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February 11, 2011

John D. Smith
Director, Legislative and Regulatory Affairs
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Ottawa, Ontario K1A 0H3

Re: Comments on Proposed amendments to the *Comprehensive Study List Regulations* under the *Canadian Environmental Assessment Act* related to ski area developments in national parks

Dear Mr. Smith,

On behalf of the Canadian Parks and Wilderness Society – Southern Alberta Chapter (CPAWS SAB), please accept this document providing comments on the proposed amendments to the *Comprehensive Study List Regulations* under the *Canadian Environmental Assessment Act* (CEAA) related to ski area developments in national parks. CPAWS SAB is part of a national non-profit organization dedicated to protecting Canada's wilderness. Since our inception in 1967, we have had a long history of involvement with many aspects of Banff National Park management and appreciate the opportunity to provide comments on this proposal. We recognize that the decisions made with respect to ski areas in the National Park are fundamental to the ecological health of these sensitive areas.

There are strong reasons to continue to require Comprehensive Studies for proposed developments by ski areas in national parks. These studies provide for a greater depth of assessment in the review of development proposals; legally require public consultation and provide for participant funding; and provide for third party involvement (CEAA) in the review process. In our efforts to protect the ecological integrity of our treasured national parks for future generations of Canadians, it is our view that this added level of assessment and public oversight is warranted.

The following points outline CPAWS SAB's main concerns. Included in our submission is an opinion from legal council to substantiate some of our concerns.

1. A Comprehensive Study is necessary to uphold the *Canada National Parks Act* with respect to ski area development

Since their inception in 1940, we have learned that ski hill operations are fundamentally inappropriate for national parks, and particularly the sensitive areas within them. This fact is supported by the introductory paragraph of the Ski Area Management Guidelines stating:

Due to the pressures placed on alpine and sub-alpine environments, the 2000 Canada National Parks Act prohibits developing new commercial ski areas inside the national parks. (2006)

Existing ski areas grandfathered in the park are essentially anomalies to the system as they are not permitted within newly created national parks. National parks protect many of Canada's most treasured lands and waters on behalf of present and future generations of Canadians, and in some cases, including Banff, are designated as World Heritage Sites in recognition of their outstanding universal values. These special places are deserving of the utmost protection and the highest level of public and technical scrutiny to ensure they are effectively protected. As such, CPAWS SAB argues that these areas should be subject to the highest level of environmental assessment (i.e. a comprehensive study) to uphold *The Canada National Parks Act* which gives first priority to the maintenance or restoration of ecological integrity in the management of our national parks.

Commercial ski area developments in a national park are included under the current *Comprehensive Study List Regulations* enacted under CEAA. Projects that trigger a comprehensive study are those that are likely to have significant adverse environmental effects. CPAWS SAB argues that any ski area development in national parks (including those beyond hotel development and the expansion of major ski terrain as indicated in the discussion paper) needs to remain under this regulation, as any further development of these areas has the potential for significant and detrimental environmental impacts.

It is well known that all of the ski areas in the mountain parks are situated within key wildlife corridors and are core habitats for grizzly bears, particularly breeding females, during the summer. Further development in these areas may gravely affect keystone species in parks. For example, in Jasper National Park, the Marmot Basin ski hill is proposing expansion of the ski area into endangered caribou habitat, a species at risk nationally. We believe that further development and summer use in ski areas will increase pressure on these sensitive areas and result in a negative cumulative impact on wildlife species, including grizzly bears and caribou. Any proposal for increased development in ski areas has great potential to threaten the prioritization of ecological health of these sensitive areas and needs to undergo the most rigorous environmental assessment.

CPAWS SAB believes that any projects other than maintenance, repair, or replacement of facilities on a "like-for-like" basis for ski areas requires more than just an environmental screening, and that site and ski area management guidelines alone do not provide adequate rigor to the approval process to uphold the *Canada National Parks Act*.

2. Proposed amendments, in combination with enabling Site Guidelines, set the stage for potential increased development and intensity of use of the ski areas

Ski area site guidelines do not specify projects, but rather create blueprints that accommodate a range of potential development and use of these highly sensitive areas within the national parks. For example, the draft Mt. Norquay Site Guidelines open the flood gates to increased potential development and intensity of use, including a 3,800 skier/day capacity, more ski terrain, commercial space, new lifts, widening of ski runs, glading, tea house improvements, more snowmaking,

reservoirs, parking lot and day lodge expansion, via ferrata, zip lines, canopy tours, mountain biking, a gondola (tramway), as well as lift replacement and alignment.

CPAWS SAB recognizes that not all development stated in the guidelines may occur, however, we believe that the enabling list of potential growth to the ski area outlines a recipe that is not conducive to the long term protection and certainty of this area and could have significant adverse environmental effects.

Under the proposed amendments, a major project (e.g. all of the above pertaining to Mt. Norquay) would only be subjected to an environmental screening under CEAA, and will no longer undergo a comprehensive study so long as they are consistent with the site guidelines. With enabling site guidelines and no requirement for third party regulation triggering comprehensive studies enacted by CEAA, CPAWS SAB strongly argues that the long term protection and certainty of the area could be at risk and major development could potentially occur without the most stringent possible review. Any significant changes to current development and use needs to remain under the comprehensive study list regulations as enacted by CEAA to ensure the highest level of protection for this area.

CPAWS SAB recommends that the current section 3.1 remain mandating a comprehensive study for ski area projects set out in a long range plan.

3. Proposed amendments give too much discretion to Parks Canada and ski hill operators

Proposed amendments to CEAA would downgrade the requirement for ski area development within the National Park from a comprehensive study to an environmental screening. Each project would be assessed to determine if it is consistent with site guidelines for the area, but it is not clear from the discussion paper who will exercise this discretion (i.e. Parks Canada or the ski area). As indicated in the attached Feb 8, 2011 legal opinion letter,

There are no legal requirements to ensure this discretion is exercised in a transparent manner, nor are there any express constraints on this power. This discretionary decision will nonetheless have a significant legal effect under the proposed changes to the Comprehensive Study List Regulations. The discretionary decision as to whether a proposed project is consistent with the site guidelines will determine whether or not the project must be subject to a comprehensive study.

In the draft Site Guidelines for Development and Use of the Mt. Norquay Ski Area, Parks Canada writes that they are undertaking a proactive Strategic Environmental Assessment (SEA) to examine the implications of the proposed guidelines. A SEA is not a CEAA assessment and its process and content are not subject to CEAA. The SEA process is mandated by a federal Cabinet Directive and as such, is a policy requirement rather than a legal obligation. Therefore, it is very unlikely that any legal obligations attach to Parks Canada or the Minister under the SEA process.

CPAWS SAB is concerned that the proposed amendments remove the third party oversight from the process and give too much regulatory authority and discretion to the Parks Canada Agency with

respect to development and use of the ski area. Parks Canada will administer the environmental screening under its discretion with no obligation to involve the Minister, and Parks Canada will decide whether to approve the project on the basis of the screening report. CPAWS SAB would argue that given the anomalous nature of ski areas and the unique nature of their context within our country's most highly protected area, keeping CEAA involved in the review would be valuable and help to ensure that these areas deserve the highest level of environmental assessment.

4. Proposed amendments to the CEAA cause concern for devaluation of public review process

With proposed amendments to the Comprehensive Study List Regulations under CEAA related to ski area developments in national parks, CEAA environmental assessments of projects would have no legal requirements to include public consultation during the assessment process. CPAWS SAB is concerned that the proposed amendments would devalue the public engagement process, as it would no longer be a legislative necessity, and would reduce the rigour and scope required under the current system. Sections 21.1 and 21.2 of CEAA require Parks Canada to engage in public participation as part of the comprehensive study assessment process. Section 58(1.1) requires the Minister to operate a participant funding program to facilitate public participation in a comprehensive study. CPAWS SAB is very concerned about the non-consultative process that took place in the development of the Site Guidelines for Mt. Norquay and about potential further erosion to the public consultation requirements as proposed by the CEAA amendments. Public engagement brings value to the process and ensures credibility and accountability to the Parks Canada Agency for their decisions with respect to national park management. Comprehensive studies require public participation and participant funding, which adds value and certainty to the review and public oversight of development proposals in national parks. This is entirely appropriate and necessary in reviewing development proposals that could affect our most treasured public lands.

5. Rationale for the proposed amendments is questionable and legislative text is required

CPAWS SAB questions the rationale for the proposed amendments. In the discussion paper (January 2011, p.6) it states that, *"Ski area operators argue that undertaking a comprehensive study is an excessive requirement given the limitations imposed by the Ski Area Management Guidelines and the Site Guidelines where cumulative effects issues are addressed."* We believe that recommendations for change should be based on the broad public interest and meeting the legislative mandate of Parks Canada, not on the proposed need of ski area operators to have fewer hoops to jump through to achieve increased commercial development. The Parks Canada Agency is legally required to manage the park in a way that prioritizes ecological integrity; not to ensure economic viability for ski hill areas. Because site guidelines are drafted by Parks Canada in conjunction with ski hill operators, CPAWS SAB strongly recommends that environmental assessments for ski area development needs to be conducted by an independent third party like CEAA.

CPAWS SAB also understands that the CEAA is due for review and possible revisions. We question the need and timing to put forward these particular amendments prior to scheduled review of the entire act, and would request that such amendments not be considered before such a review takes place.

Another area for concern is the actual legislative text that would replace section 3.1 in the Schedule to the Comprehensive Study List Regulations has not been provided in the discussion document. CPAWS SAB would argue that a comprehensive legal analysis of the proposed changes needs to include exact legal wording.

In summary, CPAWS SAB feels that the proposed amendments to the regulations are:

- in conflict with the *Canada National Parks Act*;
- would reduce the rigour of environmental review of proposed developments in national parks in ways that could threaten the ecological integrity of the parks;
- have great potential to enable substantial major development in ski areas, , which could result in adverse long term and cumulative environmental impacts on the values our national parks are mandated to protect;
- leave too much discretion to Parks Canada as the regulatory authority, and devalue the importance of public consultation and engagement in the management and protection of our national parks;

We also question the need, timing and rationale for these proposed amendments and request precise proposed legal wording.

In conclusion, we do not support the proposed amendments and specifically request that the current section 3.1 mandating a comprehensive study for ski area projects set out in a long range plan is not changed.

Thank you for providing CPAWS SAB this opportunity to comment on the proposed amendments to the *Comprehensive Study List Regulations* under the *Canadian Environmental Assessment Act* (CEAA) related to ski area developments in national parks. Please contact me (403-232-6686 or amsyslak@cpaws.org) if you would like to discuss any of these comments in further detail.

Sincerely,



Anne-Marie Syslak
Executive Director CPAWS SAB

Cc: Peter Kent, PC, MP Environment Minister
Gerard Kennedy, MP Liberal Environment Critic
Bernard Bigras, MP Bloc Quebecois Environment Critic
Linda Duncan, MP NDP Environment Critic
Alan Latourelle, CEO Parks Canada
Bill Fisher, Director General Western and Northern Canada
Tracy Thiessen, Executive Director Mountain Parks
Kevin VanTighem, Superintendent, Banff Field Unit
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