



March 24, 2023

Beth Pargman, Holland Lake Lodge Team Lead
U.S. Forest Service, Swan Lake Ranger District
200 Ranger Station Road
Bigfork, MT 59911
Elizabeth.Pargman@usda.gov

Kurt Steele
U.S. Forest Service Supervisor
Flathead National Forest
650 Wolfpack Way
Kalispell, MT 59901
Kurtis.Steele@usda.gov

**Re: Request for compliance with mandatory duties under 36 C.F.R. § 251.50 and
Notice of violations of NEPA regarding Holland Lake Lodge Special Use Permit and
Amendment #2**

Dear Mr. Steele and Ms. Pargman,

The Center for Biological Diversity, Alliance for the Wild Rockies, and Save Holland Lake (“Center”) provide you with this request to comply with mandatory Forest Service regulations when determining whether to issue a new term special use permit for Holland Lake Lodge. We further provide you with a courtesy notice of the Forest Service’s violations of the National Environmental Policy Act (“NEPA”) in relation to the current Holland Lake Lodge Resort/Marina Term Special Use Permit dated May 26, 2017, and Amendment #2 for Special-Use Authorization for the Holland Lake Lodge Special Use Permit dated August 22, 2022.

The Forest Service’s pattern of actions indicate that the Forest Service has come to a predetermined decision to authorize an expansion to Holland Lake Lodge by POWDR Corp. The Forest Service has allowed POWDR Corp to store a four-unit modular home for employee and construction housing on the permit area and has granted POWDR Corp the authority to drill two new wells on the current Holland Lake Lodge Special Use Permit area without public notice and without any analysis. Evidence of a predetermined decision prior to compliance with NEPA violates the law.

We were recently notified that POWDR Corp has submitted an application for a special use permit for Holland Lake Lodge, essentially transferring permit authority from Christian Wohlfeil to POWDR Corp. In an email to a member of the public, Mr. Steele stated that “as long as [POWDR] is deemed financially and technically capable and is planning to meet the intent of the special use permit, a new permit is issued.” Not only is this an incorrect summary of the law regarding the Forest Service’s duties when issuing special use permits, it also clearly indicates

the agency's predetermined decision to issue a new special use permit to POWDR Corp regardless of the results of public comment and analysis, in violation of NEPA.

We urge the Forest Service to comply with its requirements under 36 C.F.R. § 251.54, which mandate that the Forest Service consider the public interest, provide public notice and opportunity to comment, and engage in a NEPA analysis prior to issuing a new term special use permit for Holland Lake Lodge. The Center and its partners will pursue litigation in federal court should the Forest Service fail to adequately and completely comply with its duties as described below.

Factual Background

The current special use permit authorizing Holland Lake Lodge was issued to Christian Wohlfeil on May 26, 2017. The permit was issued for the purpose of "operating and maintaining a resort, including food service, retail sales, and other ancillary facilities described herein, known as the Holland Lake Lodge." The permit provided specific and limited actions and facilities authorized by the permit.

On September 1, 2022 the Forest Service issued a scoping letter proposing the "Holland Lake Lodge Facility Expansion." The expansion was developed and proposed by POWDR Corp, one of the United States' largest ski resort operators. It was and continues to be clear to the public that POWDR Corp hopes to opulently remodel and substantially expand operations at Holland Lake.

Despite working with POWDR Corp for at least two years to develop a "Master Development Plan" ("MDP") that included major renovations and new construction that would triple the Lodge's current capacity, the September 1, 2022 scoping letter was the first time the public was made aware of the Forest Service's involvement with the expansion.

Prior to the release of the scoping letter, a four-unit modular home was parked on the permit area, seemingly in anticipation for construction activities associated with the Holland Lake Lodge expansion. When asked about the trailers at a public meeting, Mr. Steele informed the public that these were to be used as future employee housing for the Holland Lake Lodge expansion and that he had allowed POWDR Corp to "store" the trailers on the permit area.

Additionally, on August 22, 2022, the Forest Service authorized, without public notice and comment, Amendment #2 for the permit. Amendment #2 authorized the "drilling of two new wells behind the existing storage shed and BBQ pit for pump testing." Amendment #2 authorizes and describes the equipment necessary for drilling these two wells, which involves large drill rigs, trucks to transport 20-foot-long steel casing, and drill cutting pile, which will also create a slurry that may run into the lake and will be excavated. Documents received from the Center's FOIA requests indicate that, in addition to the impacts described in Amendment #2, at least 12 trees will need to be cut down to allow trucks and equipment to access the area.

Further, documents show that these two wells will not be limited to "testing" but will ultimately be used for the seemingly eventual Holland Lake Lodge expansion. To begin with, two wells drilled in close proximity to each other are clearly not meant to test different aquifers because

they will reach the same aquifer. If these two wells were truly meant for testing, they would not be in such close proximity. In fact, the Forest Service’s own hydrologist stated that the use of the term “test well” was perhaps disingenuous. As they succinctly stated in an email, it “[s]eems like a connected action to expansion of the lodge and should require some level of NEPA.”

Ultimately, after significant public opposition, on November 21, 2022, the Forest Service “decided to cease evaluation of the proposed use at this time.” The Forest Service also “returned” the MDP “to be revised to meet the requirements of Section II.C. of [the] special use permit and addresses the inaccuracies we have discussed.”

Recently, the Center learned that the Forest Service “was formally informed of the change of control [of Holland Lake Lodge] and application for a new [special use] permit was submitted” by POWDR. Thus, we are under the assumption that POWDR Corp has officially purchased Holland Lake Lodge from Christian Wohlfeil. The Forest Service stated that “[a]s long as the new applicant is deemed financially and technically capable and is planning to meet the intent of the special use permit to provide services to the public, a new permit is issued.” As explained below, this is incorrect.

The Forest Service is required to 1) consider public interest when determining whether to authorize the new term Special Use Permit for Holland Lake Lodge; 2) provide the public with adequate notice and opportunity to comment on the special use proposal; and 3) engage in NEPA procedures.

Before the Forest Service analyzes an application for a proposed use pursuant to NEPA, agency regulations require the Forest Service to undertake two levels of screening. The Forest Service’s “initial screening” must “ensure that the [proposed] use meets ... minimum requirements applicable to all special uses.” 36 C.F.R. § 251.54(e)(1). Among other things, the Forest Service must “ensure” that:

The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law

Id. § 251.54(e)(1)(i). “Any proposed use ... that does not meet all of the minimum requirements of [36 C.F.R. § 251.54 (e)(1)(i) – (ix)] shall not receive further evaluation and processing. In such event, the authorized officer shall advise the proponent that the use does not meet the minimum requirements.” *Id.* § 251.54(e)(2).

Where the Forest Service concludes that a “proposal ... passes the initial screening,” the agency then undertakes a “[s]econd-level screening.” *Id.* § 251.54(e)(5). As part of the second-level screening, the Forest Service “*shall reject any proposal ... if, upon further consideration, the officer determines,*” among other things, that:

[t]he proposed use would *not be in the public interest*

Id. § 251.54(e)(5)(ii)(emphasis added). Where the special use authorization “does not meet [each and every one of] the criteria” evaluated for second-level screening, the Forest Service need not

prepare “environmental analysis and documentation” pursuant to NEPA before rejecting the application. *Id.* § 251.54(e)(6).

Thus, the Forest Service has a duty to reject special use authorization applications if, among other reasons, the proposed use is not “in the public interest.”

We are formally requesting that the Forest Service comply with its duties under 36 C.F.R. § 251.54 when reviewing the application for special use for Holland Lake Lodge. Specifically, the Forest Service must adequately consider whether allowing POWDR Corp, an out-of-state corporation known for high-end ski resorts and lodging, is in the public interest.

The Forest Service has previously rejected proposals as not in the public interest where those proposals would have led to private gain at the public’s expense. For example, the Grand Mesa Uncompahgre and Gunnison National Forests in Colorado in 2009 rejected without NEPA analysis a proposed master development plan for expansion of the Crested Butte ski area. The Forest Service based its rejection on its conclusions, among others, that: the local community was deeply divided about the expansion; the expansion threatened to harm significant natural resource values (roadless lands and wildlife habitat); the expansion would increase area visitation, thus burdening local infrastructure; and completing the NEPA process “would require a large commitment” of Forest Service and other agency resources. Letter of C. Richmond, Supervisor, GMUG National Forest to T. Mueller, Pres., Crested Butte LLC (Nov. 5, 2009), available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5288146.pdf. Also, in 2016, the Forest Service rejected a special use permit for utility rights-of-way (“ROWS”) as not in the public interest where those ROWs would have facilitated a widely opposed private land development on the doorstep of Grand Canyon National Park.

Here, unlike in Colorado, the community is not deeply divided about POWDR Corp’s ownership of Holland Lake Lodge. Instead, the public is overwhelmingly opposed to POWDR Corp’s presence at Holland Lake. This is evidenced by the thousands of comments decrying the proposed expansion in 2022. In fact, in an analysis done by Save Holland Lake, out of the almost 6,500 comments submitted, only 74 supported the proposed expansion. Of these 74 supporters, a significant portion were either from out of state or from local residents with high potential to directly profit from the expansion. Therefore, it is not in the public interest for POWDR Corp to maintain a special use permit to operate and inevitably expand Holland Lake Lodge. The Forest Service should reject POWDR Corp’s special use permit application.

If the Forest Service determines that the proposal meets the criteria established in 36 C.F.R. § 251.54(e)(5) and the Forest Service accepts the special use proposal as a formal application – which it should not – the Forest Service is required to engage in formal NEPA procedures, including providing adequate notice and opportunity to comment to Federal, State, and local government agencies and the public. *Id.* at 251(g)(2)(ii). The failure to engage the public in the Forest Service’s determination as to whether to issue a new term special use permit for Holland Lake Lodge is a violation of NEPA.

The Forest Service has failed to engage in the NEPA process regarding Amendment #2 and its authorization of a modular home on the current special use permit area.

The two “test wells” authorized by Amendment # 2 are inaccurately characterized as “test wells.” Rather, these wells will be used for a future Holland Lake Lodge expansion, were not subject to NEPA notice and analysis, and thus should not have been authorized by the Forest Service.

NEPA requires federal agencies to prepare an Environmental Impact Statement (“EIS”) for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. §4332(2)(C). NEPA regulations require that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action *shall be evaluated in a single impact statement.*” 40 C.F.R. §1502.4(a) (emphasis added). The regulations also require that two or more agency actions must be analyzed together in the same EIS if they are “cumulative” actions, “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2).

As the Forest Service’s own hydrologist disclosed, the two wells are part and parcel with the Holland Lake Lodge expansion and thus should be analyzed with the NEPA analysis, should there be one. Segmenting these two wells from the Holland Lake Expansion is, itself, a violation of NEPA. *Webster v. U.S. Dep’t of Agric.*, 685 F.3d 411, 426 (4th Cir. 2012) (Agencies may not engage “in segmentation, which involves ‘an attempt to circumvent NEPA by breaking up one project into smaller projects and not studying the overall impacts of the single overall project.’”) However, the Forest Service did not even engage in a NEPA analysis prior to authorizing the wells, which is clearly a connected action to the Holland Lake Lodge expansion because it is an “interdependent part of the [Holland Lake Lodge expansion] and depends on the [Holland Lake Lodge expansion] for [its] justification.” 40 C.F.R. § 1501.9(3)(iii). The authorization of Amendment #2 is a clear indication that the Forest Service has made a predetermined decision to authorize an expansion at Holland Lake Lodge, in violation of NEPA.

Moreover, the employee/construction housing on the Project area is similarly authorized in anticipation for construction activities associated with the Project. The current 2017 Holland Lake Lodge permit does not authorize the presence of modular homes on the permit area. The Forest Service set forth specific terms and conditions in the permit that authorize the following facilities: lodge, five rental cabins, residential conference dwelling, barn, corrals, rail fence, water well, store, 3’ pressure sewer line connected to the Forest Service Lagoon, two storage sheds, portable sauna building, portable fuel storage tank, two temporary platform tents, one temporary yurt, boat dock, and floating dock.

Therefore, the presence of the modular homes on the permit area is a violation of the 2017 permit terms and conditions, and the authorization of their storage is an amendment to the 2017 Holland Lake Lodge special use permit that did not comply with the special use permit regulations or NEPA. Additionally, this authorization indicates a predetermined decision.

The issuance of Amendment #2 authorizing the construction of two wells for the purpose of serving an expanded Holland Lake Lodge, and the authorization to store the modular home or trailer, indicate that the Forest Service has made a predetermined decision that irreversibly and irretrievably commits resources and violates NEPA’s “hard look” requirement. *Metcalf v. Daley*,

214 F.3d 1135, 1145 (9th Cir. 2000); *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007). Therefore, the Forest Service must immediately remove the modular home from the permit area and rescind Amendment #2 or risk liability for failing to comply with NEPA and its regulations under 36 C.F.R. § 251.43, and follow its own regulations should they intend to authorize these activities in the future.

Conclusion

The Forest Service is required to comply with 36 C.F.R. § 251.54 and NEPA when deciding whether to issue a new term special use permit. The Center and its partners request that the Forest Service provide notice if and when the Forest Service has formally accepted the application for special use permit. If the Forest Service fails to adequately comply with its legal obligations and duties when considering issuance of a new term special use permit, and if the Forest Service does not cure the legal violations associated with the modular home and Amendment #2, the Center and its partners will pursue litigation in federal court.

Sincerely,



Kristine M. Akland, Northern Rockies Director
Center for Biological Diversity
317 E. Spruce St.
Missoula, Montana 59802
kakland@biologicaldiversity.org
(406) 544-9863

Bill Lombardi
Save Holland Lake
Seeley Lake, Montana

Mike Garrity, Executive Director
Alliance for the Wild Rockies
Helena, Montana

CC: Leanne Marten, Regional Forester
26 Fort Missoula Road
Missoula, MT 59804
Leanne.martin@usda.gov

Ben South, Deputy Regional Forester
bennie.south@usda.gov