



Melanie Mills  
President & CEO  
Colorado Ski Country USA, Inc.  
3773 Cherry Creek North Drive Suite 955  
Denver CO 80209  
303-837-0793  
mmills@coloradoski.com

September 20, 2024

Via Upload – <https://cara.fs2c.usda.gov/Public//CommentInput?Project=65356>

Director, Ecosystem Management Coordination  
USDA Forest Service  
201 14<sup>th</sup> Street SW, Mailstop 1108  
Washington, DC 20250-1124

**RE: Comments of Colorado Ski Country USA, Inc. on United States Forest Service Old-Growth Forest Plan Amendments**

Dear Director, Ecosystem Management Coordination:

Colorado Ski Country USA, Inc. (“CSCUSA”) respectfully submits these comments on the United States Forest Service’s June 2024 Draft Environmental Impact Statement for the Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System (the “Old-Growth Amendments”). Please add these comments to the administrative record for the Draft EIS and the proposed amendments.

**INTRODUCTION AND INTEREST OF CSCUSA**

CSCUSA is a trade association of twenty-one ski resorts in Colorado. CSCUSA serves its member resorts in the areas of public policy, communications, and marketing. CSCUSA submits these comments on behalf of itself and its member resorts.

CSCUSA member resorts provide a significant amount of high-quality winter and year-round recreation. Sixteen CSCUSA member resorts operate on National Forest System (“NFS”) lands under long-term ski area special use permits issued by the Forest Service under the Ski Area Permit Act of 1986, as amended by the Ski Area Recreational Opportunities Enhancement

Act of 2011. Those resorts are among the most well-known and beloved ski areas in the United States: Arapahoe Basin, Aspen Highlands, Aspen Mountain, Buttermilk, Ski Cooper, Copper Mountain, Eldora, Loveland, Monarch, Powderhorn, Purgatory Resort, Snowmass, Steamboat, Sunlight, Telluride, and Winter Park.

CSCUSA member resorts host millions of recreation visits each year. They are stewards of the natural environment they are entrusted to manage, and work diligently with the Forest Service and other federal and state agencies to protect the land, wildlife, and natural environment at their resorts.

CSCUSA member resorts have decades of experience with the Forest Service's decision-making process as proponents of actions to maintain, improve, expand, and enhance the quality of four-season developed recreation at permitted ski areas. CSCUSA and its member resorts are familiar with the integral role that Forest Plan standards and guidelines play in this process. The National Forest Management Act requires that ski area projects on NFS lands are consistent with applicable Forest Plan standards and guidelines, or can be made consistent with the management direction through a project- or activity-level Forest Plan amendment. 16 U.S.C. § 1604(i). CSCUSA member resorts have practical experience developing, proposing, and implementing ski area projects that comply with these requirements and enhance the public recreation experience on the public lands within their ski areas.

CSCUSA was an active stakeholder in the development of prior programmatic Forest Service regulations and Forest Plan amendments similar to the Old-Growth Amendments proposed here. CSCUSA participated in the development of, and filed detailed written comments on, the Forest Service's 2001 Roadless Rule, the 2002 White River National Forest Land and Resource Management Plan, the 2012 Colorado Roadless Rule, and the 2008 Southern Rockies Lynx Forest Plan Amendments. CSCUSA and its member resorts have decades of experience with the implementation of these programmatic management policies within the boundaries of their ski area special use permit boundaries, and in partnering with the agency to refine and implement these policies to effectuate the shared goal of providing public recreation on public lands.

CSCUSA submits these comments to inform the Forest Service's development of the Old-Growth Amendments to help ensure the final amendments are consistent with and implement the shared goal of providing high-quality public recreation to public visitors on NFS lands. It is essential that the final Old-Growth Amendments provide clear and unambiguous direction on their application to permitted ski areas. Ambiguity in the application of the final amendments to ski area projects and operations will result in unnecessary conflict, delay, and process that will burden the agency and permitted ski area operators and impede the management of these areas for their intended purpose of providing developed recreation to public visitors on NFS lands.

### COMMENTS

**1. CSCUSA supports the adoption of the Forest Service’s Preferred Alternative, Alternative 2, with the inclusion of the revisions and clarifications in this comment letter.**

CSCUSA supports the Forest Service’s articulation of a “framework for conserving, stewarding, recruiting, and monitoring old-growth forests.” Draft EIS at S-1. CSCUSA agrees with the Forest Service that old-growth forests play a meaningful role in providing “recreational experiences.” Draft EIS at 19. The forested lands CSCUSA’s member resorts are entrusted to manage are an integral component of the recreation experience they provide. CSCUSA shares the goal of protecting this valuable natural environment while providing high-quality public recreation.

CSCUSA is confident that old-growth forest conservation and ski areas can coexist if the Forest Service adopts the proposed management direction with the revisions and clarifications requested in these comments.

The Forest Service should adopt Alternative 2 with the revisions and clarifications requested in these comments.

**2. The Forest Service should state that Standard 2.b does not apply to developed recreation sites permitted under long-term special use authorizations.**

CSCUSA requests that the Forest Service state in the final amendments that Standard 2.b does not apply to developed recreation sites permitted under long-term special use authorizations, including ski areas. This clarification is critical to avoid a management overlay at these areas that will cause avoidable confusion, conflict, and delay in the future management and operation of these areas.

The appropriate application of proposed Standard 2.b is critical to the Forest Service’s management of multiple uses on NFS lands, including permitted ski areas on NFS lands. CSCUSA’s requested revision is essential to its appropriate implementation, and critical to ensuring that the agency can continue to administer lands subject to ski area permits, and other developed recreation sites subject to long-term special use authorization, for their dedicated purpose.

Ski area special use authorizations under the Ski Area Permit Act of 1986 issue for 40 years. 16 U.S.C. § 497b. The permit term represents the agency’s acknowledgment of the investment required to own, maintain, and operate a ski area on Forest Service lands, and the important role ski areas play in providing public recreation on these lands. The permit term represents the agency’s commitment to the long-term management of the permitted lands for the purpose of providing developed recreation. The NFS lands at many of CSCUSA’s member

resorts have been managed for developed recreation for sixty years or more. The NFS lands at Steamboat Ski Resort in the Routt National Forest have been subject to long-term ski area permits for developed recreation since 1962. The Forest Service first issued a special use permit for Aspen Mountain in the White River National Forest in 1946. The agency issued a ski area permit for Ski Cooper Ski Area in 1942 in connection with military training for the famed Tenth Mountain Division during World War II.

The point is: the Old-Growth Amendments are not being drawn on a blank slate. They will, at ski areas, overlay land management decisions made decades ago. It is important that the Old-Growth Amendments do not conflict with and impede these existing management allocations, prior management decisions, and existing special use authorizations. There are many examples of the potential conflict that could result from managing permitted ski areas for old-growth characteristics. An obvious example is tree removal for the addition, replacement, or upgrade of a ski lift. This conflict will also likely arise in the approval of routine vegetation management and timber removal needed for annual trail maintenance and visitor safety.

The Forest Service should not invite this potential conflict. But the test proposed in Standard 2.b(2) threatens to do just that. It proposes a subjective test that will require individual Forest Service decision-makers and resource specialists to determine what constitutes an “ecologically appropriate scale” and whether forest conditions at this scale continue to meet old-growth criteria. It is likely that this will result in application of the standard in a manner that causes stakeholder conflict, confusion, delay, and avoidable controversy in the authorization and implementation of maintenance, development, and operational activities at ski areas.

Take for example the recent categorical exclusions promulgated by the Forest Service under the National Environmental Policy Act. *See* National Environmental Policy Act (NEPA) Compliance, 85 Fed. Reg. 73620 (Nov. 19, 2020). Multiple years of effort went into the development of these regulations on behalf of the agency and stakeholders. The rules include new categorical exclusions that are important to the effective and efficient implementation of projects at permitted ski areas. Because agencies must analyze for extraordinary circumstances before authorizing a project under a categorical exclusion, the test proposed in Standard 2.b(2) has the potential to add uncertainty and confusion into the process by requiring the agency to consider whether old-growth conditions implicate any of the listed extraordinary circumstances, thereby reducing the administrative benefits of the categorical exclusions.

The Forest Service has previously acknowledged the importance of exempting existing, authorized management activities from the overlay of programmatic planning prescriptions that have the potential to conflict with and impede these uses. The Forest Service did this in the 2001 Roadless Rule by adopting provisions that allowed for existing special use authorizations and other management decisions to continue despite the rule’s prohibitions on road construction and timber removal. *See* 36 C.F.R. § 294.13(b)(2), 294.14(a).

CSCUSA requests that the Forest Service adopt a similar position in the Old-Growth Amendments and state that Standard 2.b does not apply to developed recreation sites permitted under long-term special use authorizations, including ski areas.

Please state in the final amendments that Standard 2.b does not apply to developed recreation sites permitted under long-term special use authorizations, including ski areas.

- a. In the alternative, the Forest Service should revise Standard 2.b to allow for old-growth removal when incidental to a management activity not otherwise prohibited and clarify its application to permitted ski areas on NFS lands.

The Forest Service can also address the issues raised above by working within the existing language and framework the agency has proposed. Specifically, the Forest Service can revise Standard 2.b to allow for timber removal if the purpose is “incidental to the implementation of a management activity” not prohibited by the applicable Forest Plan, **or** “the area” continues to meet old-growth forest criteria after the timber removal.

The Forest Service proposes to adopt a two-part test under Standard 2.b to allow for vegetation management and timber removal for purposes other than proactive stewardship. Standard 2.b provides:

The cutting or removal of trees in old-growth forest for purposes other than proactive stewardship is permitted when (1) incidental to the implementation of a management activity not otherwise prohibited by the plan, and (2) the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.

Draft EIS at 30. Standard 2.b thus allows for timber removal if the purpose is “incidental to the implementation of a management activity” not prohibited by the applicable Forest Plan, **and** “the area” continues to meet old-growth forest criteria after the timber removal.

As indicated above, Standard 2.b(2) proposes a subjective test that imposes an old-growth management overlay on ski area operations, maintenance, and development. And it makes the consideration of old-growth characteristics paramount.

The Forest Service can resolve this conflict, working within the existing language and framework the agency has proposed, by Standard 2.b to allow for timber removal if the purpose is “incidental to the implementation of a management activity” not prohibited by the applicable Forest Plan, **or** “the area” continues to meet old-growth forest criteria after the timber removal. This approach would closely follow the approach the agency adopted in the 2001 Roadless Rule by exempting timber removal incidental to a management activity not otherwise prohibited, without any need to further demonstrate that the area continues to meet old-growth criteria. *See*

36 C.F.R. § 294.13(b)(2), 294.14(a). The Forest Service should apply this established template here by exempting timber removal incidental to a management activity not otherwise prohibited, without any need to further demonstrate that the area continues to meet old-growth criteria.

Please revise Standard 2.b to read: The cutting or removal of trees in old-growth forest for purposes other than proactive stewardship is permitted when (1) incidental to the implementation of a management activity not otherwise prohibited by the plan, **or** (2) the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.

- i. The Forest Service should clarify that timber removal for maintenance, development, and operations at a permitted ski area is an example of timber removal incidental to the implementation of a management activity not otherwise prohibited.

In conjunction with the proposed revision to Standard 2.b. to allow for timber removal that is incidental to a management activity not otherwise prohibited – without having to satisfy the test proposed in Standard 2.b(2) – CSCUSA requests the Forest Service also specify that timber removal at permitted ski areas is an example of timber removal incidental to a management activity not otherwise prohibited within the meaning of Standard 2.b(1).

Timber removal pursuant to Forest Service decisions authorizing maintenance, development, and operations at a permitted ski area qualifies as timber removal “incidental to the implementation of management activity not otherwise prohibited” for purposes of Standard 2.b(1). The term “management activity” in Standard 2.b(1) is naturally read to include agency decisions for the implementation of ski area special use permits, including decisions authorizing the construction of new lifts and facilities, or development of additional terrain, as well as other more routine decisions, like authorizing seasonal operating plans. And because tree-cutting, vegetation management, and timber removal are a necessary and incidental part of ski area maintenance, development, and operations, timber removal associated with these authorized activities is inherently “incidental” to the approved “management activity.”

Authorized timber removal and vegetation management at ski areas satisfies the second part of the clause as well. Applicable Forest Plans do not “prohibit” management of permitted ski areas. It is the opposite. Forest Plans allow for the permitted ski area, often through ski area-specific land management designations.

This careful and natural reading of Standard 2.b(1) confirms that “the cutting or removal of trees in old-growth forest for purposes other than proactive stewardship” at a permitted ski area satisfies Standard 2.b(1) because it is “incidental to the implementation of a management

activity” – maintenance, development, and operation of a ski area – not otherwise prohibited by the plan. The Forest Service should make this point clear in the Final EIS.

Please clarify in the Final EIS that timber removal for maintenance, development, and operations at a permitted ski area qualifies as timber removal “incidental to the implementation of a management activity not otherwise prohibited” within the meaning of Standard 2.b(1).

**3. If the Forest Service does not adopt CSCUSA’s requests to clarify or revise Standard 2.b, the Forest Service should adopt the following clarifications to Standard 2.b(2) and Standard 2.c.**

- a. Please acknowledge that operation, maintenance, and development activities at ski areas are a foreseeable and appropriate application of Standard 2.b.

CSCUSA reiterates its request that the Forest Service clarify that Standard 2.b does not apply to developed recreation sites authorized under long-term special use authorizations or revise Standard 2.b to allow for timber removal, including timber that may meet old-growth standards, if that timber removal is incidental to a management activity not otherwise prohibited – without having to also satisfy the test proposed in Standard 2.b(2).

In the alternative, CSCUSA requests that the Forest Service specifically state that Standard 2.b(2) allows for timber removal for maintenance, development, and operations of a permitted ski area if the area continues to meet old-growth forest definitions and criteria after the timber removal.

Proposed Standard 2.b(2) allows for timber removal incidental to a management activity not otherwise prohibited, if “the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.” Draft EIS at 30. The Draft EIS provides the example that “this would allow for trail development or maintenance” if “the sideboards specified in (1) and (2)” are satisfied. Draft EIS at 30.

CSCUSA appreciates that the agency identified trail maintenance and development as an example of the appropriate application of Standard 2.b. CSCUSA requests that the Forest Service also specifically identify the authorization of timber removal for maintenance, development, and operations at a permitted ski area as an example of Standard 2.b’s intent and purpose.

The Forest Service ski area special use permit program merits acknowledgment as a foreseeable example of the application of Standard 2.b. Permitted ski areas occupy a miniscule amount of NFS lands, but play an outsized role in providing public recreation opportunities.

CSCUSA member resorts host millions of recreation visits each year. Forest Service surveys indicate that skiing is the second most popular primary activity on NFS lands, behind hiking.<sup>1</sup>

Ski areas on NFS lands allow public visitors to enjoy their public lands under managed and controlled conditions that protect the environment. As described in prior sections, timber removal and vegetation management activities are integral to these operations. If the Forest Service does not adopt CSCUSA's request to clarify or revise Standard 2.b, as described in Section 2, CSCUSA requests that the agency specifically identify the authorization of timber removal for maintenance, development, and operations at a permitted ski area as an example of the appropriate and intended application of Standard 2.b. This clarification will help avoid unnecessary process, conflict, and delay for the agency and for ski areas.

Please state in the Final EIS that the authorization of timber removal for purposes other than proactive stewardship for maintenance, development, and operations at a permitted ski area is an example of the appropriate and intended application of Standard 2.b.

- b. Please clarify Standard 2.c to acknowledge its application at permitted ski areas and avoid potential confusion in its application.

If the Forest Service does not adopt CSCUSA's requests to revise or clarify Standard 2.b, it is reasonably foreseeable that Standard 2.c may apply to Forest Service decisions to authorize timber removal and vegetation management within ski area special use permit boundaries. Standard 2.c(iii) provides in relevant part:

Deviation from Standard 2.a and 2.b may only be allowed if the responsible official determines that vegetation management actions or incidental tree-cutting or removal are necessary for the following reasons and includes the rationale in a decision document or supporting documentation.

...

iii. to comply with other statutes or regulations, valid existing rights for mineral and energy resources, or authorizations of occupancy and use made prior to the old-growth amendment decision.

Draft EIS at 31.

The Draft EIS states that the purpose of Standard 2.c is “to allow for vegetation management activities in old-growth for certain other multiple use and management considerations.” Draft EIS at 31 (emphasis added). CSCUSA supports the proposed adoption of

---

<sup>1</sup> U.S. Forest Service National Visitor Use Monitoring Survey Results National Summary Report, 2016 – 2020, at 12, available at [www.fs.usda.gov/sites/default/files/2020-National-Visitor-Use-Monitoring-Summary-Report.pdf](http://www.fs.usda.gov/sites/default/files/2020-National-Visitor-Use-Monitoring-Summary-Report.pdf).



Standard 2.c and its stated intent. CSCUSA requests three clarifications to Standard 2.c to achieve its stated intent.

Please revise the first sentence of Standard 2.c to add decisions that “allow for” the listed reasons. Standard 2.c states that deviation from Standards 2.a and 2.b are allowed if “necessary” for identified reasons, including “to comply with . . . authorizations of occupancy and use made prior to the old-growth amendment decision.” Draft EIS at 31. The word “necessary” is unnecessarily restrictive and may impede the stated intent “to allow for” the multiple uses identified in the standard. At permitted ski areas, it is foreseeable that the word “necessary” will invite confusion and controversy over whether timber removal and vegetation management is “necessary” for implementation of the ski area authorization. These activities are necessary, as explained in this letter, but the agency should not invite this potential controversy. The Forest Service should revise the language in Standard 2.c to match the stated intent to include decisions that “allow for” the identified reasons.

The Forest Service should revise the first sentence of Standard 2.c to add the underlined language:

Deviation from Standard 2.a and 2.b may only be allowed if the responsible official determines that vegetation management actions or incidental tree-cutting or removal are necessary for, **or allow for**, the following reasons and includes the rationale in a decision document or supporting documentation.

Please revise the language in Standard 2.c(iii) to add decisions that “allow for” operations under existing authorizations. Standard 2.c(iii), when read in conjunction with the first sentence of Standard 2.c, allows for deviation from Standards 2.a and 2.b if “necessary . . . to comply with . . . authorizations of occupancy and use made prior to the old-growth amendment decision.” Draft EIS at 31. Like the term “necessary” in the first sentence of Standard 2.c, the use of “comply with” in Standard 2.c(iii) could lead to an overly restrictive interpretation that conflicts with the stated intent of Standard 2.c. The Forest Service should revise Standard 2.c(iii) by incorporating the intent identified on page 31 of the Draft EIS and adding decisions that “allow for” operations under existing authorizations.

The Forest Service should revise Standard 2.c(iii) to add the underlined language:

iii. to comply with other statutes or regulations, valid existing rights for mineral and energy resources, or **to allow for** authorizations of occupancy and use made prior to the old-growth amendment decision.

Please clarify that ski area permits issued before the old-growth amendments, and new permits issued to replace existing permits, are subject to Standard 2.c(iii). The Forest Service should clarify in the Final EIS that a ski area special use permit issued prior to the final Old-Growth Amendments is an “authorization of occupancy and use made prior to the old-growth amendment decision” within the meaning of Standard 2.c(iii). The Forest Service should also clarify in the Final EIS that a new permit issued to replace an existing ski area permit prior to adoption of the final amendments, due to a change in ownership of the ski area or its assets or the renewal or re-issuance of an expiring ski area permit, is an “authorization of occupancy and use made prior to the old-growth amendment decision” within the meaning of Standard 2.c(iii). The issuance of a new ski area permit due to a change in ownership of the ski area or its assets is a ministerial act categorically excluded from NEPA by statute. 16 U.S.C. § 497c(i); *see also* 36 C.F.R. § 220.6(d)(9). The statutory categorical exclusion acknowledges that the change in ownership does not implicate the agency’s prior decision authorizing the ski area. Issuance of a new ski area permit to replace an existing permit continues the agency’s long-term decision to dedicate the permitted lands to developed recreation as a ski area. For these reasons, the Forest Service should clarify that issuing a new ski area permit to replace an existing ski area special use permit issued prior to adoption of the final Old-Growth Amendments qualifies as an “authorization of occupancy and use made prior to the old-growth amendment decision” within the meaning of Standard 2.c(iii).

The Forest Service should clarify in the Final EIS that a ski area special use permit issued prior to adoption of the final amendments is an example of an “authorization of occupancy and use made prior to the old-growth amendment decision” within the meaning of Standard 2.c(iii).

The Forest Service should clarify in the Final EIS that a new permit issued to replace an existing ski area permit issued before the adoption of the final amendments, due to a change in ownership of the ski area or its assets or the renewal or re-issuance of an expiring permit, is an “authorization of occupancy and use made prior to the old-growth amendment decision” within the meaning of Standard 2.c(iii).

- 4. If the Forest Service does not adopt CSCUSA’s requested clarification or revision to Standard 2.b, the Forest Service should clarify that Forest Service decision-makers will determine consistency with the Old Growth Amendments in accord with 36 C.F.R. § 219.15, including through the use of project- and activity-level Forest Plan amendments when necessary and appropriate.**

If the Forest Service does not accept CSCUSA’s proposed revision or clarification to Standard 2.b, as articulated in Section 2 of this letter, Forest Service decision-makers will be required to determine whether areas proposed for timber removal at permitted ski areas

“continue[] to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal” when evaluated at “an ecologically appropriate scale.” The Forest Service should clarify in the Final EIS that this evaluation of the proposed project or activity’s consistency with the Old Growth Amendments should be determined in accord with 36 C.F.R. § 219.15(c), including the potential use of project- and activity-level Forest Plan amendments under 36 C.F.R. § 219.15(c)(4).

The National Forest Management Act provides that Forest Plans “may be amended in any matter whatsoever.” 16 U.S.C. § 1604(f)(4). And the agency’s regulations specifically authorize decision-makers to adopt project- and activity-level Forest Plan amendments when necessary and appropriate. 36 C.F.R. § 219.15(c)(4).

The Draft EIS anticipates that project- and activity-level Forest Plan amendments may occur under the Old-Growth Amendments. The agency should state this point explicitly in the Final EIS. The Forest Service should clarify in the Final EIS that consistency with the Old-Growth Amendments will be determined in accord with 36 C.F.R. § 219.15(c), including through the potential use of the project- and activity-level Forest Plan amendments under 36 C.F.R. § 219.15(c)(4).

Please state in the Final EIS that decision-makers will determine consistency with the Old-Growth Amendments in accord with 36 C.F.R. § 219.15(c), including the through the use of the project- and activity-level Forest Plan amendments under 36 C.F.R. § 219.15(c)(4) when necessary and appropriate.

\*\*\*\*\*

CSCUSA respectfully requests the Forest Service take the foregoing comments under consideration. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'mmills', with a small dot above the second 'i'.

Melanie Mills  
President and CEO  
Colorado Ski Country USA  
MMills@coloradoski.com