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Re: Lutsen Mountains Ski Area Expansion Project DEIS

Please accept these comments on behalf of the Center for Biological Diversity ([ldquo]Center[rdquo]) and our 1.7 million members and online activists, over 18,000 of whom live in Minnesota, on the proposed expansion of the Lutsen Mountain Ski Area. At the Center, we work to secure a future for all species, great and small, hovering on the brink of extinction. We do so through science, law and creative media, with a focus on protecting the lands, waters and climate that species need to survive.

The proposed Lutsen expansion will have extensive impacts on natural and cultural resources, such as old-growth forests and water quality. The draft EIS also makes clear that many endangered and sensitive wildlife species will be negatively impacted, including gray wolves, moose, American three-toed woodpeckers, northern goshawk, boreal owls, little brown bats and more. In these comments, we focus on the two species federally protected under the Endangered Species Act that will be most impacted by the proposed expansion, Canada lynx and northern long-eared bat, but want to be clear that the proposed expansion will be harmful to a broad array of wildlife and the ecosystems upon which they depend and thus should be dropped or substantially scaled back.

The Proposed Expansion is Likely to Adversely Affect Canada Lynx

The draft EIS and supporting Biological Assessment ([ldquo]BA[rdquo]) conclude that the proposed expansion of the Lutsen Mountain Ski Resort will not adversely affect the federally threatened Canada lynx, but this conclusion is clearly not supported by the impacts acknowledged in both documents. The DEIS acknowledges that the entire area of the SUP is lynx habitat, including denning, foraging and movement habitat, and indeed the area is designated as critical habitat by the U.S. Fish and Wildlife Service, meaning it is [ldquo]essential to lynx conservation.[rdquo]<sup>1</sup> The DEIS also acknowledges that the proposed expansion would result in the loss of all 314.29 acres of lynx habitat in the SUP, including mature and old-growth forests that provide denning habitat for the winter cats. This amount of permanent loss of critical habitat is in and of itself an adverse

1 DEIS at 189-191; 78 FR 59456

impact to the long-term conservation of the lynx.<sup>2</sup> Given this, the Forest Service must enter formal consultation with the U.S. Fish and Wildlife Service to ensure the lynx will not be jeopardized or its habitat adversely modified and ensure the acknowledged habitat destruction is minimized and mitigated.<sup>3</sup>

The draft EIS and BA both attempt to minimize this substantial habitat destruction by arguing that it is only 1.7% of the Barker Lake lynx analysis unit ([ldquo]LAU[rdquo]).<sup>4</sup> The loss of nearly two percent of habitat in the unit in one project, however, is hardly insubstantial. The Draft EIS also acknowledges that road construction associated with the project will increase road densities from 2.8 to 3 miles per square mile in the LAU, which is above the Superior National Forests standards of 2 miles per square mile and makes clear that the Lutsen expansion will harm lynx by increasing fragmentation.<sup>5</sup> Relatedly, both the Draft EIS and EA fail to consider the impact of increased traffic on the lynx through vehicle strikes, which is a known problem for the cat. This too indicates formal consultation is needed and undercuts the draft EIS[rsquo]s claim that the lynx will not be adversely impacted.

Lastly, the BA claims that the expansion doesn[rsquo]t violate standards established by the Superior National Forest to help conserve lynx and their habitats, but it[rsquo]s clear this is not the case.<sup>6</sup> In

particular, Forest Plan guideline G-W-1 states:

Within LAUs on NFS land, moderate the timing, intensity, and extent of management activities, if necessary, to maintain required habitat components in lynx habitat, to reduce human influences on mortality risk and inter-specific competition, and to be responsive to current social and ecological constraints relevant to lynx habitat.

The combination of permanent habitat destruction, increased road density and increased human traffic to the National Forest from the proposed expansion is clearly inconsistent with this guideline and conservation of Canada lynx.

The Draft EIS Makes Clear Lutsen Expansion Will Have Unacceptable Impacts on Northern Long-eared Bats

The Draft EIS and BA acknowledge that the expansion will result in destruction of slightly over 170 acres of old-growth forest depended on by the federally threatened northern long-eared bat and that tree cutting will occur in the summer when bats with pups will be using the habitat, resulting in adverse impacts on the species. The BA further acknowledges that [ldquo]summer habitat loss due to forest conversion and management[rdquo] is a known threat to the bat.<sup>7</sup> The primary factor in the bat[rsquo]s decline and the reason it was listed as threatened under the Endangered Species Act is an introduced

fungal pathogen that causes the disease white-nose syndrome ([ldquo]WNS[rdquo]), but as the BA rightly

<sup>2</sup> The Endangered Species Act defines conservation as [ldquo]all methods and procedures which are necessary to bring

any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.[rdquo] U.S.C. [sect] 1532(3).

<sup>3</sup> U.S.C. [sect] 1536(A)(2).

<sup>4</sup> DEIS at 58.

<sup>5</sup> Id.

<sup>6</sup> BA at 46.

7 BA at 25.

acknowledges WNS has [ldquo]reduced these populations to the extent that they may be increasingly vulnerable to other stressors that they may have previously had the ability to withstand.[rdquo]8 This includes habitat destruction like what is proposed by Lutsen.

Despite acknowledged destruction of habitat for the bat and the likelihood of harm to roosting bats and pups in the summer, the BA ultimately concludes that:

There are no effects beyond those previously disclosed in the programmatic biological opinion on implementing the final 4(d) rule dated January 5, 2016, signed by Lynn Lewis. Any taking that may occur incidental to this project is not prohibited under the final 4(d) rule (50 CFR

[sect]17.40(o)).9

Listing of the northern long-eared bat as threatened rather than endangered, which allowed the 4(d) rule relied on by Lutsen in the BA and DEIS, has been overturned by a federal court and is currently remanded to the U.S. Fish and Wildlife Service. Given its precarious status, there is a real possibility that the bat will be listed as endangered and the 4(d) rule will be invalidated. For this reason, the bat should be the subject of formal consultation and cutting of old-growth forest for the expansion should be limited or at the very least restricted to winter when the bats are hibernating. If, however, the preferred alternative is selected, Lutsen should seek to compensate for the loss of old-growth by protecting or restoring oldgrowth habitats elsewhere, following existing guidelines for compensatory mitigation, which generally require protection of 2-3 times acres lost. Finally, two other bat species potentially occurring in the SUP, little brown bat and tri-colored bat, are under consideration for federal protection under the Endangered Species Act and should be the subject of consultation between the Forest Service and Fish and Wildlife Service.

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8 Id.

9 BA at 44.