



September 20, 2024

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

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

RE: Comments of Vail Resorts Management Company on Nationwide Old-Growth Forest Plan Amendments

Dear Director, Ecosystem Management Coordination:

These comments are submitted on behalf of Vail Resorts Management Company (together with its affiliates, “Vail Resorts”) in response to the June 2024 Draft Environmental Impact Statement for the Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System. Please add these comments to the administrative record for the Draft EIS and the proposed amendments.

Interest of Vail Resorts in the Proposed Amendments

Vail Resorts operates eleven ski areas on National Forest System lands under special use authorization from the United States Forest Service. Those ski areas are among the most iconic and loved four season resorts on federal public lands in the United States: Beaver Creek, Breckenridge, Keystone, Vail, and Crested Butte resorts in Colorado, Stevens Pass resort in Washington state, Kirkwood resort in California; Heavenly resort in Nevada and California, Mount Snow resort in Vermont, and Wildcat and Attitash resorts in New Hampshire.

Vail Resorts is proud to partner with the Forest Service in providing high quality recreation on public lands under managed and controlled conditions that protect the environment. Vail Resorts is a steward of natural resources and the environment at all of its resorts. Vail Resorts appreciates the extent to which our federal public lands and environmental laws and regulations are the foundation for providing outstanding recreational experiences that prevent and avoid adverse impacts to the environment.

Vail Resorts has substantial experience with Forest Plans and Forest Plan amendments. Operations at Vail Resorts’ eleven public lands ski areas are subject to the National Forest Management Act and the applicable Forest Plans prepared by the agency. Vail Resorts has participated in the development, revision, and amendment of Forest Plans through public review processes, including by submitting detailed written comments on proposed Forest Plans,

Director, Ecosystem Management Coordination
Page 2

including for the White River National Forest, Grand Mesa Uncompahgre Gunnison National Forest, the Lake Tahoe Basin Management Unit, and the Forest Service Washington Office.

Vail Resorts is very familiar with the role of Forest Plan management direction in carrying out Forest-wide and project-level objectives at its ski areas. All projects at Vail Resorts' eleven ski areas on Forest Service lands are designed and implemented to be consistent with applicable Forest Plan standards and guidelines as required by the National Forest Management Act, 16 U.S.C. § 1604(i). Vail Resorts has concrete experience with Forest Plan amendments made by the agency in project and activity level decisions at its public lands ski areas.

Vail Resorts will be affected by the proposed Forest Plan amendments. The amendments are proposed for the seven Forest Plans that apply to Vail Resorts' eleven Forest Service lands ski areas. After the proposed amendments are adopted in final form and incorporated into Forest Plans, the Forest Service must apply the old-growth management direction, including standards and guidelines, to Forest Service decisions at those ski areas. As required by federal law, before authorizing actions proposed by Vail Resorts, the agency must conclude that the action is consistent with the management direction, or can be made consistent with the management direction through a project-level Forest Plan amendment.

Vail Resorts prepared these comments in a spirit of partnership to assist the Forest Service in ensuring that its old-growth Forest Plan amendments are workable and consistent with the agency's public lands recreation program at ski areas on National Forest System lands.

Comments

1. Vail Resorts Supports the Adoption of the Old-Growth Amendments— Alternative 2—with the Minor Clarifications Identified in These Comments.

The Draft EIS reports that the proposed management direction will apply to approximately 24.7 million acres of old-growth forests, or 17%, of the 144.3 million acres of forested National Forest System lands. Draft EIS at S-4. It is probable that, given definitions of old-growth forests in Forest Plans and in regional office direction, old-growth forest conditions subject to the proposed amendments may exist within the special use permit boundaries of one or more of the Vail Resorts eleven ski areas on Forest Service lands.

Vail Resorts appreciates and supports the Forest Service's recognition in the proposed direction that old-growth forests provide important and valued "recreational experiences." Draft EIS at 19, Plan Component NOGA-FW-DRC. That is true for forested lands at Vail Resorts' ski areas. Visitors to ski areas on public lands value and appreciate outstanding recreational experiences in and around the forested lands, including areas that meet old-growth forest definitions. Forested lands – including old-growth forests as described in the Draft EIS – are a

Director, Ecosystem Management Coordination
Page 3

significant contributor to the outstanding natural resources that visitors seek out, enjoy, and treasure at Vail Resorts' ski areas and other ski areas on National Forest System lands.

Old-growth forest conservation and ski areas are capable of coexisting and thriving if the Forest Service adopts the proposed management direction with the minor clarifications identified elsewhere in these comments. That is because developed recreation at Vail Resorts' eleven public lands ski areas (and at other ski areas on Forest Service lands) is managed to an extraordinary extent to prevent, avoid, and minimize adverse environmental consequences. The Forest Service, and its ski area partners like Vail Resorts, follow a thorough planning, environmental review, mitigation, and management process in implementing and providing recreation activities at ski areas.

Two critical foundations of managed recreation at ski areas on Forest Service lands are Forest Plans and environmental review under the National Environmental Policy Act ("NEPA"). Forest Plans provide substantive standards and guidelines for the agency and permit holders to adhere to in designing, implementing, and providing managed recreation. The Forest Service uses the public environmental review process under NEPA to evaluate proposed actions and consider the extent to which they may (or may not) be consistent with applicable Forest Plan standards and guidelines (and other management direction) as required by federal law. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15. That is at times an iterative process where projects are designed, modified, proposed, and mitigated to be consistent with Forest Plan management direction. Sometimes, the agency elects to undertake a limited project-specific Forest Plan amendment as permitted by the National Forest Management Act and Forest Service regulations. 16 U.S.C. § 1604(f)(4); 36 C.F.R. § 219.15(c)(4). Together, Forest Plans and NEPA review help the Forest Service and its ski area partners achieve a laudable policy goal: provide outstanding recreation on public lands under managed conditions that protect the environment.

Vail Resorts is confident that the Forest Service can achieve its old-growth forest goals and objectives, including at permitted ski areas on National Forest System lands, by applying the proposed management direction at the project level through the public NEPA process, and in accord with the agency's planning regulations at 36 C.F.R. Part 219. That system works.

Vail Resorts has decades of successful experience working with the Forest Service on projects at its ski areas, including in Forest Plan consistency issues. The balance of these comments identify minor clarifications to the proposed management direction that Vail Resorts submits will achieve the agency's identified old-growth forest goals while continuing to provide outstanding four-season recreation at ski areas now and in the future.

Director, Ecosystem Management Coordination
Page 4

The Forest Service should adopt the old-growth forest plan amendments—Alternative 2—with the minor clarifications identified in these comments.

2. The Forest Service Should Clarify Standard 2.b.

Proposed Standard 2.b is critical to the Forest Service’s multiple use and developed recreation mission, including at ski areas on National Forest System lands. 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. Paraphrased, Standard 2.b allows 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.

Vail Resorts respectfully requests the Forest Service to modify and make minor clarifications to Standard 2.b to ensure the standard achieves its purpose at ski areas.

- a. Please modify Standard 2.b to allow timber removal for maintenance, development, and operations at a permitted ski area because it is incidental to the implementation of a management activity not otherwise prohibited by the plan.

The agency will not implement the old growth management direction in a vacuum. It will do so throughout the National Forest System on lands that, at ski areas, are subject to decades of prior long-term management decisions that should continue into the future. Vail Resorts’ eleven permitted ski areas are a prime example. Vail Mountain Resort, for example, opened to the public on December 15, 1962. Vail Mountain Resort has provided outstanding winter and summer recreation on permitted White River National Forest lands for over six decades. The first rope tow at Stevens Pass Ski Resort in Washington State commenced operating on Forest Service lands in 1937; Stevens Pass has provided winter and summer recreation on lands managed by the Mt. Baker-Snoqualmie and Okanogan-Wenatchee National Forests for over 80 years. Civilian Conservation Corps workers cut the first ski run on Forest Service lands at Wildcat Mountain Resort in New Hampshire in 1933.

Director, Ecosystem Management Coordination
Page 5

These examples demonstrate that the Forest Service has dedicated the permitted lands at Vail Resorts' eleven ski areas, and at other ski areas on National Forest System lands, to developed recreation. That winter and summer recreation is in the public interest. Vail Resorts, in partnership with the Forest Service, provides a tremendous amount of high quality recreation on a relatively modest amount of land under managed conditions that protect the environment. Congress recognized the benefits, and long-term nature, of developed skiing on Forest Service lands in the Ski Area Permit Act of 1986, as amended by the Ski Area Recreational Opportunity Enhancement Act of 2011. The Act provides for ski area special use permits with a 40-year term, the longest term of any statutory Forest Service special use authorization. 16 U.S.C. § 497b. The four-decade permit term acknowledges the long term management dedication of permitted lands to the identified purpose: developed and managed recreation. Many Forest Plans, for example the White River National Forest in Colorado, provide a management area designation specific to permitted ski areas to recognize that such lands are managed for that purpose long term.

This context is relevant to the proposed old growth management direction because, as drafted, Standard 2.b has the potential to frustrate, rather than allow for, the use of permitted lands at ski areas for the statutory purpose: winter and summer recreation. That is because Standard 2.b, as drafted requires satisfaction of *two conditions* before any tree may be removed inside a permitted ski area where old-growth forest conditions may exist—*first*, that timber removal must be incidental to the implementation of a management activity not otherwise prohibited by the Forest Plan, and *second*, the area must continue to meet the definition and criteria for old-growth forest after the timber removal. The first condition is not an obstacle to timber removal at a permitted ski area. As stated in the next comment below, the “incidental to the implementation of a management activity” condition, standing alone, allows for timber removal inside a permitted ski area, although the agency should make that intent clear in the Final EIS as requested below.

The second condition of Standard 2.b is the issue. Vail Resorts understands that the National Ski Areas Association has informed the Forest Service that Standard 2.b, as written, presents significant potential to thwart the use of permitted lands at ski areas from use for their dedicated purpose: winter and summer managed recreation. Vail Resorts supports that observation by the National Ski Areas Association, and offers these comments as additional reasons to modify Standard 2.b. The problem is that Standard 2.b as proposed requires that any timber removal at any ski area be subjected to review for old-growth forest conditions, and that any timber removal in the presence of such conditions cannot proceed unless the agency affirmatively concludes that “the area” “at an ecologically important scale” must continue to meet the definition and criteria for old-growth forest. Draft EIS at 30.

The practical effect of Standard 2.b at a ski area is to subordinate the use of the permitted lands for skiing, decades after the Forest Service made the decision to dedicate the lands to skiing, to another purpose: old-growth forest. For every ski area on Forest Service lands,

Director, Ecosystem Management Coordination
Page 6

Standard 2.b will subject the permitted lands to a superseding binding old-growth Forest Plan standard.

This foreseeable conflict in management direction will quickly complicate or prevent management actions at ski areas, small and large. Ski areas routinely remove vegetation, timber, and hazard trees to ensure that the permitted lands are suitable for high quality winter and summer recreation. That is necessary for many reasons, including guest safety. Tree removal for maintenance, development, and ski area operations is an annual and seasonal practical reality.

Tree removal decisions may be made by the agency via review and approval of a seasonal operating plan. Other tree removal decisions are made in decision documents entered into after preparation of a categorical exclusion, an environmental assessment, or an environmental impact statement. In every instance, for every type of decision involving *any* tree removal at every ski area on Forest Service lands, Standard 2.b (as drafted) will require a written analysis whether old-growth conditions exist on the permitted lands, and if they do, an affirmative determination that the tree removal will result in “the area” “at an ecologically appropriate scale” continuing to meet old growth conditions. The Forest Service and its ski area permit holders will not be able to remove a single tree unless the agency appropriately undertakes, explains, documents and defends those analyses. The second condition of Standard 2.b will thereby require project-level Forest Plan consistency determinations with detailed analyses for tree removal associated with routine maintenance activities, and all other decisions involving tree removal. That standard is legally binding and judicially enforceable by third parties against the agency given the statutory Forest Plan consistency requirement of 16 U.S.C. § 1604(i). Third parties may foreseeably contend that, under Standard 2.b, the agency is legally obligated to manage permitted lands inside ski areas to maintain old-growth conditions rather than provide developed recreation. The adverse consequences of the management conflict between Standard 2.b and managing ski area lands for skiing include project level uncertainty, controversy, delay, administrative objections, and litigation.

Given the relatively limited amount of acreage within permitted ski areas nationwide, the Forest Service should modify Standard 2.b to omit the requirement that the agency affirmatively determine that old-growth forest conditions continue to exist after tree removal inside a permitted ski area. Vail Resorts supports the request by the National Ski Areas Association that the Forest Service prevent the management conflict between Standard 2.b and permitted lands at ski areas from occurring. A simple way to do that is to change Standard 2.b from requiring satisfaction of two separate conditions to requiring satisfaction of either of the two conditions. That is, the agency could replace the “and” between the two conditions with an “or.” Alternately, the agency could state in the language of Standard 2.b that it does not apply within lands subject to a long-term special use authorization for a developed recreation site such as a ski area.

Director, Ecosystem Management Coordination
Page 7

The Forest Service should replace the “and” with an “or” as indicated with the underlined “or” in Standard 2.b as follows:

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 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.

Alternately, the Forest Service should state in Standard 2.b that it does not apply within lands subject to a long-term special use permit for a developed recreation site such as a ski area.

- b. Please clarify that timber removal for maintenance, development, and operations at a permitted ski area is incidental to the implementation of a management activity not otherwise prohibited by the plan within the meaning of Standard 2.b(1).

This is a critical technical comment about a technical issue. The Forest Service should clarify that timber removal for purposes other than proactive stewardship at a permitted ski area is an example of timber removal that is incidental to a management activity not prohibited by the Forest Plan as provided in Standard 2.b(1).

The “management activity” at a permitted ski area are the Forest Service decisions related to the maintenance, development, and operation of the ski area. For permitted ski areas on National Forest System lands, such as the eleven Vail Resorts public lands ski areas, the “management activity” referenced in Standard 2.b(1) includes the agency’s decisions related to the maintenance, development, and operations of the ski area under the ski area’s special use authorization. That “management activity” includes agency decisions small and large related to the ski area permit. It includes the aggregate agency decisions related to the ski area special use permit, including authorizing winter and summer and seasonal operating plans, accepting master development plans, authorizing project-level actions such as development of new lifts and terrain and facilities, and other routine and material decisions necessary for the successful operation of the permitted four-season resort.

Timber removal for purposes other than “proactive stewardship” (as defined in Standard 2.a) at a permitted ski area is “incidental” to the implementation of Forest Service decisions for that management activity. Tree-cutting, vegetation management, and timber removal are a necessary and incidental part of routine ski area maintenance and operations, for example to

Director, Ecosystem Management Coordination
Page 8

carry out actions in an approved winter or summer operating plan as required by the special use permit. Tree-cutting, vegetation management, and timber removal are often a necessary and incidental, and approved, action to implement a Forest Service decision authorizing terrain expansion, lift construction or replacement, or development of other approved facilities at a permitted ski area. Such timber removal for purposes other than proactive stewardship is “incidental” to achieving the developed recreation purpose of the ski area special use authorization.

Applicable Forest Plans do not “prohibit” management of permitted ski areas within the meaning of Standard 2.b(1). Where a permitted ski area exists on National Forest System lands, the applicable Forest Plan does not prohibit the ski area. The Forest Plan allows for the permitted ski area. The applicable Forest Plan provides for the use, occupancy, and operation of the ski area, often through a ski area-specific land management designation. The White River National Forest in Colorado, for example, designates permitted ski areas as Management Area 8.25 Ski Areas. Some Forest Plans do not include ski area-specific land management designations, but provide management direction that allows for permitted ski areas. The Lake Tahoe Basin Management Unit in California is an example. The seven Forest Plans that apply to Vail Resorts’ eleven permitted ski areas on Forest Service lands each provide for (rather than prohibit) the ski area(s) subject to the Forest Plan.

The proposed old-growth amendments, when adopted into Forest Plans, will not prohibit permitted ski areas. Nothing in the old-growth amendments states an intent to categorically prohibit the maintenance, operation, and development of ski areas on National Forest System lands. Standard 2.a states that where old-growth conditions exist, vegetation management may only be allowed for purposes of proactive stewardship. Standards 2.b and 2.c provide exceptions to Standard 2.a under defined circumstances for multiple use actions such as development and operation of a permitted ski area. The point is: the old-growth amendments, when adopted into Forest Plans, will not prohibit permitted ski areas.

This careful 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.

That this explanation, however, requires a page or more of single-spaced text to set forth is the simplest reason why the Forest Service should clarify this point in the Final EIS. A reader with specialized knowledge of the proposed old-growth amendments, Forest Plans, Forest Plan consistency requirements, and ski area special use permits will recognize that timber removal at a permitted ski area is included in the terms of Standard 2.b(1).

The Forest Service should make this point clear in the Final EIS so that this important standard is applied appropriately at permitted ski areas in the future.

Director, Ecosystem Management Coordination
Page 9

The Forest Service should clarify in the Final EIS that timber removal for purposes other than proactive stewardship for maintenance, development, and operation of a permitted ski area is an example of an action that is “incidental to the implementation of a management activity not otherwise prohibited by the plan” within the meaning of Standard 2.b(1).

- c. Please clarify that Standard 2.b(2) allows 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.

In conjunction with Standard 2.b(1), Standard 2.b(2) allows for timber removal for maintenance, development and operations at a permitted ski area 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 states, “this would allow for trail development or maintenance” if “the sideboards specified in (1) and (2)” are satisfied. Draft EIS at 30. The “trail” example provided is helpful, but inadequate.

The agency’s developed recreation program at Vail Resorts’ ski areas and other permitted ski areas provides a tremendous amount of high quality recreation on a relatively small amount of National Forest System lands under managed and controlled conditions that protect the environment. The Forest Service ski area special use permit program merits acknowledgment as a foreseeable example of the application of Standard 2.b to a recreation activity that provides tens of millions of user days each year on a relatively small amount of National Forest System lands. Please clarify in the Final EIS that so long as Standards 2.b(1) and 2.b(2) are satisfied, timber removal at a permitted ski area for maintenance, development and operations is allowed.

The Forest Service should clarify in the Final EIS that timber removal for purposes other than proactive stewardship for maintenance, development, and operations of a permitted ski area is allowed if Standards 2.b(1) and 2.b(2) are satisfied.

3. The Forest Service Should Clarify Standard 2.c(iii).

Standard 2.c may apply to numerous Forest Service programs, decisions, and permits, including ski area special use permits issued before the date of the decision adopting the old-growth amendments. 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

Director, Ecosystem Management Coordination
Page 10

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.

Vail Resorts appreciates that the Forest Service proposed Standard 2.c(iii), specifically the provision stating that deviation from Standards 2.a and 2.b is allowed for incidental timber removal in connection with “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). Vail Resorts supports the adoption of Standard 2.c and requests three minor clarifications to Standard 2.c(iii) to achieve the stated intent.

The Forest Service should revise the first sentence of Standard 2.c to include decisions that “allow for” the identified categories of actions. The first sentence of Standard 2.c states that deviation from Standards 2.a and 2.b are allowed if “necessary” for any of multiple “reasons,” including for “authorizations of occupancy and use made prior to the old-growth amendment decision.” Draft EIS at 31. The word “necessary” is inadequate, and too narrow, to achieve the stated purpose of allowing for those purposes. The word “necessary” invites avoidable controversy about whether “incidental tree-cutting or removal are necessary” for “authorizations of occupancy and use made prior to the old-growth amendment decision.”

The Forest Service should revise Standard 2.c(iii) to include decisions that “allow for” operations under existing authorizations. Standard 2.c(iii) is inartful insofar as it uses the words “to comply with” at the beginning of the provision. Read in conjunction with the first sentence of Standard 2.c, the provision 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.

The words “to comply with” in Standard 2.c(iii) are overly restrictive, and narrow, especially when read in conjunction with the restrictive word “necessary” in Standard 2.c. Standard 2.c(iii) invites confusion rather than dispels it when applied to vegetation management for “authorizations of occupancy and use made prior to the old-growth amendment decision.” That is, when is vegetation management “necessary . . . to comply with” a ski area special use permit issued prior to the date of the old-growth amendment decision? This language is clumsy and does not achieve the stated purpose of carrying out pre-existing authorizations such as a pre-existing ski area special use permit.

Director, Ecosystem Management Coordination
Page 11

The confusion and awkward language in Standard 2.c and 2.c(iii) is easily corrected by better incorporating the intent identified on page 31 of the Draft EIS of *allowing for* vegetation management activities in old-growth forests for certain multiple use activities and management consideration such as at a permitted ski area. The importance of Standard 2.c merits adding the words “to allow for” to the text of Standard 2.c and 2.c(iii) to make the agency’s stated intent express in the standard itself.

The Forest Service should 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). Ski area special use authorizations under the Ski Area Permit Act of 1986 issue for 40 years. 16 U.S.C. § 497b. The 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 Forest Service should clarify in the Final EIS that a ski area special use permit issued under the Ski Area Permit Act of 1986, as amended, prior to the old-growth amendment decision 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 a ski area permit issued before the date of the old-growth amendment decision due to a change in ownership of the ski area or its assets 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 in connection with a change in ownership of the ski area or its improvements is a ministerial act that is categorically excluded from NEPA review under a federal statute and agency regulations. 16 U.S.C. § 497c(i); 36 C.F.R. § 220.6(d)(9). The categorical exclusion is an acknowledgment that a change in ownership or other ministerial change involving the ski area continues the agency’s prior decision to authorize the ski area. Issuance of the new permit to replace an existing permit due to a change in ownership allows that long-standing ski area to continue in accord with the applicable Forest Plan, and in accord with the decision made, decades earlier, to dedicate the permitted lands long term to skiing. Similarly here, the Forest Service should clarify that issuing a new ski area permit to replace a ski area special use permit issued prior to the date of the old-growth amendment decision as a result of a ministerial change due to a change in ownership of the ski area or its assets, is an “authorization of occupancy and use made prior to the old-growth amendment decision” within the meaning of Standard 2.c(iii).

There are many existing ski area permits that predate the anticipated January 2025 decision date for the old-growth amendments. The importance of the agency’s ski area program merits the clarifications requested in the Final EIS.

Director, Ecosystem Management Coordination
Page 12

The Forest Service should revise the first sentence of Standard 2.c to add the words “to allow for” as follows, with the added words underlined.

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 to allow for, the following reasons and includes the rationale in a decision document or supporting documentation.

The Forest Service should revise Standard 2.c(iii) to add the words “to allow for” as follows, with the added words underlined.

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.

The Forest Service should clarify in the Final EIS that a ski area special use permit issued prior to the old-growth amendment decision 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.

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

4. The Forest Service Should Clarify that the Old-Growth Amendments Allow for Project or Activity Level Forest Plan Amendments Decisions Under 36 C.F.R. § 219.15(c)(4).

A project-level Forest Plan amendment is entirely appropriate and is an important tool for Forest Service decision makers. The National Forest Management Act provides that Forest Plans

Director, Ecosystem Management Coordination
Page 13

“may be amended in any matter whatsoever.” 16 U.S.C. § 1604(f)(4). The agency’s planning regulations specifically contemplate that the agency may make Forest Plan amendments limited in effect to project or activity decisions. 36 C.F.R. § 219.15(c)(4).¹

A Forest Plan amendment limited to a project or activity level decision is an important option for an agency decision maker, including in making future decisions subject to the proposed old-growth amendments. It is not uncommon for the Forest Service to adopt forest-wide standards and guidelines (as will be the case with the old-growth management direction) and later identify a need for a project-specific Forest Plan amendment to allow implementation of a specific project or activity. That issue is foreseeable given the complexity of the agency’s multiple use mission, and Forest Plan issues that arise in authorizing different actions on National Forest System lands.

The Draft EIS anticipates that project specific amendments may occur under the old-growth amendments, but the point is not made very clearly. Again, federal law, including the agency’s planning regulations, allow for project or activity specific amendments to Forest Plan management direction. 36 C.F.R. § 219.15(c)(4). The old-growth amendments will be subject to those planning regulations, and administered in accord with them. The Forest Service should clarify in the Final EIS that after the old-growth amendment decision, consistency with the old-growth amendments will be determined in accord with 36 C.F.R. § 219.15(c), including through potential use of the project specific amendment mechanism of 36 C.F.R. § 219.15(c)(4).

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 the possible use of the project or activity specific amendment mechanism of 36 C.F.R. § 219.15(c)(4).

*

*

*

Vail Resorts appreciates and supports the Forest Service’s efforts to develop nationwide Forest Plan amendments for old-growth conditions in the National Forest System. Thank you for this opportunity to comment.

Respectfully submitted,

¹ See Ohio Forestry Assoc. v. Sierra Club, 523 U.S. 726, 735-36 (1998) (noting the Forest Service has the discretion to amend Forest Plans in connection with project specific decisions).

Director, Ecosystem Management Coordination
Page 14

Signed by:

Eugene Kim

801D20C2ED4E402...

Eugene Kim

Vice President, Associate General Counsel
Vail Resorts Management Company