

June 5, 2015

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

Commissioner Rose:

Thank you for this opportunity to offer comments on your April 16, 2015 draft decision regarding the proposed expansion of the ski area at Mt. Sunapee State Park. The Nature Conservancy appreciates the transparent and thorough public process undertaken by you and the Department of Resources and Economic Development in reaching the draft decision. While the Department has done a reasonable job of studying the proposal and considering public comments, The Nature Conservancy is not able to support the draft decision for a number of specific reasons cited in this comment letter. It is our hope that you and the Department use our input, along with the hundreds of other comments you have received, to revisit and amend your draft decision to better balance all the interests concerned about the future of this important state park.

The Nature Conservancy is a leading conservation organization working around the world to conserve the lands and waters on which all life depends. The Conservancy and its more than 1 million members have protected nearly 120 million acres worldwide. In New Hampshire, the Conservancy has helped protect over 280,000 acres and with the support of over 7,000 members, owns and manages 28 preserves. We have a strong and longstanding working relationship with the Department and staff, and have partnered with the Department on many activities including land conservation, management of public and private conservation lands, development of best management practices, and State natural resource management policy.

When considering commenting on development projects such as the proposed expansion of the Mt. Sunapee ski area, The Nature Conservancy is guided by the mitigation hierarchy, a concept adopted by many state and federal agencies when performing environmental assessments of development projects. There has developed a sequence of steps through which mitigation is typically achieved: (1) avoid impacts to important natural resources, (2) minimize those impacts that cannot be avoided, and finally, (3) compensate for those impacts that cannot be avoided or minimized.

Specific to the Mt. Sunapee situation, we are also mindful of the mission of the Division of Parks and Recreation, including the importance of maintaining the public trust related to the stewardship of State lands and natural resources, and important issues raised by members of the local communities that will be most directly affected by this decision.

While there are positive aspects of your draft decision, we believe that the decision does not adequately follow the mitigation hierarchy and falls short of ensuring sufficient protection of the natural resources that the Department is obligated to uphold. As you know, Mt. Sunapee State Park's remarkable natural resources, the ski area, the multiple recreational amenities, and beauty are important to many who live in and visit New Hampshire. Balancing these interests, safeguarding special natural features, and upholding the public trust in the state park system are necessary when evaluating a plan to expand the footprint and operations of the ski area. The draft decision needs further work in order to get this important balance correct.

Relevance and Applicability of the Native Plant Protection Act

NH RSA 217, also known as the Native Plant Protection Act, was established by the Legislature to ensure that for *"human needs and enjoyment, the interests of science, and the economy of the state, native plants and natural communities throughout this state should be protected and conserved; and that native plant numbers should be maintained and enhanced to insure their perpetuation as viable components of their ecosystems for the benefit of the people of New Hampshire."*

New Hampshire statute, specifically RSA 217-A:3, VII, defines an 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."*

The New Hampshire Natural Heritage Bureau (NHB) has identified and mapped an exemplary 484-acre northern hardwood - conifer forest system that will be directly and indirectly affected by the proposed ski area expansion at Mt. Sunapee State Park. The northern hardwood – conifer system encompasses two exemplary natural communities: (i) sugar maple – beech – yellow birch forest, and (ii) northern hardwood – spruce – fir forest. Documented exemplary occurrences of these communities are rare in New Hampshire, with NHB documenting 17 known element occurrences (EO) of exemplary sugar maple – beech – yellow birch forest statewide (excluding Mt. Sunapee), and 12 EO of exemplary northern hardwood – spruce – fir forest. Apart from Mt Sunapee, only two exemplary occurrences of each of these communities are south of the White Mountains.

The Mt Sunapee EO has statewide significance, comprising over 15% of the cumulative acreage of all NHB-documented exemplary occurrences of these forest types in NH. This forest is of particular significance in southern NH, with this single area comprising >40% of the exemplary northern hardwood – conifer forest documented by NHB south of the White Mountains. Conserving large areas of exemplary forest is important as these areas support a wealth of biodiversity and are more able to resist and be resilient to natural disturbance events such as windstorms, pest outbreaks, or disease. Furthermore, this large area of forest serves to buffer the remaining patches of old-growth forest embedded within the matrix.

Of particular concern is the co-occurrence of "Polygon D", a patch of northern hardwood – spruce – fir forest sampled by NHB, and the proposed location of the new ski lift. Polygon D, as documented by NHB

in their 11/23/2004 report on Mt. Sunapee State Park, is mature forest with potential old-growth characteristics and is unlikely ever to have been logged. Samples taken from red spruce trees in 2004 indicated that 6 of the 8 trees sampled were over 170 years old. The proposed ski lift passes directly through this stand within the state park. Old-growth forest of this type is extremely rare in southern and central NH. As such, this stand and the biodiversity and structural characteristics found within serve as an important ecological reference point for the region. Furthermore, our few areas of remaining unharvested forest have important intrinsic value to the people of NH.

The draft decision does not take into consideration the full impacts of the proposed expansion on the exemplary northern hardwood-conifer system and associated biodiversity. The draft decision acknowledges there will be 1.6 acres of impact to this system because of a new chair lift (Lift M) and associated trail network. This assessment represents the amount of direct habitat loss within Polygon D, but does not consider the overall significant ecological impact on the exemplary EO that will result from habitat alteration and fragmentation. In reality, approximately 27 acres of the exemplary northern hardwood – conifer forest to the west of the summit will be fragmented from the remaining block of this forest by the ski area expansion.

Furthermore, the abrupt transitions in vegetation between open ski/lift trails and remaining forest will introduce significant edge effects including changes in microclimate that can extend more than 50 meters into the forest. These edge effects can be particularly important for plants and animals associated with old forests such as epiphytic lichens and lead to further loss of mature trees through increased wind disturbance. Given the relatively limited area of Polygon D, and the location of the proposed lift and trail through the center of this area, the best available science indicates that this rare ecological community will be highly degraded as a result of the expansion. If the proposed ski lift and trails were in place when the exemplary forest system was mapped, we believe the entire 27-acre area west of the summit would not have been included in the documented occurrence because it would not meet the criteria as exemplary.

These rare and important natural resources are held in the public trust by the Department of Resources and Economic Development, and as such, the Commissioner should do all it can to first avoid unnecessary impact to these systems. The Native Plant Protection Act, RSA 217-A:7, provides clear guidance to the Commissioner that *“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.”*

Following the established mitigation hierarchy of avoid, minimize and mitigate impacts, The Nature Conservancy urges the Department to amend its draft decision to require the developer to avoid direct and indirect impacts to the identified EO mapped in Polygon D. We believe that it is possible to amend and limit the lift and trail system proposal in order to avoid all impacts to these important and rare natural features.

Adequacy of the Mitigation Proposal

As stated above, we believe that the best course would be for the Commissioner to amend the draft decision in order to avoid any impact to the EO in polygon D. If a final decision avoided the impacts

altogether, some of the comments below related to the mitigation portion of the decision may no longer hold or be relevant.

Because of the impacts to the exemplary natural community system, the draft decision proposes to mitigate the impacts “directly through a donation of land currently owned by the Mount Sunapee Resort of approximately 52 acres to the State for conservation purposes.” Importantly, your decision references that 10 acres of this land has been identified by the Natural Heritage Bureau as containing the EO being impacted. While this is a start, it is an inadequate amount of mitigation for a project of this scale which will have negative direct and indirect impact to 27 acres of this exemplary community.

To improve the mitigation proposal, we would suggest several additional concepts:

- 1) Any transfer of land to the state as mitigation for ski area expansion (such as the 52 acres described in the draft decision) should be subject to a conservation easement held by a third party, in order to restrict development and ensure the permanent conservation and protection of the land.
- 2) Should available onsite actions be insufficient to adequately mitigate impacts, the Department should require that the developer contribute financially to a third party (such as the New Hampshire Land and Community Heritage Investment Program) a sum of money to be used to solely for the protection and conservation of exemplary natural communities, such as the one being impacted by this development. This type of program would result in the protection of additional land with similar characteristics, and is comparable to wetland mitigation policy and practice in New Hampshire.

While we are not intending to put forward a complete package of mitigation alternatives, we believe that any mitigation proposal should be a net positive for the type of resource impacted. As currently constructed, the draft decision fails to meet this standard.

Additional Environmental Protections

The draft decision requires the developer to agree to transfer 150 acres of land to the State Park in 2028. The acreage that DRED is requiring to be donated to the park includes any trails, facilities and built infrastructure in the West Bowl area needed to operate the ski area. While we agree that a land transfer requirement should be part of any expansion proposal for the ski area, having this occur ten years after development is not standard practice. The Department offers no clear explanation for the unusual terms of this proposal, which raises understandable questions about the State’s rationale and the private benefits that may accrue. Any transfer of land required as part of an expansion proposal should be transferred to the state in a timely manner (e.g., within 12 months of the construction of a new lift) and incorporated into the state park system. Furthermore, these transferred lands should not be allowed to count against density requirements for the developer in other private real estate development activities.

In addition, the draft decision requires the developer to transfer to the state a 208 acre parcel of land, owned by the developer and already subject an easement restricting development under the New Hampshire LCIP program. While The Nature Conservancy appreciates the intent of this proposed transfer, suggesting that the transfer of this land to the state will provide meaningful additional

environmental benefits is unfounded. This land is already well protected through the existing conservation easements, and a transfer to the state will not necessarily enhance its conservation status, rather, it could result in an unintentional weakening of those protections.

If any transfer to the state of this parcel is to occur, the Conservancy strongly encourages that the fee simple and existing conservation easement interests not be merged, and that the conservation easement be transferred to a third party organization. As the proposed expansion of the Mt. Sunapee ski area clearly demonstrates, having the state park system control the land does not guarantee that the land will not be subject to future development and so it is vital that the existing conservation easement remain in place.

Monitoring Proposal

The draft decision requires that there be established a post-construction program to monitor the direct and indirect impacts of the ski trails and built infrastructure upon the identified EO. While we believe that this requirement is beneficial, the draft decision is not specific enough in order to have a high level of assurance that the program will be adequate and beneficial in understanding the effect of the proposed development on the exemplary community.

A final decision should outline for the public the specifics of such a proposal including whether there will be any pre-construction monitoring required in order to establish a baseline; what resources, land area and species the monitoring will cover; over what time period will the monitoring occur; who will conduct the monitoring; and how much annually the monitoring is expected to cost?

There is also no discussion of what is to be done with the findings from such a monitoring project. Is the idea to use the data collected for adaptive management of the area, and if the monitoring shows that the operation of the ski area has negative consequences for the species and habitat monitored, is there a clear mechanism for modifying how the state park and leases will operate the facility?

Without the answers to these questions, it is impossible to understand the scope and benefits of the work involved, or the public benefit served by this monitoring requirement. DRED should further develop and explain the monitoring requirement and provide the public with a better understanding of how the Department will utilize the results to protect the park's special natural resources.

Conclusion

The Nature Conservancy is thankful for this opportunity to comment on the proposed expansion of the Mt. Sunapee ski area. While the Department has done a thorough job of studying the proposal and responding to public comments, The Nature Conservancy is not able to support the draft decision for the following reasons:

- 1) RSA 271 establishes protections for exemplary natural communities, and provides clear guidance that state agencies should avoid "to the extent possible" impacts that could jeopardize these important natural resources. The draft decision would allow for significant degradation of the identified exemplary natural community. These negative impacts can be avoided through

alternative designs of the lift system and trail network. In this case, the Department has the statutory obligation to avoid these impacts to the resources it manages in the public trust.

2) The proposed mitigation of 52 acres of land to be transferred to the state park is inadequate in light of the direct and indirect impacts to the exemplary natural community, and there is no clear rationale for the proposed delayed timing of transfer.

3) The additional transfers of land to the state identified in the "Additional Environmental Protection" section of the draft decision are not designed in a way that provides a high degree of assurance that there is any additional conservation value accomplished by the plan. A final decision should further clarify the additional benefits of these land transfer.

4) The proposed monitoring program described in the draft decision is vague and does not adequately explain the scope of the monitoring, or how that monitoring will be used to make decisions in how the land is managed.

It is our hope that you and the Department use these comments, along with the hundreds of other comments you have received, to revisit and amend your draft decision to better balance all the interests concerned about the future of this important state park.

Thank you for this opportunity to provide comments.

Sincerely,



Mark Zankel
State Director, The Nature Conservancy of New Hampshire