



October 19, 2023

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Re: Lake of the Woods Resort Expansion Project Draft Environmental Assessment

Greetings,

Thank you for considering these comments on behalf of the Klamath Siskiyou Wildlands Center (KS Wild), Oregon Wild and Cascadia Wildlands. Our organizations and members greatly value the terrestrial forest ecosystem and recreational opportunities provided by public lands surrounding Lake of the Woods.

An Impartial and Objective NEPA Planning Process is Required

We are concerned that this planning process appears to have a pre-determined outcome. The economic preferences of a resort developer to convert public forest lands into parking lots and RV campgrounds are not an appropriate purpose and need for this project. Unfortunately, it appears that the Forest Service entered into an October 19, 2017, settlement agreement with Lake of the Woods Resort (LOWR) intended ensure inevitable resort expansion onto public lands managed by the Fremont-Winema National Forest prior to any public involvement or NEPA planning. It also appears that rather than conducting an impartial NEPA analysis that included a range of reasonable action alternatives that the NEPA documents have been prepared by a private consulting company paid for by the project proponent in order to achieve an inevitable and pre-ordained outcome. The only two action alternatives developed and considered by LOWR's consultant contain significant expansion of RV and car parking designed to increase peak season use of the project area. The Forest Service has not acknowledged and incorporated

the concerns and values of the general public into this planning process- instead the only driver for this expansion proposal is the project proponent.

Please note that in 2004 our conservation organizations supported the efforts of the Forest Service to shift the land use allocation for the Lake of the Woods project area from Late Successional Reserve (LSR) to Administratively Withdrawn. The Forest Service has given us reason to regret that we offered our support. It was our understanding in 2004 that the agency understood the value that many Oregonians find in the forest character surrounding Lake of the Woods. Conversion of the native forests at Lake of the Woods into additional parking lots and RV campgrounds will significantly diminish the scenic, recreational, and vegetative values of the project area such that an Environmental Impact Statement (EIS) is required for this project.

In this instance a private contractor paid by the project proponent has conducted a cursory NEPA process designed to achieve a pre-determined outcome of converting public forestlands into parking lots and RV campgrounds for the economic benefit of a private party. The Forest Service has failed to acknowledge and incorporate the importance of these public lands to a wide swath of the public. Rabe Consulting largely ignored the vast majority of public scoping comments that expressed concerns about increased visitor use, crowding, user conflict and environmental impacts.

The Forest Service signed a binding agreement that allows the addition of new RV sites and it is obliged to work together with the Resort to come up with an approved MDP for which the agency provided a template and required it to include where new RV cabins and the new RV camping area would be located and how development would be coordinated between the two. According to 2017 Settlement, the Forest Service has committed itself to approve development of new RV sites (which contribute to the need for development of a new RV camping area) even if any development significantly affects the environment and even if it negatively affects the overall public recreation experience. Forest Service has illegally irreversibly and irretrievably committed resources to further development at LOWR prior to this NEPA process such that the NEPA process is designed to simply rubber stamp an inevitable action.

The Ninth Circuit has made it clear that an agency may not limit its obligations to prepare an environmental assessment that complies with NEPA by entering into a contract. In *Metcalf v. Daley*, the federal defendants signed a contract with the Makah Indian Tribe, agreeing to make a formal proposal urging the International Whaling Commission to allow the tribe to engage in limited whaling. 214 F.3d 1135, 1139 (9th Cir.2000). The next year, the defendants completed an EA which found that the whaling proposal would not significantly affect the environment. *Id.* at 1140. Pointing out that NEPA's effectiveness depends entirely on involving environmental considerations in the initial decision making process, the Ninth Circuit concluded that the agency had prepared the EA too late, after it had already committed itself contractually to the proposal it was analyzing. Despite the existence of the government contract with the tribe, the Ninth Circuit ordered the agency to prepare a new EA under circumstances that ensured an objective evaluation, free of the previous taint. *Id.* at 1146. Here the Forest Service and LOWR have entered into a settlement agreement that unlawfully obligates the Forest Service to approve the construction of additional RV sites prior to conducting a public NEPA planning process.

A Reasonable Range of Action Alternatives Was Not Developed or Considered

In our timely scoping comments, our organizations suggested consideration and implementation of an action alternative that focused on practical improvements to the existing resort infrastructure such as renovating the existing dock and reconstruction of the existing marina building in order to improve the recreational experience. These actions meet the definition of “improvement” as opposed to “expansion” of the resort. Rather than consider this reasonable alternative the Forest Service simply changed the name of the project to reflect the pre-ordained outcome of resort expansion. NEPA does not permit the agency to ignore reasonable action alternatives due to a sweetheart settlement with a project proponent. To put the question simply, why did the agency completely ignore our proposed action alternative?

There are many reasonable ways in which the recreational experience at Lake of the Woods could be improved without increasing visitation, congestion and crowding during the peak summer season, yet both action alternatives contained in Rabe Consulting’s EA are primarily designed facilitate even more visitation during the peak season.

The Forest Service must at least consider action alternatives that focus on improving the public experience at Lake of the Woods as opposed to merely cramming more people into more parking spaces. As acknowledged on page 27 of the EA currently almost all “visitors to residences stated that LOW was too crowded,” yet their experience is not reflected in either of proposed actions.

User Conflict

The draft EA is largely silent as to the significant issue of user conflict. The current Rainbow Bay Day Use Area recreational experience does not involve a massive parking lot nor a nearby RV Park. The preferences and experiences of current recreational users are not analyzed or disclosed in the EA. There are literally thousands of “camping” areas for RVs (including those already at Lake of the Woods) available in Oregon but the forested, beautiful old-growth forest environment of Lake of the Woods cannot be replicated. A steady stream of RV traffic and significantly increased daily summer use may foreseeably lead to additional conflict between recreational users with different expectations and desires.

Crowding

The draft EA repeatedly recognizes the negative impacts to recreational experiences at Lake of the Woods from summer crowding that range from driving away wildlife to traffic jams, to crowding. Yet both proposed actions call for increasing the amount of motorized visitation during the most crowded days of the year. If the Forest Service is committed to increasing crowding at LOW then it must complete an EIS (as opposed to an EA) to address this significant and controversial issue.

Water Quality

The Draft EA has very little to say about the impacts of additional visitors during the peak season on water quality. There are already significant concerns about lakeside shore erosion that may be exacerbated by additional peak season boat and shoreline use. Boats, RVs and cars that visit Lake of the Woods are not inspected for oil leakage or maintenance condition. Hence the Forest Service cannot assume that additional motorized use will not impact water quality.

Great Gray Owls

The draft EA lacks any data, analysis or information to support the conclusion that Great Gray Owls will not be negatively impacted by the project. The proposed increase in summer visitation will directly lead to more use in, through and around the Great Meadow which currently serves as GGO habitat. This is not disclosed or analyzed in the draft EA.

Northern Spotted Owl Critical Habitat

The removal of trees providing spotted owl critical habitat within the East Cascades South Critical Habitat Unit is a significant and controversial issue that is largely ignored in the draft EA. The conclusions stated on page 52 are not supported by data or analysis.

Pacific Fisher and Management Indicator Species

The draft EA presents an interesting example of circular logic in addressing Pacific Fisher and Management Indicator Species. No data, surveys or actual information or analysis is provided. Instead, Rabe Consulting states that wildlife species of concern likely aren't present in the forests around Lake of the Woods due to extensive recreational use that will be increased by the establishment of an RV Campground. The Forest Service cannot propose additional recreational pressure on wildlife and their habitat while simultaneously contending that it need not analyze project impacts on wildlife species of concern because there is already so much recreational use occurring.

Sunset Trail

While the project maps illustrate that the Forest Service intends to construct an RV park directly over the Sunset Trail, the draft EA makes no mention of the trail or the effect that the proposed action will have on trail users.

Septic Fields

The draft EA contains no information, data or analysis regarding the impacts of either septic field establishment or the projected sewer flow into groundwater. Basic information such as the projected daily sewer flow is simply absent from the document.

Conclusion

Lake of the Woods is not Lake Tahoe. Most people do not want the Lake to be largely defined by RV Parks and extensive parking lots. There are so many improvements that could be done to the existing recreational infrastructure that would retain rather than diminish the recreational and scenic values that draw people to the area. Quantity should not always trump a quality public lands recreational experience. Please limit this project to the improvement and updating of the existing recreational infrastructure or in the alternative write and EIS that addresses the significant issues associated with expanding motorized recreational use and pressure during the peak visitation season.

Regards,

/s/ George Sexton

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