



COTTONWOOD

ENVIRONMENTAL LAW CENTER

To: U.S. Forest Service
RE: Holland Lake Lodge Facility Expansion
Date: 9/14/22

Cottonwood Environmental Law Center opposes the Holland Lake Lodge Facility Expansion Categorical Exclusion (CX). Approving the action under a Categorical Exclusion is a violation of the National Environmental Policy Act (NEPA).

The United States Forest Service will violate NEPA if it relies upon 36 C.F.R. §220.6(e)(22) to approve the Expansion. The applicable regulation has identified activities such as “Constructing, reconstructing, or expanding a toilet or shower facility” and “constructing or reconstructing campsites” as an appropriate use of the Categorical Exclusion. 36 C.F.R. §220.6(e)(22). The CX does not permit a facility to triple its user numbers while failing to analyze the corresponding impacts on threatened species that will be impacted by the action. The proposed expansion does not fall within any of the identified sections of the applicable regulation that can be used to categorically exclude an action from NEPA analysis.

The Forest Service failed to adequately consider impacts to “Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species” when determining whether an EA or EIS was necessary. 36 C.F.R. §220.6(b)(1)(i). The CX violated NEPA by failing to adequately address the impacts on “critical habitat” for Canada lynx. The Forest Service also failed to adequately address the impacts on grizzly bears, their dens, wolverines, wolverine dens, and fishers.

The Master Development Plan (MDP) asks for Forest Service approval “with the understanding that further submissions to USFS are required prior to construction (e.g. proposed action, permits, [etc.])” MDP at 1. The Forest Service cannot approve this action without disclosing what further environmental impacts may occur. Some speculation under NEPA is required. *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1079 (9th Cir. 2011) (citation omitted). “Because speculation is . . . implicit in NEPA, we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.” *Id.* (citation omitted). “[R]easonably foreseeable future actions need to be considered even if they are not specific proposals.” *Id.* (citation omitted). The Forest Service violated NEPA by failing to address reasonably foreseeable



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future actions, including winter recreation, as a result of this action and its impacts on wildlife. The “Proposed Activities” section of the CX (P.28) implies future winter use, but fails to identify the associated impacts. How will the expansion impact hibernating grizzly bears, Canada lynx, or wolverines? Where are dens located relative to anticipated ski recreation? What methodology did the CX choose to limit analysis to .25 miles from the facilities? Winter recreationalists will undoubtedly travel farther than .25 miles from the expansion. The Forest Service cannot identify future “additional wildlife design criteria” as a mitigation to justify the CX. This assumes, without knowing, that the impacts on threatened and candidate species can be mitigated to such a degree that a CX is acceptable. The approach has previously been rejected. “[R]eliance on mitigation measures presupposes approval. It assumes that—regardless of what effects construction may have on resources—there are mitigation measures that might counteract the effect without first understanding the extent of the problem.” *Northern Plains*, 668 F.3d at 1084-85.

The Forest Service cannot approve the Holland Lake Lodge Facility Expansion with a Categorical Exclusion (CX). Approving the action under a Categorical Exclusion is a violation of NEPA.

/s/ John Meyer
JOHN MEYER