



Friends of Minnesota Scientific & Natural Areas

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Constance Cummins, Forest Supervisor
c/o Michael Jiménez, Project Leader
Superior National Forest
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Via E-mail Only
comments-eastern-superior@usda.gov

Re: Comments to Draft Environmental Impact Statement (DEIS); EIS No. 20210135
Proposed Lutsen Mountains Ski Area Expansion Project

Dear Ms. Cummins and Mr. Jiménez,

Friends of Minnesota Scientific and Natural Areas (FMSNA) is a Minnesota non-profit, tax-exempt [“501(c)(3)”] corporation, established to advocate and support the establishment, management, perpetuation of Minnesota’s Scientific and Natural Areas (SNAs), statewide, in an undisturbed natural state.

Thank you for the opportunity to comment on the Draft Environmental Impact Statement (DEIS), which intends to state the environmental impacts of the Lutsen Mountains Ski Area Expansion Project (the “Project.”).

FMSNA is particularly concerned that the DEIS fails to study the impacts of the Project – and foreseeable “expanded recreational activities” – on the ecological integrity of nearby Lutsen Scientific and Natural Area.

Background Information – Lutsen Scientific and Natural Area

Lutsen Scientific and Natural Area (SNA) is located in Cook County, legally described

“Section Twenty-two (22); the Southeast Quarter of the Northeast Quarter (SE ¼, NE ¼) of Section Twenty-one (21); and the Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼) of Section Twenty-seven (27), all in Township Sixty (60) North, Range Three (3) West.”

This SNA was established in 1994, via Commissioner’s Scientific and Natural Areas Order #106, which states:

“... such lands contain virgin, old-growth northern hardwoods, white cedar (*Thuja occidentalis* L.), and state listed special concern species Carolina Spring Beauty (*Claytonia caroliniana*) and Moschatel (*Adoxa moschatellina*) ...”; and

“... the most effective means by which such lands can be **protected and perpetuated in their natural state** and used for education and research purposes in such a manner as will leave them conserved for future generations is by designation as a Scientific and Natural Area.” [Emphasis added.]

Scientific and Natural Areas are the crown jewels of our state land system. They contain the most sensitive and rare plant and animal communities, deserving –and receiving - the highest degree of legal protection of all state land. Yet, our SNAs are also suffering from “death by 1,000 cuts.”

Legal Authority to Issue Special Use Authorization

36 CFR § 251.53 states: “**Authorities.** Subject to any limitations contained in applicable statutes, the Chief of the Forest Service, or other Agency official to whom such authority is delegated, **may** issue special use authorizations for National Forest System land under the authorities cited and for the types of use specified in this section as follows:

“...(n) Operation of nordic and alpine ski areas and facilities for **up to** 40 years and encompassing such acreage as the Forest Officer determines sufficient and appropriate as authorized by the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).” [Emphasis added.]

It is important for the U.S. Forest Service to acknowledge that it has **no legal obligation** to grant a special use authorization – or permit – for the Project.

National Environmental Policy Act (“NEPA”) - Requirements

U.S. Forest Service regulations require the Project proposer to comply with the requirements of the National Environmental Policy Act or “NEPA.” (36 CFR § 251.54.) The U.S. Forest Service defines “NEPA procedures”:

“*NEPA procedures*—the rules, policies, and procedures governing agency compliance with the National Environmental Policy Act set forth in 50 [sic] CFR parts 1500–1508, 7 CFR part 1b, Forest Service Manual Chapter 1950, and Forest Service Handbook 1909.15.” (36 CFR §251.51.)

40 CFR Part 1502 outlines the requirements of an environmental impact statement (EIS). One of the requirements is the EIS **must** address “indirect effects and their significance (§1508.8).” [40 CFR 1502.16(b).] 40 CFR Part 1508.8(b) defines “indirect effects”:

“(b) **Indirect effects**, which are caused by the action and are **later in time or farther removed in distance, but are still reasonably foreseeable**. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” [Emphasis added.]

The Draft EIS completely fails to consider analyze the following “indirect effects”:

1. Lutsen Scientific and Natural Area, located nearby, is not mentioned at all in the DEIS. *Scientific and Natural Areas are Minnesota’s equivalent to federal Research Natural Areas.* [For details, see statements below under the title, “Minnesota State Statutes are Incorporated into the NEPA Process.”]

2. Expanded recreational activities. It is reasonably foreseeable that, “later in time,” Lutsen Mountain Ski Area will seek to expand its activities – as allowed under Ski Area Recreational Opportunity Enhancement Act of 2010. These activities include zip lines; mountain bike terrain parks and trails; frisbee golf courses; and ropes courses. [16 U.S.C § 497b.(c)] The Final EIS must analyze the environmental impacts of these foreseeable activities.

We urge the U.S. Forest Service to adopt a reasonable interpretation of NEPA requirements, by following the requirements of a proposed rule (Federal Register, Oct. 7, 2021, Vol. 86, No. 192, pages 55757 to 55769):

“§ 1508.1 Definitions. * * * * *

“(g) *Effects or impacts* means changes to the human environment from the proposed action or alternatives and include the following:

- (1) Direct effects, which are caused by the action and occur at the same time and place.
- (2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- (3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
- (4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

* * * * *

“(z) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.”

Minnesota State Statutes are Incorporated into the NEPA Process

40 CFR §1508.27 defines significantly: “*Significantly* as used in NEPA requires considerations of both context and intensity ...” This section continues by stating, “The following should be considered in evaluating intensity:

“... (10). Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.”

Therefore, the above regulations incorporate by reference the Minnesota Environmental Policy Act or “MEPA” (Minn. Stat. Chapter 116D). Minn. Stat. 116D.04, Subd. 1a(a)] states: “‘Natural resources’ has the meaning given it in section 116B.02, subdivision 4.” Minn. Stat. 116B.02, Subd. 4 states:

“‘Natural resources’ shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, **quietude**, recreational and historical resources. **Scenic and esthetic resources** shall also be considered natural resources when owned by any governmental unit or agency.” [Emphasis added.]

Based on the requirements of MEPA, the DEIS is incomplete because it lacks any information regarding the potential environmental impacts on the “natural resources” of Lutsen Scientific and Natural Area (SNA), located to the east of the Project. The potential impacts include, but are not limited to:

1. Additional fragmentation of the **old growth northern hardwood** forest, diminishing the ecological integrity of the SNA and the adjoining ecosystem. Development of ski runs on the private land right up to the SNA boundary would eliminate a large area of interior forest habitat within the SNA, changing the SNA’s interior to forest edge habitat in “... one of the largest blocks of essentially undisturbed old-growth northern hardwood forest in Minnesota.” [<https://www.dnr.state.mn.us/snass/detail.html?id=sna01070> – last visited 11/18/21]

2. Scientific and Natural Areas are the state’s equivalent of U.S. Forest Service’s Research Natural Area or “RNA.” (36 CFR § 251.23.) The U.S. Forest Service must consider the impacts to Lutsen SNA as though it was an RNA.

3. Increased noise, diminishing Lutsen SNA’s “quietude”.

4. Visual impacts: blight on the “scenic and aesthetic resources” of Lutsen SNA.

5. Water impacts. It is quite clear that a good portion of the water, running off the new ski runs of the Project, would drain directly into Lutsen SNA. The DEIS calculates the increase in runoff over the watershed as a whole, but does not specify the portion that would flow into Lutsen SNA.

6. Air pollution issues, including but not limited to snow-making chemicals, arising

from Lutsen Mountains Ski Area's snow-making activities.

Ski Area Permit – Subject to “Reasonable Terms and Conditions”

16 U.S.C. §497b.(b) states: “... A ski area permit ... (7) shall be subject to such reasonable terms and conditions as the Secretary deems appropriate ...”

Friends of MN SNA respectfully requires that, **if** a ski area permit is issued, the permit be subject to the following “reasonable” conditions:

1. No increase in background noise level.
2. No visual impacts to citizens from anywhere on Lutsen SNA.
3. Establishment of a 400-foot wide (at minimum) “Exclusion Area” of native vegetation, consistent with the native plants within Lutsen SNA, along the Lutsen Mountains Ski Area boundary with Lutsen SNA. This is essential to mitigate:
 - a. Invasion of exotic plant species, known to be on existing Lutsen Mountains Ski Area property, onto Lutsen SNA;
 - b. Impacts to forest interior bird species within Lutsen SNA; and
 - c. Deposition of airborne chemicals, used in Lutsen Mountain Ski Area's snow making, onto Lutsen SNA.
4. A requirement that no run-off, during construction activities - or from any activities associated with the use of Lutsen Mountains Ski Area - is permitted into the “Exclusion Area.” All slopes must be designed to divert excess water and eroded sediments away from the Exclusion Area, without diminishing the current natural run-off
5. A requirement of on-site inspection and monitoring of construction activities to ensure compliance with grading and drainage permits. (After the fact restoration efforts never replicate and replace damaged natural communities.)
6. No additional recreational opportunities shall be allowed, such as ziplines, mountain bike parks and trails, frisbee golf courses, and ropes courses, without the completion of an Environmental Impact Statement and compliance with other legal requirements.

“Other recreational uses” – subject to “appropriate” “terms and conditions”

The “Ski Area Recreational Opportunity Enhancement Act of 2010” [16 U.S.C. §497b.(c)] states:

“Other recreational uses

(1) Authority of Secretary.

“Subject to the terms of a ski area permit issued pursuant to subsection (b), the Secretary may authorize a ski area permittee to provide such other seasonal or year-round natural resource-based recreational activities and associated facilities (in addition to skiing and other snow-sports) on National Forest System land subject to a ski area permit as the Secretary determines to be appropriate.

“(2) **Requirements.** Each activity and facility authorized by the Secretary under paragraph (1) shall-

- (A) encourage outdoor recreation and enjoyment of nature;
- (B) to the extent practicable-
 - (i) harmonize with the natural environment of the National Forest System land on which the activity or facility is located; and
 - (ii) be located within the developed portions of the ski area;
- (C) **be subject to such terms and conditions as the Secretary determines to be appropriate;** and
- (D) be authorized in accordance with-
 - (i) the applicable land and resource management plan; and
 - (ii) applicable laws (including regulations).” [Emphasis added.]

“(3) **Inclusions.** Activities and facilities that may, in appropriate circumstances, be authorized under paragraph (1) include -

- (A) zip lines;
- (B) mountain bike terrain parks and trails;
- (C) frisbee golf courses; and
- (D) ropes courses.”

Accordingly, if the U.S. Forest agrees to add “other recreational uses” authorized by statute: zip lines; mountain bike terrain parks and trails; frisbee golf courses; or ropes courses, we respectfully request the same conditions be attached as stated in this letter.

Permit Conditions – Required to Comply with State Law

Federal regulations require compliance with state law. 36 CFR § 251.56 (p. 361), states:

“**Terms and conditions.**

- (a) *General.* (1) Each special use authorization **must** contain:
 - (i) Terms and conditions which will:
 - (A) Carry out the purposes of applicable statutes and rules and regulations issued thereunder;
 - (B) Minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment;
 - (C) Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and

(D) **Require compliance with State standards** for public health and safety, **environmental protection**, and siting, construction, operation, and maintenance **if those standards are more stringent than applicable Federal standards.**” [Emphasis added.]

Lutsen SNA is protected by the requirements of Minnesota Statute 86A.05, Subdivision 5, which states:

“... (a) A state scientific and natural area shall be established to **protect and perpetuate in an undisturbed natural** state those natural features which possess exceptional scientific or educational value. [Emphasis added.] ...

“(c) State scientific and natural areas **shall be administered** by the commissioner of natural resources, in consultation with qualified persons, in a manner which is **consistent with the purposes of this subdivision to preserve, perpetuate and protect from unnatural influences** the scientific and educational resources within them. Interpretive studies may be provided for the general public. Physical development shall be limited to the facilities absolutely necessary for protection, research, and educational projects, and, where appropriate, for interpretive services.” [Emphasis added.]

Therefore, the permit conditions must contain a requirement that Lutsen SNA must be perpetuated in an “undisturbed natural state.”

State of Minnesota – Joint Environmental Impact Statement

Minnesota Rule 4410.3900 states:

“4410.3900 JOINT FEDERAL AND STATE ENVIRONMENTAL DOCUMENTS.

Subpart 1. **Cooperative processes.** Governmental units **shall** cooperate with federal agencies to the fullest extent possible to reduce duplication between Minnesota Statutes, chapter 116D, and the National Environmental Policy Act, United States Code 1976, title 42, sections 4321 to 4361.

Subp. 2. **Joint responsibility.** Where a joint federal and state environmental document is prepared, the RGU and one or more federal agencies shall be jointly responsible for its preparation. Where federal laws have environmental document requirements in addition to but not in conflict with those in Minnesota Statutes, section 116D.04, governmental units shall cooperate in fulfilling these requirements as well as those of state laws so that one document can comply with all applicable laws.

Subp. 3. **Federal EIS as draft EIS.** If a federal EIS will be or has been prepared for a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the project if the federal EIS addresses the scoped issues and satisfies the standards set forth in part 4410.2300.” [Emphasis added.]

*U.S. Forest Service
November 22, 2021*

The Draft Environmental Impact Statement (DEIS) is inadequate. It fails to consider the requirements of this rule, including a joint environmental document, even though the DEIS describes state permits that will be required before the Project can move forward.

Summary

The Final Environmental Impact Statement (FEIS) must contain a careful analysis of all potential impacts of the Project to Lutsen Scientific and Natural Area.

If a special use permit is granted, the permit must contain all of the conditions outlined in this letter, including prohibition of recreational activities outside the ski season, such zip lines; mountain bike terrain parks and trails; frisbee golf courses; and ropes courses, unless an additional Environmental Impact Statement is completed and all other legal requirements are satisfied.

On behalf of Friends of Minnesota Scientific and Natural Areas, I **thank you** in advance for your favorable decision to ensure that Lutsen SNA is “protected” and “perpetuated” in an “undisturbed natural state.”

Sincerely yours,

Thomas E. Casey

Thomas E. Casey, Board Chair
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