

USDA Forest Service Ski Area Comments
Pacific Southwest Regional Office
1323 Club Drive
Vallejo, CA 94592

Via e-mail: <http://www.regulations.gov>

November 25, 2013

Dear Forest Service,

The following are the comments of Rocky Smith, Sheep Mountain Alliance, Sequoia ForestKeeper, Conservation Congress, Heartwood, WildEarth Guardians, Klamath Forest Alliance, EPIC, Rocky Mountain Recreational Initiative, Wilderness Workshop, Rocky Mountain Wild, San Juan Citizens Alliance, Rocky Mountain Chapter of Sierra Club, High Country Citizens Alliance, and Quiet Use Coalition on the Proposed Directive for Additional Seasonal or Year-Round Recreation Activities at Ski Areas, as described in the Federal Register notice of October 2, 2013, 78 Fed Reg 60816 et seq.

The proposed directive attempts to address important issues in SAROEA, but falters egregiously on the issue of amusement parks. The directive must prevent ski areas from becoming or hosting amusement parks. Some other sections of the proposed directive need to be strengthened to meet the requirements of the law.

DEFINE AMUSEMENT PARK TO **EXCLUDE** ROLLER COASTERS. A part of the proposal is to add definitions of “amusement park” and “amusement park ride” to FSM 2340.5. This is a critical part of the directive. SAROEA clearly prohibits amusement parks from being implemented at ski areas. Section (c)(4)(E). However, Vail Resorts, Inc. has proposed to install a “forest flyer” at its flagship facility, Vail Ski Area at Vail, Colorado. Forest flyers are roller coasters, which in turn are an amusement park ride.

The proposed directive would essentially allow amusement parks to be constructed and operated at ski areas:

Amusement Park. Two or more amusement park rides located in close proximity.

Amusement Park Ride. A mechanized device or combination of devices that carry persons along, around, or over a restricted course for the purpose of giving passengers thrills or other types of amusement, other than a zip line or ropes course.

Proposed FSM 2340.5.

The above definitions would allow at least one amusement park ride, and maybe two or more if they were not "in close proximity" to each other, at any ski area on national forest land. Under this definition, some large ski areas, such as Vail and Breckenridge, both in Colorado, could easily have more than one amusement park ride, since the rides could be a good distance apart. Having two or more such rides would turn such ski areas into amusement parks, but they would still be allowed under the proposed definition. This is unacceptable and illegal.

With the emphasis on speed and the need for permanent metal structures, such facilities do not "harmonize with the natural environment", nor "encourage outdoor recreation and enjoyment of nature", as required by SAROE (sections (c)(2)(b)(i) and (c)(2)(A), respectively). These facilities would not meet the proposed definition of "natural resource-based recreation":

Natural Resource-Based Recreation. A recreation activity that occurs in a natural setting where attributes such as mountains, forests, geology, grasslands, water bodies, flora, fauna, and natural scenery are essential to the visitor's experience.

Proposed FSM 2340.5. These features are not at all essential to the experience of riding a roller coaster or other amusement park ride. Thus allowing amusement park rides as proposed would not comply with section 3(c)(3) of SAROE.

Roller coasters would not "harmonize with the natural environment of the National Forest System land on which the activity or facility is located" (SAROE section (c)(2)(B)(i)) because the coasters would not be "visually subordinate to the ski area's existing vegetation and landscape". See proposed FSM 2343.14 1(e) 1.

These facilities are clearly not appropriate on national forest land because they are not at all dependent on a national forest setting.¹ They would not comply with proposed direction which states:

Encourage additional seasonal or year-round recreation opportunities that connect visitors to the natural environment, including natural and cultural resource interpretation and conservation education supporting the Forest Service's mission to

¹ Approving roller coasters would violate proposed paragraph 5 of FSM 2343.14:

Do not approve additional seasonal or year-round recreation activities and associated facilities when attributes common in national forest settings are not essential to the recreation experience.

sustain the health, diversity, and productivity of the national forests and grasslands to meet the needs of present and future generations.

Proposed section 2343.11 (3); emphasis added. People riding roller coasters are not connected to the natural environment because much of the time, they are travelling too fast to even notice it.

Allowing any kind of roller coasters in permitted ski areas would directly contradict SAROE A, as the Forest Service admits:

Other summer uses [at permitted ski areas] have facilities that are common at amusement parks, such as merry-go-rounds, Ferris wheels, miniature train rides, and roller coasters, that do not meet the criteria in SAROE A.

78 Fed Reg 60817; emphasis added.

No amusement park rides can be allowed at ski areas, period.

Proposed paragraph 4 of FSM 2343.14 would supposedly contain a “non-exhaustive list of factors” for determining whether facilities would be allowed. One factor might be speed that people travel:

The speed at which visitors travel and are able to engage with the natural setting may affect whether a proposed activity and associated facilities are more like a zip line or more like an amusement park ride.

78 Fed Reg 60818.²

Certainly, a facility on which people traveled at high speed, like a roller coaster would be inappropriate on national forest lands - people would be moving too fast to enjoy nature. However, slower-moving facilities may be just as inappropriate if they carried people high into the air, or if they required a major structure that visually dominated the landscape. An example would be a Ferris wheel, already identified by the agency as inappropriate under SAROE A. (See above.)

NATIONAL FOREST LANDS WITHIN SKI AREA BOUNDARIES SHOULD GENERALLY BE OPEN TO USERS. To avoid “exclusive use”, permitted ski areas on national forest lands should generally be open to users in accordance with the land management plan and safety. This

² In spite of this statement in the Fed Reg notice, the actual proposed language of this paragraph does not mention speed as a factor to consider in determining what facilities or activities might be allowed.

includes ski areas in winter. Non-downhill skiers, such as snowshoers, backcountry skiers, and tubers, should be allowed to use ski areas without paying for services they do not use, as long as they do not disrupt or interfere with permitted operations. For example, snowshoers and backcountry skiers who do not use a lift should not be forced to pay for such use. They could still be charged for parking if they used an associated facility for which other users were charged.

The proposed new paragraph 5 in FSM 2434.11 would commendably prohibit charging of entry fees. It also states. In part:

Authorized officers should strive to ensure that some portions of the permit area remain open to the public without charge, so that the holder's charges do not constitute de facto entrance fees.

Ibid; emphasis added.

Proposed new paragraph 6 in the same FSM section would have related language:

In most cases, it would not be appropriate for restrictions to preclude all public use during the ski season other than by those purchasing a lift ticket or paying for other services.

Emphasis added.

Ski areas must not be allowed to exclude non-paying members of the public. While use by such people can be limited to certain parts of a ski area permit area and/or certain times of the day, the proposed language here is too loose to ensure that non-paying use would not be prohibited altogether (other than on trails maintained by the Forest Service- FSM 2343.11, proposed paragraph 4). Thus permit holders could establish "exclusive use". In proposed paragraph 5 of FSM 2343.11, change "should" to "must". In proposed paragraph 6 therein, begin the sentence with "It is not appropriate...".

When a permit holder wishes to have restrictions on use by non-paying users for reasons other than safety (such as avalanche danger), it must first justify such restrictions, and clearly show how they are necessary to avoid disruptions (not just inconvenience) to permitted use. The public must be given an opportunity to comment on proposals for such restrictions.

Any proposed and final restrictions on use by non-paying users must be clearly described in manner, timing, and location so that the public and managers will understand where and when non-paying use is allowed at ski areas. The language in proposed FSM 2434.11 paragraph 6 requiring the permittee to post restrictions "in locations where they would be effective in

informing the public” is good as far as it goes, but must be extended to ensure the public has ample opportunity to comment on restrictions it will be required to follow, and that the public is well informed about all restrictions.

LIMIT ADVERTISING. The proposed addition to FSM 2343.03 11f would state that advertising could be used during “recreation events”. That term is not defined. It is potentially very broad, meaning advertising would become more common and appear at larger portions of ski areas. Normal operation of a ski area in winter could be considered a “recreation event”. The current wording of this section allows advertising during a “short term” competitive event lasting up to 21 days. That is already longer than is appropriate or necessary.

The proposed addition to 11 g would allow advertising on “race gates”. That could mean that every gate on a slalom or giant slalom ski race course could have advertising. That would turn race courses into mini-billboards. The current language allowing advertising at the start and finish points of race courses and at terrain parks is sufficient to acknowledge the entities that provide support for such facilities.

People visit to national forests to enjoy the natural environment, and to escape from a heavily developed environment. Ubiquitous advertising is clearly out of character for any national forest land, including ski areas. The proposed changes should not be made.

IS THE FOREST SERVICE ENGAGING IN RULEMAKING? It is not clear if the proposed directive constitutes the rulemaking required by Ski Area Recreation Opportunity Enhancement Act (SAROE, 16 U.S.C. 497b note):

Not later than 2 years after the date of enactment of this subsection, the Secretary [of Agriculture] shall promulgate regulations to implement this section.

SAROE, section d.

The Fed Reg notice states that the purpose of the directive is to: “provide additional guidance for implementing [SAROE]”. 78 Fed Reg 60816.

The agency should clarify whether the proposed directive is the required rulemaking. If not, it should state when the required rulemaking will be done.

CONCLUSION. The definition of “amusement park” must exclude all roller coasters. The proposed definition violates SAROEA and is even inconsistent with other parts of the proposed directive. Non-paying use must be allowed at ski areas, subject to restrictions needed for safety and to avoid serious disruptions of permitted operations. The public must first be allowed to comment on such restrictions before they are imposed. Advertising at ski areas must be more limited than is proposed.

Sincerely,

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