

NOTICE OF APPEAL  
FEB. 23, 2012 Delich Land Exchange

From: PARTNERS IN FORESTRY COOPERATIVE  
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NOTICE OF APPEAL  
Decision Notice and Finding of No Significant Impact (DN/FONSI)  
DELICH LAND EXCHANGE Project Ottawa National Forest  
Posted in Ironwood Daily Globe Jan. 12, 2012

Herein we appeal the Decision Notice and Finding of No Significant Impact Ottawa National Forest (DN/FONSI) Delich Land Exchange Project dated December 28, 2011.

This notice of appeal is submitted pursuant to 36 CFR 215. The decision appealed is documented in a Decision Notice signed on December 28, 2011 by Anthony Scardina, Forest Supervisor. The legal notice was published on Jan. 12, 2012. The project area is the Ottawa National Forest in the Upper Peninsula of Michigan.

This appeal is made by an individual, in his own right and as a representative of the Partners in Forestry Cooperative (PIF) in exactly the same manner as the comments they previously filed. A similar appeal was filed by these same parties to an earlier decision involving a Delich Land Exchange, which then necessitated this revised EA and ultimately resulted in this regrettable DN/FONSI.

Appellant PIF is a grassroots membership coalition of individuals and forest product based businesses with an interest in the health and well being of forests in the Northwoods and the Upper Peninsula. Members have continued to express concern to our directors regarding the Delich Land Exchange project. PIF maintains an office at 6063 Baker Lake Road, Conover, WI 54519. PIF has members including, but not limited to, appellant Joe Hovel, who use and enjoy the Ottawa National Forest and who will be unfairly harmed by the decision at hand. PIF's board of directors has agreed unanimously to file this appeal. Four of our members also have commented individually, pleading that this action be denied, as have more than 30 other individuals and/or organizations.

Anthony Scardina is Forest Supervisor of the Ottawa National Forest (ONF). Supervisor Scardina has an office at Ironwood, Michigan, the headquarters of the ONF.

Partners in Forestry takes public land exchanges very seriously and strongly believes that this decision notice is not in the public interest. As we stated in our January 2010 comments, our following appeal, and in our comments of October, 2011, PIF has no objection to a Forest Service acquisition of the Delich parcel; however, in this case the FS is trading away parcels whose substantial public interest is far superior to any public interest existing in the Delich parcel. Although, by appraisal, monetary values were considered in regard to this proposed exchange because of the larger acreage of the Delich parcel, the intrinsic values lost in this proposal are too extensive to ignore. We have studied the public comments that are overwhelmingly against this exchange. These comments are relevant to the DN/FONSI because FS parcels for which the public had no objection to trading were eliminated from this current proposed exchange. There is no rational for trading parcels for which there is significant opposition and removing parcels from the exchange for which no objection was registered. No rational explanation, that is, except to pander to the proponent of this exchange, who appears to be trying to pass off a poorly managed parcel for parcels with extensive public values.

### **SPECIFIC POINTS OF CONCERN AND OBJECTION TO THE DN/FONSI DATED DEC. 28, 2011**

#### **Purpose and Need**

The Purpose and Need (P&N) for the Delich exchange is seriously flawed and inadequate.

This P&N ignores the ecological integrity of the ONF and centers only on "efficient land management" and "lower resource management cost." We feel strongly that the integrity of the ecosystems on the ONF must be of the highest priority in the P&N.

We argue that the costs to maintain the parcels near County Line Lake in reality are very low. Except for occasional line marking, the costs are quite low with no active management. These are the same parcels that exhibit old growth and Wildcat Falls, and it is about those rare and important features with which most of the public comments were concerned. In turn, even if these parcels were to experience forest management, their proximity and conditions would be more favorable to management than the Delich parcel.

FS also mentions the exchange would "reduce the risk of encroachments or trespass." With no recorded history of trespass or encroachments on these parcels, it is unreasonable to mention this point as a reason for the exchange.

The P&N states that this project would “protect ... a large, contiguous expanse of land from conversion to other uses.” This statement is both ironic and unfortunate as the risk of a new owner subdividing for sale the 421-acre Delich parcel is extremely low. This parcel has no adequate winter access, is very remote, lacks utilities, and provides an unappealing forest cover to new owners. The Ontonagon clay in these soils makes timber harvesting difficult in wet seasons and does not lend itself to waste disposal from any development with camps or cabins.

Compare the Delich tract with the Wildcat Falls area tracts which are on sandy loam and loamy sand soils and provide better summer, fall and winter timber harvesting, if that route was ever necessary. They are also more favorable to other management opportunities, not as isolated and there is a groundswell of public interest in them. We argue that the Delich tract is not at risk of parcelization. On the flip side, this exchange PROMOTES subdividing of the parcels near County Line Lake. Mr. Delich has stated as much. Rather than protecting the land from fragmentation, this project will assure forest fragmentation occurs.

The P&N states the exchange would “result in increased recreational opportunities,” particularly for dispersed recreation. We reject this reasoning. In reality, the parcels the ONF proposes to exchange have recreational opportunities that far exceed those of the Delich parcel. The amenities provided by the County Line Lake area parcels offer old growth characteristics and important stream frontage with a public treasure in Wildcat Falls. The proximity of these parcels to a higher population area, closer to Watersmeet and Hwy. 45, makes them much more accessible to the public. The Delich parcel, although close to the Porcupine Mountain Park, cannot compete with the park's appeal to hikers and recreationists because of its poor condition.

We are puzzled by the goals stated in the Strategic Plan, and attempt to look at those individually.

In regards to more (Goals 2 & 4) efficient timber management based on legal access: The Delich exchange may reduce the need for boundary line running expense, with timber sales being the most probable project need. But, when one compares the sales potential, there will not be sales opportunity on at least 350 of the 421 acres of the Delich tract for another 40 years for primarily pulp or fuel products and up to 80 or more years for quality sawlogs. In contrast parcels 1,2,3,4,& 7 could provide a variety of wood products now, or in the future, in event a national need were to occur, and if the ‘old growth’ label were not to be implemented. The DN/FONSI has this wrong, misleading at best.

On goal for more ‘public use’ being a reason for acquiring the Delich tract (more 6.1); this has already been debunked by the over 100,000 acres of 6.1 type state and Forest Service land already around the tract and with no data to show increased need. We are very fond of the 6.1 areas, however the Wildcat Falls area tracts are important to the public and we see strong public concern over losing it. Recreation attention in the DN/FONSI is focused on the wrong tract. The DN/FONSI claim the exchange serves public recreation use is just plain false.

On ‘protect’ an otherwise large, contiguous expanse of land from conversion to other uses (Goal 3). We have no particular objection to acquiring the Delich tract by some direct purchase arrangement or even a less sensitive exchange of other Forest Service lands. However, Forest Service Supervisor Anthony Scardina makes a very weak case for taking the land off the private tax rolls by acquiring it for any of these reasons, including a buffer for the North Country Trail. The Delich tract's limitations to private development have already been discussed. We have no understanding of how the ONF can warrant the time, energy, expense and manpower expended for this type of exchange. The DN/FONSI claim this ‘PROTECTS’, is weak at best. We understand the shortage of Land and Water Conservation Funds to achieve all acquisition goals, but I do note the process is not dead as is evidenced with the Prickett area.

On consolidating National Forest System Lands within a Semi-Primitive Non Motorized (SPNM) Management Area (Goal 4): In what we can find the ONF 2006 Forest Plan, page 3-57, does not present a need, case, suggest or urge the additional acquisition of 6.1 lands as a ‘goal’ in itself. An acquisition may include 6.1 lands based on more determination of need than presented in this Revised EA. The DN/FONSI is misleading in suggesting additional 6.1, in itself, is a GOAL. We appreciate the 6.1 areas immensely, but not at the expense of valuable features as in the Wildcat Falls area tracts.

### **Failure to analyze other alternatives**

***The rationale in the Decision for not fully analyzing an alternative which drops the parcels along County Line Lake Road (Fed parcels 1,2,3) from the exchange is not only inadequate but troubling, as well.*** We disagree with the rationale in the Decision for not further exploring other alternatives. It is troubling that an alternative which could have eliminated Federal parcels 1, 2 and 3 near County Line Lake was not analyzed thoroughly. The rationale states that the “estates of consideration are identified early in the process,” implying there can be no changes to the proposal once that happens. By this statement, the FS is stating that land exchanges will only have two alternatives: the proposed action and no action. This does not meet the NEPA requirement to provide a “reasonable range” of alternatives in an Environmental Analysis. Furthermore, to our knowledge, the ONF has NEVER selected a No Action alternative in a land exchange. (If we are wrong, please identify the case.) Therefore, the EA not only lacks a reasonable range of alternatives but also permits only ONE alternative that the FS truly considered for selection - the proposed action. This means that the entire EA process was a sham, based entirely on a foregone conclusion, and as such is a direct violation of NEPA since there was never any doubt that the proposed action would be selected regardless of public comment or any other findings.

Our earlier appeal of March 2011 continues to be relevant and remains inadequately answered in this most recent DN and in the revised EA. For that reason we include our earlier appeal points within this appeal, exposing them afresh to the record. As follows, I will note when a comment from our earlier appeal is used. There were several points from our earlier appeal that expressed the greatest concern from our members and board. Included in those concerns are the loss of Wildcat Falls, the loss of riparian resources, and the loss of hemlock and old growth characteristics, along with what appears to be a willingness to pander to the development plans of Mr. Delich by accepting a parcel he has mismanaged in trade for parcels of pristine condition. This exchange needs to be in the interest of the public rather than in the interest of private parties. I note that the Township of Watersmeet touts the public scenic values of Wildcat Falls in promoting tourism. [www.watersmeet.org](http://www.watersmeet.org) Scroll down to “things to do”.

### **Cedar and Hemlock communities and Old Growth Characteristics**

The Decision continues to ignore the importance of old growth hemlock and cedar communities and promotes the idea that these special features are not “rare or unique.” The Decision states that “the exchange would result in less than .003% reduction in total acres of classified Old Growth within Management Area 2.1.” While that may be true, it is irrelevant because this statement fails to acknowledge in any way that old growth hemlock and cedar communities in truth are both rare and unique. We acknowledge that there are other locations throughout the ONF that have very limited amounts of old growth cedar, but by the ONF’s own estimates there is about only 7300 acres of old growth cedar on the entire 1-million acre ONF. That amounts to about .73% of ONF land – an amount we believe qualifies old growth cedar as rare and unique. Further, as we have pointed out previously, cedar is not being successfully regenerated anywhere on the ONF or in the entire Great Lakes region due to factors such as deer herbivory and climate change, among others. With those facts in mind, it is imperative that the ONF not lose ANY Old Growth cedar in a land exchange – especially not if the person who would acquire the parcel already has said he intends to harvest it, as Mr. Delich has stated. Old Growth cedar is an irreplaceable resource and should be treated as such by the ONF. We have visited and observed the old growth cedar and hemlock parcels along County Line Lake Road, and the quality of those stands far exceeds most other cedar and hemlock stands on the Watersmeet District. The stands contain several attributes that the ONF lists in the Ottawa Forest Plan as qualifying stands for Old Growth designation: a definite large tree component, a supra layer of very tall trees, a stand basal area and crown cover that both exceed the minimum requirement for Old Growth, and a presence of snags and culls. These stands are much more than POTENTIAL old growth – they are EXISTING old growth, as defined by their current age and condition. Did the ONF consider these stands for old growth designation prior to considering this land exchange? If not, why not? These are important questions to which the public deserves an answer.

Following are the points made in our previous appeal concerning old growth and cedar-hemlock communities. We include these as we do not feel our earlier concerns were adequately addressed in the revision to the EA, which necessitated our appeal of 2011. Based on other public comments to the revised EA, and our earlier concerns surrounding stream frontage and Wildcat Falls, I also include our earlier points of concern to these issues. We are not satisfied with the minor level of importance placed on these issues, either. Our earlier appeal prevailed, demanding further analysis of the old growth. We feel the revised EA failed in analysis of this important issue.

(begin former appeal record)

One of the main reasons that the proposed Delich land exchange between the Ottawa National Forest and Mr. Delich is not in the public interest is the net loss of hemlock and old growth forests. Both Eastern Hemlock and old growth forests are now a very rare feature on the landscape. The original EA for the Delich land exchange, at page 38, mentions the Old Growth and Hemlock and/or Cedar being an important feature on Parcels 2, 3 and 4. Mr Delich's treatment of the parcel the ONF is to acquire leads us to believe that these important features would be sacrificed if the properties were exchanged. It is unconscionable to consider sacrificing the pristine nature of these parcels with all of their important features.

**Hemlock decline.** For example, in the northern Great Lakes region, hemlock cover types presently occupy only 0.5% of the upland landscape (Mladenoff and Stearns 1993; see also Abrams and Ruffner 1995). Mladenoff and Stearns compared presettlement vegetation patterns with late 20<sup>th</sup> century cover type patterns for a 9600 ha (30,000) area in the Border Lakes region of Vilas County. This area is less than 20 miles away from the lands the Ottawa National Forest would trade to Mr. Delich. This area can easily be considered the same landscape, and therefore the results of the study are valid for northern Michigan, as well. In 1989, hemlock forests covered 3.7% of the 30,000 acre study area compared to nearly 69 % hemlock and hemlock-hardwoods in the Border Lakes area around 1860.

**Table 2. Percent area of upland forest types for three periods mapped: presettlement (1860s), peak human activity (1931) and current period (1989).**

	1860	1931	1989
Pin Cherry	–	37.2	2.3
Mixed hardwood	–	13.7	21.8
Mixed conifer	–	0.5	10.3
Hardwood/conifer	–	5.9	29.4
Northern hardwood	–	19.4	30.5
Old growth Hemlock/hardwood	22.5	–	–
Old growth Hemlock	46.2	7.2	3.7
Old growth Hardwood	31.4	16.1	1.9

Due to its rarity, hemlock forests should not be exchanged for the ubiquitous aspen and second-growth northern hardwood cover types that cover Mr. Delich’s property. In no way can the diminution of this rare resource be considered insignificant. In light of the fact that eastern hemlock is threatened with extinction due to the introduced invasive Hemlock Woolly adelgid, the Forest Service should make every effort to retain and protect these rare forests. The ONF has an obligation to the public to care for these diminishing forest communities.

**Old growth.** Some of the hemlock forests that the Ottawa National Forest proposes to exchange with Mr. Delich exhibit old growth characteristics and are identified as old growth in the EA. Old growth forests are also an extremely rare feature in the Upper Midwest. Again, we want to stress that it is not in the public interest to exchange a rare resource for one that is common. The forests on Mr. Delich’s property are either recent cutover or second-growth hardwoods. They contain no old growth - therefore, the exchange as proposed would result in a loss of old growth from the Ottawa National Forest. While old growth forest is slightly more common on the Ottawa National Forest due to the Sylvania Wilderness Area than on surrounding ownerships, old growth forests still make up no more than 3-4% of all of northern Michigan.

The loss of these rare features is very significant because they are not increasing on the landscape. Hemlock forests continue to decline due to regeneration problems, and old growth forests still are lost due to wind throw or logging. If the ONF trades rare and declining resources for ubiquitous lands like those currently owned by Mr. Delich, then it will send the message that it has no adequate policy for protecting, maintaining or enhancing rare resources. We reject the finding of no significant impact! These important areas are declining and must be protected. It is the Forest Service's duty to protect them.

**Wildcat Falls.**

Although we recognize that the Forest Service did not remand its earlier decision on the issue of Wildcat Falls, we nevertheless include this earlier point because it remains valid in the eyes of the public, as evidenced in recent comments to the revised EA, and the very suggestion by the Township of Watersmeet in promoting the falls to the public.

While the DN/FONSI acknowledges the public objection, and the reasons for the objections, to trading away Wildcat Falls, the importance of Wildcat Falls to the public is simply brushed off as one opportunity in many on the ONF. Wildcat Falls is a relatively accessible waterfall, near Watersmeet, in an area that has limited waterfall viewing opportunities. In this case, the DN/FONSI gives little regard to the public objection and, instead, places more importance on satisfying Mr. Delich's desire to fragment and develop an area that the public has enjoyed in its natural state for decades. This is not in the public's best interest. This small but very unique feature is much closer to the tourist visits that originate on the Hwy. 45 region of Vilas County, Wisconsin, than are most other waterfalls in the ONF. Indeed, Wildcat Falls is a very important feature much too valuable to be expendable because "there are other waterfalls on the forest." The DN/FONSI dated February 2011, at page 17, states that: "Opportunities for...viewing...natural features, such as Wildcat Falls...maybe altered; however there are many other opportunities within the Ottawa to gain similar recreation experiences (page 27)." We strongly disagree with this rationale - another waterfall on the forest simply cannot replace Wildcat Fall.

**Riparian Resources.** As mentioned on page 48 of the EA, there is a loss of perennial streams. A .32 mile loss of perennial stream is significant when coupled with our other concerns. The EA mentions the loss of EPT. This net loss of riparian resource is not in the best interest of the public, and we reject the rationale to give this up for a parcel already decimated by poor management.

**Decision Rationale-Public Interest Determination questioned**

1. While the exchange may improve ownership pattern, the "old growth features" discussed would require little management, so the argument for better management objective is diminished.
2. As stated throughout this document, we reject the idea that the resource values and public objectives are better served in this proposal.
3. We take great exception to this paragraph. Township zoning is inadequate to protect water degradation, long term cumulative effects of development, and protection of rare communities of cedar and hemlock, which feature old growth characteristics.

**Alternatives Considered, but not Carried Forward**

We do not agree with including the parcels near County Line Lake road in this exchange. If this leads to an unbalanced exchange, so be it: the exchange should be dropped.

Purchasing the non-federal parcel was inadequately considered. Furthermore, NOT enough consideration was given to using Land and Water Conservation Funds as an alternative. The courts have demonstrated that money for land is as fair an exchange as land for land. If Mr. Delich was not interested in this, it only increases our suspicions that he wishes to degrade pristine parcels, as he has done to the parcel he wishes to exchange.

Finding of No Significant Impact: We strongly feel that you need to consider and disclose the cumulative/indirect effects resulting from any reasonably foreseeable future development of the lands to be exchanged. We do not agree that the findings are insignificant.

#### **Under ‘intensity’**

- 1. A significant effect may exist even if the Forest Service believes that on balance the effect will be beneficial.** The FS states that the exchange will be beneficial overall, but there are many negative effects, including the loss of old growth cedar/hemlock, the loss of a unique waterfall, and the loss of a portion of an important perennial stream.
- 2. Wildcat Falls is an ecologically important feature, and we disagree with the lack of emphasis placed on this feature. There is also important plant and riparian resources at risk, as are discussed throughout this appeal.**
- 3. The degree to which the effects on the quality of the human environment are likely to be highly controversial are understated.** Our members are very passionate about this issue and strongly disagree with this finding. The comments from the public to the prior EA indicate that there is considerable controversy about the FS exchanging out the County Line Lake Road parcels.
- 4. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. We do not agree that all risks are known, or predictable.** The loss of old growth cedar/hemlock and a unique waterfall do involve unknown risks. It may prove to be impossible to grow cedar/hemlock stands to this age and condition ever again (because of the numerous problems facing these tree species - climate change, disease, deer herbivory, etc) , which means that trading away parcels of land that contain such unique vegetation is an unwise move. Trading away the parcel containing Wildcat Falls also involves unknown risks because Delich's development of the parcel may negatively affect the watershed and change the unique riparian plant and animal community found in the area near the waterfall.
- 5. The degree to which the action may establish a precedent for future actions with significant effects or to which it represents a decision in principle about a future consideration.** We see this action as a possible precedent setting move, as the public values to be traded are very important,

and if dismissed in this action, are more likely to be dismissed in future actions with similar attributes. (end former appeal record)

### **Recent Public Comments**

The most recent DN/FONSI dated Dec. 28, 2011, states that: “A variety of public comments were received, both in support of and in objection to the proposed land exchange.” Page 6. When one reads this statement, one gets the idea that comments were balanced in scope, intensity and volume. This is far from the truth. Unless I was given an incomplete file, the comments received were vastly against this exchange, with over three dozen comments objecting to this exchange, one approving, and one with no objection. Of the comments received opposing this exchange, several, including ours, represent membership organizations whose members frequent the ONF, care deeply for the intrinsic values of the forest, and are deeply vested in the future of the ONF. The fact that this DN/FONSI ignores the very public who care so deeply for the future of the forest reaffirms my earlier claim that this revised EA process was a sham, that the decision was made in advance of the process, and that the process has become a disgrace to NEPA. Once again I ask you to demonstrate a land exchange in recent years on the ONF that has not proceeded. We are deeply disappointed by what appears to be a misuse of the public process. Why would the ONF act to isolate those who care the most about the forest? I acknowledge that four of the commentators opposing this exchange were members of PIF, but the volume of comments against this exchange have gone much further than my ability to network. Certainly the public cares about this exchange. The public has asked for this exchange to be moot.

### **Closing Summary**

In summary, PIF believes that the subject land exchange is not in the public interest for several reasons. The loss of a unique feature (Wildcat Falls) is unacceptable, our reasoning well stated above. The argument that recreationists can/will simply visit other waterfalls to have the same experience is flawed since most waterfalls on the ONF are located closer to Lake Superior - a much further drive for most recreationists. The recent public comments express the same. Also the loss of unique vegetative resources - namely old growth cedar and hemlock - in the parcels near County Line Lake Road is unacceptable. The original EA failed to adequately assess the rarity and value of these resources, which are rapidly disappearing from the landscape in the Upper Midwest. The revised EA used semantics, not substance, to justify the loss of these vegetative resources. The FEIS from the revised Forest Plan states on 1-13, Old Growth Management Guidelines; “the Ottawa provides blocks of forest stands with old growth characteristics that are effectively located in conjunction with other land ownerships to maintain healthy, diverse and productive eco systems”. We remain concerned over the loss of public land containing a portion of a high quality perennial stream. We feel the revised EA continues to inadequately assess the value of this resource and the damage that could be caused to this stream and its watershed by unwise land development practices. As we stated at the beginning of this appeal, the ‘purpose and need’ is either misdirected or inadequate. We feel strongly that it is disgraceful not to have conducted further analysis in order to

maintain those parcels the public has asked to remain in the ONF. Although acquisition of the Delich parcel would be desirable, the price that the public is being asked to pay for that acquisition is far too high. We believe, for the second time, that the No Action Alternative should have been selected in this case. To proceed should require more in depth study, as is offered in an Environmental Impact Statement. We reject the revised EA process as being inadequate at best. Based on the public comments we have viewed regarding the revised EA, we are not alone.

Partners in Forestry is a Cooperative with members interested in and involved in sustainable forestry. Our members and board of directors is a cross section of land owners, foresters, loggers and other resource professionals. We appreciate and care deeply about the greater forest landscape and respect the public-private land partnership. Our membership is dispersed throughout northern Wisconsin and the western Upper Peninsula.

Sincerely,  
*Joe Hovel*

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## ADDENDUM

NOTICE OF APPEAL  
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### DELICH LAND EXCHANGE COMPARISON FACTS

#### TIMBER AND FEATURES

##### FOREST SERVICE PARCEL

2010 cruise data

618,000 board feet  
7,530 cords

Timber 2010 values

(Note: recent markets have shown  
an increase in value)

\$1,310 per acre

Appraisal value of parcel

\$1,210 per acre,  
\$290,000 total value

##### DELICH PARCEL

Minimal residual timber volume  
Mostly cut over 2006

Insignificant timber values

Appraised value of parcel

\$750 per acre,  
\$316,000 total value

Photos attached demonstrate some of the unique features at the County Line Lake - Wildcat Falls tracts.

See pages 31-32 of appraisal for photos of Delich tract displaying minimal residual timber volume and value.

With conservative timber value of \$1,310/acre, it seems a tragedy for the Forest Service to give up parcels with this AND many intrinsic values, including the old growth ecosystem and Wildcat Falls, for a compensatory value of \$1,210/acre!

The Delich tract exhibits very minimal timber value and has an appraised value at \$750/acre.

One hundred dollar per acre loss on timber values to the Forest Service and free land for Mr. Delich is one way the public will judge this.

With the information in front of the Forest Service decision makers, an irrational conclusion has been reached.

The appraisal is based on several hypothetical conditions “as if in private ownership and for sale on the open market.” This land is and has not been private for decades and perhaps because of that very reason the amenities it offers appeal to the proponent. These amenities are important to public values. These parcels would offer immediate logging and timber opportunities followed by liquidation of some or all of the parcels.

Mr. Delich is the sure winner in this transaction at the expense of the American people.

Partners in Forestry is unwilling to approve of a loss of this magnitude to the public!

Photos with snow taken by Mark Hovel and Margo Popovich February 2012













Photo by Rod Sharka