

**DECISION NOTICE AND FINDING OF NO
SIGNIFICANT IMPACT**

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&
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JACKSON HOLE MOUNTAIN RESORT
GUIDED BACKCOUNTRY SKIING
ENVIRONMENTAL ASSESSMENT

USDA Forest Service
Jackson Ranger District, Bridger-Teton National Forest
Teton County, Wyoming

DECISION AND REASONS FOR THE DECISION

Background

An Environmental Assessment (EA) summarizing the analysis of a proposal to issue Jackson Hole Mountain Resort (JHMR) a new Outfitter and Guide Special Use Permit (OG SUP) was distributed for public review and comment in May 2004. The EA is available for public review at the Jackson Ranger District in Jackson, WY. This Decision Notice documents my rationale for approving issuance of a new OG SUP to JHMR. The accompanying Finding of No Significant Impact (FONSI) documents why the Selected Alternative will not have any significant impact on the human environment.

The Purpose and Need, as described in the EA, addresses safety and public requests for providing guided backcountry skiing opportunities on National Forest System (NFS) lands in Jackson Hole. The Purpose and Need is as follows:

Provide guided backcountry skiing in the Rock Springs-Jensen Canyon and Teton Pass areas as part of the recreational opportunities offered to visitors on the BTNF:

- a. *Provide a professional, guided backcountry experience for those members of the public seeking this opportunity but lacking the necessary equipment, skills and knowledge.*
- b. *Provide an OG SUP authorization that accurately reflects the existing request for, and demonstrated use of, annual service days.*

The EA documents the analysis of three alternatives - No Action, the Proposed Action, and a third alternative developed which would eliminate all of JHMR's authorized use on Teton Pass.

Decision

After thoroughly considering the issues, alternatives and analyses presented in the EA and comments submitted, **I have decided to select a modified version of Alternative 2.**

My decision recalculates the authorized number of annual service days allocated to the Rock Springs - Jensen Canyon portion of the OG SUP based on assignment of "priority use." Assignment of priority use is a standard Forest Service method¹ of calculating the appropriate number of annual service days allocated to outfitter and guides operating on NFS lands. This method adjusts service days according to the *average of the highest two years of actual use authorized to a permittee in the past five years*. Assignment of priority use is at the discretion of the decision maker, and this method is consistent with our current Forest Service Manual and Handbook direction.²

The EA analyzed a total of 900 annual service days for JHMR's OG SUP, with no more than 50 days to be used at Teton Pass. However, the past five years worth of data indicate that JHMR's highest two years actually averaged 721 (818 in 2001 and 624 in 2000). The remaining 179 priority use days that were analyzed in the EA will be authorized and allocated for use by JHMR on an as-needed basis, as demonstrated by full utilization of the 721 authorized annual service days. It is important to note that the assignment of priority use only applies to JHMR outfitter and guide operations in the Rock Springs - Jensen Canyon area and *does not apply to Teton Pass*.

My selection of Alternative 2 is hereafter referred to as the *Selected Alternative*. The Selected Alternative incorporates all boundary modifications and authorized annual user days. Two maps detailing the Selected Alternative are included following the FONSI.

Rational for My Decision

Issues that I considered in reaching my decision included: the ability to provide a continued opportunity for a safe, guided backcountry experience, and the recreational need that JHMR fills within the community. My decision is based, in part, on the fact that re-authorizing 50 annual service days to JHMR on Teton Pass represents no change from the currently approved OG SUP. JHMR's historic and future contribution to backcountry use at Teton Pass is considered negligible in light of overall use of the area. In addition, approval of the Selected Alternative will provide an OG SUP authorization that accurately reflects the existing demand for service days in the Rock Springs-Jensen area. Finally, the analysis documents a lack of significant environmental effects, which was a deciding factor in the decision-making process.

The recreational opportunities afforded at Teton Pass are highly valued by many backcountry skiers in Jackson community. Accordingly, Teton Pass experiences high levels of backcountry use throughout the winter and spring. The majority of the comments which were submitted in response to the EA pertained to ongoing management, use, traffic, and parking issues at Teton Pass, highlighting the sensitivity of this area throughout the region. Many of the comments received were based on widespread misperceptions of the nature of the JHMR proposal. I

¹ USDA Forest Service, Northern Region, Outfitter-Guide Administration Guidebook. 1997

² FSH 27098.11 41.53h.

believe that the EA has adequately and clearly addressed the issues specifically relevant to the proposal. Additionally, I recognize that there are ongoing management issues pertaining to use levels atop Teton Pass, which the Forest Service is considering various options for addressing separate from this proposal. Accordingly, I have based the decision regarding the JHMR proposal specifically upon those issues which are within the scope of this analysis.

I have determined that my decision is consistent with the 1990 Bridger-Teton National Forest Land and Resource Management Plan. In addition, I have followed all relevant acts and executive orders, including:

- Americans with Disabilities Act (ADA) of 1990
- Archaeological Resource Protection Act of 1978
- Clean Air Act of 1955, as amended
- Clean Water Act of 1948, as amended
- Endangered Species Act (ESA) of 1973, as amended
- Fish and Wildlife Coordination Act of 1934, as amended
- Forest and Rangeland Renewable Resources Planning Act of 1974
- Multiple-Use Sustained Yield Act of 1960
- National Environmental Policy Act (NEPA) of 1969, as amended
- National Forest Management Planning Act (NFMA) of 1976
- National Forest Ski Area Permit Act of 1986, as amended
- National Historic Preservation Act (NHPA) of 1966, as amended
- Organic Administration Act of 1897
- Safe Drinking Water Act of 1974, as amended
- Protection of Wetlands Executive Order 11990

The Selected Alternative, along with my decision to require all of the mitigation/monitoring measures listed in the EA on page 2-9 as well as additional mitigation/monitoring requirements, meets all applicable laws, regulations, and policies. It is also consistent with the purposes for which the BTNF was established and is being administered; the Selected Alternative is in the best interest of the public and the Forest Service.

ALTERNATIVES ANALYZED IN THE EA

In determining the Selected Alternative, three alternatives were fully considered – the “No Action” alternative, the Proposed Action and a third action alternative. Each alternative is detailed below.

Alternative 1 – No Action

Under the No Action Alternative, the Forest Service would not reissue JHMR’s OG SUP for guided backcountry skiing on Teton Pass or in the Rock Springs-Jensen Canyon areas. As such, JHMR’s guided backcountry services in these areas would cease after December 31, 2004.

Alternative 2 – The Proposed Action

The Proposed Action would entail issuing a new five-year SUP allowing JHMR to provide guided backcountry skiing services on the eastern side of Teton Pass and in the Rock Springs-Jensen Canyon area contiguous to the existing JHMR developed ski area.

A relatively large area is needed in order to accommodate guided backcountry skiing throughout the winter seasons and various snow conditions, as well as allow flexibility to avoid impacts to resources and other recreationists. The guides are responsible for informing and educating the clients to specific information pertaining to safe and efficient travel unique to the backcountry.

Currently, JHMR conducts guided backcountry skiing on two separate portions of the Jackson Ranger District: 1) immediately south of the existing developed ski area in the Rock Springs-Jensen Canyon area (approximately 2,146 acres); and 2) on the north and south sides of Teton Pass including Phillips Canyon to the north and Black Canyon to the south (approximately 1,874 acres). Operated through the JHMR ski school, the guided skiing service typically hosts groups ranging from six-to-eight clients per group. JHMR's existing OG SUP allows for a maximum of 300 total service days, of which no more than 50 may be used in the Teton Pass areas.

JHMR has proposed that a total of 900 service days be authorized under the new OG SUP, maintaining the condition that no more than 50 of the service days may be used in the Teton Pass areas. The operating season for the JHMR guided backcountry service is proposed to run from approximately December 1st to April 15th annually.

The OG SUP boundaries for the Rock Springs-Jensen Canyon and Teton Pass areas are depicted in Figures 2-1 and 2-2 within the EA, respectively.

Rock Springs-Jensen Canyon Area

Although the total annual service days for the Rock Springs-Jensen Canyon area are proposed to increase from 300 to 900, the 2,146-acre permitted area for guided backcountry services in the Rock Springs-Jensen Canyon area is not proposed to change.

Teton Pass

The revised Teton Pass permitted guiding area under the Proposed Action would be *reduced* in size by approximately 22 acres. While a boundary modification is proposed for the Teton Pass portion of the permit, no change in annual service days is proposed. Annual service days would continue to be limited to a maximum of 50. Any service days used in the Teton Pass area would be deducted from the total service days.

On Teton Pass, the portion of the existing guiding permit which lies to the west of the Pass (on the CTNF) would be removed. Under the Proposed Action, the permitted use areas on the eastern side of Teton Pass would be enlarged to include the lower portions of Black Canyon and Triple Direct, including run-outs to the bottom of the Pass at Old Pass Road/Trail Creek Trailhead. Overall, the Teton Pass/Black Canyon permit area is proposed to increase by approximately 554 acres –from 1,096 acres under the current permit to 1,650 acres proposed.

Additionally, the current JHMR SUP allows for guiding services on approximately 778 acres to the north of Highway 22 in the Phillips Canyon/Ski Lake areas. Under the Proposed Action, this use area would be reduced by 576 acres to approximately 202 acres.

Concentrating the JHMR guiding operations on the eastern side of Teton Pass would serve two primary goals: 1) this terrain is considered to be more appropriate for JHMR clientele, and would shift some use away from the popular Edelweiss area on the west side of the Pass; and 2) extending the JHMR permitted area to the bottom of the Pass would allow JHMR to offer more than “yo-yo” skiing to its clients – i.e., clients could ski the entire vertical extent of the Pass instead of repeat hiking/skiing confined to the upper elevations of the Pass.

JHMR would utilize a shuttle van to drop skiers off at the top of the Pass and return to pick them up at the bottom upon completion of their trip. No parking spaces at the top of the Pass would be consumed by JHMR vehicles.

Alternative 3 – Elimination of the Teton Pass Portion of the OG SUP

An examination of the issues raised during public scoping revealed that the local backcountry skiing public is deeply concerned with the overall management of backcountry use and opportunities on Teton Pass. Due to the enormous popularity of Teton Pass as a backcountry skiing destination, this area receives heavy use and experiences considerable congestion both at parking areas and within the available terrain. In deference to these public concerns, a third alternative was created that would eliminate all JHMR guiding on Teton Pass, addressing this key issue. Under Alternative 3, the proposed 900 annual service days would be concentrated in the Rock Springs-Jensen Canyon area adjacent to the JHMR’s Ski Area SUP boundary. Thus, the OG SUP boundary in the Rock Springs-Jensen Canyon area would include a total of 2,146 acres.

PUBLIC INVOLVEMENT

On January 15, 2003, a scoping notice was mailed and was posted on the BTNF website for review by public agencies, the general public, and organizations. This notice was specifically designed to elicit comments, concerns, and issues pertaining to the Proposed Action. A legal notice was published in the Casper Star-Tribune. A total of 35 comment letters were received by the close of the 30-day scoping period.

The EA was mailed in May 2004 to members of the public and agencies that indicated interest in the project during the scoping period. The 30-day comment period for the EA extended through June 30, 2004. Fifty-eight comment letters were received by the official close of the comment period. The majority of the commentors expressed a generalized discontent with historic guiding and operational issues at Teton Pass, and therefore spoke against the proposal to issue the new JHMR OG SUP. Notably, it was apparent that many of the commentors had not reviewed the EA document, or perhaps were not aware of its existence, and were basing their comments on information received from other sources. Misrepresentations of the facts and misperceptions of the effects of the proposal constituted the majority of the public comments submitted. Numerous comments were based on personal opinion and failed to provide substantive comments/rationale

for direct consideration in reaching a decision on this proposal. The accompanying Response to Comments (RTC) provides a synopsis of the issues that were raised by the public and includes additional information/clarification in order to help resolve some of the uncertainty surrounding the Proposed Action.

FINDING OF NO SIGNIFICANT IMPACT

After reviewing the Environmental Assessment, I have determined that implementation of the Selected Alternative will not significantly affect the quality of the human environment. The provisions of 40 CFR 1508.27 (b) indicate that project significance must be judged in terms of both *context* and *intensity*. Based on a review of these provisions, I have determined that an Environmental Impact Statement (EIS) is not required. The rationale for not preparing an EIS includes:

Context

Context means that the significance of an action must be analyzed in several ways such as society as a whole (human, national), in the affected region, the affected interests, and the locality. The effects of implementing the Selected Alternative are localized, with implications only for the immediate vicinity of the ski area. Cumulative effects of past management, combined with the current proposal and reasonably foreseeable future actions, are displayed and analyzed in the EA for each resource.

Intensity

Intensity refers to the severity of the anticipated impact. The following ten intensity factors are used to evaluate intensity:

1. Consideration of both beneficial and adverse impacts

I have considered both the beneficial and adverse impacts associated with the alternatives as presented in the EA. The Selected Alternative will provide recreational benefits to many users of the BTNF and will improve safety on NFS lands without adversely affecting resources. Chapter 3 of the EA adequately describes and discloses the anticipated level of affects to all resources of concern. None of the anticipated impacts are considered significant.

2. Consideration of the effects on public health and safety

The Selected Alternative will not adversely impact public health and/or safety. Reauthorizing 50 annual service days at Teton Pass, and increasing annual service days in the Rock Springs-Jensen Canyon area, will improve public safety by offering increased opportunities for guided backcountry use.

3. Consideration of the unique characteristics of the geographic area

The Selected Alternative will not impact any unique geographic areas, historic features, park lands, prime farmlands, wild and scenic rivers, or ecologically critical areas.

4. Consideration of the degree to which the effects on the quality of the human environment are likely to be considered controversial

A range of public comments were received during the initial development of this project, as well as in response to distribution of the EA. All comments submitted during the scoping process were reviewed by the Forest Service ID Team. All substantive comments have been acknowledged in the RTC. The official project record at the Jackson Ranger District contains all the comment letters.

As indicated, there exists a heightened level of sensitivity surrounding use and management of Teton Pass. While the project proposal has generated a moderate level of public response, I am convinced that the EA has provided the appropriate level of documentation for analysis. I am confident that much of the dialogue surrounding this proposal is attributable to misrepresentations of the facts and misperceptions of the effects of the proposal. In light of inherently increasing backcountry use by non-permitted skiers and/or the general public at Teton Pass and in the Rock Springs-Jensen Canyon area, JHMR's contribution to backcountry use is considered negligible.

5. Consideration of the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks

I have determined that there will not be effects on the human environment which are highly uncertain or that would involve a unique/unknown risks as a result of implementing this decision.

6. Consideration of the degree to which this action may establish a precedent for future actions with significant effects or that it represents a decision in principle about future considerations

I have determined that this decision does not establish precedence for future actions with unknown risks to the environment. The Selected Alternative grants approval to JHMR to conduct guided backcountry skiing activities at Teton Pass and in the Rock Springs-Jensen Canyon area for the term of the OG SUP. After that time, should JHMR wish to continue these services, a subsequent analysis and approval process will be necessary to determine the effects of continuation of these activities, and will assess any new information or changed circumstances. In addition, other outfitter and guide operations presently conducting activities on the BTNF are, and will continue to be, subject to the same analysis and approval requirements as JHMR.

7. Consideration of the action in relation to other actions with individually insignificant but cumulatively significant impacts

As indicated throughout the EA and the Decision Notice, use and management of Teton Pass for backcountry skiing is growing in popularity. JHMR's historic and approved 50 annual service days are not considered to be a direct, significant contributor to over use of the area. Cumulative effects of the Selected Alternative with other past, present, and reasonably foreseeable future activities are not expected to be significant at Teton Pass. The direct, indirect and cumulative effects of modifying the JHMR Ski Area SUP to encompass Rock Springs and Green River will be analyzed in the upcoming NEPA analysis on the 2004 MDP. The Rock Springs-Jensen Canyon area receives high seasonal use by dispersed backcountry skiers and increasing annual

service days allocated to JHMR in this area is not expected to contribute to significant cumulative effects to the recreational experience or environment.

8. Consideration of the degree to which the action may affect listed or eligible historic places

The Selected Alternative will have no effect on any significant cultural resource properties.

9. Consideration of the degree to which the action may adversely affect an endangered or threatened species or its critical habitat

A Biological Assessment (BA) was prepared in conjunction with the EA to determine potential effects to endangered and threatened species that may result from implementation of any of the alternatives. Anticipated effects to two threatened species are documented in the BA; the Selected Alternative will have *no effect* on grizzly bear and *may affect, but is not likely to adversely affect* Canada lynx.

10. Consideration of whether the action violates Federal, State, or local laws or requirements imposed for the protection of the environment

Based on the documentation I have reviewed in the EA, the BA, and the project file, I have determined that no Federal, State, or local laws, regulations, or requirements for protection of the environment will be violated with implementation of the Selected Alternative.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

I have reviewed the Selected Alternative for consistency with the Forest-wide and Management Area standards and guidelines, goals, and objectives. No inconsistencies were identified.

IMPLEMENTATION DATE

If there is no appeal, the Selected Alternative may be implemented fifty (50) days after publication of this Decision Notice in the Casper Star-Tribune.

JHMR's annually submitted Winter Operating Plan will include strategies for monitoring compliance with the required mitigation measures and an ongoing assessment of their effectiveness. Failure to comply with the required mitigation would constitute a breach of the project approval and could temporarily suspend guiding services.

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

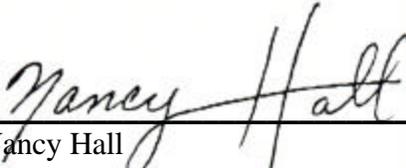
This decision is subject to appeal pursuant to 36 CFR 215.11. Any appeal of this decision must be fully consistent with 36 CFR 215.14, "Content of Notice of Appeal," and it must be received within 45 days of the date of publication of the Notice of Decision in the Casper Star-Tribune.

The written Notice of Appeal must be sent to:

Appeal Deciding Officer
Region 4, Intermountain Region
USDA Forest Service
324 25th Street
Ogden, UT 84401

CONTACT

For additional information concerning this decision or the Forest Service appeal process, contact:
Jackson Ranger District, PO Box 1689, Jackson, WY 83001; fax 307.739.5450.



Nancy Hall
Jackson District Ranger
Bridger-Teton National Forest

9/22/04
Date