

## Objection Issues

### HEAVENLY MOUNTAIN RESORT PERMIT ISSUES

#### OBJECTOR:

Heavenly Mountain Resort, **Andrew Strain**

**Summary of Objection Issues:** The Heavenly Mountain Resort is concerned about several issues regarding their permit with the Forest Service and how the revised management plan for the Lake Tahoe Basin Management Unit may impact their business. The first is that the Resort does not believe the LTBMU Management Plan should adopt a Whitebark Pine species refuge area inside Heavenly's permit and operational boundaries;

The second is that "The Forest Service should clarify that LTBMU Forest Plan direction does not apply to activities outside of the LTBMU" (specifically that it does not apply to that portion of Heavenly location on the Humbolt-Toiyabe National Forest);

And finally, they contend the Plan improperly impedes Heavenly's current rights with regard to terrain inside its established ski area Special Use Permit Boundary." SG100 results in de-facto modification of the permit boundary of existing ski area permits by restricting development inside the permit without following the procedures for modifying or terminating existing permits. The contention is tied to SG100, which limits the expansion of ski area operational boundaries to 200 acres (Forest Plan, p. 199). It is unclear if this expansion limit is Basin-wide or per ski area or exactly how it would be implemented. They also contend this standard and guide displaces the master development plan system set in place by 36 CFR 251.54(e).

The decision to limit acreage for additional development within the permit boundary at the four ski areas should be strengthened. There should be a rationale for a limit generally and for the 200-acre limit specifically as applied to these ski areas. Why is a limit needed at these ski areas, and why was 200 acres selected? It is not clear whether applications for development beyond the operational footprint have been accepted or granted for additional development beyond the operational footprint at the four ski areas. Site-specific decisions approving the development would conflict with the acreage limit in the decision. This conflict would be exacerbated if any of the permits had been amended to reflect these decisions. The agency should examine the four permits and decision records to assess what the agency previously authorized.

The permit holders argue that the decision to limit acreage for additional development within the permit boundary is a de facto partial revocation of their permits or a de facto revision of their permit boundaries.

**Review Team Summary:** The direction for Whitebark pine was addressed in the FEIS and Forest Plan. There are specific desired conditions, objectives and design criteria for whitebark pine that includes Standard and Guideline 93; “Management actions are consistent with habitat and population recovery objectives, outlined conservation strategies, and recovery plans [Guideline]”. The Forest Plan and Final Environmental Impact Statement is a programmatic document. Any site specific plan for Whitebark pine Species Refuge Areas would include input from the public. The 2013 MOU for Whitebark Pine at Heavenly outlines some of those objectives for the species conservation strategies and would be considered in any species recovery plan.

Whitebark pine is a candidate species for listing under the Endangered Species Act (ESA). Candidate species receive no statutory protection under ESA (USFWS 2011); candidate management is dictated by the management direction of the agency upon which the species occurs. However, the US Fish and Wildlife Service encourages conservation efforts for candidate species because they are, by definition, species that may warrant future protection under the ESA (USFWS 2011). It is appropriate to designate Species Refuge Areas for Whitebark pine.

The analysis discloses the following for potential effects of SRAs on ski areas, “*Species Recovery and Habitat Restoration* - Impacts to ski areas from species recovery habitat restoration activities would be minor in most cases for all alternatives. Generally, a habitat restoration activity that enhances the overall environmental health and integrity of the Lake Tahoe Basin is beneficial to ski area interests. However, there is potential for some restoration activities to affect winter sports opportunities. For example, area closures may eliminate skiable terrain, causing crowding on adjacent terrain or a loss of opportunity. In any alternative that resource actions affect recreation management’s effort to meet demand, the overall recreation experience will be changed from existing (FEIS, p. 3-420). The effects in this analysis are probably overstated, and in fact, there is a greater likelihood of impacting the timing of summer activities than winter activities.

As to the Resorts concern that the LTBMU management plan’s jurisdiction, the revised management Plan applies only to NFS lands within the Lake Tahoe Basin Management Unit. Figure 1 on page 3 of the Revised Plan depicts a map of the Lake Tahoe Basin Management Unit.

Section 6(f)(1) of the National Forest Management Act requires the Forest Service to “form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section.”

As stated on page 1-4 of the FEIS, “...the environmental analysis considers a broader area. Wildlife species ranges often extend beyond the administrative boundaries. Similarly, coordination with neighboring Forests and other jurisdictions is important for vegetation management, wildfire suppression, and fuel reduction. Analysis of cumulative effects considers lands and other plans outside the administrative boundary.”

The FEIS does specifically identify that Heavenly Mountain Resort acres listed in the analysis do not include those on the Humboldt-Toiyabe NF (FEIS, Ch. 3, p. 3-418)

To address the third issue, it is noted that in the response to comments for the DEIS, the question of management direction for two other ski areas was raised. In response to that comment the LTBMU stated, "Ski area permit boundaries are described in the special use permits. The Revised Forest Plan does not alter any special use permits currently in effect. The FEIS has been clarified by removing information that may have been confusing."

On the issue of ski area expansion, the Unit responded in part, "(...)The preferred alternative, Alternative E, includes approximately a 10% expansion in ski areas based on current expected needs for expansion. Recreation expansion has been defined in Section 2.2 of the Revised Forest Plan. Effects from expansion of ski areas have been updated in Chapter 3, Section 3.4.19 - Recreation." (App. N, p. 18)

SG100 is intended to be a basin wide limit. The acreage is based on proposals in the Heavenly master plan. The 1988 forest plan delineated areas where existing ski areas were planning to expand, but none of those plans were ever proposed. Ski area expansion greater than 200 acres would potentially raise serious public concerns in the Basin.

Also in the response to comments, the Forest Service responded to those opposing ski area expansion with the following, "The FEIS has been updated to clarify that the LRMP makes no changes to the existing ski area special use permit boundaries. However, the FEIS anticipates additional development within the existing permit boundaries to varying degrees in Alternatives A, B, C, and E, and less development within the existing permit boundaries in Alternative D. Ski area expansion beyond the existing special use permit boundary may be considered if consistent with the Management Area and Suitable Uses table identified in the Revised Forest Plan (Table 5), but would require a Forest Plan amendment." (App. N, p. 102) and "(...)the Recreation Program Strategy describes that the recreation program must have the ability to adapt to changing recreation preferences including user experiences and trends (Revised Forest Plan Section 2.2 and Suitable Uses section (2.3)). The FEIS anticipates additional development within existing ski area permit boundaries in Alternatives A, B, C and E in support of year round activities. Additional development may be in response to either winter or summer recreation uses as authorized by law, regulation, and agency policy including but not limited to the Ski Area Recreation Opportunity Enhancement Act of 2011. (FEIS Chapter 3, Section 3.4.19). (App. N, p. 103)

The decision to limit acreage for additional development within the permit boundary at the four ski areas should be strengthened. There should be a rationale for a limit generally and for the 200-acre limit specifically as applied to these ski areas. Why is a limit needed at these ski areas, and why was 200 acres selected? It is not clear whether applications for development beyond the operational footprint have been accepted or granted for additional development beyond the operational footprint at the four ski areas. Site-specific decisions approving the development would conflict with the acreage limit in the decision. This conflict would be exacerbated if any of the permits had been amended to reflect these decisions. The agency should examine the four permits and decision records to assess what the agency previously authorized.

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## INSTRUCTIONS BEING CONSIDERED

- While there are no changes needed to the record, conversations should continue with Heavenly Resort on future practices to conserve Whitebark pine as outlined in the Plan and in the 2013 MOU.
- Clarify how the Revised Plan will affect the Humboldt-Toiyabe National Forest portion of the Heavenly Ski Area Special Use Permit.
- Clarify in the record the 200 acre limitation on expansion for Ski Areas. Include in this clarification how this limit was derived; the rationale for the limit; and the extent of the current operational footprints.
- LTBMU should state the development proposals inside ski area special use permits will be evaluated pursuant to permit terms and applicable regulations and policy.
- Clarify that any future unit-wide conservation plans for Whitebark Pine or other changes such as additional regulatory direction, will be reviewed, compared to existing agreements, and discussed with Heavenly in regards to any inconsistencies and legal constraints.
- LTBMU should add a brief clarification in the FEIS describing potential impacts to summer recreation activities in ski areas due to whitebark pine management or restoration.

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## REMEDY(S) PROPOSED BY OBJECTORS

- "Remove the Whitebark Pine SRA within the Heavenly operational boundary from the list of SRAs depicted on Forest Plan Map 14."

- If the SRA at Heavenly is not removed, clarify that any future unit-wide conservation plan will consider and defer to existing agreements, such as the 2013 MOU for Whitebark Pine at Heavenly”.
- "Clarify that SG100 and other LTBMU Forest Plan direction does not apply to activities at Heavenly that are outside the LTBMU."
- Delete that portion of SG100 that limits expansion of ski area operational boundaries to 200 acres (Forest Plan, p. 199). State the development proposals inside ski area special use permits will be evaluated pursuant to permit terms and applicable regulations and policy.