

November 21, 2020

ATTN: Objection Reviewing Officer
USDA-Forest Service Intermountain Region
324 25th Street, Ogden, UT 84401
objections-intermtn-regional-office@usda.gov

**RE: Project 54201 Snow King Mountain Resort On-Mountain Improvements;
Jackson Ranger District, Bridger-Teton National Forest, Teton County,
Wyoming**

On behalf of the Jackson Hole Conservation Alliance (“Alliance” or “We”) – which has a physical address of 685 S. Cache Street, Jackson, Wyoming, 83001 and a telephone number of (307) 733-9417 – I hereby submit this formal Objection letter regarding Project 54201 Snow King Mountain Resort On-Mountain Improvements subject to the objection process pursuant to 36 CFR 218 Subparts A and B in response to the Bridger-Teton National Forest’s Final Environmental Impact Statement (“FEIS”),¹ and Draft Record of Decision (“ROD”),² for the Snow King Mountain Resort On-Mountain Improvements Project, which would authorize Alternative 4; increase beginner ski terrain, expand the ski area boundary, remove existing lifts and buildings, and construct new ski runs, lifts, lighting and snowmaking infrastructure, bike trails, ziplines, gondola, access road, summit building, and planetarium.

The Alliance represents thousands of community members in Jackson Hole who want Snow King to succeed without harming important community and conservation values. We appreciate the opportunity to object to the draft ROD. The Alliance has previously submitted timely written comments regarding this project during all periods where public comments were requested. *See* Exhibit 1 (Comment Scoping) and Exhibit 2 (Comment DEIS); those comments are hereby incorporated by reference and are thus part and parcel of these Objections. This Objection letter also addresses issues that have arisen after the expiration of all prior comment periods. The Alliance requests an Objection Resolution meeting to address the concerns listed in its Objection, which are raised below.

Overview of Objections to the Draft Record of Decision and FEIS

We have thoroughly reviewed the Snow King draft ROD and FEIS and found that many flawed elements in the DEIS still remain and thus should be redone through additional national Environmental Policy Act (“NEPA”) analysis. In this formal Objection letter, we explain in depth the following 9 areas of concern:

¹ https://www.fs.usda.gov/nfs/11558/www/nepa/109524_FSPLT3_5396982.pdf

² https://www.fs.usda.gov/nfs/11558/www/nepa/109524_FSPLT3_5396985.pdf

1. The Agency's failure, in violation of NEPA and public trust in the process, to develop an accurate purpose and need statement that speaks to the Bridger-Teton's purposes and needs in fulfilling its public mandate.
2. The Agency's failure, in violation of NEPA, to consider and fully analyze a reasonable range of alternatives.
3. The Agency's failure to properly respond to Scoping and DEIS comments, instead adding new harmful project elements.
4. The Agency's failure to conduct a sound and rigorous NEPA process.
5. The Agency's failure to carry out in-depth analyses on issues including water, wildlife, and safety, and failure to use the analysis to generate and evaluate alternatives that would have had more acceptable levels of impact.
6. The Agency's failure, in violation of NEPA, to analyze in depth the impact of the proposed action, including failing to specifically analyze the extent that the Summit Access Road, backside expansion, and east-west expansion would have on northern goshawk populations and wintering elk.
7. The Agency's inclusion of elements in the action alternatives that directly contradict Forest Service manuals, handbooks, guidance, or relevant laws.
8. The Forest Service's failure to respond to the Alliance's February 2020 FOIA request, and subsequent October 2020 request, before putting the Draft Decision out for review and potential objections.
9. We also object to the Forest Service's National Historic Preservation Act process in connection with this project.

The Alliance's Specific Objections

1. **The Agency's failure, in violation to NEPA and public trust in the process, to develop an appropriate purpose and need statement that speaks to the Bridger-Teton's purposes and needs in fulfilling its public mandate**

Violation: In our DEIS comments, we stated "The purpose and need statement is fatally flawed: it is actually the developer's project list in disguise and inappropriately brings economic questions into the review process." The "needs" are not reasons why "this action is needed," but rather present a project list from the special use permittee, disguised as "needs." This disguised list then biased the generation and conservation of alternatives, which in turn skewed the entire NEPA analysis of alternatives and impacts.

We observe that the FEIS Purpose & Need differs from the Scoped Purpose & Need in two ways:

- Changed the “need” of “to serve as the primary ski resort in Jackson Hole” (DEIS S-3) to “to better respond to skier-market demand” (FEIS S-3)
- Removed the “need” of “provide an outdoor education center” (DEIS S-3)

These edits do not change the fundamental problem: the Purpose & Need was written in such a way that *only* the developers’ projects can meet the Purpose & Need. When the “Need” is a list of projects proposed by the developer, then by definition only those projects can meet the “Need.” What we wrote in our DEIS comment (see Appendix) holds for the FEIS as well:

The DEIS identifies specific projects rather than categories of recreational opportunities and seemingly prevented the consideration of a reasonable range of alternatives. An agency cannot allow a project proponent’s objectives to preclude consideration of otherwise reasonable alternatives (*National Parks & Conservation Association [NPCA] v. Bureau of Land Management [BLM]*, 2009). Instead of deferring to a private party’s objectives in defining a project’s purpose under NEPA, an agency should “consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency’s statutory authorization to act, as well as in other congressional directives” (*NPCA v. BLM*, 2009, at 1070, quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). Agencies may not “define the objectives of a proposed action so narrowly as to preclude a reasonable consideration of alternatives” (*Wyoming v. U.S. Department of Agriculture*, 661 F.3d 1209, 1226 (10th Cir. 2011)).

Please see our specific concerns about the “Purposes” and “Needs” in our DEIS Comments, which we do not believe the Agency has rectified in its draft ROD or FEIS.

Additionally, the Draft ROD memo asserts that providing more beginner terrain and more summer recreation on Snow King are legitimate public Agency purposes and needs. We do not believe the Agency has provided any evidence or reasoned rationale for this argument. We understand that the investors at Snow King want more beginner/intermediate ski terrain. That does not mean that it is a valid *public* purpose. Snow King has always been a mountain for human-powered recreation and youth ski racing. Our community has not identified a “need” for beginner terrain at Snow King. Teton County, WY contains three ski areas: Snow King, Jackson Hole Mountain Resort (JHMR), and Grand Targhee Resort (GTR). JHMR (which is also in the Bridger-Teton National Forest) and GTR (in the neighboring Caribou-Targhee) both provide extensive beginner and intermediate terrain. “Skier-market demand” is already addressed by these other ski areas, and the Agency has not provided any reasonable argument that the skier market needs more beginner terrain on the Bridger-Teton National Forest. To the contrary, the Agency argues that climate change will harm the ski market and require more summer amusement activities – undercutting the idea that the region or the Bridger-Teton National Forest (as opposed to any one ski area) needs more developed ski terrain.

Moreover, summer recreation can be provided within the existing operating footprint, and without boundary expansions or an operating footprint expansion. This part of the Purpose & Need could be met with Action Alternatives that do not expand the footprint. Such an Action Alternative is notably missing from the DEIS and FEIS.

Further regarding summer activities, the Draft ROD memo states without evidence: “Concentrating these activities at a permitted, developed recreation site like Snow King, where parking, lifts, trails, restrooms, and other visitor services are in place, will help reduce the adverse resource effects and management demands of dispersed recreation” (pg. 5). There is no evidence provided that *increasing* use of developed recreation *reduces* use of dispersed recreation. In fact, increased developed use can also increase dispersed use, as new users are introduced to sports in developed locations and then decide to embark on “more adventurous” activities further out. We believe that increasing summer amusements in Snow King will also increase summer use in dispersed areas on the Bridger-Teton National Forest. The FEIS does not provide any evidence, and this lack of data leads to improper (or completely unsubstantiated) conclusions.

Suggested Remedy: We request a new purpose and need statement that speaks to the *Agency’s* purposes and needs in fulfilling its public mandate under laws enacted to protect National Forest System lands, not the developer’s project list. Although the ROD mentions comments made by a multitude of community members and organizations, the purpose and need statement of the FEIS is still fundamentally the developer’s project list. We therefore request that a new purpose and need statement be drafted that accurately addresses *both clauses* of FSM 2343.11 which states, “Work with holders to ensure that ski areas provide a high-quality recreation experience *and that recreation activities at ski areas are conducted in a manner that protects the natural environment and cultural resources and enhances community values*” [emphasis added]. We request this new appropriate Purpose & Need be the basis for consideration and evaluation of a new, broader range of alternatives.

2. The Agency’s failure, in violation of NEPA, to consider and fully analyze all reasonable alternatives

Violation: NEPA requires “consideration of a reasonable range of alternatives that can accomplish the purpose and need of the proposed action.” However, the three action alternatives considered in this FEIS are nearly identical on the substantive questions. In our DEIS comments, we explained that the Agency did not conduct in-depth analysis of the vast range of reasonable middle-ground alternatives suggested by public comment, cooperating agencies, and wildlife agencies. The Agency dismissed these alternatives on the basis that they did not conform to the artificially narrow Purpose & Need. But as demonstrated above, the Purpose & Need was written specifically to only allow alternatives that match the developers’ project list. This is circular reasoning and has been found inappropriate in significant past litigation cited above.

The ROD memo states: “The ski area and the Forest Service have comprehensively identified and assessed options for the necessary summit access road/novice skiway, and the proposed alignment is the only viable option” (pg. 5). This is not accurate, as demonstrated below. The FEIS also includes a new explanation for not fully considering the Briggs Road

alternative; but this explanation does not contain coherent reasoning. The Agency states: “It also would not notably reduce many of the resource impacts of concern to commenters who suggested the alternative” (FEIS 2.7.2.3). This is clearly incorrect: the Briggs Road would clearly reduce the resource impact of concern to the commenters who suggested it: the impact on northern goshawks in the proposed east expansion area would be entirely removed. The FEIS does *not* include any explanation for not fully analyzing the other road alternatives shown in the 2017 MDP maps (see our DEIS comments under “Lack of road alternatives”). As we wrote in DEIS comments:

The ski area’s design/engineering consultant SE Group provided an “ACCESS ROAD OPTIONS” chart (Figure 6 attached to the 2017 MDP, labeled September 2017) which contradicts this statement. The chart shows three presumably viable options: “Existing SUP Only,” “Preferred Option,” and “Western Expansion.” We understand that the ski area *prefers* their “Preferred Option.” However, that does not make it the *only viable option*, especially after the ski area itself showed two others. The DEIS should have carried all three SE Group road options into in-depth analysis as action alternatives.

We still do not see any good reason for ignoring the full range of SE Group road options in the FEIS.

The FEIS includes new language rejecting elements of the Stakeholder scenarios, but with no rationale:

The exceptions were considered but not carried into in-depth analysis because they did not meet purpose and need or were not feasible: a zip line adjacent to Rafferty (section 2.7.6); prohibiting skiing between switchbacks in the access road/skiway (section 2.7.2.4); no development of beginner terrain on the summit (section 2.7.7); and allowing only human-powered activities on the back side (section 2.7.4). (FEIS 2.7.14)

We see no reasoned basis for why these elements would not meet an appropriate Purpose and Need – or even this biased Purpose and Need – or would not be feasible. Lacking such reason, these statements are not persuasive, nor comply with the Agency’s obligation under NEPA and the Administrative Procedure Act.

In addition, even setting aside the fatally flawed Purpose & Need statement, we object to the complete lack of in-depth analysis of any middle-ground alternatives. The virtually identical nature of the action alternatives (as demonstrated in a table in our DEIS comments) was not a sufficient “range” of alternatives. It was three virtually identical versions of the developers’ project list, not a range of alternatives for fair and candid public discussion that sharply contrasted the proposed action from other reasonable action alternatives

Suggested Remedy: Please include a reasonable range of action alternatives, including “middle-ground” alternatives, options for no development in Leeks Canyon and no East

expansion beyond current ski area boundaries, and other road alignments such as the “Existing SUP Only,” in a redone and legally compliant Supplemental FEIS.

3. **The Agency’s failure to properly respond to Scoping and DEIS comments, instead adding new harmful project elements**

Violation: Instead of responding to public comments by removing harmful project elements or creating a reasonable range of alternatives, the Agency made the project *more* harmful with the addition of new project elements. This is the Agency description of changes:

“As modified in this Final EIS, Alternative 4 maintains its initial focus, but it reflects these additional inputs: the outcome of consultation on the historic landscape regarding the effect of new ski runs; ongoing concern expressed in comments on the Draft EIS regarding management of lift-served mountain biking, protection of specialized elk and deer habitat in Leeks Canyon, and Cougar lift removal; new data on goshawk habitat use; and public interest in eBiking opportunities.” (FEIS 2.6)

In response to “ongoing concern” about lift-served mountain biking, which was justifiably prohibited in the Skyline ROD (see our DEIS Comments), the Agency is now proposing to allow lift-served mountain bike access onto important human-powered trail systems. We see no coherent reason to believe that vague “adaptive management” will be enforced. We object to the claim in the ROD memo that the Skyline ROD prohibited bikes on lifts due to a lack of data. The Skyline ROD, and former Agency staff, was unequivocal in listing the lift-served-bike prohibition as the first condition of approval not due to a lack of data but due to a clear harmful impact. This revisionist history is a disservice to the excellent work and service of previous Agency staff who shepherded the Skyline ROD through a successful public process and balanced many community interests well.

Even worse, the FEIS / draft ROD suddenly allows eBiking on trails – without having ever mentioned that concept in the Scoping Notice or any opportunity for public comment. This is a radical shift (and certainly *not* the logical outgrowth of the scoping notice of DEIS) and should be fairly presented for public comment during a Scoping or DEIS comment period, not first announced as a surprise in the Draft ROD.

Additionally, the FEIS does not actually protect elk and deer habitat (see our DEIS comments). It admits: “Compared to Alternative 3, Alternative 4 could have an increased impact on elk parturition areas, as mountain bikers are not allowed to leave the designated trail systems under Alternative 3” (FEIS 3.6.3.4.3). And it does not protect goshawk habitat – instead it allows *more* clearing in the goshawk home territory. This goshawk nesting pair is the most productive pair in the county, so disturbing them may have an impact beyond individuals. We are shocked that the Agency has *increased* the harm to this sensitive species in the FEIS, after receiving significant very clear public comment – including from biologists – asking to protect the goshawks in the DEIS comment period. This, too, fails to constitute reasoned decisionmaking that is the logical outgrowth of the proposal on which the Agency solicited prior public comment.

Suggested Remedy: Include in a Supplemental EIS a reasonable range of alternatives that actually address public comments. Do not allow lift-served mountain biking to the summit. Do not allow eBiking on trails on FS lands. Protect elk and deer habitat by removing the permit area boundary from Leeks Canyon; protect goshawk habitat by denying a boundary expansion into the Ferrins/Cache area.

4. The Agency’s failure to conduct a sound NEPA process from the beginning, leading to flaws and inconsistencies in the DEIS and FEIS

Violation: This section details our overarching concerns about the NEPA process, including: an EIS that does not address what was outlined in the scoping notice, past FS decisions, or Snow King’s agreements with the Town of Jackson; collusion between FS staff and the developer; the piecemealing of and failure to resolve past Snow King actions in a NEPA process; the disregard for the best available data; a lack of meaningful response to comments provided during Scoping and DEIS; and improper integration of NEPA with the National Historic Preservation Act Section 106 process. These concerns are fully outlined in our DEIS Comment letter (see Exhibit B), which are fully incorporated here by reference and are thus an important part of our Objections. The FEIS does include some responses to our Scoping and DEIS comments but these responses do not address or remedy these issues.

Suggested Remedy: We believe these issues are clear and reasonable grounds for a Supplemental EIS so that the Agency can come into compliance with NEPA.

5. The DEIS dismissed many significant issues that should have been carried into in-depth analysis – like water, wildlife, and safety – and failed to use this analysis to generate alternatives that would have had more acceptable levels of impact.

Water

Violation: The FEIS does not note or discuss that the resort currently uses drinking water for snowmaking rather than untreated water, and that using more drinking water could have significant impacts both to the municipal water supply and the environment. With a proposed 150-163% expansion in snowmaking, use of water would significantly increase. Even if the Town has not identified an “impending water shortage,” the EIS made no effort to understand how many gallons of drinking water are currently used and what usage might look like under future conditions. Moreover, just because there is no identified shortage does not mean the environmental impacts would be insignificant. Usage would increase dramatically, especially since this EIS claims that Snow King needs additional snowmaking capacity to open earlier. We have no understanding of how much drinking water is currently wasted due to high temperatures and resulting snowmelt due to producing snow at unfavorable times of year.

Also, approving a dramatic expansion could very likely place a burden on town infrastructure given that the current water conveyance pipes are too small. The Agency should

consult with the Town, especially as a cooperating agency, before approving these changes. The same consultation is true for the needed connection for sewer.

Snow King has also not demonstrated the viability of or need for additional snowmaking. The FEIS does not analyze past snow depths, despite the snow course that has been in place since 1959. The FEIS also fails to consider future snow projections, even though research has demonstrated that the intermountain west will become much hotter and drier (Koshmrl, 2020), which would indicate no such “need” for early-season snowmaking genuinely exists (because it may not be possible) therefore making the environmental impacts not worth the downsides involved.³

Suggested Remedy: A Supplemental EIS should carry all these issues into full analysis to generate and evaluate different alternatives, while also evaluating all relevant impacts to affected resources.

Wetlands

Violation: The EIS contends that there are no significant impacts to nearby wetlands and waters (S-8/S-9) after only evaluating the impacts of construction and not human activity that will result directly and indirectly from the construction activities. The EIS claims that an increase in snowmaking would not equate to an increase in water usage because additional water usage would fall within the range of natural variability and thus impacts would be minimal. There is no evidence for this assertion, especially since the resort is likely to produce snow on the high end of the range consistently for an early opening season.

Suggested Remedy: Please prepare a Supplemental EIS that considers impacts to nearby wetlands and waters, including non-federal waters nearby, as they are still public resources. Because of the proposed trail system changes that would add more users into Cache Creek, the Agency should consider impacts to that system as well, along with the Flat Creek watershed.

Vegetation

Violation: First, the FEIS does not properly reference impacts to vegetation in terms of watershed conditions, wildlife habitat, and scenic values. Second, nowhere does the EIS consider the basic impacts on vegetation due to recreation, including how plant communities will change over time due to trampling, erosion, and other recreation impacts. Third, the EIS claims that snowmaking does not have the potential to affect vegetation. This assertion seems unlikely, especially if snowmaking is introduced in southern-exposed areas where it was not present before, and if changes are as dramatic as proposed. The Agency failed to investigate or quantify how much water Snow King plans to use, which prevents any ability to determine if these changes would (or supposedly would not) create impacts as compared to baseline conditions.

³ All of the Alliance’s relevant research citations that support these Objections are contained in the Alliance’s DEIS Comments Citation List, and thus are expressly incorporated herein by reference.

That stark failure subverts the NEPA process by failing to establish a baseline against which to measure the impacts of the proposed action.

The Agency also does not consider the seasonality of snowmaking and snow melt, and how this phenomenon could affect vegetation. Again, an earlier start date would mean that more water would be used for snowmaking, leading to a higher risk of melting and resulting in significantly more water on the soil.

Suggested Remedy: Prepare a Supplemental EIS that addresses the impacts of recreation and snowmaking would have on vegetation.

Wildlife

Violation: General wildlife habitat should be considered. As this section reads now, it appears that habitat that does not serve a sensitive species does not warrant consideration, even when total acreage of the resort and degradation of habitat could expand by 250%. Even on a local level, the impacts could be substantial.

Some recreation users already violate winter wildlife closures on Snow King's terrain, but the FEIS makes no effort to quantify the number of violations. This use occurs already without boundary expansions that would bring users much closer to the existing wildlife closures. The Agency did not adequately consider how this proposal enables current and additional violations. Although addressed in the FEIS, the Agency fails to discuss the need for seasonal closures of trails that connect to Skyline and other trails that already have wildlife closures in place.

Suggested Remedy: Include additional considerations for impacts to wildlife in a Supplemental EIS, including seasonal closures and the anticipated impacts of skiers going out of bounds.

Recreation

Violation: While the Agency claims that lift prices are outside the scope of analysis for the FEIS because they are a part of Snow King's business model, the Agency fails to consider their role in approving a vast expansion in infrastructure that would logically lead to an increase in prices. As Snow King already claims its finances are in poor shape, it is reasonable to assume that providing new infrastructure, amenities, and ski runs would result in an increased cost to users, whether lift ticket or uphill pass prices. The magnitude of such fee increases is important given that the resort is on public land, especially since the Agency failed to analyze whether the action will, in fact, satisfy the stated purpose and need in light of resort price increases (i.e., it is entirely possible that such increases will impair the ability of the selected action to achieve the purpose and need—therefore rendering it a non-viable alternative that the Agency thus lacks the discretion to select). The FEIS also does not consider impacts to fee changes for uphill access even though prices have increased dramatically in the past two years alone ("Snow King skinning," 2018).

The Agency has a mandate to manage public lands for the public, which includes reducing barriers to access. Recreation research has shown that seemingly minor changes in price—even nominal day use fees—dramatically change recreation use patterns (Langlois, 2017). Teton County may be the wealthiest county in the United States, but we also have the greatest wealth inequality (Cottier, 2019; Jackson and Teton County Long-Range Planning Department, 2019). Moreover, the diversity of national park visitors often does not reflect the diversity of those living in the nearby community (Rott, 2016). Many of Jackson’s lowest-income families are Latino, and though our tourism-fueled economy depends largely on immigrant workers, they “have historically enjoyed few of the perks of mountain-town life” which inherently includes recreation on public lands (Bullinger, 2018). Increases in recreation fees could compound those dynamics and further impact who has access to our public lands (while furthering inequity in terms of recreational opportunities on National Forest System lands).

Suggested Remedy: The Agency should consider how different proposals would affect pricing and accessibility to a variety of users. A Supplemental EIS must also address whether anticipated price increases will result in a failure to achieve the project’s stated purpose and need, and, if so, whether this alternative remains viable.

Mountain Biking

Violation: Although the FEIS responds to the comments made on the impacts that increased mountain bike usage will have on the Cache Creek, Snow King, Josie’s, and Game Creek trail systems, it fails to accurately address this issue with specifics of the adaptive management plan. The FEIS states plans for Snow King, the Bridger-Teton, and local stakeholders to engage in the process for monitoring and planning during the adaptive management plan for mountain biking but fails to give specifics of that process. If the process for the adaptive management plan is similar to this NEPA process, we do not believe public input or concerns will be accurately represented, instead merely reflecting the developers wishes. Nor has the Agency explained why the adaptive management plan could not be developed before or during the EIS process, so that members of the public could consider its effectiveness and provide comments to strengthen its ability to protect the local ecosystem. By concluded the NEPA process before any adaptive management plan has been contemplated—let alone finalized—the Agency shut the public out of what should have been a critical component of the NEPA process itself.

Suggested Remedy: Please do not allow lift-served mountain bike access to the summit, Leeks Canyon, or adjacent FS trails, in a Supplemental EIS. Also, a Supplemental EIS should discuss the parameters of the adaptive management plan, and allow the public to comment on that efficacy of that plan in order to ensure that it will, in fact, effectively mitigate environmental harm.

Socioeconomics

Violation: Our desired community character is not an ongoing debate. The vision of “community first, resort second” was the result of a multi-year public process that resulted in our

2012 Comprehensive Plan. Moreover, assessing character is possible: our community uses the number of workers living locally as a proxy, which is readily available to the Agency from a cooperating agency (see Teton County Annual Indicator Reports). The huge increase in visitor amenities and developments will dramatically increase the number of tourists as well as the service-industry jobs needed to support them, which is especially problematic given that we already have an imbalance of jobs versus workers given housing constraints.

Providing workforce housing is another significant struggle in Teton County/Town of Jackson. Snow King will only have to mitigate workforce housing for a portion of its workers while infrastructure expansions will drive the need for more jobs and hotels, directly contributing to growth. Growth in this remote mountain valley inherently has an environmental impact and the impacts to the Town and its limited land supply should be considered. Moreover, failing to consider the impacts to community character directly ignores the County's scoping letter requests. Contrary to what the EIS implies, the master plan with the Town is not a "dynamic" document, but rather one that only gets significantly updated every 20 or so years. And given that elected officials and Town staff have debated whether or not Snow King has been compliant with its own master plan (Graham, 2018), the FEIS should not brush off the cascading impacts to town infrastructure.

Suggested Remedy: Please accurately respond to concerns from the Town, as a cooperating agency, and include impacts to town infrastructure and socioeconomics in a Supplemental EIS.

Resort viability and bonding

Violation: After one ski area changed hands and fell into disrepair, the Agency took responsibility and "opted to burn down the ski lodge at the base to avoid any future liability concerns" (Balogh Rochfort, 2020). While FSM 2700 calls for the permittee to remove remaining infrastructure, that does not mean removals will happen. For example, the T Bar on Rendezvous Bowl at JHMR was left on the mountain for years before it was removed (personal communication, Susan Marsh, retired BT staff). The Agency should require the permittee to bond against this possibility to protect the public from having to pay for it.

Suggested Remedy: The Agency should consider the potential liability of buildings and other infrastructure left on top should the resort go out of business, and require bonding, in a Supplemental EIS.

Traffic and parking

Violation: The FEIS ignores the role of the Agency in permitting infrastructure of a nature and scale that would have significant impacts for traffic and parking at the base, especially resulting from developments that the Town or County wouldn't allow (e.g. a 25,000 square foot ridgetop complex). It is the responsibility of the Agency to ensure access to public lands, and the FEIS's failure to analyze traffic and parking complicates accessibility for all users.

Suggested Remedy: Please redo the EIS – or prepare a Supplemental EIS – and carry out the issues above further into analysis to generate and evaluate different alternatives.

6. The Agencies’ failure, in violation of NEPA, to analyze in depth the impact of the proposed action, including failing to specifically analyze the extent that the Summit Access Road, backside expansion, and east-west expansion would have on northern goshawk populations and wintering elk.

Violation: Due to the biased developer-driven Purpose and Need that only allows alternatives that match the developer’s project list, the Agency did not attempt to address significant issues:

“Three of these issues were inherent in the nature of the project and could not be realistically addressed by any alternative that met the purpose and need for action, as discussed above. These issues were related to the summit access road/novice skiway, the associated east and west boundary adjustments, and the impacts of the backside development on wintering elk.” (Response of the Selected Alternative to the Key Issues p.5, Draft ROD, Forest Service)

The impact analysis is flawed and dismisses significant impacts to wildlife and other resources due to an incomplete presentation of impacts; flawed analysis regarding impacts to wildlife and other resources; the lack of analysis of human use of infrastructure; and an insufficient analysis of cumulative effects. This leads to the incorrect conclusion that the action alternatives are relatively impact-free.

Violation: In response to DEIS and Scoping comments that raised concerns about the east-west and backside Leeks Canyon expansion, the FEIS includes the following changes to 3.6.5 Design Criteria for Alternative 4: Added: 2.6.5 WINTER BOUNDARY MANAGEMENT section “Shift the southern boundary of the western boundary adjustment area to the actual ridgeline to provide a buffer between summit development and use and the winter wildlife habitat lower on the slope. Administratively and physically design and control the permit boundary seasonally as needed regarding the sensitive wildlife habitat below.”

Eliminated: “Limit the active skiing hours for Leeks Canyon to 9 am–4 pm.”

Maintained: “Construct mountain biking trails in a way that does not require the removal of any northern goshawk nest trees.”

These changes to the FEIS do not address what the effects of these actions will be on wildlife. Not limiting ski hours in Leeks Canyon and just including a winter boundary management does not fully address the cumulative impacts increased use and development will have on wintering game species below. In fact, not limiting ski hours will likely *increase* the impact on wintering big game and other species – and this increased impact is not analyzed or mitigated. As well, simply not removing the nests during mountain biking trail construction (but notably, not other types of construction) does not adequately consider the depth of impacts on Northern Goshawk populations.

Additionally, the decision regarding northern goshawks is based in poor analysis or understanding of the science. The FEIS states:

“In addition to these goals, regional precedent protects active northern goshawk nests by establishing a 30- acre buffer around any active nests, within which no adverse management activities should occur (Reynolds et al. 1992). However, this goshawk pair nests and forages in an area subject to high levels of disturbance in an area that has been permitted for recreational use. Therefore, this nest is not considered a high priority for protection, as it is not located in an area with large patches of contiguous habitat with little to no existing disturbance.” (FEIS 3.6.2.2.9)

Actually, the goshawk pair nests in the large patch of contiguous habitat contained within a larger area that does have disturbance. As shown in data from the Teton Raptor Center and referenced in our DEIS comments, the pair’s nests are in the most-contiguous part of their range. Fragmenting this habitat with the proposed road – and now additional cleared ski runs approved in the FEIS but not DEIS – will cause substantial impacts and should not be allowed.

Suggested Remedy: Please redo the impacts analysis in a Supplemental EIS, including an alternative that does not include expansion into Leeks Canyon or into the eastern boundary. Please establish a significant buffer around the known northern goshawk nests.

7. Many elements in the action alternatives directly contradict Forest Service manuals, handbooks, guidance, or relevant laws.

Violation: Many elements in the proposed alternative directly contradict the Agency’s own manuals, handbooks, guidance, or relevant laws. Please refer to our DEIS comment to review a summary of violations not already discussed elsewhere in this letter (such as our discussion of the purpose and need as well as the range of alternatives required).

A Forest Service EIS should not include projects that are inconsistent with the Agency’s own regulations. Many of the action alternatives are focused on summer attractions that undermine the recreation quality of the ski resort. If the permittee wants to build a *summer* resort, they should apply for a different permit with a different MDP.

Suggested Remedy: A Supplemental EIS should only include action alternatives that are consistent with Forest Service regulations, policy, and direction.

8. The Forest Service’s failure to respond to the Alliance’s February 2020 FOIA request, and subsequent October 2020 request, before putting the Draft Decision out for objections

Violation: The Forest Service still has not supplied a large portion of documents requested by Earthjustice on our behalf in February 2020; and just provided 2000 documents on November 19 – giving us only two business days to review thousands of documents before submitting this Objection letter, and no time to review thousands of still-pending documents.

As Earthjustice wrote in an email communication to the agency: “The Forest Service has now delayed responding to this FOIA request for over eight months. Since that time, the Forest Service has released a final EIS and a draft Record of Decision (October 9, 2020) for the project. JHCA is now in the position of formulating an objection to this project without the aid of documents it should have received months ago.” Exhibit C.

Precedent: “The Forest Service has failed to meet its NEPA and FOIA responsibilities with regard to CFC’s FOIA request and the related NEPA process for the Draft Decision. Informed public participation in federal agency decision-making is an essential part of the NEPA process. 40 C.F.R. § 1500.1(b) (2017). In order to participate effectively, the public is entitled under NEPA to receive not only the agency’s draft NEPA analysis itself, but also all incorporated documents and documents otherwise underlying the NEPA analysis and Proposed Action. *Id.* §§ 1502.21, 1506.6(f). CEQ regulations specifically require that federal agencies make such documents available pursuant to FOIA requests, and in order for that availability to be meaningful under NEPA, the public must have those documents before they comment on or object to any draft NEPA analysis. *Id.*; see generally *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 2014 WL 6977611 at *14–20 (D. Or., Dec. 9, 2014) [“LOWD”].” In sum, the failure to timely provide the Alliance with documents to which it is statutorily entitled under FOIA – while at the same time closing the NEPA process and accompanying objection process – violates FOIA, NEPA, NFMA, and the implementing regulations for all three statutes.

Suggested Remedy: Share all requested documents (as required by law) and allow at least a 30-day document review period before re-opening the objection process, in order to ensure that the Alliance has sufficient time to raise relevant issues before its opportunity to exhaust its administrative remedies has expired.

9. We also find problems with the connected National Historic Preservation Act process.

Violation: It is exceptionally rare for a ski area to have retained sufficient historic and cultural integrity to qualify for the National Historic Register. Snow King is a historic gem for our community (and the nation as a whole, as evidenced by the number of tourists who visit Snow King); yet the public process failed to successfully integrate NEPA and the Section 106 process, as well as failed to adequately identify adverse impacts and then use those to drive different alternatives as required by the NHPA and its implementing regulations. As to process, we previously explained in our DEIS comments:

- “...the integration of the Section 106 process with the DEIS fails to meet the process requirements or intent of 36 CFR Part 800”; the scoping notice failed to “call out effects on historic resources,” as in it failed to identify Snow King as eligible for historic listing or identify that the 106 process would be a parallel process, until the DEIS was released.
- § 800.14(d)(2) states that agencies “shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment,” and *id.* (d)(1): it is required that the public involvement reflect the “nature and complexity of the undertaking.” Yet,

as we noted in our DEIS comments, the Agency failed to even identify Snow King as eligible for historic listing, and thus eligible for a Section 106 process; failed to provide the required documentation in time to inform alternative generation; failed to note it in public meetings with cooperating agencies or the public; failed to include the Alliance as a consulting party, despite our explicit request; and failed to provide an opportunity for the public to comment on any proposed mitigation measures.

As to substance, the draft ROD fails to address concerns we outlined in a letter dated October 24, 2019, which was also appended to our DEIS comments. *See* Exhibit B, Appendix D. The draft ROD fails to maintain a cultural landscape approach; fails to conduct a proper visual analysis to understand impacts to the visual of Snow King’s historic core and setting; identify the proposed road (which is included in all alternatives, even Alternative 4 which was allegedly designed to reduce impacts to historic resources) as an adverse impact; identify boundary expansions and new runs as adverse impacts and avoid them; cumulatively identify impacts from amusement and other development on the setting or experience of the historic landscape; allows demolition of the historic Panorama House; and bulldozes the historic viewshed in Leeks Canyon.

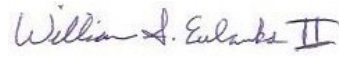
Ultimately, the draft ROD and the Memorandum of Agreement that was the result of the 106 process fails to follow the first, fundamental principle of historic preservation: avoid, minimize, and only then, mitigate. The selected action comes at a high, destructive cost to historic resources for the benefit of the permittee, including destroying historic structures and drastically changing the historic view. *See* our DEIS Comments for more detail.

Suggested Remedy: A Supplemental EIS should include at least one action alternative that does not destroy historic structures or change the historic view of Snow King, as required by the NHPA and its implementing regulations. *See, e.g.,* 36 C.F.R. § 800.1(c) (requiring that agencies “initiat[e] [the Section 106 process] early in the undertaking’s planning, so that *a broad range of alternatives may be considered* during the planning process for the undertaking” (emphasis added)); *see also id.* § 800.3(a) (explaining that “goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties”).

CONCLUSION

We find many substantive and procedural violations in this process and believe the best remedy is for the Forest Service to prepare and solicit public comment on a Supplemental EIS that addresses these violations that have fundamentally undermined the objectivity and accuracy of the NEPA process conducted to date. We look forward to the Objection Resolution meetings and we remain optimistic that we can find a mutually agreeable path forward for a fair and objective re-examination of this project, its impacts, and reasonable alternatives to it. Thank you for your consideration of these Objections.

Respectfully,



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Eubanks & Associates, PLLC

*Counsel for Jackson Hole
Conservation Alliance*

Enclosures:

Exhibit A – Jackson Hole Conservation Alliance’s Scoping Comments

Exhibit B – Jackson Hole Conservation Alliance’s DEIS Comments

Exhibit C – FOIA Emails