



Save Our Canyons

Citizens' Committee
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Dedicated to Protecting the Beauty and Wildness of the Wasatch Canyons, Mountains and Foothills

To: Melissa Hearst, Acting District Ranger
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December 19, 2008

Dear Ms. Hearst,

On November 17, 2008, the Uinta-Wasatch-Cache National Forest (UWCNF) issued a scoping notice for issuance of a ten-year Special Use Permit (SUP) to Wasatch Powderbird Guides (WPG) to conduct commercial helicopter-assisted skiing operations on lands of the UWCNF. Citizens Committee to Save Our Canyons submits the following comments in response to this notice.

Citizens' Committee to Save Our Canyons (SOC) is a non-profit corporation dedicated to protecting the wildness and beauty of the Wasatch Mountains and its canyons and foothills. Founded in 1972, it currently has over 1,700 hundred members, who share a deep appreciation of the quiet, solitude, and recreation opportunities these lands provide, and an interest in maintaining these qualities. A large portion of SOC's members frequently enjoy winter recreation in areas of the UWCNF that would be used

by WPG under the proposal, and they routinely experience the impacts inherent in WPG's operations, chiefly noise impacts.

The following comments are offered in support of SOC's belief that it would be unlawful for the UWCNF to issue a 10-year SUP to WPG under the Categorical Exclusion (CE) it relies on as authority for this proposed action.

Under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4331 *et seq.*, and its implementing regulations, 40 C.F.R. §1500–1508, agencies of the Federal Government, prior to undertaking actions that may adversely affect the human environment, must make a determination as to the extent of environmental impact review required under NEPA. 40 C.F.R. §1501.4. Where agency regulations require, or where an environmental assessment determines that a proposed federal action may significantly affect the quality of the human environment, the agency must prepare an environmental impact statement (EIS), which thoroughly evaluates the impacts of the proposed action, as well as those of alternatives to the proposed action. 40 C.F.R. §§1501.3, 1501.4, 1502.14. The agency need not prepare an EIS under two circumstances: 1) it has performed an environmental assessment and determined that a particular proposed action would have no significant impact; and 2) the proposed action is within a predetermined category of action that, based on the agency's experience, it has determined generally do not significantly affect the human environment. 40 C.F.R. § 1501.4(a).

Forest Service regulations specify the circumstances in which an action may be exempt from the preparation of an EA or EIS. First, the action must be among those categories of actions specified in 36 C.F.R. §220.6(d) or (e). 36 C.F.R. §220.6(a)(2). Second, "[a] proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action" which may cause a specific proposed action to have significant impacts even though it is within a category of action predetermined generally not to have such impacts. 36 C.F.R. §220.6(a).

In the November 17, 2008 Scoping Document, the UWCNF stated its intention to exercise authority to issue a 10-year SUP to WPG under a CE that appears at 36 C.F.R. §220.6(e)(15):

Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of

authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

36 C.F.R. §220.6(e)(15) (hereafter “CE 15”).

I. CE 15 Cannot Apply to the Proposal Because the Forest Service Recognizes that WPG Causes Significant Impacts

CE 15 cannot provide authority for the issuance of a permit to WPG because it provides no assurance that WPG’s operations will cause no significant impact. In fact, the agency ignores its own determination that WPG’s activities do cause significant impact. A categorical exclusion “by definition . . . does not create a significant environmental effect.” *U.E.C. v. Bosworth*, 443 F.3d 732, 741 (10th Cir. 2006). To help assure that they exempt only those actions without such impacts, NEPA regulations require that agencies provide “[s]pecific criteria for and identification of those typical classes of action ... [w]hich normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).” 40 C.F.R. § 1507.3 (b)(2).

CE 15 lacks any criteria for distinguishing activities under prior permits that cause no significant impacts from those that do cause such impacts. On its face, it equates no changes in impacts with no impacts, and it therefore lacks any criteria assuring that a new authorization will have no significant impact. Thus, so long as there was no change in the proposed use, an authorized operation found in an earlier NEPA process to cause profound, ongoing environmental impacts could be reauthorized under this CE with no environmental review. Put differently, the impacts of any authorized use, no matter how destructive, would be rendered irrelevant merely by the fact that the use had previously been authorized. Such laundering of impacts through a CE—precisely as the Forest Service seeks to do here—is obviously a violation of NEPA and demonstrates that CE 15, as the agency seeks to apply it, provides no assurance that WPG’s activities will cause no significant impact.

The reason, then, that CE 15 cannot be applied to support issuance of a new permit to WPG is that validity of including any particular permit renewal among those authorized by CE 15 depends upon the fundamental premise governing all CEs. They are a permissible basis for dispensing with an EA or EIS only where there is a credible basis for concluding in the first place that the particular type of activity will have “no significant impact;” it is not enough that the activity “fit” the terms of one of the enumerated CEs. 40 C.F.R. §§1508.4 (“‘Categorical exclusion’ means a category of actions which do not individually or cumulatively have a significant effect on the human

environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations.”) In the present case, there is obviously no credible basis for concluding that any CE might apply because the agency itself has determined that WPG’s activities do cause significant impacts.

The publication of this CE in the Federal Register, when it was first proposed as a directive for inclusion in the Forest Service Handbook, included an example consistent with the principal that the agency’s decision to exercise a CE must be supported by a rational basis for concluding that an activity causes no significant impacts:

The following is an example of a situation involving a special use authorization in which use of a categorical exclusion would be appropriate: An organization camp has been authorized for a term of 20 years and its term has expired. The holder applies for a new special use authorization and does not propose any change to the use or occupancy previously authorized. Agency review indicates that the use has been consistent with the terms and conditions of the authorization and that previous analysis determined there were no individually or cumulatively significant effects on the environment.

69 FR 48413 (emphasis added).¹

This view of the rational operation of CE 15 is further supported by the explanation provided for the genesis of the proposed directive. In 1998, after implementing a new CE applicable to ski area permits:

the Forest Service reviewed applicable statutory authority and regulations and concluded that a similar categorical exclusion should be provided for certain special use applications and authorizations. As suggested by the reengineering study, a record of EAs and resulting findings of no significant impact (FONSIs) for special uses has been collected, which shows that certain categories of actions involving special use authorizations generally have no significant effect on the human environment

69 FR 48413 (emphasis added).

¹ A second example, this time in which application of the CE was not appropriate, involved reauthorization of a use that was previously authorized prior to NEPA. Of course, for such an action there would have been no determination as to significance of impacts.]

In support of its claim that a new WPG SUP may be issued under a categorical exclusion, the FS claims that “[n]o significant impacts as defined in NEPA regulations were identified in any of the previous environmental analyses.” As discussed above, this *post-hoc* interpretation of earlier environmental review is irreconcilable with the agency’s own analysis and the rich record documenting the agency’s recognition of WPG’s significant impacts on the human environment.²

The 1999 FEIS stated that “since the proposal could potentially result in significant impacts to the human environment, the National Environmental Policy Act of 1969, as amended (NEPA), requires the Forest Service to prepare an Environmental Impact Statement (EIS) to assess and disclose the proposal’s potential impacts on the environment.” 1999 FEIS p. 1-1, 2004 FEIS p. 1-1. The 1999 FEIS explained that, since an earlier environmental assessment (EA) and finding of no significant impact (FONSI), non-motorized backcountry use had increased, and accordingly impacts on other Forest users had increased, engendering a level of conflict that it was “a consideration in deciding whether, and under what conditions, to issue the requested permit.” 1999 FEIS 1-1, 2-2. WPG’s impacts on other Forest users were considered “the driving force of this analysis.” 1999 FEIS p. 4-44. Reducing these impacts was a critical element of the statement of purpose and need for the 1999 EIS, and the potential impacts on other recreationists provided the basis for the identification of the alternatives analyzed in the document. 1999 FEIS pp. 1-6, 1-10. Accordingly, the EIS sought to describe the impacts WPG’s operations would impose on other forest users under the different alternatives. 1999 FEIS 4-1 to 4-20.

The 1999 FEIS stated that noise impacts were “a major part of the impact of helicopter skiing,” and therefore an important factor that the FS “will consider . . . seriously in reaching a decision.” 1999 FEIS pp. 3-2, A-56. In addition to noise impacts, safety impacts on recreationists in the 1999 FEIS were “the most important concern” of the analysis and, accordingly, played a driving role in the identification of alternatives. 1999 FEIS 2-29, 1-13.

Like the 1999 FEIS, the 2004 FEIS recited the Forest Service’s determination that the agency must perform an EIS in support of the 2005 SUP, and identified impacts on other recreationist as those requiring analysis. 2004 FEIS p. 1-1, 2-1. It said that, “[w]hile the general conclusions documented in the 1999 EIS regarding these issues remain valid, detailed analysis in this EIS is necessary” because circumstances had changed,

² As it did in litigation over the 2005 permit, SOC maintains that, though the agency has recognized the existence of impacts, it has done insufficient analysis to assess their severity and develop measures to prevent or mitigate these impacts.

specifically an apparent increase in the number of non-motorized Forest users. 2004 FEIS 3-1 to 3-4. Like the 1999 FEIS, the purpose and need statement and alternatives identified for analysis all sought to address WPG's impacts on other recreationists. 2004 FEIS p. 2-1, 2-8 to 2-20.

Like the earlier EIS, the 2004 FEIS recognized that, among the WPG's impacts on the human environment, noise impacts were the most common impact identified by other backcountry users, and that "[h]elicopter noise . . . is a primary component of the impact to other recreationists." 2004 FEIS 2-25, 4-4. It also recognized impacts on backcountry users' safety as another important concern. 2004 FEIS S-5, 2-22 to 2-23.

Both the 1999 FEIS and the 2004 FEIS were clear that they did not view the impacts on other Forest users as not significant. In summarizing the unavoidable adverse impacts of any action alternative, as required by 40 C.F.R. 1502.6, both the 1999 and 2004 EISs stated:

Potential adverse impacts are identified in all the areas addressed in this analysis. However, most are minor and all could be mitigated through either the alternatives considered in the analysis or the cited management and mitigation requirements. The exception is the impact to recreation that is inherent in WPG's operation.

This passage then identifies two such recreational impacts the agency views as significant. The first, "conflicts among recreationists" in which "helicopter skiers are not notably different from any other type of recreationist" appears to refer to competition for ski terrain. The passage continues:

The other unavoidable recreational impact, which is specific to helicopter skiing, is the noise of the helicopter itself and of explosive testing. While the Tri-Canyon Area is affected by numerous noise sources, the helicopters' noise will inevitably constitute an incremental noise impact to some recreationists.

1999 FEIS 4-46, 2004 FEIS 4-51. This conclusion of these EISs is in square contradiction to the Forest Service's now-convenient, *post-hoc* assertion that that "[n]o significant impacts . . . were identified in any of the previous environmental analyses."

The fact that an agency prepares an EIS, almost by definition, means that it has determined a proposed action may cause significant impacts to the human environment. The Forest Service states this determination explicitly in with regard to the present proposed action. As discussed above, the 1999 FEIS stated the Forest Service's determination that it must perform an EIS and analyze impact on non-motorized Forest

users because of growth in this use and commensurate impacts.³ It also recognized such growth could be expected to continue. 1999 FEIS S-1. The 2004 FEIS again sited growth in non-motorized use as a reason the Forest Service was required to prepare an EIS. It stated that the information it had indicated that “backcountry use is high and growing, and that this trend is likely to persist.” 2004 FEIS 3-1 to 3-4. With two sequential conclusion that the SUP would potentially result in significant impacts and that this required preparation of EISs, two previous conclusions that significant adverse impacts were “unavoidable” and “inherent,” and with both EISs indicating only more of the same impacts can be expected, it is untenable for the FS now to take the position that approval of exactly the same authorized activities, for a term twice as long, will have no significant impact and requires the preparation of no EIS.

II. Extraordinary circumstances preclude application of CE 15.

Regardless of whether CE 15 might fit the action the Forest Service proposes, the specific circumstances of this authorization preclude the application of this CE. A proposed action may not be authorized by application of a categorical exclusion if “extraordinary circumstances” exist such that “a normally excluded action may have a significant environmental effect.” *Utah Env. Congress v. Bosworth*, 443 F.3d 732 (10th Cir. 2006) (quoting 40 C.F.R. § 1508.4); *see* 36 C.F.R. §220.6(a). The record is clear that such extraordinary circumstances exist.

A. The EISs identified significant impacts from WPG’s operations.

As described above, the Forest Service has not just concluded that WPG’s operations may cause significant impacts on the human environment—which is sufficient to require an EIS—but that they actually do cause such impacts. It is argued above that the criteria for the application of CE 15 must avoid its application to activities that may cause significant impacts. However, in the absence of such a commonsense initial

³ The CEQ regulations provide that “[a]gencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.” 40 C.F.R. 1501.3. By the Forest Service’s own acknowledgment, the 1999 FEIS and 2004 FEIS do not represent this sort of elective action. SOC has understood some communications from the Forest Service to suggest, and itself in the past has erroneously believed, that the agency might prepare an EIS not because it found there might be significant impacts from the proposed use, but because the proposed use is controversial. This would be a misunderstanding of 40 C.F.R. 15008.27(b)(4), which provides that, in assessing whether a proposed action might significantly affect the human environment, the agency should consider whether there is a high degree of controversy about what the impacts of the proposed action are likely to be. The existence of this form of controversy, then, is a factor favoring preparation of an EIS.

assessment of whether CE applies, the fact that the Forest Service has determined that the WPG's operations may cause significant impacts and, in fact, do cause significant impacts, must then constitute a determination that extraordinary circumstances exist, precluding application of CE 15. Clearly, the actual identification of significant impacts caused by a proposed use must, by some mechanism, prevent the application a CE, otherwise NEPA has been circumvented.

B. Continued growth expected backcountry use is an extraordinary circumstance.

A well-documented extraordinary circumstance associated with the proposed SUP, and one discussed in greater detail above, is the continued growth in the numbers of other Forest users experiencing impacts from WPG's operations. The most recent EIS, the 2004 FEIS, was clear that the Forest Service expects significant growth to persist. Even ignoring the conclusion of the 1999 FEIS and 2004 FEIS that impacts on other Forest users were significant, and assuming that, still today, WPG's impacts are not significant, the record provides no basis for the agency to conclude that impacts will remain insignificant until the termination of the 10-year permit, some 11 years from now.

Furthermore, still ignoring the conclusions of the 1999 FEIS and 2004 FEIS, years have now passed since these documents on which the Forest Service purports to rely were developed, making it even more farfetched for the agency to conclude from these documents that WPG will cause no significant impacts through the term of its permit. While the 2004 FEIS nominally provided analysis of impacts on non-motorized Forest users, it documented only continued growth in backcountry use, and otherwise only incorporated the 1999 analysis. 2004 FEIS 3-1, 3-4, 4-1. Thus, for its conclusion that impacts on other Forest users are not significant and will remain so for the term of the proposed SUP, the Forest Service relies on an analysis performed 21 years prior to the termination of the proposed 10-year permit—21 years during which the agency expects continued growth in the population of Forest users impacted by WPG's operations.

This tremendously long period of time transpiring without further impacts analysis is especially excessive given the expectations of growing impacts, and the possible consequences of growth, expressed in the 2003 WCNF Forest Plan. This plan states that, though the Forest Service desires to maintain heli-skiing on the Forest, “[i]t is uncertain . . . whether helicopter skiing can be managed to remain profitable over the long term while accommodating a reasonable level of compromise with competing backcountry uses.” 2003 WCNF Forest Plan p. 4-462. Yet, now the Forest Service apparently abandons this view. With the current proposed SUP authorization, it is taking the position that, in the long term—and presumably 17 years qualifies as “long

term”—backcountry usage will remain effectively static, and it is now sufficiently certain that no management changes will be needed to address the increased impacts that would attend a growth in use.

Perhaps an example from the history of the WPG SUPs helps demonstrate the preposterousness of the 21-year period during which the Forest Service suggests that impacts on other Forest users will remain unchanged. According to the agency, as late as 1978, the Forest Service “recognized emerging conflicts” between WPG and non-motorized users. 1999 FEIS 1-3 (emphasis added). Twenty one years later, the agency issued the 1999 FEIS, documenting a tremendous growth in non-motorized Forest users, and hence impacts on this user group, expressing the agency’s belief that this growth would continue, and proposing a variety of significant restraints on WPG’s operations to prevent or mitigate these impacts. Now, contrary to the agency’s acknowledgement that it expects continued growth in non-motorized use, the Forest Service takes the position that, for this 21-year period, it can rely on there being no change of circumstances that might require it to reexamine impacts on other Forest users.

C. Potential wilderness designation represents an extraordinary circumstance

The application of CE 15 is also inappropriate because of extraordinary circumstances indicating consequences to wilderness-quality lands in the permit area. Before applying CE 15, the Forest Service must determine whether any of a set of “resource conditions” are present in the affected lands. 36 C.F.R. §226.6(b). This set of conditions includes a “potential wilderness area.” 36 C.F.R. §226.6(b)(1)(iv). The “mere presence” of a potential wilderness area or other enumerated “resource condition” does not by itself preclude application of CE 15; rather, “[i]t is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.” 36 C.F.R. §226.6(b)(2).

Currently, and for the first time in decades, there is a new, viable wilderness proposal for lands in the mountains of the Wasatch Front-lands that include the WPG permit area. This proposal is the subject of vital, ongoing discussion and negotiation among officials and stakeholders, including Salt Lake City Department of Public Utilities, Salt Lake County Mayor Peter Corroon’s office, the office of Salt Lake City Mayor Ralph Becker, representatives of SOC, the Utah Chapter of the Sierra Club, all of the central Wasatch ski resorts, the City of Sandy, a representative from the staff of Congressman Jim

Matheson, Wasatch Powderbird Guides and representatives of Black Diamond Equipment Company. SOC has observed substantial progress in these efforts and believes that there is a significant likelihood that these parties will agree on the essential terms of a wilderness bill to the United States Congress in the relatively near future, as is the goal of the stakeholder meetings.

The problem that the Forest Service's proposal, which would assure WPG's presence in the permit area until 2020, is obvious—wilderness, by definition, is reserved for non-motorized use. If the Forest Service decides unilaterally to issue WPG another permit, it will clearly prejudice—if not completely scuttle—the outcome of a process that has taken the significant efforts of many parties and that might otherwise achieve an extremely significant, widely accepted result.

III. The clear terms of CE 15 preclude its application

A. Changing the term of the use is not a mere “administrative” change.

CE 15 authorizes the Forest Service to avoid performing environmental analysis “when the only changes are administrative, [and] there are not . . . increases in the scope or intensity of authorized activities . . .” 36 C.F.R. §220.6(e)(15). In the current proposal, the Forest Service justifies the application of CE 15 because, “[o]ther than changing the term from five to ten years, the new permit would include the same terms and conditions as their current permit.” Apparently, the Forest Service views as an “administrative” change the substantial increase in the term of the permit. Yet, this is not a credible characterization of the change it proposes. The term of the permit is a fundamental element of the use authorization, and changing the term clearly represents a change in one aspect of the use, and one of significant value to the permittee. There is no rational justification for declaring that increasing this particular aspect of the authorized use is merely an administrative change that in no way expands the authorization.

Support for this conclusion is found in background provided with the publication of CE 15 as a Forest Service proposed directive. In providing a few examples of administrative changes warranting the application of a CE, it states:

The reengineering study found misunderstanding and inconsistency among agency employees in actions being taken to administratively change a current valid special use authorization, such as updating authorization rental fee clauses and incorporating new environmental requirements mandated by new laws and regulations.

66 FR 48412. Doubling the term of the use—certainly a substantial change in one of the basic characteristics of the use authorization—obviously goes far beyond these provided examples of administrative changes.

B. The Forest Service’s conclusion that WPG is in full compliance is unsupported and untrue.

i) The agency has not monitored compliance

CE 15 authorizes the Forest Service to avoid performing environmental analysis only “when . . . the applicant or holder is in full compliance with the terms and conditions of the special use authorization.” 36 C.F.R. §220.6(e)(15). The scoping document for this proposal states the conclusion that WPG has operated in compliance with the terms and conditions of its current permit, yet the Forest Service has little basis for this conclusion. The agency has relied on no method of independently determining WPG’s compliance with permit requirements. There is nothing in the record to suggest that, for its conclusion that WPG has remained in compliance, the agency has relied on anything more than self-reporting by WPG and, perhaps, occasional communications offered by members of the public. It is true that, because WPG lacks stationary facilities and fixed points or routes of activity and travel, ascertaining whether WPG is in compliance is perhaps more difficult than for many other special uses. Yet, this a characteristic of a use that the agency has chosen to authorize, and it does not absolve the agency from developing a rational basis for making a determination that this use is in compliance with the terms of the authorization.

ii) WPG has acted in violation of terms of the permit

Not only is the Forest Service’s conclusion that WPG has complied with all requirements substantially unsupported, there are several respects in which it is untrue. First, WPG acted in violation of the requirement that it use explosives only in connection with stability testing, a technique used by avalanche professionals to gather information about conditions, and one used in concert with other information-gathering and analytical techniques. In January of 2005, in one of the most extraordinarily active, uniform, and widespread avalanche cycles in decades, WPG went on a bombing campaign that predictably brought down many avalanches, some of them extremely large and destructive, including the enormous Red Baldy event on January 19, 2005. As the WPG Operating Plan makes clear, using explosives in circumstances in which it is reasonably believed a slope would slide is not stability testing. Given the profound and pervasive sensitivity of the snowpack in that avalanche cycle, as widely observed by

backcountry users and as so well documented in the Utah Avalanche Center's statements of that time, the notion that WPG's bombing of any of the steeper, higher elevation slopes constituted "testing" is not credible. WPG's actions clearly went well beyond those for gathering information, and the Forest Service's August 2005 review of WPG's use of explosives during this period clearly represents recognition of this.

The WPG Operating Plan is clear that the stability testing WPG is allowed to conduct means testing of "representative slopes" for the purpose of gathering information, and then only when other information is inconclusive. Yet, WPG acknowledges that it conducts avalanche control. In a meeting on February 10, 2005, between the Forest Service and WPG, WPG acknowledged that its practices include conducting "protection shots." As the term itself suggests, and as WPG explained, the purpose of these is to assure the safety of landing zones and other specific locations where it expected to place clients or its helicopters. This is not sampling of a representative slope; this is—as WPG itself says—protection of specific areas of expected use. It is no different, then, from the avalanche control performed at ski resorts, except perhaps in the volume of explosives WPG uses.

Second, WPG's destruction of trees, as reflected in documents submitted in response to SOC's November 19, 2008 FOIA request, including in the above-mentioned August 2005 review, also represents a permit violation. Although WPG's outfitter and guide SUP clearly is not an authorization to destroy trees, Forest Service personnel described tree destruction as an expected event and, therefore, "[i]n practice, it is not considered a violation of the special use permit." Wasatch Powderbird Guides Explosives Use for Slope Stability Testing Program Review p. 10. However, the subjective expectations and practices of Forest Service administrators are irrelevant. Rather, section II paragraph M of the permit sets forth WPG's obligations regarding the protection of trees. In addition to forbidding the cutting of timber or other vegetation, it states that WPG may destroy timber only after it has gotten a Forest Service officer to identify and mark those trees to be destroyed, and then it must pay stumpage for those trees. This obviously did not occur in January 2005 or any other occasion on which WPG has destroyed trees. Regardless of the Forest Service's practice in dealing with WPG's tree destruction, the terms of the permit are clear and such destruction constitutes a violation of WPG's permit.

Third, section I paragraph F of WPG's SUP requires WPG to comply with all federal and state laws. Such laws include, of course, state trespass law. As reflected in documents in the above-mentioned FOIA response, and as likely reflected in comments submitted on this proposal, WPG has been observed on many occasions on private land on which WPG personnel knew or reasonably should have known they were

trespassing. Notably, as reflected in the January 25, 2007 of Polly Samuels, such instances have occurred in Lamb's Canyon even after WPG had been notified verbally and by letter that its use of certain lands was a trespass. Although in the past the Forest Service has treated such events as a matter of local law enforcement rather than a permit violation, 2004 FEIS B-19, these represent a violation of state law and therefore of the SUP as well.

Fourth, section I, paragraph G of WPG's SUP requires WPG not to exclude members of the public from use of the permit area. SOC has heard of many instances, including some involving SOC members, in which WPG conducted itself so as to effectively exclude them from portions of the permit area WPG desires to use. Comments submitted on the current proposal include the statements of members of the public whose experience represents a clear violation of WPG's obligation not to assert exclusive use of the permit area. These statements indicate that, in order to prevent some recreationists from enjoying a lunch on a summit after a long climb, a WPG guide explicitly and repeatedly told them that it was illegal for them to occupy the summit and that it was a "federal landing zone" that entitled WPG to sole occupancy. These recreationists had their photographs taken by the WPG guide and were informed that they were going to be subjected to enforcement action by the county Sheriff's office. In fact, as SOC has confirmed by searching Federal Aviation Regulations and consulting with the FAA's Flight Standards Office, there is no basis for WPG's claims to exclusivity. This and any similar events reflected in the record therefore represent a clear violation of WPG's 2005 SUP.

IV. Conclusion

It is unfortunate that the Forest Service is attempting opportunistically to adopt a business-as-usual approach toward issuing another permit to WPG, rather than demonstrating that the agency shares the interest of the public it represents in careful management of the invaluable lands of the UWCNF. The action the Forest Service proposes is in discord with the spirit and law of NEPA, and, as set forth above, the record provides very substantial reason to doubt that this action, if taken, would stand. Traditionally, Categorical Exclusions have been used to create an avenue for a Federal Agency to accomplish minor projects that have little or no recourse on the management of public lands, not as avenue to bypass the NEPA process and warranted environmental review. This process coupled with the length of time of the next permit, hence the length of time and the amount of change that is forecast to take place in and around the UWCNF, leads us to believe that the impacts to the Forest will be significant, and if not now, in the very near future. The UWCNF is one of the most heavily used Forests in the entire nation, receiving more annual visits than Yellowstone National Park. Over 75% of

Utah's population, both people in the Salt Lake and adjacent valley's depend on the resources that lie within these lands.

SOC hopes that these comments are helpful to the agency in assessing its obligations and the depth of the interest that a great many members of the public have in the lands the Forest Service holds in trust for them. SOC hopes to have the opportunity soon to contribute to the agency's development of an environmental review related to the present proposal.

Cordially,

/s/

Carl Fisher
Executive Director, Save Our Canyons