UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON
BOULEVARD CHICAGO, IL
60604-3590

November 22, 2021

REPLY TO THE ATTENTION OF:
Mail Code RM-19J

Constance Cummins, Forest Supervisor
Superior National Forest
8901 Grand Avenue Place
Duluth, Minnesota 55808

Re: Comments on the Draft Environmental Impact Statement for the Lutsen Mountain Ski Area Expansion, Superior National Forest, Cook County, Minnesota

Dear Ms. Cummins:

The U.S. Environmental Protection Agency reviewed the Draft Environmental Impact Statement (DEIS) for the project referenced above. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. The U.S. Forest Service (USFS) is the lead agency under NEPA, and Lutsen Mountain Corporation (LMC) is the project proponent.

The USFS will decide whether to issue a Special Use Permit (SUP) to LMC to construct, operate, and maintain an expansion to a winter sports resort. If USFS decides to issue a SUP, they will also decide on the preferred alternative and specific terms and conditions of the SUP. The DEIS considers Alternative 1, under which USFS would not issue the SUP, and two action alternatives. Alternative 2 is LMC's proposed action and includes a 495-acre SUP on National Forest System (NFS) land. To minimize project impacts, the USFS developed Alternative 3 using USFS expertise and input from public scoping comments. Alternative 3 includes 478-acre SUP of NFS lands, with select resources avoided and shifts in the project footprint compared to Alternative 2 (page 27). EPA provided scoping comments on May 27, 2020.We appreciate content in the DEIS that addresses our recommendations on (1) describing the project, (2) explaining the purpose and need, (3) describing the affected environment, (4) assessing wetland functions and values, (5) avoiding and minimize impacts to select aquatic resources through alternative design, (6) committing to construction best practices to minimize impacts to wetlands and other resources, and (7) assessing air quality and climate change impacts from the project as well as impacts of climate change on the project. Please see our enclosed detailed comments on impacts to tribal rights, cultural resources, water resources, plant and animal species, air quality, climate change, and other topics.

Thank you for the opportunity to review this project. When the subsequent NEPA document becomes available, please send an electronic copy to Jen Tyler, the lead reviewer for this project, at tyler.jennifer@epa.gov. Ms. Tyler is also available at 312-886-6394.

Sincerely,

KENNETH WESTLAKE Digitally signed by KENNETH WESTLAKE Date: 2021.11.22 15:48:57 -06'00'

Kenneth A. Westlake
Deputy Director
Office of Tribal and Multi-media Programs

Enclosures:
Detailed Comments
Construction Emission Control Checklist

Cc Via Email:
Michael Jimenez, Project Leader, Superior National Forest, USFS (michael.jimenez@usda.gov)
Karen Kromar, Project Manager, Minnesota Pollution Control Agency (karen.kromar@state.mn.us)
Frank Villebrun Jr., Environmental Director, Bois Fort Band of Chippewa (fvillebrun@boisforte-nsn.gov)
Wayne Dupuis, Environmental Director, Fond du Lac Band of Lake Superior Chippewa (waynedupuis@fdlrez.com)
Seth Moore, Director of Biology and Environment, Grand Portage Band of Lake Superior Chippewa (samoore@boreal.org)
Darren Vogt, Resource Management Division Director, 1854 Treaty Authority (dvogt@1854TreatyAuthority.org)

Tribal Resources Reserved Under the 1854 Treaty and Tribal Cultural Resources Under the National Historic Preservation Act (NHPA)

As the DEIS explains, the project is located within the 1854 Ceded Territory, which is comprised of lands ceded to the U.S. government by the Lake Superior Chippewa (Ojibwe) as part of the 1854 Treaty. In the Treaty, the Ojibwe retained rights to hunt, fish, and gather resources on the land ceded to the federal government. Scoping comments from Tribal members expressed concerns that (1) construction of the project could decrease, inhibit, or remove Tribal access to resources reserved under the 1854 Treaty, and (2) construction could fragment and/or reduce the extent and productivity of mature maple stands and white cedar stands and hunting/fishing resources (page 141). The DEIS explains that USFS received requests from Tribes to incorporate elder interviews and to be involved or complete their own cultural surveys, but timing and logistics did not make it feasible. USFS committed in the DEIS to continue consultation and coordination and include updates in the Final Environmental Impact Statement (FEIS).

Recommendations for the FEIS and Project Implementation

- Provide details regarding the time restrictions that prevented USFS from including elder interviews and Tribe-originated cultural surveys or involvement in USFS-originated cultural surveys in the DEIS.
- Describe past and planned outreach and engagement activities aimed at meeting Tribal requests to incorporate elder interviews, as well as involvement in or completion of Tribe-originated cultural studies.
- Provide specific examples of how input from Tribal representatives informed decision-making for the proposed project and explain how the project will avoid or minimize impacts to hunting, fishing, and gathering rights consistent with the 1854 Treaty.
- Discuss resources in the project area of spiritual importance to Tribes. Determine whether there are spiritual resources that would be harmed by this project and how those effects may be avoided, reduced, or mitigated.
- Document compliance with Section 106 of the NHPA and 36 C.F.R. Part 800 in the FEIS.
- Explore whether Tribal representatives have ideas for avoidance, minimization, or mitigation of temporary and permanent impacts to treaty reserved resources. Consider ways to avoid or decrease damages from project impacts on hunting, fishing, and gathering rights and impacts to cultural resources. Include findings and make mitigation commitments in the FEIS.
- Invite the 1854 Treaty Authority, Bois Fort Band of Minnesota Chippewa, Fond du Lac Band of Lake Superior Chippewa, and Grand Portage Band of Lake Superior Chippewa to advise the USFS on natural and cultural resource management considerations during and after the NEPA process. If the project is approved, invite these representatives to have a continued advisory role during project construction and operation.

Water Resources

The project area is located within three local catchment watersheds. The DEIS explains that the proposed project could impact watershed health in a variety of ways. Alternative 2 calls for approximately 369 acres of vegetation clearing of some sort within the project watersheds (page 217). Tree removal, terrain grading, soil exposure, construction of new roads, and increases in watershed yields from snowmaking, along with other proposed activities, could result in soil erosion, add sediment to project area streams, and reduce water quality. The DEIS states that impacts to waters, including jurisdictional wetlands, within the project area would be minimized through implementation of the Project Design Criteria (PDC, Appendix A) and Best Management Practices (BMPs). For example, the DEIS states that without adequate mitigation, Alternative 2 could harm aquatic and riparian connectivity through the potential loss of sections of stream channels (page 222). Further, implementation of PDC would reduce permanent wetland impacts from Alternative 2 from 0.88 acres to 0.47 acres (page 239). Given the importance of full implementation of PDC and other BMPs, the FEIS should clarify plans on how they will be monitored and enforced.

Recommendations for the FEIS and Project Implementation

- Describe how the PDC related to water resources would be monitored and enforced, as well as plans for corrective action if PDC are not followed.
- The PDC indicates that LMC will develop and submit to USFS a list of BMPs prior to construction (page A1). Include the list in the FEIS for public review and comment and describe how the BMPs would be monitored and enforced.
- Since understanding impacts on water quality from snowmaking additives (e.g., Snomax) is an ongoing international research effort:
    - Discuss opportunities to monitor for water qualtiy impacts from snowmaking additives, and commit to engage in monitoring if possible.
    - Develop a plan to check the state of international research at least annually and adjust additives as needed to protect water quality.

Species and Habitat

Alternative 2 would result in the loss and fragmentation of the forests over a 495-acre area within NFS lands. This includes eliminating or reducing canopy trees, impacts to ground layer vegetation, edge effects, and the potential introduction of invasive species. Impacts would lead to general degradation of currently intact native plan communities over time and loss of habitat (page 51). Impacts to animal species would include reduced effectiveness of habitat due to fragmentation, increased human presence, increased noise, commotion in and adjacent the project area, and removal of available habitat. Threatened and endangered species that have the potential to occur in the project area include Canada lynx, gray wolf, and northern long-eared bat (page 185), and the Regional Forester identified sensitive animal species with potential population viability concerns (page 186). Alternatives 2 and 3 have an effects determination of "may affect and is likely to adversely affect northern long-eared bat due to tree removal occuring during the summer season, potentially injuring or killing individuals" (page 191).

Recommendations for the FEIS and Project Implementation

- Describe how the project would meet the requirements of the Endangered Species Act.

- Document coordination and consultation with the U.S. Fish and Wildlife Service (FWS) and the Minnesota Department of Natural Resources (MNDNR) around the impact analysis and identification of avoidance, minimization, and mitigation measures. Augment the Project Design Criteria with any additional appropriate measures recommended by FWS and MNDNR.
- Describe how the PDC and BMPs related to plant and animal species would be monitored and enforced, as well as plans for corrective action if PDC and BMPs are not being followed.
- Commit to temporal tree cutting restrictions to protect the northern long-eared bat, or explain why such restrictions are not feasible.

Air Quality and Climate Change

The action alternatives would create air pollution during construction from trucks hauling materials, workers' vehicles, operation of construction equipment, dust from ground disturbance, and pile burning of timber and brush. Operational emissions would result from additional winter visitation and operation of the proposed infrastructure (e.g., snowmaking, additional chairlifts, grooming, guest services, etc.). In line with EPA's scoping recommendations, the DEIS discusses impacts of climate change on the project area and project impacts, as well as contributions from the project to climate change. As stated in *Executive Order 14008: Tackling the Climate Crisis at Home and Abroad*, "The United States and the world face a profound climate crisis. We have a narrow moment to pursue action…to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents." In addition to the release of GHGs from construction and operations, the project's clearing of trees, including old growth forests, would reduce the ability of the landscape to serve as a carbon sink, absorbing carbon emissions. There are additional opportunities to minimize and partially mitigate impacts associated with climate change, as described below.

Recommendations for the FEIS:

- Identify and commit to specific measures to reduce construction emissions. Options include: (1) requiring dust suppressant strategies, such as use of tarps and watering soils, (2) limiting idling time for construction trucks and heavy equipment, and (3) soliciting bids that require zero-emission technologies or advanced emission control systems. Review and commit to additional best practices from the enclosed Construction Emission Control Checklist.
- Commit to not burn trees and other vegetation to avoid air emissions. If trees are to be burned, as indicated in the DEIS, estimate the quantity of vegetation and associated air emissions to provide an indicator of significance. Consider and disclose less impactful options for handling timber and brush, such as harvesting the targeted trees for commercial timber.
- To partially compensate for the loss of functions and values of trees, including carbon capture, as a condition of the permit if it is granted, consider requiring LMC to:
    - Plant trees elsewhere, especially in areas that were historically forested, and
    - Fund conservation easements for forests, especially old growth forests, in areas that are likely to face development pressure.
- Consider measures to reduce air emissions from project operations, including use of renewable energy and other opportunities listed below in this letter under *Sustainable Development*.

Traffic Safety

The increase in construction traffic has the potential to pose safety hazards for children and others in the project area.

Recommendations for the FEIS:

Commit to require that LMC adopt a construction traffic management plan to ensure that trucks hauling materials and heavy machinery avoid or use extra caution in areas where children are likely to be present. Provide specific direction for truck traffic to use extra caution near beaches and recreation areas along Minnesota Highway 61 where children may be exiting cars and crossing the roadway.

Housing

The DEIS explains that, "Additional employees would not change the overall housing environment in Cook County but would add additional workforce housing demand, which is an identified shortage" (page 120). Adequate housing can be an important contributor towards human health.

Recommendations for the FEIS:

Include a plan in the FEIS to address employee housing, given that there is already an identified shortage in workforce housing.

Unplanned Environmental Impacts and Long-Term Restoration

The proposed project activities fall in an area with substantial ecological functions and values, as well as importance to Tribes and other communities. A description of plans and funds to address unintended environmental consequences could help FEIS readers understand the potential environmental impacts of the proposed actions.

Recommendations for the FEIS:

Discuss funding and measures the USFS and LMC would take if: (1) PDC and BMPs are not followed and environmental impacts exceed those outlined in the NEPA process, (2) PDC and BPMs are followed, but environmental impacts exceed those outlined in the NEPA process (e.g., adaptive management), or (3) LMC ceases operation, and another owner/operator does not take over.

Sustainable Development

In line with our scoping comments, EPA continues to recommend that the project proponent explore opportunities for environmentally sustainable development practices, which can have long-term benefits to natural resources.

Recommendations for the FEIS:

- Consider using green infrastructure to help manager stormwater. Green infrastructure may include green roofs, bioswales, rain gardens, and permeable pavements.
- Consider best practices for energy efficiency and sustainable building design. Examples include south-facing skylights and windows, motion-sensor lighting, and use of Energy Star certified products.
- Consider incorporating renewable energy to provide energy needs for operations.
- Consider Leadership in Energy and Environmental Design (LEED) and other green building programs, as well as designing for net-zero energy usage. In addition to

reducing the overall environmental footprint, green building certification programs promote health by encouraging practices that protect indoor air quality.

- Consider including electric vehicle charging stations and designating priority parking spots for carpools and low or no emission vehicles.
- Commit to recycle construction and demolition debris.
- Consider replacing raw materials with recycled materials for infrastructure components, such as roadways and parking lots.
- Maximize recycling and composting options for customers.
- When designing lighting, consider strategic placement and orientation of lights to protect dark skies for the benefit of animals and people.

ENCLOSURE 2

U.S. Environmental Protection Agency
Construction Emission Control Checklist

We recommend USFS and LMC consider the following protective measures and commit to applicable measures in the subsequent NEPA document.

Mobile and Stationary Source Diesel Controls

Purchase or solicit bids that require the use of vehicles that are equipped with zero-emission technologies or the most advanced emission control systems available. Commit to the best available emissions control technologies for project equipment in order to meet the following standards.

- On-Highway Vehicles: On-highway vehicles should meet, or exceed, the EPA exhaust emissions standards for model year 2010 and newer heavy-duty, on-highway compression-ignition engines (e.g., long-haul trucks, refuse haulers, shuttle buses, etc.).[1]
- Non-road Vehicles and Equipment: Non-road vehicles and equipment should meet, or exceed, the EPA Tier 4 exhaust emissions standards for heavy-duty, non-road compression-ignition engines (e.g., construction equipment, non-road trucks, etc.).[2]
- Locomotives: Locomotives servicing infrastructure sites should meet, or exceed, the U.S. EPA Tier 4 exhaust emissions standards for line-haul and switch locomotive engines where possible.[3]
- Marine Vessels: Marine vessels hauling materials for infrastructure projects should meet, or exceed, the latest U.S. EPA exhaust emissions standards for marine compression-ignition engines (e.g., Tier 4 for Category 1 & 2 vessels, and Tier 3 for Category 3 vessels).
- Low Emission Equipment Exemptions: The equipment specifications outlined above should be met unless: 1) a piece of specialized equipment is not available for purchase or lease within the; or 2) the relevant project contractor has been awarded funds to retrofit existing equipment, or purchase/lease new equipment, but the funds are not yet available

Consider requiring the following best practices through the construction contracting or oversight process:

- Establish and enforce a clear anti-idling policy for the construction site.
- Use onsite renewable electricity generation and/or grid-based electricity rather than diesel-powered generators or other equipment.
- Use electric starting aids such as block heaters with older vehicles to warm the engine.
- Regularly maintain diesel engines to keep exhaust emissions low. Follow the manufacturer's recommended maintenance schedule and procedures. Smoke color can signal the need for maintenance (e.g., blue/black smoke indicates that an engine requires servicing or tuning).
- Retrofit engines with an exhaust filtration device to capture diesel particulate matter before it enters the construction site.

[1] http://www.epa.gov/otaq/standards/heavy-duty/hdci-exhaust.htm
[2] http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm
[3] http://www.epa.gov/otaq/standards/nonroad/locomotives.htm

- Repower older vehicles and/or equipment with diesel- or alternatively fueled engines certified to meet newer, more stringent emissions standards (e.g., plug-in hybrid-electric vehicles, battery-electric vehicles, fuel cell electric vehicles, advanced technology locomotives, etc.).

Fugitive Dust Source Controls

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative, where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions.
- When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

Occupational Health

- Reduce exposure through work practices and training, such as turning off engines when vehicles are stopped for more than a few minutes, training diesel-equipment operators to perform routine inspection, and maintaining filtration devices.
- Position the exhaust pipe so that diesel fumes are directed away from the operator and nearby workers, reducing the fume concentration to which personnel are exposed.
- Use enclosed, climate-controlled cabs pressurized and equipped with high-efficiency particulate air (HEPA) filters to reduce the operators' exposure to diesel fumes. Pressurization ensures that air moves from inside to outside. HEPA filters ensure that any incoming air is filtered first.