
File Code: 1570
Date: August 9, 2021

Aaron Brill
Owner, Silverton Mountain Guides LLC
P.O. Box 4012
Palmer, AK 99645

Dear Mr. Brill:

This letter constitutes my decision, pursuant to 36 CFR 214.18, on your April 12, 2021 appeal (Appeal # 21-10-04-0001 A214). You appealed District Ranger Steve Namitz's March 1, 2021 decision regarding the Cordova Ranger District Helicopter Skiing Prospectus (Prospectus). The specific relief you requested in your appeal letter was that "the Forest Supervisor...reverse the Cordova District Ranger's decision (at the recommendation of the Evaluation Panel) to select Pulseline's permit application for further processing and direct the District Ranger to select Silverton Mountain Guide's (SMG) application for further processing within the top three ranked operators, for the reasons explained in [the] appeal" (SMG appeal, p. 6).

Background

On November 30, 2020, the Cordova Ranger District issued a prospectus inviting proposals from parties interested in providing guided helicopter skiing services on the Chugach National Forest's Cordova Ranger District. The Prospectus identified and described selection criteria (Prospectus Attachment 1.3) to be used to evaluate and score proposal applications. A review panel with experience in special use permits and helicopter skiing operations reviewed and rated each application based on selection criteria. Applications were ranked according to the score assigned by the panel. The panel made a recommendation to the Responsible Official who made all selection decisions.

The application process closed on January 19, 2021. On March 1, 2021, the Responsible Official issued his decision selecting three of the seven applicants for further processing. On April 12th, you appealed this decision and requested a stay and an oral presentation. There is an automatic stay on appeals of this nature, and your request for oral presentation was granted. On June 9th, the Responsible Official submitted his Responsive Statement, addressing your appeal points. I granted three parties (Points North Heli-Adventure, Pulseline Adventures, and Valdez Heli-Ski Guides) intervenor status at their request after determining they were eligible and timely to intervene as solicited applicants.

You and the three intervenors were provided the opportunity to respond to the Responsible Official's June 9th Responsive Statement. I received three replies to the Responsible Official's Responsive Statement:

- On June 18, 2021 from Valdez Heli-Ski Guides (intervenor)
- On June 21, 2021 from Silverton Mountain Guides



- On June 21, 2021 from Pulseline Adventures (intervenor)

On Wednesday, June 30th, the oral presentation was held via the Teams virtual platform. In attendance were the Responsible Official, representatives from Silverton Mountain Guides, representation from the three intervenors, and a small number of Forest Service staff. No parties elected to prepare a transcript of the oral presentation, though it was recorded and that recording was shared with all parties to the appeal. SMG and Pulseline submitted summaries of the oral presentation which are included in the appeal record. I closed the appeal record on Thursday, July 1. My appeal decision must be issued within 30 days of the closure of that record. I extended my appeal decision by 7 days.

Appeal Issues

In your appeal you raised three issues, as summarized in the Responsive Statement:

- Appellant states that Pulseline Adventure is not qualified to receive a special use permit for guided helicopter skiing.
- Appellant states that SMG should have scored more points than Pulseline Adventure in the evaluation of selection criteria.
- Appellant states that the Forest Service violated policy to protect public health and safety by selecting Pulseline Adventure's application in the prospectus process.

Review

My review of your appeal was conducted in accordance with the regulations at 36 CFR §214.17 and §214.18. I have reviewed the appeal record which included your appeal, the Responsible Official's responsive statement to your appeal, the three replies to the Responsible Official's responsive statement, as well as other information relevant to your appeal in accordance with §214.17(b). I appreciate the time you and the intervenors took to present at the oral presentation and I considered the points you and the intervenors raised and clarified at that time.

Appeal Decision

After a detailed review of your appeal and the contents of the appeal record and considering the content of the oral presentation, I am affirming the Responsible Official's decision and denying the relief you requested in your appeal. I am basing my decision on all of the information stated above, including contents related to the prospectus process and selection criteria, and the Responsible Official's explanation of the prospectus process in his responsive statement. I find the Responsible Official's decision to be consistent with the requirements of applicable laws, regulations, and policies. Where the Responsible Official exercised discretion related to this action, the discretion was fully within his authority. I find nothing in regulation, policy, or the appeal record that would warrant remanding this decision.

1. The Selection Process Was Sound and Relied on The Forest Service's Considerable Expertise and Experience with Helicopter Skiing and Special Uses.

The selection process was sound. District Ranger Namitz's decision was grounded in the Forest Service's extensive experience assessing which entities are best qualified to provide helicopter

skiing guiding services on the national forests. A four-person evaluation panel evaluated the parties' applications using selection criteria provided in the prospectus. The evaluation panel members were selected for their substantial experience with special use permits, helicopter skiing operations, and other winter sports and outdoor recreation services. Appeal File 0006, p. 10. Additionally, the panel members were screened to ensure their objectivity. Individuals with past experience administering permits relating to the applicants were screened out to ensure the selection process was unbiased. *E.g.*, Appeal File 0054. Moreover, though the panel members initially conducted their evaluations independently, the panel convened twice to review and rank applications in order to make a joint recommendation to the Authorized Officer and also made follow-up calls during this period with state and federal agency permit administration contacts. *See* Appeal File 0006, p. 10.

Based upon my review of the evaluation process and the full appeal record, I am confident that the Forest Service—through the panel's recommendation and District Ranger Namitz's decision—appropriately and reliably applied its expertise and experience with helicopter skiing to select the best qualified applicants, including Pulseline. This appeal largely boils down to a disagreement in judgment between the Forest Service evaluation panel and an unsuccessful permit applicant. In short, District Ranger Namitz's reliance on the evaluation panel was appropriate and I see no reason to reverse his decision.

2. Pulseline Is the "Best Qualified" Applicant Compared to SMG.

a. The Appeal Record Supports the District Ranger's Decision

I find that the appeal record fully supports District Ranger Namitz's decision that Pulseline is the better qualified applicant compared to SMG. In its appeal, SMG largely argued that because Pulseline had "never held" a heli-skiing permit that it did not have the relevant experience to be a permitted heli-ski operator, much less best qualified. *E.g.*, SMG Appeal, p. 2, 27. However, the Prospectus did not require applicants to be current or previous heli-ski permit holders. Further, the relevant experience for a corporate entity is that of its owner(s), guides, operational staff, and the entity's operational policies and procedures. Though Pulseline does not currently hold a heli-ski permit, its application and the appeal record demonstrate that its owner, guides, and staff have direct and extensive experience in heli-skiing operations, guiding and managing permits, including in the Chugach National Forest. *E.g.*, Appeal File Doc. 0049, Attachment 1.2 at 4, 10-13 (documenting extensive experience in the Chugach); Appeal File 186 at 4-5 (same); Appeal File 0049, Attachment 1.2 at 14 (documenting staff experience managing heli-ski permits with the Forest Service, BLM, and the State of Alaska); Appeal File 0181 at 6-9 ("Pulseline has significant heli-skiing experience and it showed in their application."); Appeal File 109 (Gabe Monroe and Geoff Perusse "are experienced and know the area, the terrain, ski conditions, etc. which is really important."); Appeal File 0049, Attachment 1.5 (reference letters describing Pulseline and Mr. Monroe's professionalism and experience in the permit area). Moreover, Pulseline and its guides likely have more experience guiding in the proposed use areas than SMG or any other applicants. *E.g.*, Appeal File 0049, Jay Quinlan letter (Pulseline has "the most experience guiding" in the proposed use areas); Appeal File 0049 at 4 (same).

Moreover, for the reasons above as well as for the reasons given in the District Ranger's Responsive Statement, I find that the scores the panel assigned to SMG and Pulseline for the

criteria relating to heli-skiing experience and permit management are fully supported.¹ Here, I note that the evaluation panel generally scored SMG somewhat higher on these specific criteria.²

Though SMG contends that the District Ranger's decision was faulty because it assumed that Pulseline would perform in accordance with its application, Appeal File 0185 at 6, this argument overlooks the fact that Pulseline's operations and safety plan is based on the substantial experience of Pulseline's staff. Appeal File 0186 at 5. Given the extensive experience of Pulseline's owner and guides, as well as the thoughtful and comprehensive manner in which they applied this experience to their operational and safety procedures, I find that it was perfectly reasonable for the panel to rely on the information in Pulseline's application. The Forest Service is generally entitled to rely on written submissions for special use permits. The Prospectus itself provides that the agency can select the successful applicants based solely on the initial application. Appeal File 0006, p. 13. It is also unlawful to make materially false or fictitious statements or representations to federal agencies. 18 U.S.C. § 1001.

b. Pulseline Is "Best Qualified" Because Its Application Was Substantially Stronger for Criteria Concerning Resource Protection and Client Opportunity and Feedback.

Though SMG scored slightly higher on the criteria relating to helicopter skiing experience, the Prospectus also included criteria for resource stewardship, reasonable access, and other practices to ensure that the selected operator would offer high quality services. Appeal File 0006, Attachment 1.3, p.24-27. Pulseline is best qualified because its application was objectively superior on each of these criteria, resulting in a significantly higher overall score than SMG. *See* Appeal File 0114. These scores are largely based on Pulseline providing a thorough and complete description about how it plans to operate under the new permit. By contrast, SMG's application lacked detail, even though the Prospectus explicitly warned that not providing adequate information for each of the selection criteria would result in a lower rating. Appeal File 0006, p. 10 ("stating that "[f]ailure to provide adequate information . . . will result in a lower rating").

The evaluation panel scored Pulseline higher for the criteria relating to equal opportunity (W-4), leave no trace practices (R-1), resource stewardship (R-2), and client feedback systems (C-1). During this appeal, I have reviewed the application materials, as well as the parties' briefing, and I find that Pulseline's application was clearly superior to SMG's for selection criteria C-1, W-4, R-1, and R-2, as shown in the comparison chart below. Further, my review of SMG's Appeal shows that they did not challenge these particular criteria. SMG Appeal, p. 25-34 (not mentioning criteria C-1, W-4, R-1, or R-2). Accordingly, I find that SMG's appeal did not offer any valid basis for determining that Pulseline should have received a lower score for these criteria. *See* SMG Appeal, p. 25-32.

¹ That is, selection criteria B-1 (heli-skiing experience), W-1 (working relationship with regulatory agencies), O-1 (permit compliance), O-2 (performance history), and O-3 (operating in shared use areas).

² The panel's scoring is available in Appeal File 0114 and 0115.

Category	Criteria	SMG	Pulseline
C-1	Client feedback system	Only has procedures for encountering irate guests. Verbal, email, and social media feedback. Appeal File 0007 at p. 19-20 of 56.	Multiple level feedback system in place; seeks guest feedback; has method of sharing feedback directly with owner. Appeal File 0049, Att. 1.2 at p. 16.
W-4	Equal Opportunity	EO policy is supposedly in employee handbook, but not submitted in application, Appeal File 007 at p. 14 of 56; only mentions special needs as part of interview process. <i>Id.</i> at p. 20 of 56.	States that reasonable accommodations will be made and has eligibility criteria. Appeal File 0049, Att. 1.3 at p. 9. Annual staff training on EO/nondiscrimination policy. <i>Id.</i> ; Appeal File 0049, Att. 1.2, p. 78. EO/non-discrimination policy included in employee handbook. Appeal File 0049, Emp. Hand. Sel., p. 31 (internal pagination).
R-1	Leave no trace	Only states that guests will be briefed and trash removed. Appeal File 0007, p. 22 of 56.	Robust LNT policy in employee handbook, Appeal File 0049, Employee Handbook, Appendix B. Addressed in operations plan too. <i>Id.</i> at Att. 1.2, p. 34-35.
R-2	Role in advancing resource stewardship	Glacier topography and ecology are typically discussed during lunch. Appeal File 0007, p. 22 of 56.	Shows commitment to stewardship. Appeal File 0049, Att. 1.3, p. 12. Willingness to work with USFS on stewardship; trains employees on natural history of Prince William Sound, Chugach Mountains, and local culture/history. Appeal File 0049, Att. 1.2, p. 36.

c. Pulseline Is “Best Qualified” Because Their Application Materials for Safety, Client Preparation, Medical Training, and Employee Licensing Were Higher Quality and More Comprehensive Than SMG’s.

Much of SMG’s appeal relating to safety was grounded on their past record. However, the applicants’ past experience, including safety, was largely evaluated under criteria B-1 (experience performing guided heli-skiing), W-1 (working relationship with regulatory agencies), O-1 (permit compliance), and O-2 (performance history). By contrast, the selection criteria relating to safety, client preparation, medical training, and licensing all primarily concern

the applicant's *current or planned* policies and procedures, not their previous record.³ In other words, these criteria were intended to evaluate the quality of the applicant's operational plans, procedures, and materials for the new permit. Because Pulseline's application was substantially more detailed and comprehensive than SMG's for these criteria, I find that the panel's ratings are fully supported.

For example, SMG's safety plan was very brief and didn't elaborate on many procedures. Though it discusses avalanche rescues and helicopter failure, it doesn't have checklists and the communications plan is inadequate. Appeal File 0007, Appendix A at 2-9. By comparison, Pulseline's safety plan is extensive and thorough. It is more detailed, has a better communications plan, and describes a holistic approach to risk management *E.g.*, Appeal File 0049, Att. 1.2 at 37-54.

Similarly, Pulseline's application is more extensive for criteria C-2 (client preparation and education) and C-3 (client safety orientation). For these criteria, SMG provided only a brief and vague statement that it will screen guests and states that there will be a safety briefing covering snow safety, heli-skiing safety, and the use of rescue beacons, probes, and shovels; their safety appendix contains the basic points for the safety brief. Appeal File 0007 at p. 20-22, 37 of 56. By comparison, Pulseline's plan for client preparation is significantly more thorough: they give a short list of client expectations, visual presentation, discussion, and demonstrations. Appeal File 0049, Att. 1.2 at 61-65. Further, Pulseline's extensive safety orientation is well described in their operations plan, *id.* at 51-52, and I appreciate that it includes on-snow practice with an avalanche transceiver search, probing, and shoveling, instead of simply a briefing. *Id.* at 52.

For employee licenses, certifications, and training, including medical emergency training (W-2, W-3), I find that the record supports the panel assigning higher scores to Pulseline. As to medical emergency training, both applicants appear to be up to industry standard. However, the fact that Pulseline has two physician assistants on staff, including one who is a practicing emergency room PA; a good tracking program; and strong support for staff training (they often pay for 50% of new training outside of mandatory certifications), justifies Pulseline's higher score. Appeal File 0007, p. 32 of 56; Appeal File 0049, Att. 1.2, p. 14-15, 42-43. Moreover, I also find the panel's scoring indicating that Pulseline has a better system for tracking employee licensure, certifications, and training to be fully supported. *Compare* Appeal File 0007, p. 15 of 56 *with* Appeal File 0049, Att. 1.2, p. 14-15; *id.*, Employee Handbook, p. 14, § 6.

d. SMG's Arguments About Its Guide Ratio, Guide Testing, And Helicopter Are Not A Good Reason to Reverse the District Ranger's Decision.

Concerning safety, I have considered SMG's contention that its 4:2 client-to-guide ratio, guide training program, and choice of helicopters create additional safety margins that should be considered in the scoring. SMG Appeal, 10-11, 28-29. However, this information is not new and was factored into the evaluation panel's scoring because it was in SMG's application.

³ That is, selection criteria B-2 (company safety policy), C-2 (client preparation), C-3 (client safety orientation); W-3 (medical emergency training), and W-2 (employee licenses, certifications and training).

Appeal File 0007, p. 12, 14, 20, 22 of 56. Even considering this information by itself, I do not find that it justifies reversing District Ranger Namitz's decision.

To start, it is unclear if a 4:2 client-to-guide ratio actually results in substantially greater safety margins. SMG offers little more support for this than its assertion that having two guides "substantial[ly] increase[s]" the safety margin. SMG Appeal, p. 29. Given the variety of potential risks in heli-skiing, some of which may not be dramatically reduced by the presence of an additional guide, I do not find that SMG's argument about guide ratio is a reason to change the panel's scores. *See, e.g.*, Bruce Tremper, *Avalanche Essentials: A Step-by-Step System for Safety and Survival* (2013), 14 (observing that one out of four avalanche fatalities in the U.S. and Canada results from hitting trees and rocks on the way down). Moreover, even if having two guides did result in additional safety margins, SMG's own website suggests that it may choose to ski more hazardous terrain when more than one guide is present.⁴ Thus, having more guides on a trip may not necessarily equate to less risk. SMG's application also indicates that they sometimes conduct trips with a client-to-guide ratio of 4:1 or even 5:1, which also undercuts their argument about a low client-to-guide ratio resulting in greater safety. Appeal File 0007, p. 22 of 56.

As to SMG's assertions concerning its guide testing (SMG Appeal, p. 10, 28-29; Appeal File 0005, ¶ 9), the record shows that Pulseline and SMG's guide training programs are similar in length and cover many of the same topics. Appeal File 007, p. 14 of 56 (SMG: indicating that guide training lasts 3-4 days and about 30 hours); Appeal File 0049, Att. 1.2, p. 14 (Pulseline: annual guide training is 3-4 days). While SMG asserts that its training is unique due to the guide testing, its Operating Plan appears to show that this testing is limited to written examinations concerning Standard Operating Procedures and the Employee Handbook.⁵ Appeal File 0007, p. 14. The rigor of these exams is unknown as they were not included in the application. In short, I find that SMG's inclusion of one or more written examinations is not a reason for changing the panel's scoring. This is especially true as Pulseline implements training of similar rigor and appears to have other means of attracting and retaining well qualified guides (*e.g.*, through above market pay and profit sharing). Appeal File 0049, Att. 1.2, p. 14, ¶ 3b (noting higher than typical compensation and profit-sharing plan for guides).

Finally, I do not find that SMG's helicopter selection will result in sufficiently greater safety margins such as to warrant changing the panel's scoring. Both applicants intend to use models of the Airbus AS 350 B3 helicopter. SMG Appeal, p. 11; Appeal File 0049, Att. 1.2, p. 80-81 (Pathfinder Letter). While Mr. Brill's affidavit suggests that SMG is one of the only operators in Alaska that uses helicopters specially outfitted for heli-skiing, he does not appear to have personal knowledge about Pulseline's helicopter(s). Thus, it is somewhat unclear whether SMG will actually be operating a lighter, more powerful helicopter. Even assuming that SMG's

⁴ <http://silvertontmountainguides.com/alaska-experience/guides/> ("It opens up a whole new realm of run choices that your guide may not have considered if they were out in the field without the second guide.")

⁵ The reference to the "written exam on Operational and Safety Procedures" appears to reference the exams on the Standard Operating Procedures and Employee Handbook that SMG conducts during Day 1 of employee training. Appeal File 0007, p. 14 of 56.

helicopter is better, it is also unclear whether such a helicopter would meaningfully increase safety margins. Other factors may cause helicopter accidents in Alaska (*e.g.*, poor weather, flat light, pilot error, etc.) and SMG has not pointed to any actual evidence that their particular helicopter model is linked to a lower rate of heli-skiing accidents or that other models are demonstrably less safe. Rather, they offer only their own assertions of additional safety. *See* Appeal File 0005, ¶¶ 12-13. In any event, SMG's own operating plan also expressly concedes that SMG may also use other helicopter models, which sheds considerable doubt on the importance of operating with a particular model. Appeal File 0007, p. 20 of 56.

e. SMG And Pulseline Offer Similar Levels of Community Benefit.

I find the panel's evaluation that SMG and Pulseline would provide similar levels of community benefit to be fully supported. Appeal File 0115. SMG's application indicates that customers in the Valdez/Cordova area will find lodging, retail, and food opportunities in the community and may frequent other local area businesses on off days. Appeal File 0007, p. 24 of 56. SMG also offers some educational programs and has a history of offering discounts to local schoolkids. *Id.* Pulseline's application appears to offer similar local benefits. They plan to hire several local Alaskans as guides and indicate that their clients will stay in local lodging, visit local restaurants, plan to incorporate fishing as a down-day activity, and hope to partner with the community to educate their clients on local and natural history. Appeal File 0049, Att. 1.2, p. 12 ¶ L-1. These local benefits are roughly equivalent, particularly because of criteria L-1 focuses on contributions to the local economy through generating jobs and income. Appeal File 0115.

Additionally, I find that SMG is not entitled to any ANILCA preference for the reasons in the Responsible Official's Responsive Statement. Appeal File 0181, p. 13.

3. The Negative Information That SMG Raised in The Appeal Is Not A Valid Reason to Find Pulseline Not "Best Qualified".

I have reviewed the new information that SMG raised in its appeal and do not find that it is a reason to either reduce Pulseline's score or to otherwise reverse District Ranger Namitz's decision.

a. The Death of Pulseline's Founder in An Avalanche While Guiding for Another Company Is Not a Valid Reason to Reduce Pulseline's Score.

SMG's appeal raises the 2014 death of Pulseline's founder, Aaron Karitis, in an avalanche as a reason why SMG is better qualified than Pulseline. SMG Appeal, p. 28-29. This information was not before the panel. However, after reviewing the materials from SMG's brief, I do not find that this accident justifies reducing Pulseline's score because it was not closely linked to Pulseline or to its current owner and guides. Rather, the accident occurred while Mr. Karitis was guiding for Southeast Alaska Backcountry Adventures (SEABA).⁶ SEABA is a separate company from Pulseline. Moreover, SMG has not offered any evidence that Pulseline was

⁶SMG Appeal, p. 17, fn. 5 (relying on: <https://www.powder.com/stories/ak-heli-guide-critical-condition-avalanche/>).

involved with the heli-skiing trip where the accident occurred or that Mr. Monroe or any of Pulseline's current employees were involved. In short, Mr. Karitis' unfortunate death is not sufficiently linked to Pulseline to justify reducing its score.

Though external information about SMG and Mr. Brill's safety record was not included in the application materials, such information is clearly relevant after SMG raised the issue. SMG itself does not have any recorded fatalities associated with its heli-skiing. But one of Mr. Brill's other companies, Silverton Mountain Ski Area ("SMSA"), has had a client fatality while offering guided skiing in avalanche terrain. While on a guided ski tour offered through SMSA in 2012, a client fell and died after sliding about 1,500 feet down the mountain.⁷ While SMSA is a separate entity from SMG, Mr. Brill owns both companies and cites his experience through SMSA as part of his qualifications. *See* Appeal File 0005 at ¶¶ 18-19. Further, unlike the accident involving Mr. Karitis, SMSA and SMG are closely linked beyond just common ownership.⁸ SMSA's website specifically advertises SMG's heliskiing services in Alaska and SMG's website expressly refers to skiing opportunities at SMSA, including heli-skiing.⁹ Though the 2012 SMSA fatality involved a guided ski trip in avalanche terrain, I do not find that this is a reason to reduce SMG's score. *See* Appeal File 0005 at ¶ 18 (noting that all of SMSA is avalanche terrain). It is unclear if the guide for that particular incident was affiliated with SMG. Further, both SMG and Mr. Brill's other entities otherwise appear to have an excellent safety record. Nevertheless, the fact that one of Mr. Brill's companies has had a fatality while offering guided skiing in avalanche terrain undercuts SMG's argument about the death of Pulseline's founder in an avalanche.

b. SMG's Allegations About Pulseline's Alleged Non-Compliance with Various Laws or Requirements Is Not A Valid Reason to Reverse the Responsible Official's Decision.

SMG contends that Pulseline should have received lower scores under selection criteria W-1 (working relationship with regulatory agencies) or O-1 (permit compliance) because of alleged noncompliance with various laws and requirements. I do not find that any of these allegations justify reducing Pulseline's score.

The Prospectus did not require that applicants comply with applicable federal, state, and local laws and regulations until after award confirmation. Appeal File 0181, p. 4. Pulseline's application met the requirements of a complete proposal package. *Id.* Moreover, the applicants

⁷ <https://www.denverpost.com/2012/01/15/skier-dies-after-falling-sliding-at-silverton/>;
<https://www.onthesnow.com/news/a/105807/woman-skier-dies-following-fall-at-colorado-s-silverton-mountain>

⁸ Mr. Brill's affidavit notes that additionally information about SMG and its helicopter skiing operations is available at silvertonmountainguides.com. Appeal File 0005, p.1 ¶ 1. This website expressly references the helicopter skiing opportunities and expert terrain available at Silverton Mountain Ski Area and contains links to SMSA's website. *See* silvertonmountainguides.com/Alaska-locations/silverton-colorado/

⁹ *Id.*; *see also* <https://silvertonmountain.com/experience/alaska-heli-skiing/>

were not required to hold a state business license when they applied; nor were applicants required to incur expenses for liability or workers compensation insurance prior to being selected. *Id.* In fact, Forest Service policy directs the agency to exercise care not to require applicants to incur unnecessary expenses. Appeal File 0181, p. 4. I have also considered that after being selected, Pulseline has obtained the necessary worker's compensation insurance, is an active corporation, and has a State of Alaska business license. Appeal File 0186, p. 4, n.1; Appeal File 0181, p. 3-5. Further, while SMG suggests that Pulseline may not have complied with state law requiring it to maintain worker's compensation on heli-skiing trips that it advertised in Alaska during 2021, it is not clear from the record whether any such violation occurred. SMG Appeal, p. 30; *see also* Appeal File 0049, Att. 1.2, p. 3 (noting that Pulseline operated as a small guide operation in partnership with other existing operators). Given this, I find that these allegations do not justify reducing Pulseline's score or that any reduction would be de minimis.

For the Alaska Department of Natural Resources commercial day use registration program, SMG is correct that Pulseline apparently failed to register its commercial day use. SMG Appeal, p. 15. However, the State of Alaska has acknowledged that the roll out of the program was not made explicit for potentially affected businesses. As a result, the State was following up with many businesses to educate about the program and obtain compliance with registration and fee payment. The panel took this feedback into account and did not reduce applicant scores for noncompliance. Appeal File 0181, p. 4-5. Moreover, the record suggests that SMG was also not fully compliant with the day use program. Appeal File 0110, p. 4-5. Like Pulseline, SMG's score was not reduced on this basis.

As to the now-released federal tax lien against Pulseline's owner, the lien against Mr. Monroe was apparently due to an IRS error and was released without liability. Appeal File 0186, p. 4, n.1; SMG Appeal, p. 18 (indicating that the federal tax lien was released four months before Pulseline's application). Because Mr. Monroe is not currently in arrears on his federal taxes, and because the tax lien was evidently due to an IRS error, I do not find that it justifies reducing Pulseline's score. In any event, Mr. Monroe does not have any existing tax debt and the federal regulations governing special uses do not prohibit applicants with a history of delinquent taxes from being awarded a permit. *See generally* 36 CFR Part 251.

Finally, I have also considered information about SMG's own performance. Though the panel gave SMG a perfect score on performance history (O-2) and working with regulatory agencies (W-1), and a near perfect score on permit compliance (O-1), information in the record raises questions about SMG's compliance with state law and/or permit requirements. For example, during reference checks an Alaska Department of Natural Resources employee indicated he would be "very cautious" about SMG and raised concerns about SMG storing fuel on state lands without a permit. Appeal File 0110, p. 3-4. Further, a permit administrator for the Forest Service expressed concerns that SMG might be manipulating the system and mentioned a possible permit violation. *Id.* at p. 4. While the record is hazy about SMG violating state law or its permits, and while I do not find that this information is grounds for reducing SMG's scores, compliance problems may be indicated since more than one reference expressed concerns.

c. Mr. Monroe's Misdemeanor Convictions from Over a Decade Ago Are Not a Reason to Reduce Pulseline's Score.

I have reviewed the materials from SMG's appeal relating to Mr. Monroe's criminal history and do not find that they justify reducing Pulseline's score. The Forest Service does not have a policy of denying special use authorizations because of an applicant's criminal record. Moreover, the primary focus of the selection criteria concerns Mr. Monroe's qualifications as heli-ski guide and operator. Because the record as a whole demonstrates that Mr. Monroe has an excellent safety record, a history of professionalism, substantial experience in the permit area, and good judgment as a heli-ski guide, I find that this more than outweighs any history of misdemeanor convictions. *See generally* Appeal File 0181, p. 6; Appeal File 0049 (attached reference letters). Moreover, I give little weight to the misdemeanor convictions for disturbing the peace as they are from 13 and 14 years ago and do not directly relate to heli-skiing or public lands. *See* SMG Appeal, p. 17. Similarly, I give little weight to incidents where Mr. Monroe was not convicted of misdemeanor charges or to other unidentified "criminal infractions." *Id.* at p. 17-18.

4. Pulseline Is Qualified to Hold a Special Use Permit for Heli-Skiing in the Chugach National Forest.

At a very general level, I find that Pulseline is qualified to hold a special use permit for the reasons proffered in the Responsible Official's Responsive Statement, as well as for the reasons discussed above. *See* Appeal File 0181, p. 3-6. Pulseline's application met the requirements and goals of the prospectus. Additionally, through its extensive and well thought out operating plan, Pulseline clearly demonstrated that it has the necessary capabilities, skills, experience, and technical know-how to provide high quality and safe heli-skiing services in the Chugach National Forest. I am confident that they will do so while promoting an understanding and appreciation of the national forests and minimizing impacts to other resources and forest users. In short, they are more than qualified.

Moreover, for the reasons stated in Part III.c, *supra*, I find that Mr. Monroe's history of misdemeanor convictions is not a valid basis for finding him unqualified to hold a special use permit. *See also* Appeal File 0181, p. 5-6.

5. The Forest Service's Selection of Pulseline For Further Processing Does Not Violate Its Regulatory Duty to Protect Public Health and Safety.

I find that selecting Pulseline's application for further processing is entirely consistent with protecting public health and safety. For the reasons discussed in Parts 1 through 4, *supra*, and for the reasons in the Responsible Official's Responsive Statement, I find that Pulseline is capable of running a safe heli-skiing operation in the Chugach National Forest. Appeal File 0181, p. 10. The record also refutes SMG's assertion that Pulseline lacks experience in

implementing a safety plan.¹⁰ To the extent that experience implementing a safety plan may be required, Mr. Monroe's nine years of experience as a lead guide in the Chugach National Forest is more than sufficient to meet this. Appeal File 0049, Att. 1.2, p. 10-11. Taken together with the deep experience of Pulseline's staff, *id.* at 10-13, their extensive experience guiding in the proposed use areas, and their application of this knowledge in a thoughtful and extensive operations plan, this is more than adequate to show that Pulseline is capable of conducting safe operations. *See* Appeal File 0049, Att. 1.2.

Though the Prospectus did not require that an applicant have an established safety record or that they have previously held a special use permit, I nevertheless find that SMG's assertion that Pulseline has no established safety record to be unsupported. Pulseline's application makes clear that they have operated as a small guide operation in conjunction with other existing operators. *Id.* at 3. They also state that their guides all have excellent safety records and that Pulseline has only ever had minor injuries and zero fatalities while guiding. Appeal File 0049, Att. 1.3, p. 5. SMG has not presented any information that would squarely refute Pulseline's assertion of its excellent safety record.

Finally, Pulseline's application materials, as well as Mr. Perusse's statements at the oral presentation, leave me convinced that Pulseline (and its staff) possess the technical skills and experience necessary to conduct safe heli-skiing operations. Even standing alone, this is sufficient to support my finding that selecting Pulseline for further processing is consistent with public health and safety. However, my determination is also supported by other information. For example, Pulseline obviously put serious thought and effort into their operations and safety plan. Their plan is extensive, highly detailed, and shows that they take safety seriously and have the technical know-how to operate safely. It is also substantially better than SMG's safety plan, which seemed brief and lacked detail. Thus, when considered with the strong letters of recommendation submitted on behalf of Pulseline and Mr. Monroe, I am convinced that Pulseline will be a safe and prudent heli-skiing operator on the Chugach National Forest.

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In accordance with 36 CFR §219.7(b) and §219.19, this decision is subject to discretionary review by the Regional Forester who is the Discretionary Reviewing Officer. Within one day of this decision, I will send a copy of the appeal decision, appeal and appealable decision to the Discretionary Reviewing Officer to determine whether or not a discretionary review will be conducted. The Discretionary Reviewing Officer has 30 days to determine whether or not to conduct a discretionary review, then 30 days to conduct the discretionary review, should he choose to do so. If the Discretionary Reviewing Officer takes no action within 30 days of receipt of the appeal decision, appeal, and appealable decision, my decision shall constitute USDA's final administrative decision. If a discretionary review is conducted, the Discretionary Reviewing Officer's decision shall constitute USDA's final administrative decision. If a discretionary review decision is not issued within 30 days following the notification of the

¹⁰ I note that the selection criteria did not squarely require that a company have experience implementing a safety plan. Rather, the criteria concerning safety primarily evaluated the company safety policy (B-2), client preparation and education (C-2) and the client safety orientation (C-3).

decision to conduct discretionary review, my appeal decision shall constitute USDA's final administrative decision.

If you have any questions or concerns, please contact Kori Marchowsky, Chugach National Forest Environmental Coordinator, at kori.marchowsky@usda.gov .

Sincerely,

JEFF SCHRAMM
Forest Supervisor

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