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October 7, 2022

United States Forest Service
Swan Lake Ranger District
Attn: Shelli Mavor (Holland Lake Lodge)
200 Ranger Station Rd.
Bigfork, MT 59911
Submitted electronically via web portal:
<https://www.fs.usda.gov/project/?project=61746>

Re: Community of Condon for the Preservation of Swan Valley Comments on Holland Lake Lodge Expansion

Attn: Shelli Mavor:

Our office represents the Community of Condon for the Preservation of Swan Valley (“CPSV”), a newly organized nonprofit formed by and comprised of concerned residents and property owners of the Swan Valley. CPSV’s members all have direct connections to the Swan Valley, including Holland Lake and the surrounding idyllic rural and wild landscape. CPSV’s members reside in Condon and are store owners, volunteer emergency responders, retirees, environmental professionals and avid recreationalists. In light of the Forest Service’s hasty, misleading and wholly inadequate agency scoping, members of CPSV quickly mobilized to address Forest Service’s not-so-veiled effort to illegally push through a major corporate expansion of Holland Lake Lodge (“Lodge”).

CPSV and its members are alarmed at the agencies willingness to rubberstamp a project that, as proposed, deviates quite considerably from the existing conditions of the Lodge and will likely result in significant impacts to the surrounding environment. Critically, CPSV members fear a project at this scale will seriously impact the community’s limited resources, threaten the ecological integrity of its water sources, destroy critical habitat of endangered species, damage the legacy and character of historic sites, and disrupt the Valley’s uniquely rural values.

CPSV’s submits their comments into the public record in the above matter regarding their concerns with the Holland Lake Lodge Facility Expansion (“Project”). CPSV urges the Forest Service to reinitiate the 60-day public comment period in the development of a Draft Environmental Impact Statement and deny proponents request under 36 C.F.R. § 220.6(e)(22) for a categorical exclusion (“CE”) from analysis under the National Environmental Policy Act (“NEPA”). The Forest Service indicates its intention to grant this request and categorically exclude the Project from this required analysis. The granting of a CE is both inappropriate and illegal for a project of this scale. The Forest Service must comply with the letter and intent of

NEPA and conduct an Environmental Impact Statement (“EIS”) or, at a minimum, an Environmental Assessment (“EA”). As explained below, categorically excluding the Project violates numerous federal environmental statutes.

Project Background

As proposed, the expansion would entail new construction totaling at least 32,900 square feet, which would more than triple the number of overnight visitors staying at the lodge at any one time. These new structures would include a 13,000 square foot, 28-room, two-story lodge; 6,500 square feet comprised of ten new lake cabins; 4,000 square feet comprised of 16 separate studio cabins; a 2,000 square foot Welcome Center; a 3,000 square foot restaurant with indoor and outdoor capacity for 130 guests; a 400 square foot watersports building; a 2,000 square foot maintenance building; an additional 2,000 square feet of employee housing structures; and new boat and swimming docks on Holland Lake. Additionally, Project proposes the removal of trees and vegetation along the lakeshore, impacts would include up to 130,680 square feet of new parking lots; 74,418 square feet of new driveway access to parking lots; and 19,198 square feet of pathways.

To support the projected three-fold increase in visitor use, the Project would include the construction of additional water and wastewater systems, including the drilling of new wells, the installation of larger wastewater connections, sewage tanks and lines, and a substantial expansion of the existing Holland Lake Wastewater Facility abutting the lake’s shoreline.

The resulting increase in human visitation to the area would result in significant impacts far beyond the 15-acre “permit area” to surrounding federal lands, including impacts on threatened and endangered species and the habitat on which they depend. The human impacts also include increased traffic, along with noise and dust pollution. Along with its higher density development, POWDR intends to promote an increase in recreational use in the area through the expansion of facilities at Holland Lake Lodge, through the promotion of outdoor recreation on surrounding public lands, and through partnering with private professional outfitters and guide services. The increase in winter recreational use will induce significant increase in human presence, including both motorized and non-motorized recreation opportunities in critical grizzly bear habitat.

The overall increased visitation and access to remote wilderness areas will also result in a strain on the community’s limited resources, such as their voluntary emergency services and road maintenance.

Improper Transfer of Existing Special Use Permit

Forest Service regulations dictate that the transfer of a Special Use Permit (“SUP”) as a result of death, sale, or other transfer, “the authorization terminates upon change of ownership.” 36 C.F.R. § 251.59. “The new owner of the authorized improvements must apply for and receive a new special use authorization,” according to the regulation. *Id.* This requirement is specifically

referenced in the SUP under which the present holder, Christian Wohlfeil, has been operating Holland Lake Lodge. According to this Special Use Permit (“SUP”), which was issued to Wohlfeil on May 26, 2017, any transfer of title or change in control of business entity “shall result in termination of the permit.” The SUP further states that any new owner “must submit an application for a special use permit and the Forest Service is not obligated to issue a new permit to the party who acquires control.”

Despite this clear prohibition on the transfer of an SUP, Wohlfeil transferred ownership of the lodge to the POWDR Corporation (“POWDR”) in 2021 and POWDR has neither applied for nor received a new special use authorization for the lodge. In the absence of a SUP in its name, the Forest Service lacks the authority to authorize the Project. In the event POWDR does apply for a new special use permit, the Forest Service is required under NEPA to provide the public with notice and the opportunity to comment on the application. *See* 36 C.F.R. § 251.54(g)(2)(ii).

POWDR’s planned expansion will significantly degrade the quiet, pristine, and tranquil nature of Holland Lake Lodge and adversely impact wildlife, habitat, water quality, and other aspects of the human and natural environment. Because the Project is designed to result in private benefit at a significant public expense, it is not in the public interest and the Forest Service must reject any special use permit application submitted by POWDR.

Forest Service’s Scoping Is Inadequate

The September 01, 2022 Scoping Letter improperly describes the existing on-the-ground realities of Holland Lake Lodge’s SUP, while also failing to accurately identify the proposed nature of Project’s expansion. First and foremost, the Scoping Letter mischaracterizes the current footprint of the Lodge’s SUP as an “existing 15 acre permitted area.” In actuality, the SUP applies to “10.53 acres.” The Scoping Letter also excludes any mention of the unauthorized transfer of the SUP and legally required termination when title is transferred. The SUP clearly requires that a new owner or controller submit a new application. Even so, the agency is not obliged to “issue a new permit to the party who acquires control.” Instead, the letter notes that Service has accepted the April 15, 2022, Master Development Plan. A planning document not available to the public until five days after public comment began on September 1, 2022.

Additionally, the scoping letter fails to mention the cumulative effects of numerous compounding SUPs issued to local guides and outfitters in the area. These guiding services stand to greatly benefit from an increase in visitors to the Lodge. This increase in visitors will likely increase human presence and motorized use on the roads, trails, and habitat of Holland Lake. It has long been held that NEPA analysis “must assess cumulative effects, which are the impact[s] on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 CFR §1508.7.

Here, the Forest Service failed to address the cumulative effects of existing SUPs (as permitted) and resulting expansion of these SUPs with increased visitation to the area. Omitting the cumulative effects component of the scoping process essentially permits all of the compounding impacts from increased recreation and related activities under these SUPs to evade environmental assessment. Applying a CE to the Project creates dangerous precedent on how all

SUPs are to be treated in the surrounding area, promoting the unfettered expansion of previously permitted activities without the “hard look” requirement. This type of incremental expansion belies the fundamental purpose of NEPA by denying the public the right to formally object to an expanding human footprint, in and out of the designated wilderness areas of their own backyard.

NEPA Violation: Categorical Exclusion Inappropriate

NEPA requires federal agencies to prepare an Environmental Impact Statement (“EIS”) in cases such as this one where a major federal action may potentially result in significant impacts. An EIS is required when “substantial questions are raised as to whether a project . . . may cause significant degradation to some human environmental factor.” *LaFlamme v. FERC*, 852 F.2d 389, 397 (9th Cir.1988). “The plaintiff need not show that significant effects *will in fact* occur, but if the plaintiff raises substantial questions whether a project may have a significant effect, an EIS *must* be prepared.” *Id* (citations omitted) (emphasis original).

Categorical exclusions (“CEs”) are appropriate only for categories of actions that the agency has determined “normally do not have a significant effect on the human environment.” 40 C.F.R. § 1501.4(a). Because CEs do not involve a consideration of alternatives, they are not proper in cases where unresolved conflicts exist. “If the responsible official determines . . . 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).

Here, because the Forest Service cannot ensure that the Project will not involve “extraordinary circumstances,” its reliance on a CE is improper and it must prepare an EIS or, at minimum, an EA. Forest Service NEPA regulations require 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;
- (ii) 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).

Authorization of the Project under a CE is inappropriate due to the presence of a number of the listed extraordinary circumstances. Such circumstances include impacts upon endangered an/or threatened grizzly bears, lynx, bull trout, and Spalding’s catchfly. Additional impacted species include wolverines and fishers. Project impacts also extend to wilderness, wilderness study areas,

and potential wilderness areas; national recreation areas; inventoried roadless areas; research natural areas; wetlands, historic properties, and American Indian religious and/or cultural sites. The Forest Service cannot rationally conclude that no extraordinary circumstances exist given the presence of these numerous resource conditions. Without proper NEPA analysis the Forest Service cannot ensure Project does not significantly impact the human environment.

The Project Violates the Flathead National Forest Plan

As it is currently planned, this Project will not comply with several desired conditions, objectives, standards and guidelines identified in the Flathead National Forest Plan (“Forest Plan”). For example, this Project’s proposed tree removal for the purpose of building additional cabins is not permitted under the existing management zones of that riparian location. The Forest Plan also contains the desired conditions, objectives, standards and guidelines to protect diverse wildlife habitat in supporting a range of species. Importantly, the Forest Plan addresses increased winter use and motorized winter use as it relates to grizzly bear and other protected species.

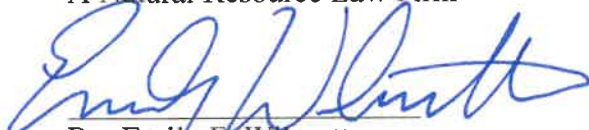
The Forest Service must therefore demonstrate the Project complies with the Forest Plan’s management provisions as it relates to recreational impacts. An increase in recreational uses will likely violate the Forest Plan’s provisions to minimize bear-human conflict; particularly, if it results in an increase of recreational sites within the bear management units. The Forest Service is required to demonstrate this Project, as proposed, will not conflict with these provisions of the Forest Plan.

Conclusion

The use of a CE will result in a failure to consider a host of extraordinary circumstances that will impact the Project area and surrounding lands and waters. It will result in a failure for the agency to consider the public input and consider the meaningful analysis of reasonable alternatives. It is imperative that the Forest Service undertake a proper, thorough, and judicious review of the proposed expansion in order to address and study the full and true impacts of the Project. Please don’t hesitate to call if you have any questions about these comments or would like additional information about any potential issues.

Sincerely,

FEGUSON & COPPES, PLLC
A Natural Resource Law Firm



By: Emily F. Wilmott
Attorney for Community of Condon for the Preservation of Swan Valley