Data Submitted (UTC 11): 12/9/2021 11:00:00 AM
First name: Matt
Last name: Norton
Organization:
Title:
Comments: [External Email]Lutsen Mountains Ski Area Expansion Project -- Comments of Northeastern Minnesotans for Wilderness

Good afternoon, Mr. Jimenez,

Thank you very much for the work you do. Please find attached the comments of Northeastern Minnesotans for Wilderness on the above-named matter. NMW opposes the project and issuance of a special use permit for the project, for the reasons enumerated in our comments.

Sincerely,

-Matt

Matt Norton

Policy and Science Director

Campaign to Save the Boundary Waters

612-669-1630

matt@savetheboundarywaters.org

Save

Northeastern Minnesotans for Wilderness | P.O. Box 625, Ely, MN 55731 | 218-365-5541

Founder and lead organization of the Campaign to Save the Boundary Waters

December 8, 2021

Constance Cummins, Supervisor

c/o Michael Jimenez, Project Leader

Superior National Forest

8901 Grand Avenue Place

Duluth, MN 55808

comments-eastern-superior@usda.gov

RE: Opposing Proposed United States Forest Service Special Use Permit for the Lutsen Mountains Ski Area Expansion Project

Dear Supervisor Cummins and Project Leader Jimenez:

This letter is submitted on behalf of Northeastern Minnesotans for Wilderness in opposition to issuance of a Special Use Permit ([ldquo]SUP[rdquo]) by the U.S. Forest Service ([ldquo]Forest Service[rdquo]) for the proposed Lutsen Mountain Corporation ([ldquo]LMC[rdquo]) Ski Area Expansion Project ([ldquo]Ski Resort Expansion[rdquo]) on National Forest lands within the Superior National Forest ([ldquo]SNF). Northeastern Minnesotans for Wilderness (NMW) is a 501(c)(3) non-profit corporation founded in Ely by residents of northeastern Minnesota. Since 1996 NMW has worked to protect the Boundary Waters Canoe Area Wilderness and Voyageurs National Park in particular, and to foster broader appreciation of and support for the preservation of wilderness and wild places.

The Forest Service is authorized to grant an SUP for a ski area pursuant to 16 U.S.C. [sect] 497b and 36 C.F.R. [sect] 251, subp. B. The Forest Service may only approve an SUP if the proposed use [ldquo]is consistent or can be made consistent[rdquo] with the applicable forest land and resource management plan. 36 C.F.R. [sect] 251.54(e)(1)(ii). The Forest Service must reject any proposal, if upon further consideration during the process, the responsible official determines that the proposed use [ldquo]would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses[rdquo] or [ldquo]would not be in the public interest.[rdquo] 36 C.F.R. [sect] 251.54 (e)(5)(i), (ii). The Forest Service also must evaluate environmental findings in deciding whether to approve, approve with modifications, or deny the proposed use. 36 C.F.R. [sect] 251.54(g)(4)(i).

Applicable regulations stress that if an SUP is issued, [ldquo]each special use authorization must

contain[rdquo] terms and conditions that will [ldquo][m]inimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment.[rdquo] 36 C.F.R. [sect] 251.56(a)(1)(i)(B). Such an authorization must also contain terms and conditions necessary to [ldquo][p]rotect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes[rdquo] and [ldquo]protect the public interest.[rdquo] 36 C.F.R. [sect] 251.56(a)(1)(ii)(E), (G).

For the proposed LMC Ski Resort Expansion, conditions cannot resolve damage to the environment, harm to Tribal exercise of Treaty-reserved rights, or inconsistencies with the Forest

Plan. The SUP would be inconsistent with Joint Secretarial Order No. 3403 dated November 15, 2021 and signed by Deb Haaland, Secretary of the Interior, and Thomas J. Vilsack, Secretary of Agriculture and USDA Departmental Regulation 1340-007 (3/14/08). The proposed Ski Resort Expansion would not serve the public interest. The only Forest Service alternative consistent with protection of Superior National Forest scenic integrity, lands, water, and wildlife, the rights of Lake Superior Ojibwe people, and the public interest is the No Action Alternative denying the SUP.

Summary of the proposed LMC Ski Resort Expansion

The Ski Resort Expansion Proposed Action would impact 495 acres of SNF public lands; a 36-acre area on the south side of Eagle Mountain and a 459-acre portion on the southwest side of Moose Mountain. The Expansion would construct cleared alpine trails, lifts, and various recreation facilities, and 1,260 additional parking spaces to meet [ldquo]the ever-increasing expectations[rdquo] of the local, regional, and destination skier markets. (DEIS 12). The Expansion would also require approximately 3.8 miles (20,036 feet) of permanent road construction on

National Forest lands (Id., 23-24).

The Ski Resort Expansion would develop 174.5 acres of cleared ski terrain, along with 172.5 acres of gladed ski terrain (Id. 15), resulting in 314 acres of Forest Land disturbance. (Id. 26). In total, the Proposed Action would require approximately 225 acres of tree cutting, and an additional 144 acres of glading, which clears from 10 to 25 percent of trees. (Id. 217). [ldquo]Overall, there would be approximately 369 acres of vegetation clearing of some sort within the project watersheds.[rdquo] (Id.) The Proposed Action also calls for 174.5 acres of new snowmaking coverage. (Id., ES-2). Additional snowmaking infrastructure includes two snowmaking reservoirs with a combined capacity of 13 million gallons. (Id., 12).

The Ski Resort Expansion would adversely affect forests and vegetation, wildlife, water resources, tribal access to exercise Treaty-reserved rights, and scenic integrity. The Expansion is inconsistent with the SNF Forest Plan for the Management Area and with the Forest Plan[rsquo]s Forest-Wide Direction. It would not serve the public interest.

Discussion: the SUP for the proposed LMC Ski Resort Expansion should not be approved.

1. The LMC Ski Resort Expansion would result in significant environmental harm.

Forests & Vegetation

The DEIS states, [ldquo]Unlike a majority of the forests along the North Shore, the forests within the proposed project area remain as intact, functioning native plant communities that contain oldgrowth (>140 years old), or at least older growth, characteristics.[rdquo] (DEIS 158). The forests on Moose Mountain, specifically, [ldquo]contain undisturbed remnant examples of northern white cedardominated forests and mesic hardwood forests dominated by sugar maple[rdquo] and the Eagle Mountain area of the project [ldquo]contains intact aspen-birch forest and sugar maple forest[rdquo] that [ldquo]ranges in age from 88 to 102 years old.[rdquo] (Id.)

DECEMBER 9, 2021 COMMENT OF NORTHEASTERN MINNESOTANS FOR WILDERNESS IN OPPOSITION TO THE LUTSEN MOUNTAIN SKI

AREA EXPANSION PROJECT, AND URGING THE SELECTION OF THE NO-ACTION ALTERNATIVE

Implementation of the Proposed Action for the Expansion would impact 314 acres of Forest Service Management Indicator Habitat (MIH). (Id. 192). [ldquo]The majority (96 percent) of the proposed activities are concentrated in mature and older stands dominated by upland northern hardwoods (MIH 3), aspen and birch (MIH 4), upland spruce-fir (MIH 6), and white cedar (MIH 0). (Id.)

The proposed Ski Resort Expansion project would impact forest sites of Outstanding Biodiversity Significance. Approximately 436 acres of the Onion River Hardwoods Site are located within the project area on Moose Mountain. (Id. 164). This Site was ranked as having [ldquo]Outstanding Biodiversity Significance[rdquo] by the Minnesota Biological Survey ([ldquo]MBS[rdquo]) [ldquo]because it contains an outstanding example of intact, relatively undisturbed old-growth mesic hardwood and fire dependent forests, along with Lowland White Cedar Forests (WFn53a) on the North Shore of Lake Superior. There is also a variety of upland white cedar forest (FDn43c) on steeper, shaded slopes adjacent to wetlands.[rdquo] (Id.)

Approximately 59 acres of the Poplar Agnes Site are within the project area, including nearly the entire eastern section of Eagle Mountain. (Id. 165) The site is also ranked as having [ldquo]Outstanding Biodiversity Significance[rdquo] because it contains intact, high-quality northern mesic hardwood forest, mixed mesic hardwood forest, wet cedar forests, rich conifer peatlands, and cliff communities that are older growth stages. (Id.).

The Forest Service DEIS concluded that the proposed Ski Resort Expansion [ldquo]would result in the loss and fragmentation of the forests over a 495-acre area within the NFS lands.[rdquo] (Id. 168). After construction, many ecological and anthropogenic factors, including invasive species, forest pests and diseases, and exacerbation by climate change all [ldquo]have the potential to impact the fragmented forests[rdquo] and [ldquo]cause largely permanent changes and degradation to the plant communities.[rdquo] (Id.) At best, [ldquo]it would take many decades for the forest to recover to its current

conditions following the cessation of any vegetation management.[rdquo] (Id.182)

Wildlife

The DEIS documents extensive impacts of the Ski Resort Expansion on wildlife. According to the DEIS, the [ldquo][e]ntire project area, including the area of both action alternatives[rsquo] SUP, is considered lynx habitat.[rdquo] (Id. 57). Habitat for many species, including those below, would be adversely impacted by the Ski Resort Expansion. (See Id. 57, 186-87, 191, 196).

Habitat acres impacted by the proposed Ski Resort Expansion per species are as follows:

[bull] Lynx: Proposed Action [ndash] 495 acres; Alternative 3 [ndash] 478 acres

[bull] Grey Wolf: Proposed Action [ndash] 96 acres; Alternative 3 [ndash] 129 acres

[bull] Moose: Proposed Action [ndash] 46 acres; Alternative 3 [ndash] 66 acres

[bull] Northern Long-Eared Bat: Proposed Action -170 acres; Alternative 3 [ndash] 308 acres

[bull] Northern Goshawk: Proposed Action [ndash] 494 acres; Alternative 3 [ndash] 456 acres

[bull] Great Grey Owl: Proposed Action [ndash] 283 acres; Alternative 3 [ndash] 352 acres

[bull] Three-toed Woodpecker: Proposed Action [ndash] 141 acres; Alternative 3 [ndash] 172 acres

Specifically, the Ski Resort Expansion would impact 117.2 acres of lynx denning habitat, 251.2 acres of foraging habitat, and 314.3 acres of connective habitat. (Id. 55, 190). [ldquo]Increased human activity within the new SUP area would likely cause lynx to entirely avoid use of the SUP area during winter.[rdquo] (Id. 190). [ldquo]Forest habitat fragmentation that would occur from the action alternatives could generally reduce the abundance of birds, mammals, insects, and plants in the project area.[rdquo] (Id., 58).

The Northern long-eared bat was deemed particularly vulnerable in the DEIS because tree clearing activities during the summer roosting period [ldquo]could cause female bats to abandon their

pups, leading to pup mortality[rdquo] and [ldquo]could also directly kill pups or mature bats.[rdquo] (Id. 191). The Forest Service that the proposed Ski Resort Expansion both [ldquo]may affect[rdquo] and [ldquo]is likely to adversely affect northern long-eared bat.[rdquo] (Id., see also 196 for Alternative 3).

The DEIS asserted that removal of habitat could theoretically be [ldquo]reclaimed and eventually restored.[rdquo] (Id. 201). But even with this (highly speculative) possibility, [ldquo]any take of wildlife and fish species resulting from the proposed projects would represent both irretrievable and irreversible commitments of these resources, because those individuals could not be brought back to life.[rdquo] (Id.). [ldquo]The addition of ski trails, lifts, and associated infrastructure within the operational area would represent irretrievable effects to wildlife and fish resources at Lutsen Mountains.[rdquo] (Id.)

Water Resources

The proposed Ski Resort Expansion would adversely affect water resources due to impairment of streams and wetlands, loss of hydrologic connectivity, increase in impervious surface, tree removal, and additional snowmaking activities.

The Forest Service DEIS concluded that the proposed Ski Resort Expansion would adversely impact 3,408 feet of streams: 929 feet through permanent direct effects, 576 feet through temporary direct effects, and 1,903 feet of streams due to tree removal and dewatering. (Id. 240). Of the 27 acres of wetlands identified in the project area, 4% would be directly impacted by the proposed Expansion and 33% would be adversely impacted by tree removal and dewatering. (Id. 244). Wetlands on Moose Mountain are all rated Exceptional. (Id. 68).

For the Ski Resort Expansion, 2,448 feet of streams would also need to be piped or bridged, impacting hydrologic connectivity. (Id. 67, 222). The DEIS concluded that construction of parking lots, facilities, lift terminals, and mountain roads would require that approximately 812 feet (22%) of existing small stream channels in the Eagle Mountain project area be piped or bridged. (Id. 222). Approximately 1,636 feet (29%) of stream channels in the Moose Mountain

project area would also be impacted by construction of proposed roads and parking lots, lift terminals and ski trails. (Id.). These culverts and bridges would impact hydrologic connectivity [ldquo]by constricting the channel, changing channel depths (e.g., by creating pools), creating barriers for aquatic life, and disconnecting the stream from the RMZ [Riparian Management Zone].[rdquo] (Id.)

Snowmaking water is currently obtained from Lake Superior through Minnesota Department of Natural Resources ([ldquo]DNR)[rdquo] Permit # 2012-0664, which was authorized in March 2013 for 150 million gallons per year ([ldquo]MGY[rdquo]) and subsequently increased to 410 MGY in March 2019.

(DEIS 20). LMC would seek additional water appropriations from the DNR for the proposed snowmaking. (Id.) The DEIS does not specify how many additional millions of gallons a year of water LMC would seek to appropriate if the Ski Resort Expansion SUP were approved.

DEIS hydrologic modeling predicts that water yields from project area watersheds would increase by 19% in the Eagle Mtn.-Frontal Lake Superior watershed and 29% in the Moose Mtn.-Frontal Lake Superior watershed. (Id., 62). Flow in the Rollins Creek trout stream would increase by 10% relative to baseline and 8% relative to existing conditions. (Id. 219). The DEIS explains, [ldquo]Increase in watershed yield, alongside the proposed 15.9 acres of impervious surfaces and compacted soils could result in soil erosion, add sediment to project area streams, and reduce water quality.[rdquo] (Id. 62).

Either Ski Resort Expansion action alternative could impact water quality due to [ldquo]erosion and sediment transport, increased watershed yield, and disturbance of near-bank RMZs.[rdquo] (Id. 64).

The proposed Ski Resort Expansion poses a severe erosion risk: 64% of the acreage where tree removal would occur corresponds to soils with a Severe or Very Severe erosion rating, and 86% of the 124 acres where glading would occur on soils with a Severe or Very Severe erosion rating.

(Id. 66). The DEIS predicts that Forest Service Watershed Condition Classified Guide ratings for the Moose Mtn-Frontal Lake Superior watershed would decrease from Fair to Poor if the Ski Resort Expansion were implemented. (Id. 67).

2. The LMC Ski Resort Expansion would adversely affect Ojibwe people, and their access to exercise recognized Treaty-reserved rights.

The Forest Service has also concluded that the [ldquo]Native American population in Cook County represents an identified population that warrants analysis for disproportionately high and adverse human health or environmental effects under EO 12898.[rdquo] (Id. 119). Under the National Environmental Policy Act ([ldquo]NEPA[rdquo]), analysis of impacts on Native Tribes must also ensure that the government properly accounts for the [ldquo]interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects[rdquo] of agency actions. Standing Rock Sioux Tribe v. United States Army Corps of Eng[rsquo]rs, 282 F. Supp. 3d 91, 102 (D.D.C. 2017) (citing CEQ Guidance). Federal regulations require that a Forest Service SUP protect the interests of people in the area who rely on fish, wildlife, and plants of the area for subsistence purposes. 36 C.F.R. [sect] 251.56(a)(1)(ii)(E). An SUP must be denied if Tribal interests in the ability to exercise usufructuary rights are not protected.

As with other property rights, taking usufructuary rights would require compensation. Irrespective of compensation, property rights may not be taken [ldquo]for the purpose of conferring a private benefits on a particular private party.[rdquo] Kelo v. City of New London, 545 U.S. 469, 477 (2005), see also 490 (concurring opinion).

The DEIS states that from the initial consultation, Tribes stated [ldquo]that the project may fragment and/or reduce the extent and productivity of mature maple stands (sugarbush stands) and white cedar stands, wild rice waters, and hunting/fishing resources.[rdquo] (Id. 5). Tribes also had concerns [ldquo]that the project would reduce the quantity of land available for individuals to hunt, gather, fish, and generally exercise the treaty rights provided by the 1854 Treaty.[rdquo] (Id.).

These adverse impacts are not disputed by the Forest Service. The DEIS acknowledges the proposed Ski Resort Expansion would impact Tribes due to [ldquo][r]educed access within the approximately 495-acre SUP area,[rdquo] (Id., 46), all of which are within Ceded Territories where the Lake Superior Chippewa/Ojibwe have usufructuary rights to hunt, fish, and gather plants reserved by the 1854 Treaty.

The DEIS concludes that clearing and fragmentation from the Ski Resort Expansion would impact Native plant communities [ldquo]including 66.08 acres of white cedar forest and 152.57 acres of sugar maple/sugar maple-birch forest, which were identified in the NEPA scoping comments as culturally significant to tribes.[rdquo] (Id. 144) The Forest Service acknowledges that this impact harms Tribal rights and interests, explaining that [ldquo]white cedar is a traditional Ojibwe medicine, and maple sugar (produced by boiling the sap of a maple tree) has been traditionally gathered and used as a dietary staple for Ojibwe people for centuries (Zede[ntilde]o et. al 2001).[rdquo] (Id. 142). The area of Moose Mountain that would be affected by the project contains [ldquo]several highquality, undisturbed, old-growth native plant communities, including some northern white cedar estimated to be over 140 years old,[rdquo] and affected area of Eagle Mountain [ldquo]encompasses intact aspen-birch forest, as well as sugar maple-dominated forest.[rdquo] (Id. 142). In addition, the DEIS notes that wetlands [ldquo]can be locations where other plants of cultural significance to Tribes grow,[rdquo] and the 27 acres of wetlands in the project area are [ldquo]Wooded Swamps that consist of Hardwood Swamp and Coniferous Swamp.[rdquo] (Id. 143)

In addition to loss of specific tree species and plants for food and medicine, the tree clearing, glading, and other construction activities of the Ski Resort Expansion would lead to forest fragmentation and allow [ldquo]aggressive early-successional tree species or invasive species[rdquo] to thrive. (Id. 144). Fragmentation of the existing sugar maple and white cedar forest [ldquo]could result

in additional indirect or cumulative impacts to these significant Tribal resources,[rdquo] including

[ldquo]spread of invasive species, which can add additional stress to the forests along the north shore

of Lake Superior, including sugar maple and white cedar forests.[rdquo] (Id.)

The Forest Service acknowledges that the 356.8 acres of adverse impacts to forests and 314.3

acres of impacts to wildlife habitat [ldquo]could reduce the prevalence of wildlife to hunt.[rdquo] (Id. 47).

The DEIS recognizes both that [ldquo]at least one species Tribal concern, the moose, has habitat in the

area[rdquo] and that Tribal concern about wildlife extends to additional species adversely impacted by

the proposed Ski Resort Expansion. (Id. 143)

Although the Forest Service documents adverse impacts on forests, plants, and wildlife salient to

Tribes as well as to the environment, the DEIS claims that this loss is [ldquo]offset by the abundance

of habitat throughout the SNF.[rdquo] (DEIS 47, see also 145, 199). This is an inaccurate statement or

a misunderstanding of the word [ldquo]offset.[rdquo] [ldquo]Offset[rdquo] means [ldquo]to cancel or reduce the effect of

(something): to create or to cancel or reduce the effect of (something): to create an equal balance

between two things[rdquo] so [ldquo]Gains in one area offset losses in another.[rdquo] The DEIS documents no

increase of forest lands or SNF wildlife habitat elsewhere to actually offset the impacts of the Ski

Resort Expansion. The Ski Resort Expansion would result in an unbalanced loss to forests,

wildlife, and Tribes.

This uncompensated loss is most striking with respect to adverse impacts of the proposed SUP

on Tribal exercise of reserved rights. The Forest Service explains that the federally owned land

where Tribes have uncompromised access to exercise reserved rights has steadily declined since

the 1854 Treaty was signed:

With the signing of the 1854 Treaty, over 6.2 million acres of land within the 1854 Ceded Territory were relinquished to the United State government. Since the signing, the amount of federally owned land within the 1854 Ceded Territory where Tribes with retained rights under the 1854 Treaty, can exercise those rights to hunt, fish, and gather has continually declined. Currently, based on publicly available federal land data, the Forest Service is the primary federal agency with land management and ownership within the 1854 Ceded Territory. . . The fragmentation and loss of the federal estate within the 1854 Ceded Territory, as well as management actions that affect access and land use, are of primary concern to the Tribes with retained rights under the 1854 Treaty. (Id. 144)

The DEIS concludes that the proposed Ski Resort Expansion [ldquo]would require a SUP to use approximately 495 acres of NFS lands within the SNF. This area is located within the 1854 Ceded Territory. . . free access to the area for the Tribes wanting to exercise their retained rights to hunt, fish, and gather would be limited.[rdquo] (Id. 144-45).

The DEIS splits hairs as to whether the loss of Tribal access would be irretrievable and irreversible, admitting that the SUP [ldquo]would represent irretrievable effects to Tribal resources through forest fragmentation and other resource impacts,[rdquo] but asserting that [ldquo]commitment of Tribal resources would not be irreversible because facilities could be removed and, in time, the forest could be reclaimed and revegetated.[rdquo] (Id.148). Such a speculative and theoretical [ldquo]reclamation[rdquo] requiring hundreds of years of revegetation under a climate regime where regrowth may not even be possible neither removes disproportionate burdens under EO 12898 nor protects Tribal interests under 36 C.F.R. 251.56(a)(1)(ii)(E).

Taken as a whole, the Ski Expansion Project is inconsistent with Order No. 3405. [ldquo]This Secretary[rsquo]s Order is issued [hellip] to ensure that the Department of Agriculture and the Department of the Interior (Departments) and their component Bureaus and Offices are managing Federal lands and waters in a manner that seeks to

protect the treaty, religious, subsistence, and cultural interests of federally

recognized Indian tribes[hellip]is consistent with the nation-to-nation relationship

between the United States and the [hellip] federally recognized Indian tribes; and that

such management fulfills the United States[rsquo] unique trust obligation to federally

recognized Indian tribes and their citizens.

[hellip]In managing the Federal lands and waters, the Departments are charged with

the highest trust responsibility to protect Tribal interests [hellip] The Departments

recognize and affirm that the United States[rsquo] trust and treaty obligations are an

integral part of each Department[rsquo]s responsibilities in managing Federal Lands.[rdquo]

(Order No. 3405)

See also USDA Departmental Regulation 1340-007 (3/14/08): [ldquo]The United States Government

has a unique, legal and political relationship with Indians and their tribal governments through

treaties, statutes, court decisions, and the United States Constitution. The United States

Government has obligations under treaties and statutes to protect and maintain the land,

resources, and traditional use areas of Indians.[rdquo]

The United States Department of Agriculture and the Forest Service have a clear duty to protect

the 1854 Treaty area.

The Proposed Action neither compensates for nor offsets the environmental harm to trees,

forests, wildlife, streams, and wetlands, nor the loss of Tribal access to exercise usufructuary

rights on 495 acres of public lands. The Ski Resort Expansion SUP must be rejected.

3. The LMC Ski Resort Expansion is inconsistent with the applicable Forest Plan.

The DEIS analyzes the inconsistency between the proposed Ski Resort Expansion and the Scenic

Integrity Objective ([ldquo]SIO[rdquo]) of the SNF Forest Plan for Recreation Use in a Scenic Landscape Management Area. The Forest Service appropriately concludes that the proposed Expansion would degrade High SIO areas to Low SIO, and that such reduction in integrity of the landscape character would be inconsistent with current SIO designations and with corresponding Forestwide objective O-S-1. (DEIS 40, 103-05). These inconsistencies, as explained briefly below, are inherent in the proposed Ski Resort Expansion and could not be [ldquo]made consistent[rdquo] with the SNF Forest Plan.

[bull] Project area disturbance through tree clearing, grading, and construction of buildings and other infrastructure would [ldquo]reduce the existing integrity of the landscape character to Low in High SIO areas and would be inconsistent with current SIO designations.[rdquo] (Id. 103) The [ldquo]inconsistency between the scenic integrity and the designated SIO would occur for as long as Lutsen Mountains exists and beyond.[rdquo] (Id.)

[bull] Lifts 4, 5 and 6 on previously undisturbed National Forest lands on the northwest side of Moose Mountain would create new openings that [ldquo]would contrast with the existing forested landscape[rdquo] and cause [ldquo]deviations[rdquo] in form, line, color and texture of the existing landscape[rdquo] in areas with an SIO of High. (Id.)

[bull] The proposed Expansion projects on previously undisturbed east and south sides of Eagle Mountain, the proposed projects would create new openings that [ldquo]would contrast with the existing forested landscape in this area[rdquo] inconsistent with the SIO of High, [ldquo]as these proposed projects would not appear to be natural occurrences and because deviations from existing views would not repeat form, line, color and texture of the existing landscape.[rdquo] (Id. 105).

In addition to these inconsistencies with High SIO designations on the North Shore, the proposed Ski Resort Expansion is inconsistent with many Forest-wide objectives, standards, and guidelines pertaining to vegetation, habitat, wildlife, and Tribal rights and interests. The DEIS does not analyze these inconsistencies with the SNF Forest Plan. However, even the brief summary below demonstrates that the Forest Service must reject the SUP as inherently inconsistent with the Forest Plan.

Forests and Vegetation

Forest Plan Objectives require restoration of white cedar, increase of old forest, old-growth forest, and multi-aged upland forest and the maintenance of large patches of mature or older native upland forests, such as those in the project area described above.

The Forest Plan Tree Species Diversity Objectives for all applicable Landscape Ecosystems call for the increase, not the destruction of white cedar. In the Mesic Birch/Aspen/Spruce/Fir Landscape Ecosystem, for example, the Plan bases this objective on the fact white cedar has decreased from 9% to 4% of tree species. (Forest Plan 2-71). SNF Forest Plan mapping of Landscape Ecosystems5 is shown on the next page.

Other Forest Plan Objectives to preserve vegetation with which the proposed SUP is inconsistent include the following:

O-VG-6 Restore the diversity of tree species within stands to conditions more representative of native vegetation communities by increasing the component of white pine, red pine, paper birch, yellow birch, upland tamarack, white cedar, and in some areas, white spruce and black spruce.

O-VG-14 Increase acres of old forest, old-growth forest, and multi-aged upland forest vegetation communities.

O-VG-17 In mature or older upland forest types managed to maintain large patches (>300 acres of all types) manage patches to maintain the characteristics of mature or older native upland forest vegetation communities and promote the maintenance or development of interior forest habitat conditions.

Wildlife

The Forest Plan emphasizes the maintenance, protection, and improvement of habitat for all threatened and endangered species. The proposed Forest Plan Ski Resort Expansion SUP is inconsistent with objectives, standards, and guidelines specifically pertaining to the conservation and recovery of Canada lynx and its habitat, including the following:

O-WL-8 Promote the conservation and recovery of Canada lynx and its habitat.

O-WL-9 In LAUs [Lynx Analysis Units] on NFS land, manage vegetation to retain, improve, or develop habitat characteristics suitable for snowshoe hare and other important alternate prey in sufficient amounts and distributions so that availability of prey is not limiting lynx recovery.

O-WL-10 In LAUs on NFS land, manage vegetation to provide for foraging habitat in proximity to denning habitat in amounts sufficient to provide for lynx.

O-WL-11 Maintain and, where necessary and feasible, restore sufficient habitat connectivity to reduce mortality related to roads and to allow lynx to disperse within and between LAUs . . .

S-WL-2 In LAUs on NFS land allow no net increase in groomed or designated over-thesnow trail routes unless the designation effectively consolidates use and improves lynx habitat through a net reduction of compacted snow areas.

G-WL-1 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 proposed Ski Resort Expansion SUP would also be inconsistent with Forest Plan objectives

to protect all threatened, endangered, and sensitive species and their habitat.

O-WL-4 Maintain, protect, or improve habitat for all threatened and endangered species.

O-WL-6 Reduce or eliminate adverse effects on threatened and endangered species from

the spectrum of management activities on NFS land.

O-WL-18 Maintain, protect, or improve habitat for all sensitive species.

G-WL-11 Avoid or minimize negative impacts to known occurrences of sensitive

species.

Tribal Rights and Interests

The SNF Forest Plan states that its Desired Condition is that [ldquo]Lands within the Forest serve to

help sustain American Indians[rsquo] way of life, cultural integrity, social cohesion, and economic

well-being.[rdquo] (D-TR-1). Forest Plan Objectives and Standards to achieve this Desired Condition

go beyond the analysis of harms which the Forest Service performed in the DEIS. They state that

the Forest Service will conduct forest management activities in a manner consistent with

protecting Tribal rights and address Tribal interests. The proposed Ski Resort Expansion SUP is

inconsistent with these provisions of the Forest Plan:

O-TR-1 Improve relationships with American Indian tribes. . . incorporate tribal cultural

resources, values, needs, interests, and expectations in forest management .. .

S-TR-3 Forest management activities will be conducted in a manner to minimize impacts

to the ability of Tribal members to hunt, fish, and gather plants and animals on Forest

Service administered lands.

S-TR-7 Decisions for environmental documents will demonstrate how tribal interests as identified in the environmental analysis were addressed.

4. The Ski Resort Expansion SUP is neither in the public interest nor appropriate.

The DEIS states, [ldquo]The Forest Service will consider the application for use of National Forest System (NFS) lands and determine if the project is in the public interest and is appropriate, based on the 2004 Superior National Forest (SNF) Land and Resource Management Plan.[rdquo] (DEIS ES-1, 2). The Forest Service has yet to determine whether the LMC application for an SUP is in the public interest or whether, on review of all the available information, it complies with the requirements of federal regulations and the objectives of the SNF Forest Plan.

No private party is entitled to a special use permit. In the case of the Ski Resort Expansion significant environmental harm, loss of trees and wildlife important to Tribes and Tribal access to exercise reserved rights, and inconsistencies with the SNF Forest Plan with respect to scenic integrity, forests, wildlife, and Tribal rights all weigh against approval of the SUP as either [ldquo]appropriate[rdquo] or [ldquo]in the public interest.[rdquo]

Even the effects of the Ski Resort Expansion on recreation are mixed. The proposed Ski Resort Expansion [ldquo]would negatively impact certain users of the project area (backcountry skiers, hikers, etc.)[rdquo] even as it [ldquo]would improve the recreational experience for other users (traditional downhill skiers).[rdquo] (Id. 97). In the Lutsen Mountain community and the North Shore of Lake Superior, visits in the spring, summer, and fall are mostly unrelated to the ski area and the economic benefits of tourism are much higher in summer than in winter. (Id. 78). Were the Forest Service to deny the SUP and adopt the No Action Alternative, visitation to Lutsen Mountains and Cook County [ldquo]would not be expected to change from its current trend, which is slightly positive.[rdquo] (Id. 80).

AREA EXPANSION PROJECT, AND URGING THE SELECTION OF THE NO-ACTION ALTERNATIVE

12

The public interest is not defined by the economic interest of LMC. Protection of forests, wildlife, streams, wetlands, climate, and scenic integrity on the North Shore are in the public interest. Respecting Treaty-reserved rights and the stewardship of water, public land, plant, and animal life is just, appropriate, and in the public interest. And it is in the public interest and appropriate for the Forest Service to follow the objectives, guidance, and standards in the SNF Forest Plan so that National Forests are not whittled away and degraded to meet the goals of a private party.

Northeastern Minnesotans for Wilderness respectfully requests that the Forest Service deny the LMC Ski Resort Expansion SUP for the reasons stated above.

Sincerely yours,

Matt Norton

Policy & Science Director

Northeastern Minnesotans for Wilderness