



October 3, 2022

U.S. Forest Service, Swan Lake Ranger District  
Attn: Shelli Mavor (Holland Lake Lodge)  
200 Ranger Station Road  
Bigfork, MT 59911  
Submitted electronically

On behalf of the Center for Biological Diversity, Alliance for the Wild Rockies, Council on Wildlife and Fish, and Save Holland Lake, please accept these comments on the scope of the proposed Holland Lake Lodge Facility Expansion (“Project”) proposed to be categorically excluded (“CE”) from analysis and documentation in an Environmental Impact Statement (“EIS”) or Environmental Assessment (“EA”).<sup>1</sup>

The Project would authorize extensive expansions and remodeling of the historic Holland Lake Lodge located in the Swan Valley in the Flathead National Forest. The Project would increase visitation by tripling the number of guests at the lodge, extend the visitation season to allow for winter recreation, increase water usage and wastewater, and increase noise, activity, and construction next to the lake. The permit holder, Holland Lake Lodge, Inc./Christian Wohlfeil, and POWDR Corp requested a categorical exclusion from NEPA under 36 C.F.R. § 220.6(e)(22). The Forest Service indicates an intention to grant this request and to categorically exclude the Project from documentation in an environmental impact statement or environmental assessment. For reasons explained below, the Project violates National Environmental Policy Act (“NEPA”), National Forest Management Act (“NFMA”), and the Administrative Procedure Act (“APA”) and will likely violate the Endangered Species Act (“ESA”). We implore the Forest Service to disclose and analyze the Project through a thorough environmental analysis in an EIS.

To begin, there are two preliminary matters that must be addressed. First, a modular home or trailer appears to be parked on the Project area, seemingly in anticipation for construction or logging activities associated with the Project. However, no decision has been issued in regards to this Project and the current special use permit (SWA456) does not allow for the presence of additional housing, modular homes, or trailers on the site. Therefore, the current permit holder, Christian Wohlfeil, is in violation of the terms and conditions of the special use permit and thus the Forest Service must revoke and terminate the special use permit. Moreover, for the reasons set forth below, public interest requires the Forest Service to revoke the special use permit and purchase the current Holland Lake Lodge.

Second, the Forest Service must provide the public with at least 60 days to identify, review, and comment on the specific issues to be addressed and studied during the NEPA process of this

---

<sup>1</sup> The comments submitted on behalf of Friends of the Wild Swan and Swan View Collations and the issues raised therein are incorporated here by reference.

Project. The failure to provide the public with at least 60 days to review the Project’s significant impacts deprives the public of the opportunity to meaningfully participate in the public process. We urge the Forest Service to promptly issue a 30-day extension to the comment period.

## **FACTUAL BACKGROUND**

The Holland Lake Lodge (“the Lodge”) is on traditional Salish and Ktunaxa tribal land and situated along the shore of Holland Lake in the Swan Valley area of Flathead National Forest. The Swan Valley is internationally recognized as the “Crown of the Continent” which has been described as one of the premier mountain regions of the world and contains many of the largest remaining blocks of roadless lands in the contiguous U.S. The Swan Valley, and particularly the Holland Lake area, is remarkable for its assemblage of peaks, dense conifer forest, cold clear rivers, mountain lakes and native grasslands. The full suite of native forest carnivores reside around Holland Lake including grizzly bears, Canada lynx, wolverine, wolves, pine marten, fisher, mountain lion, bobcat, and black bears. Holland Lake and Holland Creek are also home to bull trout and are both designated bull trout critical habitat. Big game, native and migratory song birds and a plethora of native flora can also be found around Holland Lake.

Holland Lake Lodge first opened in 1925 as a small, fifty-guest lodge. After the lodge burned down in 1947, a new, similarly sized lodge was constructed. Over the course of the last 75 years, the Lodge has maintained its small and remote foot print, adding only a handful of small cabins and small ancillary buildings. Thus, the site has maintained a small capacity which contributes to Holland Lake area’s remote, quiet, and undeveloped surroundings. Today, the Lodge can accommodate fifty overnight guests and twelve employees.

As a private facility on National Forest land, it currently operates under a Resort/Marina Term Special Use Permit (SWA456) issued to Holland Lake Lodge, Inc./Christian Wohlfeil by the Forest Service in 2017 for a twenty-year term.

However, on April 15, 2022, Holland Lake Lodge, Inc. and POWDR Corp submitted a Master Development Plan to the Forest Service, describing their plans to all but demolish the historic Lodge and replace it with a large-scale, year-round hotel and recreation hotspot. The Project is a significant departure from the historical Lodge’s relatively small footprint. As detailed in the April 2022 Master Development Plan, the Project is a joint venture between the current owner and permit holder, Holland Lake Lodge, Inc. and future owner, POWDR Corp. POWDR Corp is one of the world’s largest ski resort operators and it is clear from the considerable changes proposed at this site, that POWDR Corp hopes to opulently remodel and substantially expand operations at Holland Lake.

On September 1, 2022, the Forest Service released its Scoping Letter for the Project stating that the Project is intended to “repair the existing historic lodge and improve or replace facilities to provide modern amenities.” Contrary to this minimization, the Project will actually completely overhaul the Lodge. As proposed, it will involve major renovations and new construction to triple the site’s current lodging capacity—from fifty to 156—and upgrade its infrastructure. Numerous new facilities will be built, including a new twenty-eight-room lodge, twenty-six new cabins, a welcome center, a restaurant, a watersport building, and various support buildings for

maintenance and employee housing. The Project also entails installing new water and wastewater systems, wiring new electrical and internet service systems, constructing multiple parking areas and walkways, and building three docks along the shore. The Forest Service and permit holders expect the Project to be completed within five years, with operation of the existing lodge continuing seasonally. Once the Project is complete, the facilities may operate nearly year-round, as demand dictates.

The September 1, 2022 Scoping Letter also indicates the Forest Service's intent to categorically exclude the Project from NEPA review, asserting that the Project's "improvements" fall under 36 C.F.R. § 220.6(e)(22), which exempts construction projects at recreation sites from environmental impact analysis. The Scoping letter also opened a twenty-day comment period on the Project and scheduled a public meeting for September 8, 2022. Following a flood of public comments and over 100 attendees at the initial public meeting, the Forest Service extended the comment period to October 7, 2022 and scheduled a second public meeting for October 4, 2022. To date, over 5000 comments have been submitted by local Montanans, environmental and wildlife groups, and other interested parties.

## **LEGAL BACKGROUND**

### **The National Environmental Policy Act: Levels of NEPA Analysis**

NEPA regulations and federal courts require that agencies prepare an EIS in those cases where the major federal action has the potential to result in significant impacts.

For example, the Ninth Circuit has established a "relatively low threshold for preparation of an EIS," namely that an EIS must be prepared if a plaintiff raises substantial questions about whether a project will have significant effects. *NRDC v. Duvall*, 777 F. Supp. 1533, 1537 (E.D. Cal. 1991). "We have held that an EIS must be prepared if 'substantial questions are raised as to whether a project ... may cause significant degradation to some human environmental factor.' To trigger this requirement a 'plaintiff need not show that significant effects will in fact occur,' [but instead] raising 'substantial questions whether a project may have a significant effect' is sufficient." *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (citations omitted) (emphasis original). See also *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864-65 (9th Cir. 2005) ("To trigger this [EIS] requirement a plaintiff need not show that significant effects will in fact occur, but raising substantial questions whether a project may have a significant effect is sufficient.") (internal quotations, citations, and alterations omitted); *Anderson v. Evans*, 314 F.3d 1006, 1017 (9th Cir. 2002) ("To prevail on the claim that the federal agencies were required to prepare an EIS, the plaintiffs need not demonstrate that significant effects will occur. A showing that there are "'substantial questions whether a project may have a significant effect' on the environment" is sufficient.") (citations omitted); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

Where an agency has questions as to whether a federal action has the potential to have significant impacts, the agency prepares an environmental assessment to "determin[e] whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1501.5(c); 36 C.F.R. § 220.6(c). Even where a proposal will not have significant impacts, NEPA nonetheless

requires consideration of alternatives when there are “unresolved conflicts concerning alternative uses of available resources” via an EA. 42 U.S.C. § 4332(2)(E). If an agency “decides not to prepare an EIS,” and instead to prepare an EA, “it must put forth a convincing statement of reasons’ that explains why the project will impact the environment no more than insignificantly. This account proves crucial to evaluating whether the [agency] took the requisite ‘hard look.’” *Ocean Advoc.*, 402 F.3d at 864. See also *Blue Mountains*, 161 F.3d at 1212 (If the agency decides not to prepare an EIS, the agency must supply a “convincing statement of reasons” to explain why the action will not have a significant impact on the environment); *Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (“An agency’s decision not to prepare an EIS will be considered unreasonable if the agency fails to supply a convincing statement of reasons why potential effects are insignificant”) (citation and quotations omitted).

Categorical exclusions (CEs) are those categories of actions that the agency has determined, in its agency NEPA procedures, that “normally do not have a significant effect on the human environment.” 40 C.F.R. § 1501.4(a). Categorical exclusions do not involve the consideration of alternatives; consequently, where unresolved conflicts exist, a CE is the wrong tool. Forest Service regulations state that “[i]f the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA.” 36 C.F.R. § 220.6(c).

The Forest Service apparently intends to apply the CE established by 36 C.F.R. § 220.6(e)(22) to this Project which involves:

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. Examples include but are not limited to:

- (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.

*Id.*

To avail itself of a CE, the Forest Service must ensure that the project will not involve “extraordinary circumstances,” which, under NEPA regulations, mandate that the Forest Service cannot utilize a CE and must prepare at least an EA. Forest Service regulations state that:

Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

- (i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- (ii) Flood plains, wetlands, or municipal watersheds;
- (iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
- (iv) Inventoried roadless area or potential wilderness area;
- (v) Research natural areas;
- (vi) American Indians and Alaska Native religious or cultural sites; and
- (vii) Archaeological sites, or historic properties or areas.

36 C.F.R. § 220.6(b)(1). The Forest Service rules state that the “mere presence of one or more of these resource conditions does not preclude use of a [CE]. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.” *Id.*

### **National Forest Management Act Requirements**

The National Forest Management Act (NFMA) requires each National Forest to establish a land and resource management plan (forest plan) that binds future management decisions. 16 U.S.C. § 1604(i) (“Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.”). Once the plan is in place, “all management activities undertaken by the Forest Service must comply with the forest plan, which in turn must comply with the Forest Act.” *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 962 (9th Cir. 2002). The forest plan and NFMA restrict the Forest Service’s permissible “site specific” actions, such as special use authorizations, to those that “ensure that the action is consistent with the forest plan.” *Id.* (citing *Inland Empire Pub. Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 757 (9th Cir. 1996)). Thus, failure to demonstrate consistency with a forest plan would threaten a violation of NFMA.

The Forest Plan’s standards and guidelines provide action directives for future management decisions. The standards and guidelines are designed to achieve certain desired conditions, which represent the goals for the Forest Plan.

### **Special Use Permits on Forest Service Land**

“All uses of National Forest System lands, improvements, and resources, except those authorized by [certain specified] regulations ... are designated ‘special uses.’” 36 C.F.R. § 251.50(a). Those

seeking to conduct a special use on National Forest lands must in most cases “submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer.” *Id.* A special use authorization is defined as: “a written permit, term permit, lease, or easement that authorizes use or occupancy of National Forest System lands and specifies the terms and conditions under which the use or occupancy may occur.” *Id.* § 251.51.

Before the Forest Service will analyze an application for a proposed use pursuant to NEPA, agency regulations require the Forest Service to undertake two levels of screening. The Forest Service’s “initial screening” must “ensure that the [proposed] use meets ... minimum requirements applicable to all special uses.” *Id.* § 251.54(e)(1). Among other things, the Forest Service must “ensure” that:

The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law ....

*Id.* § 251.54(e)(1)(i). “Any proposed use ... that does not meet all of the minimum requirements of [36 C.F.R. § 251.54 (e)(1)(i) – (ix)] shall not receive further evaluation and processing. In such event, the authorized officer shall advise the proponent that the use does not meet the minimum requirements.” *Id.* § 251.54(e)(2) (emphasis added).

Where the Forest Service concludes a “proposal ... passes the initial screening,” the agency then undertakes a “[s]econd-level screening.” *Id.* § 251.54(e)(5). As part of the second-level screening, the Forest Service “shall reject any proposal ... if, upon further consideration, the officer determines,” among other things, that:

[t]he proposed use would not be in the public interest ....

*Id.* § 251.54(e)(5)(ii). Where the special use authorization “does not meet [each and every one of] the criteria” evaluated for second-level screening, the Forest Service need not prepare “environmental analysis and documentation” pursuant to NEPA before rejecting the application. *Id.* § 251.54(e)(6).

Thus, the Forest Service has a duty to reject special use authorization applications if, among other reasons, the proposed use is not “in the public interest.”

If a special use permit is transferred, the authorization terminates upon change of ownership and the new owners must apply for a receive a new special use authorization. 36 C.F.R. § 251.59.

## LEGAL VIOLATIONS

### I. POWDR Corp must apply for and receive a new special use permit.

The Forest Service regulations state that if a special use permit is transferred to a different holder by death, sale, or other transfer, “the authorization terminates upon change of ownership.” 36 C.F.R. § 251.59. The regulation states, “The new owner of the authorized improvements must apply for and receive a new special use authorization.” *Id.*

The current permit holder is Christian Wohlfeil. However, the lodge was purchased by POWDR Corp in 2021. It appears that POWDR Corp has not applied for or received a new special use authorization for operating Holland Lake Lodge. Without such special use permit, the Forest Service cannot authorize the Holland Lake Lodge Facility Expansion.

If POWDR Corp does apply for a new special use permit, the Forest Services is required to provide the public with notice and an opportunity to comment upon the application in accordance with Forest Service NEPA procedures. See 36 C.F.R. § 251.54(g)(2)(ii).

The Forest Service has previously rejected proposals as not in the public interest where those proposals would have led to private gain at the public's expense. For example, the Grand Mesa Uncompahgre and Gunnison National Forests in Colorado in 2009 rejected without NEPA analysis a proposed master development plan for expansion of the Crested Butte ski area. The Forest Service based its rejection on its conclusions, among others: that the local community was deeply divided about the expansion; that the expansion threatened to harm significant natural resource values (roadless lands and wildlife habitat); that the expansion would increase area visitation, thus burdening local infrastructure; and that completing the NEPA process "would require a large commitment" of Forest Service and other agency resources. Letter of C. Richmond, Supervisor, GMUG National Forest to T. Mueller, Pres., Crested Butte LLC (Nov. 5, 2009), available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5288146.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5288146.pdf). Also, in 2016, the Forest Service rejected a special use permit for utility rights-of-way (ROWS) as not in the public interest where those ROWs would have facilitated a widely-opposed private land development on the doorstep of Grand Canyon National Park.

The Forest Service should do the same here. It is not in the public interest to have POWDR Corp own the historic Holland Lake Lodge and the Forest Service should reject POWDR Corp special use permit application, should they apply for one. As further explained below, POWDR Corp's plans to significantly change and expand Holland Lake Lodge will degrade pristine, isolated, and quiet character of Holland Lake and adversely impact wildlife, water quality, and other aspects of the human environment. It is not in the public interest for POWDR Corp to maintain a special use permit to operate Holland Lake Lodge.

## **II. The Forest Service's use of a categorical exclusion is inappropriate and in violation of NEPA.**

The Forest Service's use of 36 C.F.R. § 220.6(e)(22) is inappropriate. This CE is meant to apply to small scale projects like the upkeep and small expansions of existing recreation sites. The complete remodeling of Holland Lake Lodge ("Lodge"), the construction of 32 new buildings and extensive infrastructure to support a tripling of Lodge capacity, as well as the much larger footprint than the current Lodge all go far beyond the scope of 36 C.F.R. § 220.6(e)(22). The use of this CE should not and cannot apply to the Project at issue here where the magnitude and impact extend beyond the previous permit's impact by leaps and bounds.

Additionally, use of this categorical exclusion does not apply to facilities operated by special use permit holders not operating a concessioner. Holland Lake Lodge, Inc. is not a Forest Service concessionaire, but merely a private individual with a special use permit, and the Lodge is not a federally-owned facility eligible for a Forest Service concession. Thus, the use of a CE cannot be

applied to this Project and the Forest Service must analyze the effects of this Project in an EA or an EIS.

Also, as further explained below, extraordinary circumstances exist in relation to the Project that will cause significant impacts and warrant analysis and documentation in an EA or an EIS. Specifically, the Project will impact the following resource conditions: endangered and/or threatened species including grizzly bears, lynx, bull trout, and Spalding's catchfly, as well as wolverine and fishers and other Forest Service sensitive species; wilderness, wilderness study areas, potential wilderness areas and national recreation areas; inventoried roadless areas and research natural areas; wetlands; and historic properties.

### **A. ESA Listed and Proposed Species**

The Project will impact grizzly bears, bull trout, bull trout critical habitat, lynx, lynx critical habitat, wolverine, fishers as well as a number of other Forest Service sensitive species including fisher, flammulated owl, harlequin ducks, common loon, bald eagle, great blue heron, big game, water howellia, and others. The presence of this many rare and imperiled species and the Project's certain impact to their habitat connectivity, reproduction, survival, and recovery requires the preparation of an EIS or at a minimum, an EA.

#### **1. Grizzly Bears**

The Project is within the Northern Continental Divide Primary Conservation Area ("PCA") for grizzly bears - an area of primary importance to grizzly bear recovery in the Northern Continental Divide Ecosystem ("NCDE"). Thus, the Project will have an adverse impact on grizzly bears that the Forest Service must disclose and analyzed through a full NEPA analysis. For example, the Forest Service must disclose and analyze the effects that 5 years of construction activities in a PCA has on grizzly bears. Moreover, because it is well established that the presence of humans and motorized use have a negative effect on grizzly bears, the increase in human presence near the Project area during construction and into the future will likely have an adverse impact on grizzly bears that the Forest Service must disclose and analyze as well.

Further, the Forest Service is required to consider foreseeable future consequences that will result from the Project. As POWDR Corp is a corporation that sells "adventure experiences," it is more than likely that this Project will result in a significant increase in human presence and motorized use on the roads, trails, and habitat around Holland Lake. Additionally, the September 1, 2022 Scoping Letter indicates that following completion of the Project, Holland Lake Lodge will be used during the winter. Because the Project is likely to result in increased capacity and attendance at the lodge property, and will induce winter visitors to the area, and thus induce an increase in winter activities including backcountry skiing, helicopter skiing and other winter recreation (motorized or non-motorized), the Forest Service must analyze and disclose the potential impacts of these activities. As POWDR Corp is a corporation that sells helicopter backcountry skiing experiences, it is likely that there will be an increase helicopter flights following completion of the Project. Because helicopters have an adverse effect on grizzly bears,



the Forest Service must consider this effect and comply with the Interagency Grizzly Bear Committee “Guide to Effects Analysis of Helicopter Use in Grizzly bear Habitat.”<sup>2</sup>

Moreover, the Forest Service must consider the inevitable increase in attractants that could result in “nuisance” bears, and the potential for an increase in legal and illegal motorized use in grizzly bear habitat. Thus, to comply with NEPA, the Forest Service must adequately analyze the effect of the Project on grizzly bears in an EA or an EIS.

Thus, not only is the presence of grizzly bears and the location of this Project in the NCDE PCA an extraordinary circumstance as identified by 36 C.F.R. § 220.6(b)(1), but there is a potential for significant impact to this factor. The Forest Service therefore cannot approve the Project via a categorical exclusion and must, at a minimum, prepare an EA.

## **2. Bull trout and bull trout critical habitat**

Holland Lake and Holland Creek are both designated bull trout critical habitat. But perhaps more importantly, the bull trout population that resides in Holland Lake and Holland Creek is a disjunct population. Disjunct populations are defined as those in headwater lakes that appear to be self-reproducing but functionally isolated from the rest of the drainage. Holland Lake supports migratory bull trout populations which utilize the Lake’s inlet tributary systems for spawning and rearing. During late summer, warm water temperatures in the outlet streams of Holland Lake likely discourage upstream migration of spawning adults from Swan Lake.<sup>3</sup> Therefore, the population of bull trout in Holland Lake is unique to the Swan River Drainage.

The Project will impact the unique population of bull trout and critical habitat in a way that must be analyzed and disclosed in an EA or EIS. For example, the Project will result in an increase in wastewater disposal and water demand that will adversely impact bull trout and bull trout critical habitat in a way that must be analyzed and disclosed by the Forest Service. Such an analysis must include, at a minimum, impacts to bull trout and bull trout critical habitat from the wastewater disposal system proposed as part of the Project, the potential for water contamination, and the possible increase in plant and algae growth resulting from an excess of nutrients from sewage treatments. Moreover, the number of parking lots will increase as a result of the Project which will also increase runoff into Holland Lake due to the significant increase in impervious surfaces and increase sedimentation and contamination of the Lake. The Forest Service must consider how this impacts bull trout and bull trout critical habitat. Further, the Forest Service must consider the impact of the increased human presence and angling, as well as the increased in motorized boat use which will increase the potential for introducing invasive species in the lake which will harass, harm, and/or kill bull trout. Thus, to comply with NEPA, the Forest Service must adequately analyze the effects of the Project on bull trout and bull trout critical habitat in an EA or an EIS.

---

<sup>2</sup> Available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5336905.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5336905.pdf) (last viewed Sep. 29, 2022) and attached as Ex. 1.

<sup>3</sup> The Forest Service must consider the best available science for each of the species impacted by this Project. This includes Swan River Drainage Bull Trout Status Reports. See attached Ex.2.

The presence of bull trout and the location of this Project on and near bull trout critical habitat is an extraordinary circumstance as identified by 36 C.F.R. § 220.6(b)(1). Also, but there is a potential for significant impact of this Project on bull trout and bull trout critical habitat. The Forest Service therefore cannot approve the Project via a categorical exclusion and must, at a minimum, prepare an EA.

### **3. Lynx and lynx critical habitat**

The Project area is within lynx critical habitat and lynx are known to reside and pass through the Project area. Project construction and operation of the new facilities with a tripling of capacity for those staying at lodge facilities will result in an impact to lynx and lynx critical habitat that the Forest Service must consider in an EA or an EIS. The analysis must include but not be limited to a discussion of the impact of an increase in human presence and winter recreation, as explained in detail above, on resident, transient, and denning lynx.

The presence of lynx and the location of this Project on and lynx trout critical habitat is an extraordinary circumstance as identified by 36 C.F.R. § 220.6(b)(1). Also, but there is a potential for significant impact of this Project on lynx and their critical habitat. The Forest Service therefore cannot approve the Project via a categorical exclusion and must, at a minimum, prepare an EA.

### **4. Proposed species and special status species**

The Project area contains areas that provide *Howellia squatalis* habitat. The Forest Service must consider the effect the Project has on this species in an EA or and EIS. The MDP indicates that it will be altering wetland habitat to construct a “honeymoon cabin.” This area is potential *Howellia squatalis* habitat and thus the Forest Service must adequately analyze the Project’s effects to this area and this species.

Moreover, wolverine and fishers utilize the Project area and habitat near or adjacent to the Project area. The Project’s resulting increase in human presence, disturbance during construction, and noise, light, and waste pollution will impact these species. The Forest Service must consider the Project’s effect on this species in an EA or and EIS.

Alone, the presence of each of the species identified above and the Project’s location on and near critical habitat is an extraordinary circumstance as identified by 36 C.F.R. § 220.6(b)(1), requiring the preparation of an EA or an EIS. However, the Project has a high potential for significant impact on all of these species. The Forest Service therefore cannot approve the Project via a categorical exclusion and must, at a minimum, prepare an EA.

As an aside, in addition to a full NEPA analysis, the Forest Service must engage in Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service to determine the Project’s effects on grizzly bears, lynx, lynx critical habitat, bull trout, bull trout critical habitat, wolverine and fishers. The standard for engaging in Section 7 consultation is “may be present.” These species all “may be present” in the area and thus, Section 7 consultation is required.

## **B. Wetlands and Flood Plains**

The Master Development Plan submitted by POWDR Corp indicates that the Project includes construction of a building on wetlands, which would likely involve filling or degrading. The Forest Service is required to analyze the impact of altering the wetland and shoreline of the Project area.<sup>4</sup> Moreover, the resulting wastewater and increased water usage has a potential to contaminate the water table. The Forest Service must consider these impacts in an EA or an EIS in order to comply with NEPA.

## **C. Wilderness, wilderness study areas, national recreation areas and inventoried roadless areas, and potential wilderness areas.**

The Project area is in between the Bob Marshall Wilderness and Mission Mountain Wilderness and adjacent to the Swan Front Inventoried Roadless Area and Recommended Wilderness. The Project will likely adversely impact these areas. The Forest Service is required to analyze the Project's potential to degrade wilderness, wilderness potential, and roadless characteristics of these areas including how the increase in human presence, potential illegal motorized access, and future helicopter use will impact these areas.

Also, Holland Lake is a Forest Service Recreation Area situated within the internationally recognized Crown of the Continent Ecosystem. The Forest Service has recognized the importance of this area's prime wetland habitat, its connectivity from the Swan to the Mission Mountains for species including bull trout, grizzly bears, Canada lynx, gray wolves, elk, moose, deer, mountain lions and wolverines.

In fact, the Forest Service, in 2017, acquired a 640-acre parcel west of Holland Lake ("Holland Lake Acquisition") for the specific purpose of protecting the area from development. See <https://www.fs.usda.gov/detail/flathead/workingtogether/?cid=FSEPRD557238>. The Forest Service recognized that limiting development near Holland Lake would not only protect wildlife values but "contribute to national efforts to provide multiple recreation opportunities to the public." *Id.* Therefore, the Forest Service has conceded that the area should be protected from private development. This recognition and prior acquisition alone creates an extraordinary circumstance that requires the Forest Service to engage in a full analysis to determine the effects of the Project on the human environment.

## **D. *Sélis* Land**

Holland Lake Lodge is located on traditional *Sélis* indigenous land. The Forest Service must consider as an alternative in a full NEPA analysis, how this Project will further appropriate land that rightly belongs to the *Sélis* People. At a minimum, the Forest Service must consider how this Project will degrade, damage, and/or alters the land and cultural resources that belong to the *Sélis* People.

---

<sup>4</sup> The permit holder must apply for and receive a Clean Water Act permit from the Army Corps of Engineers prior to initiating construction on the Honey Moon Cabin and the docks.

## **E. Historic Property**

The current Holland Lake Lodge has a deep history with deep historical character which the Project will irreversibly and irretrievably alter. The Project will forever alter the traditional and quiet setting of Holland Lake Lodge and Holland Lodge. The Forest Service must consider how permanently removing a piece of Montana history will impact the cultural and historic significance of this property and the impact it may have on the human environment.

Because of the reasons described above, the Forest Service cannot rationally conclude that no extraordinary circumstances exist in light of the presence of the above resource conditions. Additionally, the Forest Service cannot ensure that the Project does not significantly impact the human environment. Thus, the Forest Service cannot avail itself of a CE and must prepare an EA or an EIS in order to comply with NEPA.

### **III. The Project will have direct, indirect, and cumulative impacts that must be analyzed in an EA or EIS.**

CEQ regulations have long required, and courts have long recognized, that agencies must disclose the reasonably foreseeable effects of agency actions, and those effects include those that are direct, indirect, and cumulative. 40 C.F.R. Part 1500.

CEQ's NEPA regulations defined effects and impacts as:

. . .changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

- (1) Direct effects, which are caused by the action and occur at the same time and place.
- (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
- (4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from

actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

40 C.F.R. § 1508.1(g).

Analyzing and disclosing site-specific impacts is critical because where (and when and how) activities occur on a landscape strongly determines the nature of the impact. As the Tenth Circuit Court of Appeals has explained, the actual “location of development greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them.” *New Mexico ex rel. Richardson*, 565 F.3d at 706. The Court used the example of “building a dirt road along the edge of an ecosystem” and “building a four-lane highway straight down the middle” to explain how those activities may have similar types of impacts, but the extent of those impacts – in particular on habitat disturbance – is different. *Id.* at 707. Indeed, “location, not merely total surface disturbance, affects habitat fragmentation,” *id.* and therefore location data is critical to the site-specific analysis NEPA requires. Merely disclosing the existence of particular geographic or biological features is inadequate – agencies must discuss their importance and substantiate their findings as to the impacts. *Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 892 (9th Cir. 2007).

As explained above, this Project will have many current and foreseeable direct, indirect, and cumulative impacts that must be disclosed and analyzed in an EA or and EIS. In addition to discussing and disclosing the direct, indirect, and cumulative impacts from the resource conditions identified above, the Forest Service must also consider the fact that it recently acquired a 640-acre parcel just west of Holland Lake with the Holland Lake Acquisition for the specific purpose of protecting the Holland Lake area from development. If the Forest Service approves this Project, it will be a drastic change in position which requires a thorough explanation of why the Forest Service now believes that allowing private development on the banks of Holland Lake will protect wildlife and recreational values that it considers to be imperative to the area.

#### **IV. The Project will violate the Flathead National Forest Plan.**

The Forest Service must identify the Flathead National Forest Plan’s desired conditions, objectives, standards, and guidelines that apply to the Project and demonstrate that the Project complies with them. There are several Forest Plan desired conditions, objectives, standards, and guidelines that we believe apply to this Project with which the Forest Service will be unable to demonstrate compliance if this Project moves forward as planned.

The Project is in Riparian Management Area (“RMA”) Category 4a and therefore must comply with desired conditions, objectives, standards, and guidelines relating to Riparian Management Zones. FW-DC-RMZ; FW-OBJ-RMZ; FW-STD-RMZ; FWS-GDL-RMZ. Only actions that restore or enhance the aquatic and riparian-associated resources may occur. FW-STD-RMZ(1). Further, vegetation management (tree cutting) may only be done to “restore or enhance aquatic and riparian-associated resources. *Id.* The Project does not meet these requirements.

The Forest Plan also contains desired conditions, objectives, standards, and guidelines designed to protect wildlife habitat diversity and sets forth desired conditions for a range of associated species. See Forest Plan pages 41-45. The Forest Service must demonstrate that the Project promotes these desired conditions, objectives and guidelines for each of these species.

The Project contains threatened, endangered, proposed or candidate plant and animal species and must comply with the Forest Plan desired conditions, objectives, standards, and guidelines enacted to protect these species. See Forest Plan pages 45-51. Specifically, *Howellia aquatilis* habitat exists on or near the Project area. The Forest Service must analyze and demonstrate compliance with the Forest Plan in this regard.

Similarly, the Forest Plan contains desired conditions, objectives, standards, and guidelines designed to protect grizzly bears and grizzly bear habitat. See Forest Plan pages 49-51. The Forest Service must demonstrate that the Project complies with the Forest Plan in this regard. Specifically, how the increase in human presence will increase potential for illegal motorized access and attractants will comply with the Forest Plan. See FW-STD-WL (1)-(3); FW-DC-WL (1)-(3); FW-GDL-WL (1)-(3). Additionally, the Forest Service must demonstrate that the Project complies with the standards relating to recreation in the NCDE primary conservation areas.

The Forest Plan contains desired conditions, objectives, standards, and guidelines designed manage winter and summer recreation as well as sustainable recreation. See Forest Plan pages 55-62. The Forest Service must demonstrate that the Project complies with the Forest Plan in this way. Specifically, as explained above, the Project's Master Design Plan implies that there will be winter use and a likely increase in motorized winter use. The Forest Service must consider the impacts associated with such use and demonstrate that it complies with the Forest Plan in this regard including demonstrating that it complies with FW-STD-REC (1)-(4) and consider how winter use may disturb elk, grizzly bears, wolverine and lynx including how the Project's resulting increase in capacity will contribute to sustaining the recovery of grizzly bears in the NCDE and minimize bear-human conflict.

In particular, FW-STD-REC(1) limits the increase of capacity and number of developed recreation sites on NFS land to "one increase above [the 2011] baseline in number or capacity per decade per bear management unit." The Forest Service will be unable to demonstrate that the Project complies with Standard because the increase in capacity from this Project is well over one hundred.

Also, if any activities authorized by permits create grizzly bear-human conflicts, the Forest Plan requires Forest Service modify, suspend, cancel or stop the permit. The Forest Service must commit to doing so should the Project create any grizzly bear-human conflicts- which is bound to occur.

The Flathead National Forest adopted the Northern Rockies Lynx Management Directive ("NRLMD") which contains standards, guidelines and goals relating to the recovery of lynx and preservation and recovery of lynx habitat. The Forest Service will be unable to demonstrate that the Project complies with the NRLMD standards and guidelines. Specifically, the Project will violate objectives and guidelines regarding "Human Use Projects" within lynx habitat which

requires, among others, that recreational activities maintain habitat connectivity, provide for habitat needs and connectivity, manage special uses to reduce impacts on lynx and lynx habitat, and prohibits an increase in over-snow vehicle use. See Guideline HU G1-G12. Additionally, the Project will also violate Standard ALL S1 which requires any new or expanded permanent development to maintain habitat connectivity. The expansion of the Lodge will hinder lynx habitat connectivity.

Additionally, the Forest Service must disclose and demonstrate compliance to Montana Forestry Best Management Practices and National Best Management Practices to protect and restore water quality. FW-STD-WTF; FW-STD-SOIL(2).

Finally, the Project must comply with the Forest Plan Desired Conditions, Guidelines and Standards for Management Area 7. See GA-SV-MA7-SUIT. Specifically, the Project authorizes tree cutting and timber production. This violates GA-SV-MA7-SUIT (2).

## CONCLUSION

We appreciate the opportunity to provide these comments. As explained above, the Forest Service's utilization of a CE is inappropriate and will result in a failure to consider the extraordinary circumstances relating to this Project. By categorically excluding this Project, the Forest Service stymies public participation and dismisses the opportunity to fully analyze the significant impacts of creating an upscale all-season resort in an area recognized for its values to wildlife, quiet contemplation, and remoteness. By performing a CE, the Forest Service will fail to consider reasonable alternatives. We strongly encourage the Forest Service to produce an EIS or at a minimum, an EA in order to properly disclose and analyze the environmental impacts of this Project.

Sincerely,



Kristine M. Akland, Northern Rockies Attorney  
Center for Biological Diversity  
Missoula, Montana  
kakland@biologicaldiversity.org  
(406) 544-9863

Bill Lombardi  
Save Holland Lake  
Seeley, Montana

Steve Kelly  
Council on Wildlife and Fish  
Bozeman, Montana

Mike Garrity, Executive Director  
Alliance for the Wild Rockies  
Helena, Montana