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PINNACLE FOOD VENDOR SPECIAL USE PERMIT REISSUE PROJECT

Decision Memo

**USDA Forest Service, Eastern Region
Green Mountain National Forest
Manchester Ranger District
Town of Winhall, Bennington County**

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Pinnacle Food Vendor Special Use Permit Project
USDA Forest Service, Eastern Region, Green Mountain National Forest
Manchester Ranger District
Town of Winhall, Bennington County

I. SUMMARY

As District Ranger for the Manchester Ranger District of Green Mountain National Forest (GMNF), I am authorizing the issuance of a short-term one-year special use permit (SUP) allowing placement of a removable food vendor unit on National Forest System (NFS) lands already under permit with Lodge At Pinnacle View, LLC in the Town of Winhall, Vermont. After this one-year period, if the results are satisfactory to the permittee and the Forest Service, I am also authorizing amending the long-term SUP currently in force to add this additional use. Should the results be unsatisfactory, the food vendor activity would no longer be allowed. No adverse impacts to NFS lands are expected.

II. DECISION TO BE IMPLEMENTED

A. Background and Project Area

Lodge At Pinnacle View, LLC is currently authorized for a number of activities and facilities, including operation and maintenance of a wastewater lagoon, a spray irrigation field, a house (2,080 sq. ft.), a parking lot and driveway, a sign, a feeder snowmobile trail to the Corridor 7, and appropriate landscaping. The permittee is proposing an additional use on NFS lands already under permit, that being to erect a small, movable building and associated signing for cooking and selling hot food year-round in the parking lot of the Pinnacle Lodge on the north side of the junction of State Routes 11 and 30. This will augment the existing outfitter-guide and other commercial activities on the site and the adjoining private land. There will be no increase in the permitted area, and no ground disturbance since the removable structure will be placed on a gravel parking lot.

Should there be no issues and concerns after this one-year trial period, the existing permit will be amended to permanently include this additional use, for the life of the permit term which expires on June 30, 2012.

B. Purpose and Need

The purpose of this action is to allow the permittee to offer food to augment the activities offered by the outfitter guide service under permit at the Lodge At Pinnacle View, LLC, for a one-year trial period. Benefits to the public include an additional source of hot and cold food to people visiting the area and/or participating in the permitted activities conducted by the permittee. The outfitter guide offers a needed service that provides recreational activities to the public; this additional activity should enhance that service.

C. Description of Decision

My decision is to authorize, for a one-year trial period, the placement of a removable food vendor on NFS lands already under permit with the Lodge At Pinnacle View, LLC, and further allow this activity to continue beyond that period should no issues or concerns arise from its operation. Concerns expressed by Forest Service specialists included the size, color, and

accessibility of the removable building, and the availability of restrooms. The building will be colored appropriately to fit into the setting, which already contains buildings and parking areas. Accommodations will be made to provide service to those physically challenged. All mitigations and specifications will be noted in the permit terms and conditions as appropriate.

Documentation of the analysis for this project may be found in the Project Record located at the GMNF Manchester Ranger District Office in Manchester Center, Vermont.

III. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or an environmental assessment when they are within one of the categories found at 36 CFR 220.6(d) and (e), and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

A. Category of Exclusion

Based upon the environmental analysis contained in the Project Record and on experience with similar activities on the GMNF, I have concluded that this decision can be appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment. I have determined that the selected action is a routine activity within the following category of exclusion found at 36 CFR 220.6 (e)(3), “approval, modification, or continuation of minor special uses of NFS lands that require less than five contiguous acres of land.”

B. Extraordinary Circumstances

The list of extraordinary circumstances that were examined for this analysis may be found at 36 CFR 220.6(b). The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effects of a proposed action on these resource conditions that determines whether extraordinary circumstances exist. I have concluded that there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the Project Record.

Placement of a small, removable food service facility on a graveled parking lot will produce no adverse effects. Scoping with resource specialists was conducted on October 27, 2009. A summary of the project’s potential effects on the list of extraordinary circumstances may be found in the Project Record.

IV. PUBLIC INVOLVEMENT

This project was internally scoped with Forest Service staff during Small Projects Day on October 27, 2009. External public involvement included contact with the applicant (permittee). No other public contacts were deemed necessary. Further scoping will occur as part of the monitoring during the one-year trial period and may include listing of the project in the *Green Mountain National Forest Schedule of Proposed Actions* (SOPA), contacts with other food vendors in the area (very limited), and querying customers of the outfitting guide service.

V. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Forest Plan Consistency (National Forest Management Act) – The National Forest Management Act (NFMA) requires the development of long-range land and resource management plans, and that all site-specific project activities be consistent with direction in the plans. The GMNF Land and Resource Management Plan (Forest Plan) was completed and approved in 2006 as required by NFMA. The Forest Plan provides direction for all management activities on the GMNF. The Pinnacle Food Vendor Special Use Permit Project implements the Forest Plan and is within the Diverse Forest Use (MA 3.1) Management Area. MA 3.1 emphasizes a variety of forest uses and a full range of recreation opportunities (GMNF Forest Plan, p. 47). This use and the associated activities are consistent with management area direction and the guideline for non-recreation special uses. Forest Plan standards and guidelines, along with any mitigation developed for this decision, would be applied.

My decision is based on the best available science, including a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk. As required by NFMA Section 1604(i), I find this project to be consistent with the Forest Plan including goals, objectives, desired future conditions, and Forest-wide and Management Area Standards and Guidelines.

Endangered Species Act - The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat. In accordance with Section 7(c) of this Act, a report of the listed and proposed, threatened, or endangered species that may be present in the project area was reviewed. See the Project record.

Clean Water Act – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through Forest Plan Standards and Guidelines, specific project design criteria, and/or mitigation measures to ensure protection of soil and water resources.

Wetlands (Executive Order 11990) - Executive Order 11990 directs the agency to avoid to the extent possible the adverse impacts associated with the destruction or modification of wetlands, and to avoid support of new construction in wetlands wherever there is a practical alternative. There is no impact to wetlands. See the Project record.

Floodplains (Executive Order 11988) - Executive Order 11988 directs the agency to avoid to the extent possible the adverse impacts associated with the occupancy and modification of

floodplains, and to avoid support of floodplain development wherever there is a practical alternative. There is no impact to floodplains. See the Project record.

National Historic Preservation Act - Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. It also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. There is no impact to heritage resources, including those eligible for inclusion in the National Register. See the Project record.

Archaeological Resources Protection Act - The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. There is no impact to heritage resources. See the Project record.

Native American Graves Protection and Repatriation Act - The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items. No ground disturbance is expected from this project, and therefore, no impact to burial sites. See the Project record.

Wild and Scenic Rivers Act - There is no impact to wild and scenic rivers. See the Project record.

Federal Noxious Weed Act of 1974 and Executive Order 11312 (Non-Native Invasive Species) – The Federal Noxious Weed Act requires cooperation with State, local, and other federal agencies in the management and control of non-native invasive species (NNIS); Executive Order (EO) 11312 requires all pertinent federal agencies (subject to budgetary appropriations) to prevent the introduction of NNIS. This decision meets the intent of this law and EO by incorporating all pertinent Forest Plan Standards and Guidelines to ensure the management and control of NNIS.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this order. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

VI. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is not subject to an administrative review or appeal pursuant to 36 CFR 215.

This decision is subject to appeal pursuant to 36 CFR 251 by those who hold or, in certain instances, those who apply for written authorizations of a similar nature to occupy and use National Forest System lands. To appeal this decision under 36 CFR 251, a written Notice of Appeal, meeting the content requirements at 36 CFR 251.90, must be postmarked or received within 45 calendar days after the date of notice of this decision to applicants and holders of

written authorizations of a similar nature to occupy and use National Forest System land. However, when the 45-day filing period would end on a Saturday, Sunday, or Federal Holiday, the filing time is extended to the end of the next Federal working day. The Notice of Appeal must be sent to: USDA, Forest Service, Green Mountain & Finger Lakes National Forests, ATTN: Forest Supervisor, 231 Main Street, Rutland, VT 05701. The Notice of Appeal may alternatively be faxed to: USDA, Green Mountain National Forest, ATTN: Forest Supervisor, 802-747-6766. A copy of the appeal must simultaneously be sent to the District Ranger, Manchester Ranger District, 2538 Depot St., Manchester Center, Vt. 05255; fax to 802-362-1251. If an appeal is filed, I am willing to meet and discuss concerns. Additionally, if an appeal is filed, an oral presentation concerning the appeal (36 CFR 251.97) and/or stay of implementation (36 CFR 251.91) of the decision may be requested at any time prior to closing the appeal record.

VII. IMPLEMENTATION DATE

This decision may be implemented immediately.

VIII. CONTACT PERSON

Further information about this decision can be obtained from Special Use Administrator Dave Bosch during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Green Mountain & Finger Lakes National Forest Supervisor's Office, 231 North Main Street, Rutland, Vermont 05701, phone: (802) 747-6734, Fax (802-747-6766), or e-mail: dbosch@fs.fed.us.

IX. SIGNATURE AND DATE

Alex Sienkiewicz

November 13, 2009

Date: _____

ALEX SIENKIEWICZ
Manchester District Ranger, Green Mountain National Forest
Responsible Official