Holland Lake project comments

1. **Questionable NEPA Process followed by the USDA Forest Service for this project:**

In my previous positions I served as the Environmental review officer for Missoula County. In that position where I reviewed specific federally funded projects under NEPA. Like other federal agencies, the USDA Forest Service is required to initiate a proper environmental review process to evaluate the Holland Lake proposal under implementing current regulations both at the individual agency level and more broadly under the Whitehouse Office Council of Environmental Quality or CEQ. The National Environmental Policy Act or NEPA and it’s implementing regulations under CEQ establishes the specific process by which NEPA is implemented. NEPA does not require impacts to be mitigated; rather, it provides a broad step by step decision-making process through which many types of environmental impacts both direct and indirect under many federal requirements – including but not limited to the National Historic Preservation Act, The Clean Water Act, the Endangered Species Act, etc. -- are evaluated. At each point in the process a decision is made to move on to the next based on the evaluation of potential impacts.

However, it is unclear if the NEPA process being followed by the USDA Forest Service in this proposal is adhering to the new corrected procedures established by the Council on Environmental Quality (CEQ) in April 2022 to correct the errors made to the 2020 CEQ rules or even to the intent of the new regulations to correct the errors of the 2020 regulations that were inconsistent with the basic intent of NEPA. The 2020 regulations rolled back some of the basic original requirements. Before the current 2022 regulation to correct these mistakes, the 2020 regulations were being challenged in the courts over their incompatibility with the intent and basis of NEPA. “The Forest Service has amended its NEPA regulations, effective November 19, 2020. The amendments establish new and revised categorical exclusions and a Determination of NEPA Adequacy provision. See [Forest Service NEPA Procedures, Policy, and Guidance](https://www.fs.usda.gov/emc/nepa/nepa_procedures/index.shtml) for more information.” (https://www.fs.usda.gov/emc/nepa/)

***Issues with the 2020 CEQ rule*** added language to CEQ regs § 1502.13 requiring agencies to base the purpose and need statement on the agency’s authority and the goals of an applicant. The 2020 regulations also added a conforming definition to § 1508.1(z), defining “reasonable alternatives” to mean “a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, *meet the goals of the applicant*.” The intent of these changes was to shift the focus to a review that accomplished the goals of the project sponsor, which had the effect of limiting the range of considerations that an agency would be required to review in performing its NEPA review. The revisions also limited the agency to consideration of issues that it could regulate or control, which excluded the review of some impacts that would be regulated by agencies other than the agency performing the NEPA review. (https://www.orrick.com/en/Insights/2022/06/CEQs-Phase-I-NEPA-Revisions-a-Partial-Rollback-of-2020-Rules)

***CEQ’s 2022 rule*** **reverts § 1502.13 to the 1978 language, removing the requirement for agencies to base the purpose and need on the goals of the applicant and the agency’s authority. It also deletes the reference to the “goals of the applicant” from the definition of reasonable alternatives in § 1508.1(z).** **Under the revised regulations, agencies have the discretion to consider a variety of factors and environmental impacts and need not prioritize an applicant’s goals over other relevant environmental impact factors.** CEQ’s view is that this change will promote environmentally sound decision-making by allowing considerations which best meet the stated goals of NEPA and the agency’s empowering statute. CEQ’s 2022 rule furthersubstantively restores the old definitions as subsections (1)-(3) of § 1508.1(g), renaming “cumulative impacts” as “cumulative effects.” It also revokes the 2020 rule’s guidance to not consider effects with mere “but for” causation and to generally exclude from consideration effects that are remote, the product of a lengthy causal chain, or that the agency has no ability to prevent. Note that the 2022 final rule retains the language defining all “effects or impacts” as “changes ... *that are reasonably foreseeable*,” thus retaining some limitation on the scope of eligible effects. (<https://www.orrick.com/en/Insights/2022/06/CEQs-Phase-I-NEPA-Revisions-a-Partial-Rollback-of-2020-Rules>)

**1A. USDA Forest Service has overemphasized the needs of the applicant in their review of Holland Lake proposal which the 2020 CEQ regulations, as discussed above, promoted and supported and which the 2022 CEQ rule revoked.**

The 2022 regulations reversed this emphasis to original standards. The intent of NEPA is to set up a process whereby a proper environmental review is conducted when it involves a federal agency, lands or federal resources. The primary justification is that our federal agencies are there to protect PUBLIC RESOURCES AND THE PUBLIC and not private endeavors. It is not the job of the Forest Service or any other branch of the federal government to promote the interests of private entities.

**1B. USDA Forest Service’s Decision made a wrong decision to review the Holland Lake Proposal as a Categorical Exclusion (Cat EX)**

Under NEPA, the lead agency determines what level of environmental review is pertains to a specific proposal. In general, under NEPA, a decision is made to undertake a categorical exclusion when the proposal is a minor action or undertaking such as an reconstructing a trail or an administrative undertaking that will not have a significant effect on the environment.

According to the CEQ, “if the proposed action is not included in the description of the CE provided by the agency, the agency must prepare an EA or an EIS, or develop a new proposal that may qualify for application of a CE. When the agency does not know or is uncertain whether significant impacts are expected, the agency should prepare an EA to determine if there are significant environmental impacts.” (<https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf>). As part of the Trump Administration’s revisions to the CEQ (discussed above under 2020 revisions) the USDA FS included a new CE in the USDA FS rule, 36 CFR 220. According to the FS, 36 CFR 220.6(e)(22) a CE now includes: *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*. Again application of a CE to a project such as the Holland Lake Project is misguided because it means that the agency has determined that there will be no significant environmental impacts. The project will involve the construction of an additional 30,000 sft in structures; major expansion of wastewater treatment in critical habitat for endangered species, change existing historic structures without required historic preservation reviews or mitigations, dramatically increase use on the lake affecting summer homes on the lake and negatively impact other local recreation access to the area. Therefore, a CE conclusion determination is unsupported. It will clearly be a major construction project adjacent to a wilderness area, dramatically increasing the size, the footprint, and the potential for major impacts to air quality, water quality, endangered species and more.

New construction with extensive expansion of existing facilities is not a CE. Activities in the proposal will clearly have a significant effect on the environment including the potential to impact endangered species, wilderness, water quality, air quality, historic resources, and other areas. These potential impacts must be properly analyzed using an Environmental Assessment or an Environmental Impact Statement.

1. **Major impacts of the project have not been identified adequately in the scoping process.**

My family and I have spent almost 30 years visiting Holland lake and recreating there. We have camped there and consistently stayed in one of the summer lease homes every summer located directly across from the lodge. This proposal directly affects our experience and use of Holland lake and will negatively impact the experience of the summer home leasees, campers, and other recreationists. It will create an overuse of the lake impacting species of concern like loons and other threatened and endangered species like lynx, grizzly bears, and specific types of trout. As climate change impacts continue, drought and lower snowpacks have already impacted the lake resulting in lower lake levels. More use will just exacerbate those impacts. These impacts must be evaluated.

Again, the project will involve the construction of an additional 30,000 sft in structures; major expansion of wastewater treatment in critical habitat for endangered species, change existing historic structures without required historic preservation reviews or mitigations, dramatically increase use on the lake affecting summer homes on the lake and negatively impact other local recreation access to the area. It will clearly be a major construction project adjacent to a wilderness area, dramatically increasing the size, the footprint, and the potential for major impacts to air quality, water quality, endangered species and more. NEPA requires that these potential impacts must be reviewed in either an EA (initially) or a full EIS.