

February 11, 2011

Kevin Van Tighem  
Banff Field Unit Superintendent  
Banff National Park  
Box 900  
Banff, Alberta T0L 0C0

**Re: Comments on Mt. Norquay Ski Area Site Guidelines for Development and Use**

Dear Mr. VanTighem,

On behalf of the Canadian Parks and Wilderness Society – Southern Alberta Chapter (CPAWS SAB), please accept these comments on the Mt. Norquay Ski Area Site Guidelines. CPAWS SAB is part of a national non-profit organization dedicated to protecting Canada's wilderness. Since CPAWS SAB's inception in 1967, we have had a long history of involvement with many aspects of Banff National Park management. We appreciate the opportunity to provide comments on the Mt. Norquay Ski Area Site Guidelines. 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. It is imperative that the guidelines effectively address *The Canada National Parks Act*, which states that:

*Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.*

In summary, we are particularly concerned with the proposal to reverse the previous decision and to allow summer use at Mt. Norquay because of its potential impact on ecological integrity, particularly on wildlife and the Cascade wildlife corridor. We believe that protecting the ecological integrity of the park requires a precautionary approach to management that is not reflected in the draft guidelines.

We are also concerned with the inclusion of the commercial operator's goals of economic sustainability in the Parks Canada guidelines, with no emphasis on the fact that the *Canada National Parks Act* requires ecological integrity take priority in park management. It is important that Parks Canada clearly separate their legally defined mandate and responsibilities from the ski area's commercial goals and interests to achieve outcomes that will effectively implement the Parks Canada mandate in a way that protects our most treasured places for future generations and avoids incremental loss of natural values.

Our key concerns of the Mt. Norquay Ski Area Guidelines are highlighted as follows:

1. Further development of ski areas is not in line with the *Canada National Parks Act*
2. Proposed Site Guidelines set the stage for perpetual growth instead of land use certainty and protection
3. Historic transactions discredit integrity of system
4. A reduction of lease hold in exchange for a license of occupation is not seen as a substantial environmental gain

5. Additional summer use of ski areas poses a direct threat to ecological integrity of the park and does not adequately address cumulative effects
6. Parks Canada is not responsible for the economic viability of ski areas
7. Proposed amendments to the Canadian Environmental Assessment Act (CEAA) cause concern for devaluation of environmental and consultative processes
8. Further development of Mt. Norquay threatens to increase traffic through the Cascade Wildlife Corridor
9. Projected increase in skier numbers is not substantiated
10. Restoration of historic vegetation should not justify further development
11. Water usage needs to be carefully managed and monitored
12. Environmental education and stewardship should be standard practise in national parks and not justification for commercial development

These concerns are explained in detail within this submission for your review and consideration.

**1. Further development of ski areas is not in line with the *Canada National Parks Act*.**

CPAWS SAB recognizes that downhill skiing has a long history within the mountains parks. Although our knowledge of ecosystem integrity and landscape connectivity is much younger, since 1940 we have learned that ski hill operations are fundamentally inappropriate for national parks because of their impacts on sensitive ecological areas. This fact is supported by the introductory paragraph of the 2006 Ski Area Management Guidelines which states that:

*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.*

CPAWS SAB asserts that expansion ski hill developments directly conflicts with the Ski Area Management Guidelines and the *Canada National Parks Act*. Existing ski areas grandfathered in the park are anomalies in the national parks system as they would not be permitted within newly created national parks. As such, they should not be considered in the same regard or fall under the same management standards that apply to other development decisions within the national parks.

**2. Proposed Site Guidelines set the stage for continued growth, not land use certainty and ecosystem protection**

CPAWS SAB feels strongly that the draft Site Guidelines for Mt. Norquay create a blueprint for the potential ongoing growth and intensification of development within a highly sensitive area of the National Park. These guidelines open the flood gates to increased potential development, including 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 new gondola, as well as lift replacement and alignment to name a few.

CPAWS SAB recognizes that not all developments identified in the guidelines may occur, however, we believe that the enabling list of potential expanded development and growth at the ski area outlines a future path that is not conducive to long term ecosystem protection and certainty for this area. A long range plan was put forward by Mt. Norquay in 1988 (approved in 1989) to establish growth limits, which is now considered irrelevant and out of date. The new framework enables Mt.

Norquay to move forward with another long range plan based on the need for more capacity and development.

CPAWS SAB feels that this proposed approach does not contribute to land use certainty of Mt. Norquay, but rather feeds the perpetual desire to accommodate expansion and intensification of use of the ski area without setting effective growth limits. Long term protection and certainty of the area will only be achieved by capping development permanently in its current state. A precedent for capping development is exhibited by the town of Banff.

### **3. Historic transactions discredit integrity of system**

The draft Site Guidelines for Mt. Norquay indicate that the ski area has a shortage of intermediate terrain and seeks to add additional intermediate terrain, glading opportunities, and run widening in order to stack up to industry standards. This is not the first time the ski area has made such a request and this history should be understood and taken into consideration.

In 1988, the former owners of Mt. Norquay (Banff Lifts Ltd.) indicated a need for more intermediate terrain on the ski hill. As a result, they negotiated a trade with Parks Canada to give up summer use in exchange for a significant expansion of the ski area onto Mystic Ridge. The trade was seen as achieving a “net environmental gain” because summer use would no longer be permitted. The Mystic Ridge area development ensued.

Subsequently, Mt. Norquay was sold and the new owners went on to legally challenge Parks Canada to reinstitute summer use at Mt. Norquay. They sought to overturn the Superintendent’s decision to deny a business license to reinstate summer use of a chair lift at Mt. Norquay (*Peter White Management Ltd. V. Her Majesty the Queen in Right of Canada et al., (1997 FTR89)*). It was decided that the Superintendent had the legal discretion to refuse the business license by the Federal Court of Canada, and the business license was denied. During this legal process, the 1988 former owner of Mt. Norquay clarified the circumstances that led to the relinquishment of summer use:

*(We) realized that we had to make some concessions in the overall operations if we were to be able to convince Parks Canada of our need to expand the winter ski operations...The only way we could advance our ski area proposal was to promise a reduction of impact on environmentally sensitive areas...by sacrificing our summer operations...The assertion that giving up summer use was simply a business decision we made independent of Parks Canada demands is misleading. We had to give something in order to get the additional terrain we needed for our expanded winter operations. Summer use was all we had to trade. (Peter White Management Ltd. V. Her Majesty the Queen in Right of Canada et al., (1997 FTR89))*

In 1989 the approved long-range plan for Mt. Norquay outlined this agreement and in 1997, the new Banff Park Management Plan documented the prohibition against summer use in this area. Given the history of this decision, the recent re-introduction of summer use in the park management plan is unacceptable. CPAWS SAB questions the integrity of this policy reversal.

Historical context is important as it raises questions about the long term integrity of the decision making process. It makes groups like CPAWS question why the longstanding agreement to relinquish summer use was not included in the current management plan, and why past decisions

that rely on their long term implementation to be effective are now being overturned. History appears to be repeating itself.

CPAWS SAB feels strongly that this decision regarding protection of ecological integrity, particularly in the context of a trade-off to allow for more development, must be upheld in the long term to maintain public credibility in the decision-making process and trust. The development of the Mystic Ridge area in addition to future development of more intermediate ski terrain, along with the re-instatement of summer use (without decommissioning and reclamation of Mystic Ridge) would result in a net environmental loss to the Mt. Norquay area.

**4. A reduction of lease hold in exchange for a license of occupation is not seen as a substantial environmental gain.**

The revised *Ski Area Management Guidelines (2006)* states that a shrunken lease boundary may be a substantial ecological gain if it acts as an offset against an increased development footprint:

*Ski area expansion into undeveloped areas, un-skied terrain and un-serviced terrain can only be considered if there are substantial environmental gains. An example of an exception that can be considered is a leasehold reduction or reconfiguration that results in better protection of sensitive areas in exchanges for development in less sensitive areas.*

In the draft Site Guidelines for Mt. Norquay, a minor adjustment to the leasehold removes cliff faces from the lease. Due to the nature of the terrain, which is too steep to develop for skiing and relatively low habitat value, this exchange does not equate to a “substantial environmental gain”.

Furthermore, Parks Canada suggests in the Site Guidelines that this area, once removed from the lease, would be licensed back to the ski area under a license of occupation for avalanche control, off-piste skiing and potential use and installation of via ferrata. So despite not having property rights to the lease area, the proponent would continue to use this area and may be permitted to develop it further. The change in administrative arrangement for these lands will not result in a net environmental gain if the future development proposals continue as proposed. Whether the land is leased to the ski hill or licensed back to them does not affect the net environmental impact. It is the development on the lands that determines the environmental impact.

It is wholly inappropriate to suggest this small area removal from the leasehold contributes to an ecological gain for the area. If leasehold boundaries are shrunk, the areas removed from the leasehold areas should not be permitted for use in the future.

**5. Additional summer use of ski areas poses a direct threat to ecological integrity of the park and does not adequately address cumulative effects**

In the face of climate change, ski areas are pushing for increased summer use in the mountain parks to ensure their economic viability. Despite outlined mitigation measures in the draft Site Area Guidelines for Mt. Norquay, CPAWS SAB is fundamentally opposed to any increase in summer use of this area because of the direct threat it poses to the ecological integrity of the park. It is well known that all of the ski areas in the mountain parks are core summer habitat for grizzly bears, particularly breeding females. Grizzly bears are now listed as a threatened species under the Alberta Wildlife Act. In the draft Site Guidelines for Mt. Norquay ski area, Parks Canada states,

*Potential changes to summer use present ecological challenges beyond those of winter operations. The ski area slopes serve as important habitat for a greater range of wildlife species in the summer than the winter. The Norquay lease includes good summer habitat for a variety of wildlife including grizzly bear, cougar, wolf, lynx, elk, bighorn sheep, mountain goats, mule deer and white-tailed deer. The lease is one of two areas of concentrated grizzly bear activity in the lands around the Town of Banff.*

We believe that further development and summer use will increase the pressure on this sensitive area and result in a negative cumulative impact on wildlife species, particularly threatened grizzly bears. Permitting summer use in core habitat directly reduces habitat security, which leads to increased habituation and mortality risk. Provincial and national jurisdictions need to coordinate efforts to recover Alberta's grizzly bears. It is the responsibility of Parks Canada to set an example of how to appropriately manage lands to increase grizzly bear security in Alberta. The Norquay Ski Area Guidelines directly contradict that responsibility.

Parks Canada's management efforts need to protect key areas of concern, not exploit and develop them for further use. CPAWS SAB supports the endeavours made by Parks Canada to improve wildlife habitat and reduce wildlife habituation, but we believe the proposed draft Site Guidelines for Mt. Norquay directly contradict this work. We believe that there are considerable opportunities to improve visitor experience for summer use within the current development footprint of the park. Summer use does not need to expand into sensitive core grizzly bear habitat on the Norquay ski hill.

CPAWS SAB would like to see more work done with respect to modelling of cumulative effects in National Parks to better address and inform all park management direction and decisions. For example, Mt. Norquay is very close to the TransCanada Highway and the Canadian Pacific Railway, both of which are significant causes of wildlife mortality. How will increased use of the ski hill impact overall habitat quality? The risk of displacing wildlife from the currently secure ski hill to the highway or railway needs to be addressed and considered carefully.

## **6. Parks Canada is not responsible for the economic viability of ski areas**

The draft document for Mt. Norquay's Ski Area Guidelines for Development and Use, as written by Parks Canada, justifies the need of the ski area to expand in order to have "long-term financial sustainability." The mandate of Parks Canada as posted on their website is to steward National Parks for Canadians.

*On behalf of the people of Canada, we protect and present nationally significant examples of Canada's natural and cultural heritage, and foster public understanding, appreciation and enjoyment in ways that ensure the ecological and commemorative integrity of these places for present and future generations. (2009)*

CPAWS SAB strongly believes that Parks Canada is not responsible for ensuring the economic well being of the Mt. Norquay ski area or any other business that is permitted to operate within the boundaries of a National Park. CPAWS SAB feels that this rationale should be taken out of the Banff management plan, and should not be a consideration in the Site Guidelines for Ski Areas or in any other agency decisions regarding mountain and other national parks. Parks Canada is the agency managing National parks on behalf of current and future generations of Canadians. We believe that

the economic sustainability of commercial operations within the parks lies outside of Parks Canada's mandate; that these goals will often be in direct conflict with Parks Canada's legal responsibilities for ecological integrity; that Parks Canada should be responding to proposals by commercial operators in a non-partisan way; and that they should not be representing commercial operators' goals of economic viability as those of Parks Canada.

## **7. Proposed amendments to the Canadian Environmental Assessment Act (CEAA) cause concern for devaluation of environmental and consultative processes**

Proposed amendments to the *Canadian Environmental Assessment Act (CEAA)* would downgrade the requirement for ski area development within the National Park from a comprehensive study to an environmental screening. CPAWS SAB is concerned with these proposed changes both from an environmental and public review perspective.

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 weaker policy requirement rather than a legal obligation. It is very unlikely that the SEA process will attach any legal obligations to Parks Canada or the Minister.

CPAWS SAB is concerned that the proposed amendments give too much regulatory authority and discretion to the Parks Canada Agency with respect to development and use of the ski area which will mean that each decision will be subject to debate. Maintaining the current clear, legal requirement for environmental assessment provides more clarity and certainty to all interested parties. Under the proposed new arrangement, Parks Canada will administer the environmental screening under its discretion with no obligation to involve the Minister, and Parks Canada alone will decide whether to approve the project on the basis of the screening report. Given the anomalous nature of ski areas within our country's most treasured and highly protected areas, environmental screenings are not sufficient in and of themselves, and proposed developments in these areas deserve the highest level of environmental assessment.

In addition, with proposed amendments to the Comprehensive Study List Regulations under the Canadian Environmental Assessment Act related to ski area developments in national parks, CPAWS SAB is concerned that the public engagement process will be devalued as it would no longer be a legal requirement of the assessment process. 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 lack of public engagement that took place in the process of developing the Site Guidelines for Mt. Norquay, and about further erosion to the public accountability system as proposed by the CEAA amendments. Stakeholder engagement brings value to the process and ensures credibility and public accountability for Parks Canada's decisions with respect to national park management.

CPAWS is already concerned that the rigour of the public review and stakeholder process has declined in recent years. CPAWS SAB has observed that recent processes related to development proposals did not have adequate equal representation from all groups and are becoming increasingly closed, less transparent, and dominated by a few. We encourage Parks Canada to

review its process for public and stakeholder engagement and ensure that it is transparent, rigorous and includes adequate representation from all parties.

## **8. Further development of Mt. Norquay threatens to increase traffic through the Cascade Wildlife Corridor**

CPAWS SAB appreciates Parks Canada's recognition of the importance of the Cascade wildlife corridor to maintain wildlife connectivity. While we support efforts to improve and facilitate animal movement in this area, such as the wildlife trails across the lower slopes of Stoney Squaw Mountain, we have fundamental concerns about tourists needing to cross the Cascade wildlife corridor to access Mt. Norquay, particularly during the summer months when habitat security is an issue. This could have serious impact on the effectiveness of the corridor to address the park's connectivity objectives.

The draft Site Guidelines for Mt. Norquay outlines a plan to increase ski area capacity, including an expanded parking lot and increased summer use. It is highly likely that this potential development in the area would result in a net increase in traffic through the Cascade corridor if it is not regulated effectively. Although mass transit has been suggested as a mitigation tactic to decrease traffic levels on the Norquay road, it will only do so effectively if the road becomes closed to private vehicles. Should mass transit be required and the road closed to private vehicles, traffic up the Norquay could be managed to levels lower than currently observed. This could also provide wildlife using the corridors consistency and predictability in human use, thus affording them opportunities to use the corridor in times without people.

CPAWS SAB believes that this area should not be exposed to any increased traffic due to its sensitive location and should have very prescriptive measures in the park management plan irrespective of Mt. Norquay Site Area Guidelines to ensure this.

## **9. Projected increase in skier numbers is not substantiated**

The 1988 long range plan for Mt. Norquay set the ski area capacity at 2,700 skiers per day. The draft Site Guidelines indicate that Mt. Norquay's current ski area facilities can accommodate 700-2,500 skiers per day, however, Mt. Norquay projects a need for 3,800 skiers per day in the draft Site Guidelines.

CPAWS SAB would like to see evidence that an increase of this magnitude meets consumer demand and is necessary to improve visitor experience in the park.

In a recent media interview, one of the owners of the hill admitted that, "*With only 1,000 skiers now coming each day, expansion in the winter season isn't necessary*" and that "*summer use is really the goal.*"<sup>1</sup>

Given the pressures already facing this area of Banff National Park it seems doubtful that the ecological carrying capacity can absorb this kind of impact. In addition, the site guidelines do not present any evidence that there is demand from Canadians to do more at Norquay, and there is no

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<sup>1</sup> Vancouver Sun, Jan 11, 2011, <http://www.vancouversun.com/travel/Norquay+resort+looks+expand+summer+operations/4106091/story.html?id=4106091>

evidence presented of a justifiable demand for an increase of capacity to accommodate an almost four-fold increase in numbers of skiers per day.

CPAWS SAB is concerned that there will be never ending demands by ski areas to perpetually expand capacity and that Parks Canada needs to set and enforce realistic limits. As climate change continues to become more apparent, the ski industry will need to change. There is a strong possibility that the ski season will shift, the snow base may not be as robust. In estimating any increase in capacity, ski hills ought to consider how climate change will impact the quality of the service they offer and if people will want to ski at greater levels than today. Again, we emphasize the needs to manage the park by accurately projecting cumulative effects and ecological thresholds for areas with robust scientific data; both biological and social data is required to make informed decisions.

#### **10. Restoration of historic vegetation should not justify further development**

CPAWS SAB supports efforts by Parks Canada for fire management to restore a healthy ecosystem in the park. However, we strongly believe that ecosystem restoration should be planned, prioritized and implemented in order to achieve Parks Canada's legal mandate to maintain and restore ecological integrity, and not to justify further development in the Norquay ski area.

#### **11. Water usage needs to be carefully managed and monitored**

CPAWS SAB has concerns over increased demand for water for snowmaking, use of snowmaking agents, reservoirs and cumulative effects of water usage at the Mt. Norquay ski area. Water is the most pressing environmental issue in southern Alberta and we need to ensure proper allocations, monitoring and management both regionally and nationally. CPAWS SAB believes that any additional impacts to aquatic ecosystem health within the National Park (home of the Bow glacier) or developments affecting water use on the Bow River Basin should be consulted on an inter-jurisdictional level as part national park protocol and should be an integral part of any water management strategy for the ski area and park.

#### **12. Environmental education and stewardship should be standard practise in national parks and not justification for commercial development**

CPAWS SAB supports efforts by Parks Canada to enhance environmental stewardship programs and educate both residents and visitors about park values. We believe that these programs should be a cornerstone of all operations currently taking place within national parks, and a standard practise for all businesses located within the park boundaries. Development and expansion of commercial operations should not use this mandate to leverage proposals.

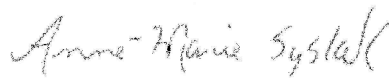
In addition to the above key point, CPAWS SAB also voices concerns about the rigour and enforcement ski areas monitoring, as this needs to contain more prescriptive measures outlined in the Site Guidelines. We also believe that there is a requirement for a decommissioning plan for ski hill infrastructure no longer in use included in the guidelines as a requirement for all ski hills within the National Park. The operator should also be required to post a bond or a letter of credit to provide some level of financial certainty about the eventual decommissioning activities. The estimate of decommissioning costs should be reviewed every five years and the bond or letter of credit amounts adjusted as necessary.



We also believe that a separate operating license should be issued for summer use as distinct from winter use in order to better manage compliance with activities within these two distinct operating periods in the year.

CPAWS SAB feels that substantial changes are required to the draft Site Guidelines for Development and Use of the Mt. Norquay Ski Area to prioritize ecological integrity and bring it into accordance with the *Canada National Parks Act*. Thank you for providing CPAWS SAB this opportunity to comment, and for the continued long-term collaborative relationship that CPAWS SAB has had with Parks Canada. Please contact me (403-232-6686 or [amsyslak@cpaws.org](mailto:amsyslak@cpaws.org)) if you would like to discuss any of these comments in further detail.

Sincerely,



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Executive Director CPAWS SAB

Cc: Alan Latourelle, CEO Parks Canada  
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