and creek, and over a wide area affecting the surrounding landscape represents exponential growth, and a real threat/challenge for wildlife and fish already struggling to adapt to rapid human encroachment. The cumulative impacts to wildlife and fish are “significant,” and as such, must be analyzed and disclosed in an EIS. These cumulative effects, again citing *Thomas,* areinextricably intertwined, and that they are "connected actions" within the purpose and meaning of the CEQ regulations. Thomas v. Peterson, 841 F. 2d 332 - Court of Appeals, 9th Circuit (1988).That purpose requires that the NEPA process be integrated with agency planning "at the earliest possible time," [40 C.F.R. § 1501.2](https://casetext.com/regulation/code-of-federal-regulations/title-40-protection-of-environment/chapter-v-council-on-environmental-quality/subchapter-a-national-environmental-policy-act-implementing-regulations/part-1501-nepa-and-agency-planning/section-15012-apply-nepa-early-in-the-process), and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken.

### So, I must ask the Forest Service: Why is there no mention of the likelihood that with the lodge and cite expansion will come a massive expansion of destination tourism featuring expanded winter development and winter recreational activities? This is a “no-brainer.” POWDR Corporation owns numerous large ski area complexes across the country. A lie of omission is an intentional failure to tell the truth in a situation requiring disclosure. I certainly hope the Forest Service understands that POWDR wants much more than to simply own and manage a small recreation area on the shores of Holland Lake. Bigger plans are afoot, and I believe the Forest Service is quite aware of at least some of POWDR’s aim here. Please disclose to the public in the NEPA process all emails, meeting notes and other communication between the U.S. Forest Service (at all administrative levels, including, but not limited to the WO, RO, SO and District offices) and POWDR that may pertain directly, or indirectly to this project.

### A no-action alternative is critical to understanding and memorializing the baseline ecological conditions before a decision is made, which could “change everything.” Water quality, fisheries and wildlife habitat effectiveness and socio-cultural conditions may be adversely affected by rapid, exponential increases in levels of use, and expansion into new uses with unforeseen impacts. This project has the potential to trigger rapid (cascading) urbanization in an area that has remained relatively free of the social and psychological impacts of noise, increased pace/speed, “the hustle” associated with the modern, materialistic mindset, and human fragmentation/dissociation that places man separate and apart from Nature’s language and the qualitative wonders that touch upon instinct/spirit/soul. These are all impacts that have not historically existed as a direct threat to the quality of life sought by the local resident population. Before kicking off this potential avalanche of urban uniformity, a no-action NEPA alternative is required. If nothing else, it will stand as a milepost down the road to help people grasp unique conditions that existed before the trigger point that moved the Swan Valley toward urban sameness/meaninglessness.

### Another gross inadequacy of the CE exemption from a proper NEPA analysis and disclosure process is the lack of imagination and creativity that only comes with full consideration of a range of viable alternatives. For example, an alternative should consider the removal of the cabins in order to expand day-use opportunities. This would minimize the impacts from exposure to uber-rich tourist attitudes while maximizing opportunities for Montanans who are being priced out of many of the prime waterfront locations to wealthy corporations with the primary purpose of maximizing profit. There is plenty of this selling-out to the highest bidder all around Montana. This could be an alternative that explicitly caters protecting the commons for commoners.

### Obviously, an alternative that prioritizes the recovery and persistence of (ESA) threatened and candidate species is a mandatory legal requirement that cannot be overlooked. The ESA has no provision that exempts the intent and purpose of the Act to prioritize protection and recovery of listed species, especially over against a primary goal of maximizing private/corporate profit by exploiting the public domain. Expand public use, not private use for the 0.01% who need to be ferried from the Missoula airport by helicopter to avoid mixing with the “riff-raff” at the car rental service counter? How long before a private jet port is needed to land and house tourists with private jets and pilots somewhere out in the “flats” near Clearwater Junction, just to maximize convenience? Think it can’t happen? I urge you to visit Three-Forks, or Ennis, and witness the building frenzy underway to construct enough private-jet hangers -- because Bozeman airport is running out of room to accommodate all the private jets carrying elite travelers destined for Big Sky. **It can happen here!** Emphasis added. One final question: Can a special-use permit be assigned of sold (or partnered) to a new corporate

### The public is not onboard. The standard should be followed: “…public need for the facilities and where there is no suitable private land for such facilities within reasonable distance.” FSM Sec. 2343.3 and 2340.3. “Public need” has not been established. And judging from the public outrage at the proposal, none can be established without breaking rules. Please, develop NEPA alternatives that do conform to the long-established rules governing special-use permits.

This category includes sites and facilities such as lodges, hotels, motels, campgrounds, trailer courts and camps, and commercial group camps. In addition to the general policies in
section 2340.3, the following policy applies to lodging and overnight accommodations.

*Authorize provision of lodging accommodations on National Forest System land only where there is a public need for the facilities and where there is no suitable private land for such facilities within a reasonable distance.* FSM Sec. 2340.3(1).

A CE is wholly inappropriate and unlawful with this self-evident and significant level of ecological impact. The Lodge and site expansion will trigger widespread significant, associated, irreversible, cumulative effects caused directly, and/or indirectly rippling outward from the expansion (epicenter) of this special-use permit. An EIS is required.

### **Endangered Species Act (ESA)**

### Increased human encroachment resulting from Holland Lake Lodge expansion into secure wildlife habitat in the surrounding landscape and aquatic system presents a potential “may affect” situation for listed species or their habitat. Grizzly bears and lynx will be impacted in spring, summer and fall. Added pollution, boating and fishing pressure will contribute to an increase in the level of “take” for bull trout, lynx and grizzly bear. Wolverine, warranted for listing, will feel the pressure in winter, especially if helicopter skiing is being offered as a destination resort option.

### There is no mention of the extraordinary circumstances caused by expanded facilities, and associated increased human uses affecting the entire area

### The proposed action failed to establish the baseline condition of the wildlife and fish habitat and the habitat effectiveness for wildlife and fish, already under considerable human-caused stress because of the area’s popularity with a variety of recreationalists. Extraordinary circumstances related to a proposed action obviously exist and warrant further analysis in a biological assessment (BA). A BA will determine the level of impact to T&E species and their habitat.

### Whenever a federally listed threatened or endangered species or a species proposed for Federal listing, designated critical habitat or proposed critical habitat, or

### Forest Service sensitive species may be present, a CE is not appropriate. 36 CFR 220.6(b)(1)(i).

### The forested landscape surrounding Holland Lake is designated a “primary conservation area” for grizzly bears in the Northern Continental Divide Ecosystem. The Swan-Mission Valley is a critical linkage corridor, which connects bears in the Bob Marshall Wilderness complex to bears in Mission Mountain Wilderness and the Rattlesnake Wilderness to the south.

### The Master Development Plan uses anecdotal evidence (bear sightings) to rationalize its blindness to the presence of grizzly bears. The legal standard is: “…may be present…” Obviously, grizzly bears “may be present” on the 15-acre site of expanded development, and obviously too in the surrounding area that will be frequented by a huge increase in human recreational activity. This is the intent and purpose of this huge financial investment and expanded development – more wealthy (“upscale”) guests, more money and more profit: yes or no?

### Holland Lake and Holland Creek are occupied by a “disjunct population” of bull trout and is designated bull trout critical habitat. Bull trout use Holland Creek to spawn. They mature in Holland Lake several years before returning to the creek to spawn again. Holland Lake and Holland Creek bull trout do not access the Swan River ecosystem.

### These bull trout have a life cycle similar to the disjunct Lindbergh Lake population on the Mission Mountains (west) side of the Swan-Mission valley.

### The area surrounding Holland Lake is designated critical habitat for Canada lynx. Abundant snow in winter favors lynx. And helicopter skiing, I hear. Is this a foreseeable action, or no? Monitoring has confirmed that lynx occupy the Holland Lake area. But, again, this is not the standard by which ESA action is triggered. A proper “may be present” determination is mandatory.

### Wolverine are proposed for listing under the federal Endangered Species Act. Their presence, as with lynx, has been

### confirmed by monitoring surveys. Wolverine inhabit this area.

### Three listed species and one proposed-for-listing species constitutes something extraordinary. Extraordinary warrants a biological assessment (BA) by the Forest Service and consultation with the U.S. Fish and Wildlife Service (USFWS) for the three listed species, and another evaluation for Wolverine, and a letter of concurrence from the USFWS.

### Environmental Impact Statement and consultation with the US Fish and Wildlife Service. Best get busy.

### Please do not forget guidance provided to your staff in the Forest Service Manual (FSM). The following Forest Service Manual (FSM) Policy requirements have not been fulfilled:

## 2340.3 - Policy

1. Issuance of Authorizations to State, County, or Municipal Agencies for Recreational Improvements.

a. Issue special use authorizations for State, County, or Municipal agencies to develop or manage recreational improvements on National Forest System lands for:

(1) Lands that over a long period should be dedicated to that purpose, or

(2) Lands that could logically be conveyed to State or local governments through land-exchange procedures without detriment to National Forest System administration or programs.

b. In either case, National Forest System lands eligible for such use should meet at least two of the following conditions. The lands must be:

(1) Tracts adjacent to exterior National Forest System boundaries.

(2) Small tracts associated with adjacent, larger tracts managed by other agencies or privately owned that are not suitable for acquisition for National Forest System purposes.

(3) Tracts adjacent to lands owned by the agency proposing or applying for the authorization and needed to complete a unit for development as a park or recreation area.

c. Although it would be preferable to adhere to the conditions in the preceding paragraphs 1 through 1b(3) for target range authorizations, target ranges may have specific needs for special site conditions, safety zones, and sound buffers that cannot be achieved along exterior boundaries, on small tracts, or adjacent to other privately owned lands. Therefore, consider special use proposals and applications for target ranges not meeting these criteria on a site-specific, case-by-case basis.

2. Denial of Proposals by State, County, or Municipal Agencies for Recreational Improvements. Deny special use permit proposals by State and local agencies proposing to develop parks or recreational areas that do not qualify under the provisions in the preceding paragraphs 1(1)c, except in unusual circumstances or when the authorization is clearly in the public interest. Obtain review and advice of the Chief before approving permits based on these exceptions. Review by the Chief is not required for roadside rest and picnic developments by county or State agencies if no suitable private land or other agency land is available for such purposes.

3. Denial of Proposals by the Private Sector for Recreational Facilities and Services. Deny proposals by the private sector to construct or provide outdoor recreation facilities and services on National Forest System lands if these facilities and services are reasonably available or could be provided elsewhere in the general vicinity. Encourage business enterprises engaged in providing such facilities and services to locate on private lands or in nearby communities.

4. Use of Appropriated Funds. Normally, do not use appropriated funds to construct recreation facilities for operation by others under special use authorization. Use appropriated funds, when necessary, to restore existing Government-owned recreation improvements that have been operated under special use authorization.

5. General Requirements and Prohibitions related to Authorizations for Recreation Facilities and Services.

a. Require holders to protect soil, vegetation, and other resources within the authorized area to perpetuate a condition suitable for recreation purposes.

b. Ensure that all services and facilities provided by private individuals or public entities under special use permits are equally available to all members of the public. Include non-discrimination clauses in special use permits (FSM 1700 and 2710) and revoke the permits if discriminatory practices occur.

c. Prohibit gambling devices or activities at any facility or any area authorized for special recreation uses on National Forest System land.

## 2340.4 - Responsibility

See FSM 2710.4 for the responsibilities of the Chief; Washington Office, Director of Recreation, Heritage, and Wilderness Resources; Regional Foresters; Forest Supervisors; District Rangers; and Directors of Experiment Stations concerning the authorization and administration of special use permits. See FSM 1920 for responsibilities for land management planning relevant to planning for private sector recreation uses.

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### Where is the “…required review by the regional forester…”?

### **2721.33 - Resort**

Resorts are concessioner developments that include a complex of enterprises. They may include any of the activities or services covered in FSM 2721.4 or FSM 2721.58. In addition, winter recreation resorts include uphill transport systems and other specialized services covered in
FSM 2721.6.

1. Determine the minimum public services to be provided by the permittee and those services that may be optional. Make these a condition of the permit. See FSM 2343 for direction relating to management of the various types of resorts permitted on National Forest System land. See also FSM 2344 for policy on permitting use of Government-owned resorts.

2. Except for ski areas authorized under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) and those ski areas which elect to have their permit fees calculated under section 701 of the Omnibus Parks and Public Lands Management Act of 1996
(16 U.S.C. 497c; FSH 2709.11, sec. 38), calculate resort fees under the graduated rate fee system (FSH 2709.11 sec. 52.1). The minimum fee is $300 per year.

3. Ensure that the required review by the regional forester is completed prior to issuance of a permit where the capital investment to be authorized exceeds or is expected to exceed $500,000 for resorts.

Where is the “…required review by the regional forester…”? FSM 2721.33(3). It does not appear to be included in the “scoping package” presented for public review and comment.

Full disclosure, please, ***before*** a decision is made. Emphasis added.

# **2341 - PLANNING FOR PRIVATE SECTOR USES**

Generally, the planning process for private use requires the following management actions:

1. Identify and justify National Forest System sites and areas suitable for development, operation, and use by the private sector under special use authorization through Forest land and resource management plans and addendums (FSM 1920 and FSH 1909.12).

2. Review needs assessments and development plans (master plans) to determine the location, nature, scope, and timing of development of facilities at current and potential permit sites.

3. Review engineering designs and drawings and approve the configuration and design of structures and facilities to be placed at sites under permit.

##  4. Review and approve the Permittee's operating plan to ensure agreement with the Permittee about the management, operation, and maintenance of the permitted site and area.

## Has the Permittee’s operating plan been reviewed and approved?

## 2341.2 - Planning for Changes in Development and/or Use

When it appears necessary to change development and/or use of an established site, conduct needs assessments and studies, preferably as part of the forest planning process, and, if appropriate, prepare and approve updated site development plans.

Has “…conduct needs assessment and studies, preferable as part of the forest planning process…” been completed and disclosed to the public prior to initiating NEPA scoping?

Have “…updated site development plans…” been prepared and approved?

## 2343.3 - Lodging and Overnight Accommodations

This category includes sites and facilities such as lodges, hotels, motels, campgrounds, trailer courts and camps, and commercial group camps. In addition to the general policies in
section 2340.3, the following policy applies to lodging and overnight accommodations.

1. Authorize provision of lodging accommodations on National Forest System land only where there is a public need for the facilities and where there is no suitable private land for such facilities within a reasonable distance.

2. Require operation, management, and marketing of lodging and overnight accommodations in a manner that ensures the general public has full access to the facilities. Deny exclusive or preferential use by holders, their employees, families, friends, business associates, partners, stockholders, lenders, or others who may have a monetary interest in the facilities.

3. Require holders to establish guest stay limits of 30 days or less to ensure the continuing availability of facilities for public use and to ensure no personal, private, or preferential use of authorized facilities, including trailer sites, overnight houseboat mooring accommodations, and campsites.

**2347.6 - Private Lodging**

This category includes private accommodations such as condominiums, condo-hotels, and time-share camps, hotels, and motels. (See also FSM 2720 for direction on non-recreation special uses.)

1. Allow cooperative or condominium financing of overnight accommodations only when units will be operated on a fully public basis, available for rental to the general public.

2. Submit all proposals for cooperative or condominium financing of overnight accommodations to the Chief for review.

3. Issue permits for cooperative or condominium-financed lodging to a single permittee-operator entity, rather than to individual investors.

4. Require Permittees to exercise effective ownership and operational control of the structures through leaseback, lease, or other formal agreement.

5. On an opportunity basis, convert all cooperative or condominium permits to fully public use.

6. Require Permittees to establish reservation systems that guarantee access to condominium units by the general public and do not allow investor-owners to make a reservation more than 2 months in advance of any given period of occupancy.

7. Make no commitments to individual investors in the event of dissolution of the permittee through transfer, bankruptcy, foreclosure, or other legal proceeding.

Is this special-use expansion project being issued to “…a single permittee-operator entity, rather than to individual investors…”? FSM 2347.6(3).

Have any “…commitments to individual investors…” already been made, verbally, or in writing, or in digital communication(s)? Please disclose. FSM 2347.6(7).

To summarize, “truth is the first casualty in war” (against Nature). Exhibit #1: This whopper of a statement comes from the press release issued by the Flathead National Forest: **“Improvements would provide a family-friendly destination with the modern comforts and amenities visitors have come to expect today while maintaining the integrity of the site.”** Emphasis added. OMG, this is a new (very creative) pack of lies by omission on multiple levels. Nothing in this “we-can-have-it-all” statement seems out of the ordinary. Extraordinary, posing as ordinary; how clever. Unfortunately, this style of misrepresentation is quite familiar (ordinary) to us and has been USFS-USDA SOP for decades. Our trust level when dealing with the federal government, the U.S. Forest Service-USDA, and the Flathead National Forest in particular, remains, reinforced by recent events at 0%.

We thank you for this opportunity to comment and express our concerns.

Sincerely,

Steve Kelly, Pres.

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and;

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