



June 5, 2015

Commissioner Jeff Rose
Department of Resources and Economic Development
PO Box 1856
Concord, NH 03301

Re: Draft Mount Sunapee Master Development Plan (MDP)/Environment Management Plan (EMP) 2015-2019 Statement (April 16, 2015)

Dear Commissioner Rose:

Conservation Law Foundation (CLF) appreciates the opportunity to comment on the Draft Mount Sunapee MDP/EMP 2015-2019 Statement issued by you on April 16, 2015 (Draft Statement). We commend you for the public process, including the fifty-day public comment period, provided as part of your decision-making. As set forth below, CLF does not support the Draft Statement, and we urge you to amend it substantially prior to finalizing your decision.

CLF is a member-supported, non-profit environmental advocacy organization working to protect New England's – including New Hampshire's – environment for the benefit of all people. We use the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. For the reasons outlined below, we believe the Draft Statement is inconsistent with the Department of Resources and Economic Development's (Department) statutory obligations relative to the protection of exemplary forest resources and management of the state park system.

Exemplary Forest Resources

The General Court, through its enactment of the New Hampshire Native Plant Protection Act, RSA Chapter 217-A, has specifically recognized the importance and value of New Hampshire's native plant species and, importantly, has established statutory obligations to protect exemplary natural communities. The statute defines "exemplary natural community" as "a viable occurrence of a rare natural community type or a high quality example of a more common natural community type as designated by the natural heritage bureau based on community size, ecological condition, and landscape context." RSA 217-A:3,VII. In addition to recognizing the scientific, economic and other values of native plants and natural communities throughout the state and the need to protect and conserve such resources, RSA 217-A:2,I, the General Court has placed a special

obligation on state agencies, and on the Department in particular, with the following mandate:

All state agencies, consistent with their authority and responsibilities, shall assist and cooperate with the commissioner [of the Department] to carry out the purposes of this chapter. To the extent possible actions funded or carried out by state agencies shall not jeopardize the continued existence of any protected plant species or exemplary natural community.

RSA 217-A:7.

As the Draft Statement acknowledges, the expansion plan proposed by Mount Sunapee Resort will directly affect forest resources on Mount Sunapee determined by the Natural Heritage Bureau (NHB) to be an exemplary natural community. Indeed, the NHB has twice assessed the West Bowl area of Mount Sunapee and has twice determined that growth in Polygon D – an area to be directly impacted by new proposed ski infrastructure – warrants protection. The NHB first surveyed the West Bowl portion of Mount Sunapee State Park in 2004 to determine the condition of its forest as related to the mature, old-growth forest present in the East Bowl. The NHB determined that the 16-acre patch of northern hardwood-spruce-fir forest in Polygon D contains trees that are over 170 years old, giving it old growth characteristics. Additionally, the discovery of spruce trees suggested that the area had never been logged, adding to Polygon D’s significance. *See* NH National Heritage Bureau, Addendum to 2004 report on Mt. Sunapee State Park (Jan. 26, 2015) at 2. Following its 2004 investigation, the NHB determined Polygon D to be “statewide significant” as a result of:

- 1) The condition is good to very good in that it appears to never have been logged;
- 2) Small patches of old examples of this natural community type (**northern hardwood – spruce – fir forest**) are rare;
- 3) Polygon D is part of a larger mosaic of mature and old growth patches of exemplary forest on Mt. Sunapee (East Bowl); and
- 4) It is contiguous and forms the northern extent of the large, unfragmented forest block to the south (Sunapee-Pillsbury Highlands).

Id. at 2.

In 2014, the NHB conducted a second survey of Polygon D and confirmed its original assessment that the forest is an exemplary natural community. Further, it explicitly outlined the importance of the exemplary natural community system on Mount Sunapee, including their values when left intact, stating:

The sections of mature trees found in the exemplary natural community system add significant value to the larger forest mosaic of Mt. Sunapee. This mosaic in turn has a high ecological value because of its connection to the extensive Sunapee Highlands Corridor. Large, intact systems are more resistant to impacts from natural disturbance, insects and disease, and human disturbance.

Id. at 5. While the Draft Statement includes conditions intended to reduce the direct impact of the proposed expansion on Polygon D (i.e., by reducing the scale of direct impact from approximately 4.2 acres to 1.6 acres), the proposed development will nonetheless result in adverse, direct impacts to this exemplary natural community, such as through the loss of trees, canopy, and associated habitat. In addition to direct impacts, it also will result in indirect impacts, meaning that portions of the exemplary natural community not directly affected by the proposed expansion will nonetheless be affected. These impacts relate not only to Polygon D, but to the value of the “larger forest mosaic of Mt. Sunapee.” *Id.*¹ The Draft Statement fails to adequately assess direct and indirect impacts on the exemplary natural community in Polygon D and on the ecosystem values at the larger landscape scale on Mount Sunapee.

As stated above, the Department has a special obligation to carry out the purposes of RSA Chapter 217-A, and to not take actions that jeopardize exemplary natural communities. RSA 217-A:7. Indeed, the Department, through the NHB, has acknowledged this statutory obligation. *See id.* at 1 (“According to the Native Plant Protection Act (RSA 217-A:7), state agencies are required to work together to protect New Hampshire’s native plants and exemplary natural communities. . . .”). By authorizing an expansion proposal that will directly and indirectly impact the exemplary natural community, and by failing to adequately assess the nature and scope of such impacts, the Draft Statement, if finalized, would violate important statutory requirements.

State Park System Priorities & Stewardship

RSA Chapter 216-A establishes the statutory framework for management of the state park system. Importantly, in establishing this statutory framework, the General Court stated its intent that

a comprehensive state park system shall be developed, operated, and maintained to achieve the following purposes *in order of the following priority*:

¹ The definition of “exemplary natural community” explicitly acknowledges the value of such natural communities within the landscape context. RSA 217-A:3,VII.

- I. To protect and preserve unusual scenic, scientific, historical, recreational, and natural areas within the state.
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- IV. To encourage and support tourism and related economic activity within the state.

RSA 216-A:1 (emphasis added). Thus, as the General Court has established, the Department must afford the greatest weight to the purpose of protecting and preserving unusual natural areas (the statute’s highest priority), and the least weight to encouraging tourism and economic activity (the statute’s lowest priority). In its attempt to strike a “balance” among various competing considerations, the Draft Statement fails to give appropriate weight to the value of exemplary natural communities as well as to the exceptional scenic and recreational attributes of Mount Sunapee State Park in its current state , as compared to the interests of tourism and economic activity.

In addition to its inconsistency with the prioritized purposes established in RSA 216-A:1, the Draft Statement violates important concepts of public trust. The Department has itself acknowledged that the New Hampshire’s state parks “are assets held in the public trust that must be safeguarded for future generations.” N.H. Div. of Parks and Recreation Ten-Year Strategic Development and Capital Improvement Plan (Jan. 2010) at 11 (describing the State’s stewardship obligations for the park system). The Draft Statement responds to a plan and proposal developed by a private entity, motivated by private economic objectives. It provides no compelling public reason to significantly alter the character – including but not limited to exemplary natural communities – of this valuable public asset for the benefit of private interests. The Draft Statement is inconsistent with the Department’s important public trust stewardship responsibilities.

Again, CLF appreciates the opportunity to submit these comments. We consider the Department’s ultimate decision relative to the proposed Mount Sunapee Resort expansion to be a critically important one for purposes of preserving and protecting a valuable and cherished public asset held in trust for the public benefit of New Hampshire’s citizens, and for purposes of ensuring the faithful application of New Hampshire statutory law. For the reasons discussed above, we urge the Department to reconsider its Draft Statement.

Respectfully submitted,

/s Tom Irwin



For a thriving New England

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