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RE: Holland Lake Lodge Facility Improvement & Expansion #61746

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To: U.S. Forest Service, Swan Lake Ranger District

I have the special privilege of serving as Director of the Bolle Center for People and Forests in the W.A. Franke of College of Forestry and Conservation at the University of Montana. I am writing for myself in this capacity and not as a representative of The University of Montana or the Montana University System.

The Bolle Center is named after the late Arnold Bolle (1912-1994), a conservation leader celebrated in the Gallery of Outstanding Montanans at the State Capitol as the “Dean of Western Forests.” In 1969, Dean Bolle was asked by Senator Lee Metcalf to investigate matters pertaining to National Forest management on the Bitterroot National Forest. Bolle appointed a select group of faculty members from the University of Montana to investigate citizen complaints, primarily about the dominant role of timber production.

The Committee’s final report—the so-called “Bolle Report”—was an important catalyst in transforming national forest law and policy in the 1970s. The Bolle Report provided not just a critique of timber primacy on the Bitterroot. At its heart was a deeper criticism of the USFS’s institutional culture at the time, one that seemed unable “to involve most of the local public in any way but as antagonists.” One of the most enduring contributions of the Bolle Report, now firmly established in national forest law and regulation, is the role of meaningful public participation and the use of scientific knowledge in forest planning and management.

Here we are, decades after the Bitterroot controversy, only to find local citizens and the public once again treated as antagonists, with a proposal to exclude them from a fully informed, scientifically credible, and participatory NEPA process. The USFS intends to categorically exclude the proposed Holland Lake expansion from the type of analysis and public participation required by environmental impact statements and assessments prepared pursuant to NEPA.¹

¹ The intent to categorically exclude this project is based on 36 C.F.R. §220.6(e)(22). How this and other new CE authorities could so easily be abused by the agency is detailed in a letter to the USFS by five

Of course, development at Holland Lake is no Bitterroot controversy in terms of scope, scale and implications. But both cases signify something far bigger within the agency and Montanans clearly recognize something is once again amiss. Rarely have I been approached by so many citizens about a local project or proposal, all with deep concerns and lots of questions about the proposed expansion *and* the Forest Service’s misuse of NEPA.

To categorically exclude some projects and activities from full environmental review is both reasonable and necessary. Doing so can help the agency focus on proposed actions most likely to actually have significant environmental effects. But the USFS is now using its growing list of “CE” authorities to an alarming degree. Roughly 84 percent of the agency’s NEPA work is now done using CE determinations.² The Forest Service seems intent on excluding even more projects and actions from NEPA review in the future, using new exemptions provided in the Bipartisan Infrastructure Law (BIL), among several other new authorities granted by Congress, and more controversially by the agency itself.³

But to abuse this tool is to risk the agency’s credibility and social license. The intention to categorically exclude such a significant action sends a message that CEs are being used not as a way to do NEPA more efficiently, or to make better decisions—which is the whole point of NEPA—but rather a way to avoid the use of best available science and informed public participation in public lands management. The backlash is already evident and I’m afraid it will taint future good faith efforts aimed at actually improving the USFS’s implementation of NEPA.

USFS regulations prohibit the use of CEs where there are “extraordinary circumstances” related to the proposed action, such as having federally listed threatened or endangered species in the project area or other special resource conditions.⁴ The ecological setting of Holland Lake provides a textbook example of extraordinary circumstances that warrant closer environmental analysis and full public participation.

The recently revised Flathead National Forest Plan begins by emphasizing the “distinctive roles and contributions” of this special place:

The Forest has an inherently high diversity of plant and animal life due to its geographic location, geology, ecologically significant wetlands, topography, elevation ranges, climate conditions, and unique patterns of historical disturbance processes, primarily

State Attorney Generals writing in 2019. Included in their review was a warning about proposed changes to using CEs for actions at existing recreation sites, as used here, which they saw as “highly vague and potentially sweeping in its breadth.” (letter on file).

² The agency now completes an average of 1,588 CE determinations, 266 environmental assessments (EAs), and 39 EISs annually (between 2014-2019). U.S. Forest Service, *NEPA Compliance Final Rule*, 85 Fed. Reg. 73,620 (Nov. 19, 2020). For further context on the growing use of CEs, consider that in 2003 the USFS had but one CE authority to use in approving certain vegetative management activities. See Government Accountability Office, *Forest Service: Vegetative Management Projects Approved during Calendar Years 2003 through 2005 Using Categorical Exclusions*, 2007.

³ Letter from USFS Chief Randy Moore to Regional Foresters, Station Directors, Deputy Chiefs, and WO Directors (Apr. 25, 2022)

⁴ 36 C.F.R. §220.6(b)

wildfires of variable severities and sizes. The Forest is uniquely positioned in the heart of the Crown of the Continent Ecosystem, with a complex of wilderness and unroaded areas that border Glacier National Park and a remote portion of British Columbia. This location, one of the largest wild areas in the lower 48 states, enhances its importance as a connector of habitats and core populations of associated wildlife.

The Crown of the Continent Ecosystem harbors one of the most intact assemblages of medium to large carnivores in the contiguous United States and is inhabited by hundreds of species of native mammals, birds, fish, reptiles, amphibians, and invertebrates. Numerous carnivores inhabit the Forest, including the Canada lynx as well as the grizzly bear and wolverine. The Flathead National Forest is part of Canada lynx critical habitat unit 3, which is the Northern Rocky Mountains region defined by the U.S. Fish and Wildlife Service (USFWS). The largest population of grizzly bears and one of the largest populations of wolverines in the lower 48 states inhabits the Forest and surrounding portions of the Crown of the Continent Ecosystem.

The Forest is part of the Northern Continental Divide Ecosystem (NCDE) for grizzly bears, one of seven grizzly bear ecosystems in the continental United States. The Flathead River in British Columbia and the North Fork of the Flathead River in Montana, as well as drainages on the east side of the Continental Divide that are located in the northwestern portion of the Crown of the Continent Ecosystem, have the highest density of grizzly bears in inland North America. The Forest is the largest land manager within the NCDE recovery zone, managing approximately 37 percent of NCDE lands. Over 1,000 bears are estimated to be within the NCDE.⁵

The revised Flathead Plan also makes the significance of the “Swan Valley Geographic Area” perfectly clear, emphasizing its unique characteristics such as providing an important connectivity zone and key winter habitat for many species of wildlife.⁶ This same Plan, moreover, acknowledges the public and private dollars used to acquire more than 45,000 acres of Plum Creek Timber Company lands through the Montana Legacy Project—the historic land deal that was about keeping things intact and the same in the Swan Valley. I can also find nothing in the related Planning process—from the Assessment, Need for Change, or the USFWS’s Biological Opinion—that provides any reasonable justification for such a proposal so out of sync with its governing land use plan.

So much time, energy and resources collectively spent on revising this Plan, one of the first to be revised under the 2012 Forest Planning Regulations—Regulations that require the use of best available scientific information, public participation, and an “all lands” approach to National Forest management. So much work and money spent on the Montana Legacy Project, so carefully done so to protect the ecological and rural community values so cherished in the region. So much effort to protect the ecological integrity and feel of a special place. And yet none of that work seems to have shaped or informed a proposal that would undermine it all.

⁵ U.S. Forest Service, Flathead National Forest Land Management Plan (2020), at 8-9.

⁶ *Id.*, at 144-145.

The agency's purpose and need for action statement references the revised Forest Plan's desired conditions for Management Area 7, Focused Recreation. This vague and discretionary plan component calls for providing "sustainable recreational opportunities and settings that respond to increasing recreation demand." But this provision does not call for *generating* greater demand for even more intensive recreation nor can it be understood in isolation from other relevant parts of the Revised Plan, including the plan components for the Swan Valley Geographic Area, and requirements under 36 C.F.R. §219.9 "to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and to maintain a viable population of each species of conservation concern."

The special use permit and proposed expansion of Holland Lake Lodge is clearly and directly related to forthcoming activities and an environmental footprint that will extend far beyond the 15 acre permitted area. The type of intensive year-round recreation associated with the POWDR corporation makes this clear and is entirely inappropriate in an area so ecologically significant. The NEPA case law forbids the segmentation of related actions and requires that the cumulative effects of related actions must be considered, usually in an EIS.⁷ The Council on Environmental Quality (CEQ) also states that "federal agencies must be sure the proposed [CE] captures the entire proposed action" and "should not be established or used for a segment or interdependent part of a larger proposed action."⁸

The categorical exclusion proposed by this action would be unwise and unlawful. It is not too late for the agency to change course and to use NEPA, and the science and public participation it entails, to consider smarter alternatives for Holland Lake.

Thank you for your consideration.

Sincerely,

Martin Nie

⁷ See *e.g.*, *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976); *Daly v. Volpe*, 514 F. 2d 1106 (9th Cir. 1975); *Northwest Resource Information Center v. National Marine Fisheries Service*, 56 F. 3d 1060 (9th Cir. 1995).

⁸ *Establishing, Applying and Revising Categorical Exclusions under the National Environmental Policy Act*, 5 (November 23, 2010), at 5, available at https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov-232010.pdf