

Bog Creek Road Project Objection Responses

Bog Creek Road Project – Idaho Panhandle National Forest

Michael Garrity – Alliance for the Wild Rockies

Issue 1: Forest Service Decision-Making Authority

Contention: The objector claims that the Forest Service is relinquishing its decision making authority to U.S. Customs and Border Protection

Response: 36 CFR 220.5(b)(3) requires that agencies identify lead, joint-lead, or cooperating agencies in the Notice of Intent to prepare an Environmental Impact Statement (EIS). On April 27, 2016 the Department of Homeland Security – U.S. Customs and Border Protection (CBP) and the Department of Agriculture – Forest Service filed a Notice of Intent to prepare a Joint Environmental Impact Statement.

The Bog Creek Road Project has two objectives. One is for CBP, to provide safe east–west access for administrative use to this section of the U.S.–Canada border across the Selkirk Mountains. The second is the Forest Service’s need to meet legally required IPNF Forest Plan standards for motorized access in grizzly bear habitat in the Blue-Grass Bear Management Unit that are compatible with the needs of grizzly bear as defined in the Recovery Plan. (Draft ROD, p. 1) It is appropriate for both agencies to proceed as joint lead agencies. Each agency will sign its own decision.

I conclude that the Forest Service is in compliance with 36 CFR 220.5(b)(3) by identifying CBP as a Joint agency.

Issue 2: Range of Alternatives

Contention: The objector contends that in failing to fully analyze an alternative which doesn’t open the Bog Creek Road, yet meets the Access Amendment, the FEIS contains an overly narrow range of alternatives in violation of NEPA.

Response: The proposed action includes providing east-west access to Customs and Border Protection across the Selkirk Mountains (FEIS, p. 6). The only viable way to do this is via the Bog Creek Road. A reasonable alternative to the proposed action must address a significant issue while fulfilling the purpose and need for action [40 CFR1502.14 (a)]. An alternative that does not substantially accomplish the purpose and need is not reasonable.

Issue 3: Purpose and Need

Contention: The objector contends that the FEIS fails to establish a genuine need for the proposed motorized access using the Bog Creek Road.

Response: CEQ regulations require agencies to “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” (40 CFR 1502.13)

Section 1.3.1 of the FEIS states that “Given the significant border access to this area from the north, the ongoing threats of terrorism facing this Nation, and the existence of a maintained network of roads throughout the Blue-Grass BMU, restoring and maintaining access to the area north of Continental Mountain has been identified by CBP as a priority.” (FEIS, p. 6) It goes on “CBP agents must be able to access the U.S.–Canada border to prevent illegal activities before perpetrators can reach areas where they can blend into legitimate activities and elude apprehension.” (FEIS, Section 1.3.2, p. 7) It further explains that CBP agents patrol these remote areas for surveillance and to gather information for assessment of threats. CBP also requires access to the area north of Continental Mountain for the “potential future installation of maintenance of technological assets designed to detect incursions into the United States and provide information on the nature and manner of those incursions.”

I conclude that the Forest Service, working in coordination with U.S. Customs and Border Protection, complied with law, regulation and policy by explaining the need for motorized access on the Bog Creek Road.

Issue 4: NFMA Violation

Contention 1: The objector contends that the FEIS fails to demonstrate consistency with Forest Plan desired condition GA-DC-VEG-PR-02 to provide high ecological integrity, in violation of NFMA and NEPA.

Response: Forest Plan desired condition GA-DC-VEG-PR-02 applies to forest composition and structure. As indicated in the response to the identical comment submitted on the Draft EIS, the action alternatives propose modifications to existing roads. Vegetation management is not part of this project, therefore forest composition and structure would not be altered. This project does not propose new roads and will not impact ecological integrity of the geographic area.

Contention 2: The objector contends the FEIS also fails to address Forest Plan GA-DC-WL-PR-01 which requires “NFS lands provide habitat conditions for wildlife movement, especially woodland caribou, throughout the Selkirk recovery zone.”

Response: The FEIS acknowledges “Open administrative motorized use of Bog Creek Road and Blue Joe Creek Road could disrupt or disturb caribou that may be moving from north to south, detrimentally impacting their population connectivity.” (pp. 48-49). The FEIS (p. 117-118) discloses that the repair and maintenance activity on the Bog Creek Road could reduce caribou population connectivity; it also describes how the activity and noise would constitute a temporary impact on caribou movement patterns. While caribou may be temporarily displaced, in general the NFS lands in the Priest Lake Geographic Area provide habitat conditions for wildlife movement.

To be consistent with the goals and desired conditions of the Forest Plan, a project or activity must be designed to meet one or more of the following conditions:

1. Maintain or make progress toward one or more of the desired conditions of the Plan without adversely affecting progress toward, or maintenance of other desired conditions; or
2. Be neutral with regard to progress toward Plan desired conditions; or
3. Maintain or make progress toward one or more of the desired conditions over the long term, even if the project or activity would adversely affect progress toward or maintenance of one or more desired conditions in the short term; or
4. Maintain or make progress toward one or more of the desired conditions over the long term, even if the project or activity would adversely affect progress toward other desired conditions in a minor way over the long term.

The purpose and need to coordinate with the CBP on issues relating to national security along the northern international border of the United States and Canada (FW-DC-CC1-02) would be achieved, as well as the long-term recovery of ESA-listed species in the analysis area (FW-DC-WL-03 and FW-DC-WL-05), despite short-term adverse impacts. (FEIS Appendix C, p. C-27 in response to grizzly bear).

Issue 5: Grizzly

Issue 5a: Grizzly Cumulative Impacts

Contention 1 – The objector asserts the FEIS does not take a hard look at management/human activities on lands adjacent to the Bear Management Unit which are intensively managed by the Idaho Department of Lands and intensively managed land just over the border inside Canada.

Response: NEPA requires the analysis and disclosure of potential cumulative effects, which is the impact on the environment that results from the incremental impact of the action when added to other past, present (ongoing), and reasonably foreseeable actions, regardless of which agency or person undertakes such actions (40 CFR 1508.7). The effects of past and ongoing activities are reflected in the description of existing conditions for each resource in Chapter 3 of the FEIS (FEIS, p. 71).

The FEIS defines the cumulative effects analysis area for grizzly bears as the Selkirk Recovery Zone or SRZ (FEIS, Section 3.2.5.4, p. 146). It also states “Although BMUs have not been established in Canada, the habitat available north in Canada is important to population connectivity and linkages.” (FEIS, Section 3.2.2.1, p. 74) Referring to the Idaho State Lands (IDL) BMU south of the project area, the Biological Assessment (BA) states “Future activities on these State lands likely include camping, hunting, ATV use on open roads, and timber harvest. Decisions made by these landowners regarding motorized access management on their lands could potentially result in cumulative effects to grizzly bears such as displacement, disturbance, or mortality.” (BA, p.74)

Table 3.2.33 in the FEIS (pp. 152-155) discloses the potential cumulative effects to all Threatened and Endangered species in the project area by alternative based on “Reasonably Foreseeable Future Activities Located within the Analysis Area(s)” Future activities include those located in Canada and on State of Idaho lands. The conclusion on page 75 of the FEIS that says “For the reasons stated above, direct, indirect, and cumulative impacts from the proposed action may affect, and are likely to adversely affect, grizzly bear” indicates that although there is uncertainty involved in reasonably foreseeable activities on lands of other ownership, the responsible official took a hard look at the cumulative effects on grizzly bears. More certainty regarding future activities would not likely change the conclusion.

I conclude that the Forest Service complied with law, regulation and policy by taking a hard look at effects from lands adjacent to the Blue-Grass Bear Management Unit.

Issue 5b: Grizzly – Road Closures

Contention: The FEIS fails to disclose the effective road closures for the purpose of eliminating human access behind the closures.

Response: The description of the Proposed Action in the FEIS does not include plans for eliminating “human access” behind the closures. Non-motorized access would be allowed. However, the FEIS does describe measures to be taken to prevent *motorized access* behind the proposed closures. The FEIS states “Upon completion, locking gates that minimize potential destruction, dismantling, or breaching would be installed at either end of the 5.6-mile route and remain closed year-round. The road would be signed PUBLIC MOTORIZED ENTRY PROHIBITED – THIS ROAD IS UNDER SURVEILLANCE – VIOLATORS WILL BE PROSECUTED by the Forest Service. Road access and gates would be regularly monitored by CBP to ensure that no illegal motorized access is occurring along the road.”

Section 2.2.2.2 of the FEIS titled *Motorized Road Closure* says “Approximately 26 miles of Forest Service roads would be closed to all motorized use by the Forest Service within the Blue-Grass BMU. This would allow the Forest Service to meet the Access Amendment grizzly bear core area habitat requirement of 55 percent and the TMRD (> 2 miles per square mile) requirement of 26 percent. (FEIS, p. 21) It explains further that “The means by which motorized road closure would take place would vary by site and would include both decommissioning and long-term storage. Decommissioning involves permanently removing a road from the Forest Service transportation system.” Maps displaying roads in the project area are included in Figures 2.2.1 and 2.2.2. They show where existing gates are located. (FEIS, pp. 17-18)

The Biological Assessment for the Bog Creek Road Project contains a detailed description of how road closures will be implemented (Bog Creek Road Project BA, pp. 6-9)

Issue 5c: Grizzly – Roads treated as “not roads”

Contention: Roads treated as “not roads” by the FEIS, although not decommissioned, are not included in TMRD. Yet, given recent CBP behavior, such roads would receive use inconsistent with the Access Amendments/Forest Plan- all sanctioned by the FS.

Response: See also response to Issue 5b.

Figure 2.2.2 in the FEIS Errata shows the current motorized route drivability status within the Blue-Grass BMU (pp. Errata-5). In Map 1 of the TAPS report, the narrow red non-system road lines and brown line roads, are all either decommissioned or have been undrivable for more than 30 years (Forest Service 2016e, p. 10). These roads have officially been removed from the Forest Service INFRA database and they would not become motorized routes again in the future, therefore it is not appropriate to include them in the TMRD moving windows calculation (FEIS, pp. 5 definition of TMRD in Table 1.2.1).

Issue 5d: Grizzly – ESA Violation

Contention: Selection of any of the action alternatives would violate result in “take” of grizzly bears, in violation of the ESA.

Response: Biological Assessment (BA) was completed for this project and formal consultation was initiated on March 5, 2019. Effects to listed species were addressed within the BA. It is anticipated that the IPNF will receive a Biological Opinion (BO) including an incidental take statement (ITS) from the USFWS prior to a final decision. This would fulfill our Section 9 requirements. See also the project design features within the BA (page 9 and Appendix F), FEIS (Appendix B), and Mitigation in the Draft ROD included to minimize the effects of the project on listed species. It is also expected that the BO and ITS will include additional Conservation Measures and required monitoring.

I conclude that this issue was sufficiently addressed in the FEIS.

Issue 5e: Grizzly – Management Situation 1

Contention: Implementation of any of the action alternatives would not be consistent with the requirement to prioritize the needs of the grizzly bear in MS1.

Response: See response to comments #58-113 to Idaho Conservation League on page C-35 to C-36 of the FEIS, #56-105 and #56-108 to Yellowstone to Yukon Conservation Initiative and reiterated in the revised Appendix C of the FEIS (pp. C-69 and 70) in response to CBD and WEG (Comment #108-214).

The FEIS addressed Management Situation 1 (MS1) in the FEIS Table 2.4.4 which provides a summary comparison of the alternatives. Pages 47 to 48 discuss how each alternative is or is not compatible with MS1. New figure 2.2.2 (FEIS errata) shows the secure habitat associated with roads that have been undrivable for less than 10 years, which shows the functional core within the BMU.

Table 6.19 of the BA with the associated discussion on pages 72-72, summarizes Alternative 3 Modified regarding prioritizing these grizzly bear recovery needs: 1) maintain and improve habitat; 2) minimize bear-human conflict to avoid mortalities; and 3) maintain genetic

connectivity and distribution of breeding animals across the recovery zone. Within Table 6.19, it shows that with Alternative 3 modified, overall there will be a very small increase in quality core habitat (ibid, p. 73).

I conclude that issue has been sufficiently addressed in the FEIS.

Issue 5f: Grizzly – No Action Alternative

Contention: The FEIS inaccurately describes the No-action Alternative. It does not disclose the effective or “function” core percentage, which involves recognizing as core the “undrivable” roads “having received no motorized use in at least 10 years” and thus “considered to be providing secure habitat for grizzly bears using the area. By omitting disclosure of the functional core, the FEIS provides an inaccurate characterization of the No-action Alternative, skewing the analysis in favor of the ROD’s selected alternative. This is a violation of NEPA.

Response: See response to Idaho Conservation League Issue 1. The revised Idaho Panhandle National Forest Plan (2015) provides direction that includes numerical standards for Motorized Access Management and establishment of core areas for the purpose of providing secure habitat for grizzly bears within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones. (Forest Plan Appendix B, pp. 151-155). The attributes of core areas are described in the Forest Plan (beginning on p. 152). The FEIS discloses the differences in these standards by alternative including the No Action alternative. (pp. 108-116) “Functional core” is not a metric established by the Forest Plan or the Grizzly Bear Access Amendment but is discussed in the project file as a means of disclosing effects. Relative to the No Action Alternative the FEIS states “Although not mapped as core area habitat, the area surrounding Bog Creek Road currently functions as core habitat because of its undrivable condition and would continue to function as core habitat under the No-Action Alternative.” (FEIS, Table 2.4.4, p. 45). It is also discussed in the BA (pp. 6, 12, 29-76).

Objectors also allege that the Forest Service is “skewing the analysis in favor of the ROD’s Selected alternative.” The record does not support this allegation. The FEIS states “There would be direct and indirect detrimental impacts from road repair and motorized closure actions under the Proposed Action. Grizzly bears would be likely to avoid these areas during repair and motorized closure activities, which affects the bears’ use of available resources. Also, during repair activities and over the long term, the Bog Creek Road repair would fragment habitat that has been effectively functioning as core area habitat because the road is currently impassable to motorized use.” (p. 116). The effects to grizzly bears from all alternatives were adequately analyzed following standards established in the Forest Plan and leading to a determination of “may affect, likely to adversely affect” grizzly bears. (BA, p. 76)

I conclude that the Forest Service properly represented the effects of all alternatives on grizzly bears.

Issue 5g: Grizzly – Non-motorized trail use – Cumulative effects

Contention: Non-motorized trail use that is currently considered moderate by the FEIS would likely increase to the level at which it would need to be buffered out of core in the foreseeable future. The FEIS fails to analyze and disclose the cumulative effects of the likely increase in non-motorized trail use and thus impacts on the grizzly bear.

Response: See Response to Center for Biological Diversity, Issue 6b.

Issue 5h: Grizzly – Narrow strips of core

Contention: The FEIS violates NEPA by not adequately considering the reduced value of narrow strips of core area currently designated within the BMU, particularly between Blue Joe and Grass Creeks, where there are two tiny isolated blocks of core and also a third roughly 1 mi in extent sliver of core northeast of Silver Mountain.

Response: The comments/objections are not new and were responded to in Appendix C of the FEIS (pp. C-23 and C-24) in response to Paul Sieracki, Alliance for the Wild Rockies – Michael Garrity, and Tim Layser (Comment #48-78).

As discussed in detail in Allen et al 2011 (pp. 16-21), there is currently no biological basis to discount or ignore smaller blocks of core. Existing core habitat is discussed in the BA (pp. 29-31). The BA identified four existing large (>1,800 acres) core blocks within the BMU (BA table 6.7). The remaining eight smaller core blocks contributed approximately 857 acres of secure habitat to bears in the BMU, resulting in approximately 27,690 acres of core (ibid, pp. 30 and Figure 3.3). In the BA this was also looked at with respect to functional core as well. The existing large (>1,800 acres) functional core blocks can be seen in Table 6.9, with the smaller eight functional core blocks contributing approximately 556 additional acres of secure habitat to bears in the BMU, resulting in approximately 30,442 acres of functional core (ibid, pp. 32 and Figure 3.2). These smaller core and functional core blocks do not change between the existing condition and Alternative 3 modified. The changes in the larger core blocks can be seen in tables 6.17 (pp. 63) and 6.21 (pp. 75).

Issue 5i: Grizzly – Travel Management Rule – Subpart C

Contention: The FEIS violates NEPA by failing to demonstrate whether the Forest Service is managing the BMU consistent with the Travel Management Rule, Subpart C, as no process has been undertaken.

Response: Regulations at 36 CFR 218.8(b)(4)(c) for the Project-Level Predecisional Administrative Review Process require that “Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and

attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues (see paragraph (d)(6) of this section).” This contention was not previously raised by the objector during the scoping period or comment period on the DEIS. The objector did not demonstrate compliance with this requirement, therefore a response is not warranted.

Issue 5j: Grizzly – Spring Extension of Bear Year

Contention – The objector contends the FEIS violates NFMA by failing to implement a spring extension of the bear year and is therefore inconsistent with FW-DC- WL-04, which requires “All grizzly BMUs have low levels of disturbance to facilitate denning activities, spring use, limit displacement, and reduce human/bear conflicts and potential bear mortality.”

Response: As stated in the response to comments, “Because of the many types of projects and activities that can occur over the life of the Forest Plan (Forest Service 2015a), it is not likely that a project or activity can maintain or contribute to the attainment of all goals and desired conditions, nor are all desired conditions relevant to every activity.” It goes on to say, “Here, the desired condition to coordinate with the CBP on issues relating to national security along the northern international border of the United States and Canada (FW-DC-CC1-02) would be achieved, as well as the long-term recovery of ESA-listed species in the analysis area (FW-DC-WL-03 and FW-DC-WL-05), despite short-term adverse impacts.” (PF, Project Documents, 20190215_Bog Creek Road Project FEIS, pp. C-26 and C-27).

I conclude that the Forest Service complied with the IPNF Forest Plan and extension of the bear year is not warranted.

Issue 6: Caribou Analysis

Contention: The FEIS analysis for caribou is not consistent with nor informed by the Travel Management Regulations Subpart C process. Foreseeable outcome scenarios of the Kaniksu Over-the-Snow Management Plan were not analyzed nor considered in the FEIS. Reconstruction/re-opening of the Bog Creek Road would constitute a violation of the ESA.

Response: The IPNF is currently preparing an Over Snow Vehicle Travel Plan for designating a system of routes and areas for over-snow vehicle use on the Kaniksu portion of the Forest (FEIS, p. 317; see also Schedule of Proposed Actions, <https://www.fs.usda.gov/project/?project=53091>). This is a future travel planning process which has no decision yet.

Issue 7: Lynx

Contention 1: The objector alleges that the FEIS fails to consider, apply, and incorporate best available science pertaining to Canada lynx and fails to demonstrate consistency with all Forest Plan/NRLMD direction, in violation of ESA.

Response: Under the Endangered Species Act (ESA), Section 7(a)(2), each agency is required to use the best scientific and commercial data available in analyzing effects to listed species and their designated critical habitats. Forest Service regulations at 50 CFR 402.4 require that the federal agency requesting formal consultation shall provide the U.S. Fish and Wildlife Service with the best scientific and commercial data available or which can be obtained during consultation for an adequate review of the effects that an action may have upon listed species or critical habitat.

Forest Service regulations at 36 CFR 219.3 state “The responsible official shall use the best available scientific information to inform the planning process required by this subpart” In addition 36 CFR 219.15(b) requires that projects be consistent with Forest Plans and 36 CFR 219.15(d) requires that projects be consistent with applicable forest plan components including the following: 1. Goals, desired conditions, and objectives. 2. Standards 3. Guidelines and 4. Suitability.

With respect to lynx, the Idaho Panhandle National Forest Plan retained the 2007 Northern Rockies Lynx Management Direction which contain numerous goals, objectives, standards, guidelines, and monitoring that the Forest Service must be compliant with on all National Forest System lands that are known to be occupied by Canada Lynx. This includes the Idaho Panhandle National Forest.

The FEIS lists compliance with the Forest Plan regarding numerous endangered species, including lynx (FEIS, p. 157). Appendix E of the FEIS (pp. E-1 to E-4) shows how the project was compliant with the Forest Plan. However, because the objector did not specifically state how the Forest Plan or NRLMD wasn’t followed, and the objection did not present a description of how the objector believes the environmental analysis specifically violates the law, regulation, or policy no further response is possible.

I conclude that the Forest Service was compliant with ESA and its regulations for the Forest Service regarding best available science. The Forest Service adequately presented how the analysis is in compliance with the Forest Plan.

Issue 8: Project Impacts on Streams

Contention 1: The objector contends that the FEIS fails to address impacts on streams and therefore fish habitat from foreseeable road degradation, especially where roads are not maintained for the long term leading to inevitable road prism and culvert failures. Additionally, the Forest Service does not have a monitoring and maintenance plan for culverts that will be left on closed roads.

Response: The Draft Bog Creek Road Project Record of Decision provides the specifics of road changes under the selected alternative. (Pp. 4-5 under section 2.3 *Modifications Included in the Selected Alternative*). In Appendix A the repair and maintenance of Bog Creek Road is discussed. Table A-1 on page A-3 specifies alternative roads proposed for motorized road closure. It states, “Approximately 26 miles of NFS roads will be closed to all motorized use by the Forest Service within the Blue-Grass BMU (Table A.1). This will allow the Forest Service to meet the Access Amendment grizzly bear core area habitat requirement of at least 55 percent and the total motorized route density (TMRD) (> 2 miles per square mile) requirement of no more than 26 percent.”

Regarding road closures the FEIS says, “The means by which motorized road closure will take place will vary by site and will include both decommissioning and long-term storage. Decommissioning involves permanently removing a road from the Forest Service transportation system. Roads that are placed into long-term (e.g., a minimum of 10 years) storage remain on the system, but are rendered undrivable. While these roads will not be accessible during the “stored” period, they will remain available if needed for emergency purposes. Both decommissioning and long-term storage are designed to make roads hydrologically inert by installing water bars along the full length of affected segments, removing high-risk drainage structures (culverts), and fully recontouring specific sections. On-the-ground road work may be very similar between decommissioning and long-term storage, as both are intended to prevent future failures and erosion hazards.” (FEIS, p. A-3) it goes on to state “If no hydrologic problems or risks of mass failure are present, and/or the road is grown in to the point that motorized use is not possible, motorized road closure may include merely leaving the road as is (or barricading the front end) and making the change administratively. The decision to either decommission roads or place them into long-term storage will depend on several factors, including anticipated future need, location in relation to other roads, and, to a lesser extent, the current condition of the road.” FEIS, p. A-4) The above points are also covered in the Bog Creek Road Project Biological Assessment (pp. 5-9).

Table 3.6.5 in the FEIS lists the water related desired conditions, standards, goals guidelines, and objectives of the Forest Plan (FEIS, pp. 252-253). Sections 3.6.5 Environmental Consequences discusses the issues and indicators of water related impacts. Table 3.6.7 lists the three indicators used to evaluate water quality.

The Aquatic Resources Report for the Bog Creek Road Project (Sections 3.1. *Watershed and Erosional Processes*, 3.2. *Water Quality Status and Beneficial Uses*, and 3.3 *Aquatic Habitat*) covers impacts of the project to the watershed and fisheries.

Impacts to fish from roads are addressed in Section 3.4.5.3 of the FEIS (p. 221) and Table 3.4.8. displays which fish streams would be affected long term.

Additionally, refer to the response to Center for Biological Diversity Issues 9a and 5c regarding compliance with the Clean Water Act and impacts to bull trout, respectively. These two issues cover points on impacts to stream and fish habitat and the governing rules that the FEIS adheres to.

I conclude that the FEIS adequately addresses impacts on streams and fish habitat from foreseeable road degradation.

Issue 9: Fisher

Contention 1: The objector contends the FEIS violates NEPA and NFMA by failing to adequately analyze the cumulative effects on fisher due to trapping or from use of the road and trail networks and by failing to provide assurance that a viable population exists now in the IPNF.

Response: The objector alleges that the Forest Service violates NEPA and NFMA by failing to adequately analyze cumulative effects in the FEIS due to trapping or from use of the road and trail networks. Further, the IPNF fails to provide assurance that a viable population of Fisher exists on the IPNF.

See response to Issue 5a for cumulative effects requirements under NEPA. NFMA does not include any requirements for cumulative effects, however the Forest Plan identifies non-endangered species that are important for management, as required by 36 CFR 219.9. No special designation were given to Fisher. Fisher habitat quality and quantity was analyzed and discussed in great detail in the Forest Plan FEIS and associated documents. The discussion includes habitat estimates for the forest, and scientifically derived thresholds for fisher population viability. Modeling of fisher habitat determined that despite a decline in fisher habitat over the next five decades (mainly due to wildfire and root disease), habitat amounts would remain within the historic range of variation and there was no indication that fisher viability is at risk.

FEIS Section 3.3.5.4 provides a qualitative disclosure of actions and their potential impacts, when combined with the FEIS alternatives (see Table 3.3.12). The FEIS discloses potential cumulative effects to fisher, including from trapping or use of the road and trail networks. Regarding population viability, the Idaho Department of Fish and Game conducts monitoring efforts to look at fisher populations (PF, Project Documents, 20190215_Bog Creek Road Project FEIS, pp. 179, 180, 185, 201, 197-203, C-28).

I conclude that that the Forest Service complied with NEPA and NFMA in its analysis of Fisher.

Issue 10: Wolverine

Contention: The objector contends the FEIS violates NEPA and NFMA by failing to provide a description of the quantity and quality of habitat that is necessary to sustain the viability of wolverine. The FEIS also fails to disclose cumulative impacts of recreational activities on wolverine.

Response: 36 CFR 219.9 requires the Forest Service to address population viability at the Forest Plan level, not the project level. Appendix G of the FEIS contains a summary of the wolverine programmatic assessment (FEIS pp. G-1 to G-2). Table G-1 lists activities proposed in the Bog Creek Road Project, acres potentially impacted, and potential impacts to wolverines. The FEIS states, “The purpose of the programmatic BA is to describe and analyze a variety of actions routinely conducted on NFS lands within the Northern Region that are not likely to jeopardize the continued existence of the species. Road repair, culvert repair or replacement, and motorized road closure activities are analyzed under threat factor A2 (b), Habitat impacts due to human use and disturbance, infrastructure development (Forest Service 2014a:4).” (FEIS, pp. 99).

The FEIS describes the analysis area used for wolverines and habitat including acreages (FEIS, p. 81) and discloses potential effects from the action alternatives, including recreational activities (FEIS, pp. 192-193, 196-197).

Section 3.2.5.4 of the FEIS (beginning on page 146) summarizes cumulative effects for Threatened, Endangered, and Sensitive species including wolverine.

I conclude that the Forest Service complied with NEPA and NFMA and adequately disclosed the cumulative effects to wolverine.

Issue 11: Marten

Contention: The objector contends the FEIS violates NEPA by failing to consider best available science for insuring viable populations of pine marten, a species whose habitat is significantly altered by active forest management. The FEIS also fails to conduct an analysis of the historic range of marten habitat on the Forest, thus it also violates NEPA by failing to conduct the proper cumulative effects analysis.

Response: This specific issue was not raised by the objector during comments. The objector brought up issues regarding fisher and trapping. Per 36 CFR 218.8 the objector must raise issues in objection based on previous comments. I conclude that because the objector did not raise this issue in comment this issue does not have standing for further review per 36 CFR 218.8(c).

Issue 12: Boreal Toad

Contention: The objector contends the FEIS violates NEPA by failing to describe the quantity and quality of habitat necessary to sustain the viability of boreal toad and has no explanation of FS methodology for measuring this habitat.

Response: The objector alleges the Forest Service analysis of western (boreal) toads is inadequate and in violation of NEPA and NFMA. NEPA requires agencies to analyze and disclose effects. Effects are “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative” (40 CFR 1508.8)

The FEIS summarizes western toad species information and describes its habitat (FEIS, pp. 167-168). It states, “Forty-eight wetlands and 53 perennial streams were identified in the project-scale wildlife analysis area, all of which may serve as potential western toad habitat (CBP 2015a; Forest Service 2016b)” Table 3.3.7 in the FEIS (p. 176) displays the analysis measure used for potential effects to western toads. It also discloses that repair of the Bog Creek Road would directly affect approximately 0.1 acre of wetland which represents less than 1% of the total available habitat. (FEIS, p. 180)

I conclude that the Forest Service complied with NEPA in the analysis of effects to western toads and their habitat.

Issue 13: Roads

Issue 13a: Road Maintenance

Contention: The objector contends that the FEIS violates NEPA by failing to disclose and analyze all ongoing damage where project funding cannot address the full scope of insufficient maintenance issues. The FEIS fails to disclose the temporary effectiveness of all the road maintenance and upgrading, merely assuming that the proposed actions will forever mitigate the problems they now exhibit.

Response: CEQ regulations provide direction on what is required in an EIS for disclosing effects. They state, “The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.” (40 CFR 1502.16)

Chapter 2 of the FEIS describes the alternatives including the proposed action. Section 2.2.2.1 titled *Road repair and Maintenance* describes the condition of the Bog Creek Road (Forest System Road 1013) and what maintenance would be required for administrative use. It says “Long-term future actions for Bog Creek Road maintenance would include grubbing or trimming vegetation along the roadside, cleaning culverts, and periodic grading.” (FEIS, p. 21) FEIS Table 2.2.2 displays a list of roads proposed for closure to motorized use, the current road condition in terms of whether they are drivable or not, and how they relate to grizzly bear core habitat. (FEIS, p. 22). This section further describes how these roads would be closed or decommissioned.

The project file contains reports and field data that document the condition of the roads in the project area (See Bog Creek Project – Field Classification Notes (Road No. 1013), September 2012; 1013 Bog Creek Road Recon, September 7, 2012). In addition, Table 3.1.2 discloses what the long term maintenance and use of the Bog Creek and other roads in the Bear Management Unit. (FEIS, p. 69) See also response to Issue 5b.

I conclude that the Forest Service complied with NEPA by disclosing the condition of roads, proposed road maintenance, closures and removals, and their potential effects to the human environment.

Issue 13b: Travel Management, Subpart A

Contention: The objector contends that the FEIS is not consistent with the Travel Management Regulations Subpart A requiring a science-based Travel Analysis Process identify the minimum road system.

Response: The objector states that “Subpart A requires the FS to identify the minimum road system needed to manage the Forest sustainably. The FEIS does not demonstrate how it is minimizing the forestwide road system in compliance with the Travel Management Regulations and related Directives.” The Travel Management Rule (Rule, 36 CFR 212) includes a

requirement to identify the minimum road system needed for safe and efficient travel, and for administration, utilization, and protection of National Forest System lands. The Rule also includes a requirement to identify the roads no longer needed to meet forest resource management objectives. However, the Rule does not require the Forest to establish an upper or absolute limit on the available miles of transportation system road. Nor does it mandate specific road management actions, such as decommissioning, when identifying a minimum road system. Also, as stated in Forest Service Manual 7700, travel analysis informs decisions; travel analysis is not a decision-making process. In addition, nothing in the Rule requires “minimizing the forestwide road system”.

In 2015 the Idaho Panhandle National Forest (IPNF) completed a forest-wide Travel Analysis and produced a Travel Analysis Report (see Travel Analysis Report for Idaho Panhandle National Forest in the project file). The purpose of the Travel Analysis Report (TAR) was to “1) identify the minimum road system (MRS) needed for safe and efficient travel and for protection, management, and use of NFS lands (36 Code of Federal Regulations (CFR) 212.5(b)(1)); and 2) identify roads that are no longer needed to meet forest resource management objectives (36 CFR 212.5 (b)(2)).” (TAR, p. 1) As stated in the TAR, it *identified* the minimum road system needed although it would “not change or modify any existing NEPA decisions, but should help to inform Forest managers as they identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.”

In addition to the forestwide TAR the responsible official produced a project-specific travel analysis report for the Bog Creek Road Project (see Travel Analysis Process Report, Blue-grass BMU, 2016) based on Forest Service Handbook guidance (FSH 7709.55, Chapter 20). That analysis includes all existing roads, whether or not they are national forest system roads, within 900 meters of the Blue-grass Bear Management Unit. The purpose of the project specific travel analysis was to inform the development of the project proposal and help meet the Access Amendment in the Blue-Grass BMU (Travel Analysis Process Report, Blue-grass BMU, 2016, p. 1)

I conclude that the Forest Service complied with the 2005 Travel Management Rule and with Forest Service Manual and Handbook direction for completing project specific travel analyses.

Issue 13c: Road Economics

Contention: The objector contends that the FEIS does not present proper economic or financial analysis to allow anyone to understand how well or how deficiently all the post-project system roads will be maintained. Nor does it disclose the project area road system's needed long-term financial investments, nor the associated ecological impacts due to inadequate maintenance funding.

Response: NEPA does not require economic or financial analysis for every proposed action. It speaks to cost-benefit analysis when it is relevant to the choice among environmentally different alternatives. It states "the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." 40 CFR 1502.23

The FEIS discusses those "important qualitative considerations" and describes them in terms of the purpose and need of the Bog Creek Road Project. The project is designed to 1) enable CBP to execute its statutory mission to protect the U.S. northern border and for the safety of CBP and other law enforcement officers while carrying out their duties; and 2) meet legally required IPNF Forest Plan standards for motorized access in grizzly bear habitat in the Blue-Grass BMU that are compatible with the needs of grizzly bear as defined in the Recovery Plan (FEIS, p. 6) Long-term financial investments needed for maintaining the road system are outside the scope of the analysis. However, the ecological impacts of the proposed project are explained in detail in the FEIS, Draft ROD, and throughout the project record. (FEIS, Chapter 3)

Issue 13e: Identification of non-system roads

Contention: The objector contends that the FEIS does not disclose if the Forest Service has surveyed the project area with the detail needed to determine if all non-system roads existing in the project area have been identified, so their ecological liabilities can be accounted for.

Response: See response to Issue 13b. The 2016 Travel Analysis Process developed for this proposed project used "The most updated information available was used to conduct this analysis. Current road information was gathered using INFRA (USDA Forest Service infrastructure database) core data, aerial photo interpretation and GIS data." It includes system and non-system roads in the Blue-Grass Bear Management Unit or within 900 meters of it. (Travel Analysis Process Report, Blue-grass BMU, p. 2) The report discloses the condition of all roads in the analysis and what if any issues they have.

Issue 13f: Travel Analysis Process

Contention: The objector contends that the FEIS does not comprehensively identify the unneeded or most damaging roads and that the process the Forest Service used is not consistent with requirements to involve the public in a science-based Travel Analysis Process, create a Travel Analysis Report, and identify roads likely not needed to manage the forest, as required under the Regulations and in the Directives.

Response: See response to Issue 13b. As the objector points out in his letter, the IPNF conducted a forest-wide travel analysis in 2015. That analysis was consistent with the 2005 Travel Management Rule as amended and identified the minimum road system using a science-based analysis. (Travel Analysis Report for Idaho Panhandle National Forest 2015 (TAR), pp. 1-2) The report describes the public involvement process followed as “The public and partner agencies were invited to review the preliminary Opportunities for Change Map and provide feedback. The review and comment period for the Opportunities for Change Map began with the June 2, 2015, press release announcing the availability of the map on the Forest Service ArcGIS Online Mapping website and the electronic availability of the *draft Travel Analysis Report for Idaho Panhandle National Forest.*” (TAR, p.6)

Travel analysis was also conducted in 2016 within the Blue-Grass Bear Management Unit to inform the Bog Creek Road Project. Public involvement for this effort was in conjunction with the public comment opportunities for the Bog Creek Road Project. This included scoping through postal and electronic mail in 2013, public meetings, and comment periods on the Notice of Intent in 2016 and Draft EIS in 2018 (Draft ROD, pp. 27-30).

I conclude that the Forest Service complied with the 2005 Travel Management Rule and with Forest Service Manual and Handbook direction for completing project specific travel analyses.

Issue 14: Data Reliability

Contention: The objector contend the Forest Service has not undertaken the task of determining the reliability of all the data used as input for the models used in the Bog Creek FEIS analyses.

Response: The objector states “The Bog Creek FEIS does not conform to NEPA because the FS has not insured the reliability of data relied upon by the models, and the FS has not validated the models for the way the Bog Creek FEIS utilizes them.” The Council on Environmental Quality (CEQ) establishes a scientific integrity requirement for Environmental Impact Statements. It says “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. . .” (40 CFR 1502.24).

Chapter 3 of the FEIS describes methodologies used to analyze effects to Threatened and Endangered Species (Section 3.2.5.1, p.106), wildlife (Section 3.3.5.1, p.176), fish habitat and species (Section 3.4.5.1, p. 214), special status plants and habitat guilds (Section 3.5.5.1, p. 235), water resources (Section 3.6.5.1, p. 254), soil resources (Section 3.7.4.1, p. 274), recreation resources (Section 3.8.5.1, p. 299), and heritage and tribal resources (Section 3.9.5.1, p. 325). These sections disclose the methods used in the analyses, assumptions made, issue indicators used, and the metrics used to measure and compare between alternatives. The Biological Assessment states “The following discussion will rely on the best available scientific literature available on grizzly bears, particularly local research and quantification of important grizzly bear habitats.” (Bog Creek Road Project Biological Assessment, p. 60). The FEIS and Biological

Assessment cite scientific literature used throughout the document and include full literature cited sections.

The objector also made comments to the DEIS questioning the stated accuracy of 1/100th of a percent in the areal calculations used to measure a Bear Management Unit. That comment is repeated in their objection. The comment was responded to and the accuracy figure noted above was corrected in the FEIS.

I conclude that the Forest Service complied with law, regulation, and policy.

Bog Creek Road Project – Idaho Panhandle National Forest

Bonner and Boundary County Boards of Commissioners

Issue 1a: Forest Plan Compliance

Contention: The objectors contend the draft selected alternative does not adequately consider the desired conditions for access and recreation in the project area, including FW-DC-AR-07, FW-DC-AR-09, and FW-DC-LND-01 as required by the forest plan.

Response: Because of the many types of projects and activities that can occur over the life of the Plan, it is not likely that a project or activity can maintain or contribute to the attainment of all goals and desired conditions, nor are all desired conditions relevant to every activity. Most projects and activities are developed specifically to maintain or move conditions toward one or more of the desired conditions of the Plan. It should not be expected that each project or activity will contribute to all desired conditions in the Plan, but usually to one or a subset (IPNF FP p.1) The desired conditions cited by the objector involve the transportation system and land ownership adjustments. A transportation system is in place, and no land ownership adjustments were necessary for this project.

Here the purpose of the proposal is to: 1) Provide CBP motorized access for the purposes of executing its statutory mission to protect the U.S. northern border and for the safety of CBP and other law enforcement officers while carrying out their duties and 2) Aid in the recovery of grizzly bears by addressing motorized route density within the Blue-Grass BMU. There is no “recreational” component or desired condition that the Forest Service and CBP are seeking to achieve with the project. As allowed by the Forest Plan, the project would be neutral, with respect to recreational motorized access to the Bog Creek Road and its western and eastern approaches. Under the draft selected alternative motorized recreational access to the Bog Creek Road would not change from the existing condition, because the road segments proposed for closure are currently designated as seasonally restricted, are not open to the public for motorized travel from April 1 through November 15, only allow limited motorized administrative use, and under the draft selected alternative current snowmobile designation would remain the same (Bog Creek Road Project FEIS, pp. 21, 26, and 308).

I conclude that the selected alternative appropriately considered Forest Plan desired conditions.

Issue 1b: Need for Management

Contention: The objectors contend that the FEIS provides little analysis of the need for fire protection and active management of the BMU, particularly in the “General Forest” management classification. Nor is there consideration or explanation as to how access will be allowed in emergency situations over roads that are “administratively open,” but otherwise gated and locked. These potential effects could directly impact citizens of Boundary County and should be analyzed and considered in the Draft ROD and FEIS.

Response: The Access Amendment Supplemental FEIS recognized that road restrictions could have a number of potential impacts on fire and fuels; mainly reduced administrative access could result in delays in initial attack and fire suppression. Reduced access may also result in a decrease in the number of human-caused fires (Access Amendment SFEIS, p. 246). The impacts were expected to be proportional to the change in administrative and wheeled motorized vehicle

access and additional air supported fire suppression would be needed to compensate for reduced ground-based response time (ibid, p. 247 and 248).

Vehicles currently operating on restricted roads within the BMU are there for law enforcement, medical/search and rescue, fire suppression, forest management, and grazing, and to access the Continental Mine property (FEIS, p. 2). Per the existing closure order, law enforcement and emergency responders are exempt. Neither the FEIS nor draft ROD propose to change the current protocol. The roads identified for closure are generally overgrown and undrivable (FEIS, Tables 2.2.2 and 2.2.4, pp. 21 and 26 respectively) and would need heavy equipment to reopen regardless of whether they are restricted, stored or decommissioned.

I conclude that the Forest Service appropriately considered existing uses.

Issue 1c: Public Access and Recreation

Contention: The objectors contend Alternative 4 Modified is compatible with the needs of the grizzly bear as defined in the Recovery Plan and that the Forest Service is required under NFMA to balance competing interests such as recreation, border security and public access. The Forest Service has violated NFMA by failing to balance competing interests such as recreation, border security and public access with the security of grizzly bear.

Response: The objector asserts that “While the forest plan does incorporate the Access Amendment it does not address any requirement to prioritize the need of the grizzly bear over all other needs. Nor does it appear to incorporate the 1986 IGBC guidelines.”

Alternatives 4 and 4 Modified were found incompatible with the needs of grizzly bear because they would allow for increased public access along the open west-to-east access roads that could lead to the increased potential for mortality from hunters, poachers, or those seeking to maliciously kill grizzly bears. With improved public access to the area, the potential for habituation and grizzly-human conflicts would increase. Increased human presence could also increase the potential for bear mortality in defense of human life (FEIS, p. 141).

Contrary to objector’s assertions, the IPNF Forest Plan does address the requirement to prioritize the need of the grizzly bear and it incorporates the 1986 IGBC guidelines. Specifically, forest-wide guideline FW-GDL-WL-18 Grizzly Bear states that “[e]lements contained in the most recent “Interagency Grizzly Bear Guidelines,” or a conservation assessment once a grizzly bear population is delisted, would be applied to management activities.” The IGBC guideline document contains a description of the five Management Situations and management guidelines applying to each situation (see Biological Assessment and Evaluation).

I conclude that the Forest Service appropriately balanced uses as required by NFMA, the Forest Plan.

Issue 1d: Purpose and Need

Contention: The objector contends that the draft ROD’s assertions that allowing public access on Bog Creek Road would diminish CBP’s ability to effectively control the border is unsupported as evidenced by statements from Border Patrol representatives to the Boundary County Board of Commissioners that CBP was not concerned with the public having access to the route. The draft ROD places too much emphasis on potential detriments of public access when such effects were not adequately discussed or analyzed in the FEIS.

Response: NEPA regulations require that federal agencies disclose the effects of a proposed action. Regulations direct that “The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.” (40 CFR 1508.16) “Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” (40 CFR 1508.8)

The FEIS includes analysis of an alternative (Alternative 4) that would allow un-restricted public access on the Bog Creek Road and portions of FSRs 2546, 1011, 636, and 1009 year-round. (FEIS, pp. 29-37) Chapter 3 of the FEIS discloses both the detrimental and beneficial effects to resources impacted by the proposed project. As an example, the FEIS states “This change in road classification would have a beneficial impact on motorized recreational use in the Blue-Grass BMU by opening up an additional 17.4 miles of road for public year-round motorized use (e.g., ATVs, OHVs, and utility-terrain vehicles).” It also says “Year-round motorized use of Bog Creek Road and 17.4 miles of portions of FSRs 2546, 1011, 636, and 1009 would have a detrimental impact on non-motorized recreational use for visitors who value non-motorized experiences, such as biking, horseback riding, and hiking. (FEIS, p. 310)

With respect to effects on CBP’s purpose and need, the FEIS say “CBP’s capability to effectively control the border would be impacted in the following ways:

- Maintain Situational Awareness: Capability diminished due to the increased general public road traffic in the area. The expected higher volume of traffic detrimentally affects the level of situational awareness in the area.
- Identify and Classify Threats: Capability diminished due to the lower ratio of Law Enforcement Officers to general public traversing the immediate border area.
- Respond Efficiently and Effectively: Capability enhanced due to west-east motorized access which reduces agent response time to the immediate border area.
- Resolve Law Enforcement Situations to Satisfaction: Capability diminished due to the increased probability of cross-border violators blending in with the general public traversing the area. The expected higher volume will necessitate increased law enforcement presence in the area.” (FEIS, pp. 311-312)

CBP is a joint lead agency in this process and participated in preparation of the FEIS. (FEIS, p.1; DROD, p.4) Input from CBP is incorporated in the Forest Service responsible official’s decision over which alternative to select.

I conclude that the FEIS appropriately discussed the impacts of public access.

Issue 2a: Reasonable Access

Contention 1: The objectors allege that the draft selected alternative does not provide reasonable access to inholding property under ANILCA. While inholding owner’s access to their property is subject to reasonable regulation by the Forest Service, the draft selected alternative is not reasonable given historic use.

Response: See Response to Chuck Rody, Continental Lands, Inc – Issue 1, Illegal limitation of access.

Bog Creek Road Project – Idaho Panhandle National Forest

Andrea Santarsiere – Center for Biological Diversity

Organizations - Center for Biological Diversity, WildEarth Guardians, Sierra Club, Predator Defense, Western Watersheds Project, Selkirk Conservation Alliance, The Lands Council, and Northeast Oregon Ecosystems.

Issue 1: Response to Comments

Contention: Objectors contend that the agencies have violated NEPA by failing to assess, consider, and respond to the objector's comments on the project's draft EIS.

Response: Objectors state that they submitted timely comments to the Bog Creek Road DEIS on July 16, 2018, the last day of the original 45-day objection period. The responsible official then extended the comment period an additional 15 days. Objectors correctly claim that in "Table C-2, "Letter Identification Number and Submitter Information," our organizations are absent from the list and the agencies entirely failed to respond to our comments." The *Errata Sheet for the Bog Creek Road Project Final Environmental Impact Statement* (Errata Sheet) says the 108th comment letter in question "was missed during the agencies' comment receipt process and located on March 20, 2019." (p. Errata-1) The Errata Sheet also says "The majority of the comments within this letter were addressed through other responses provided in the February 15, 2019, *FEIS Appendix C Response to Comments on the DEIS*. Comments from Letter 108 have been incorporated into a revised *FEIS Appendix C* published on the agencies' project websites on April 5, 2019. Below is an errata table providing FEIS revisions, based on Letter 108 comments, not previously addressed through the February 15, 2019, version of the FEIS."

CEQ regulations require "An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement." The responsible official's actions to rectify the misplacement of the objector's comment letter comply with NEPA and the CEQ regulations.

Issue 2: Purpose and Need

Contention 1: The agencies have violated NEPA by failing to reasonably define the purpose and need for the project by conflating two completely different objectives into a single purpose and need statement, in order to justify the preferred alternative of opening the Bog Creek and Blue Joe Creek roads. They have done what NEPA and NEPA case law prohibits by defining the purpose so narrowly so that only one alternative meets the purpose and need, thereby failing to analyze a reasonable range of alternatives including an alternative that maintains or increases the effectiveness of natural barriers to provide border security.

Response: See response to Alliance for the Wild Rockies – Issue 3; Harry Jageman – Issue 1, Contentions 3 and 4

Issue 2a: Border Security and Motorized Access

Contention: The agencies fail to adequately respond or demonstrate how increasing the availability of motorized access will result in improved border security, as the logical approach would be to decrease access opportunities by increasing the presence of natural barriers. The agencies suggest that increased patrols and access will result in a more secure border, but the EIS provides no discussion or supporting evidence to support this assertion.

Response: See responses to Alliance for the Wild Rockies - Issue 3, Harry Jageman – Issue 1

Issue 3: Vegetation Removal work

Issue 3a: NEPA Violation

Contention: The objector contends that CBP’s vegetation removal work violated NEPA because no NEPA analysis was completed prior to conducting the work. CBP failed to describe an emergency that made it impossible for the agency to comply with NEPA, nor did CBP describe making alternative arrangements. Rather, it appears CBP went forward with vegetation removal with complete disregard to NEPA’s mandates.

Response: The objectors raised this issue in their comments to the DEIS. Appendix C of the FEIS (Response to Comments to the Draft Environmental Impact Statement) responded to the comment stating the clearing was conducted “for safety purposes to facilitate a non-motorized response to an exigent circumstance and not to presage the repair of Bog Creek Road. The brush trimming is described in Section 1.2, Background, and the current state of vegetation is addressed in the baseline environment sections. Continued coordination between CBP and the Forest Service on this project will help ensure that all environmental requirements are fulfilled appropriately.” (FEIS, p. C-42) An email contained in the Bog Creek Road Project file from a CBP agent described the clearing as “CBP agents on horseback at a camp operation in the Bog Creek area received a technology indication that a possible cross border violation had occurred. In order to get to the location of the indication, they used chainsaws to remove brush from the roadway.” (Brush Trimming Description Email)

I conclude the Forest Service complied with NEPA.

Issue 3b: Vegetation Removal work – ESA Violation

Contention: The objector states that the previous unauthorized brush clearing on the Bog Creek Road violates the consultation requirements of the ESA.

Response: See response to Issue 3a. This issue was raised by another commenter and a response was provided (FEIS, page C-42, Comment #64-131). The Forest Service did not conduct or authorize the action, and therefore the Forest Service did not violate the ESA. The brush clearing

was reported in the FEIS and a discussion of this action was included in the biological assessment. The Forest Service has submitted a biological assessment to the regulatory agency.

I conclude the Forest Service properly disclosed and addressed clearing of brush on the Bog Creek Road.

Issue 4: Access Amendment

Contention 1: The objectors contend the EIS fails to appropriately analyze each alternative or comply with the IPNF Forest Plan standards for motorized access in the Blue-Grass BMU. They contend the agencies used an inappropriate baseline to demonstrate compliance with the Access Amendment standards because actual road use has never met minimum designated use, in violation of NFMA.

Response: The Draft Record of Decision (pp. A-3 to A-4) and FEIS Table 2.4.2 (p. 43) show how the action alternatives meet the Access Amendment standards. “Minimum designated use” is not a concept in the Forest Plan Amendments for Motorized Access Management with the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones. The Access Amendment includes an allowable use of 57 trips annually on seasonally-restricted administratively-open roads. When this number is exceeded, the roads are modeled as “open” for reporting purposes. Table 3.1.3 on page 70 of the FEIS displays designated and actual road use in the Blue-Grass BMU.

I conclude that the Forest Service complied with NFMA.

Contention 2: The objectors contend the agencies have failed to demonstrate compliance with the Blue-Grass BMU core area standard because the foreseeably potential action of the Upper Priest River and the American Falls trails to become high-use trails will impact the amount of grizzly core habitat and therefore, must be accounted for in the current project proposal. Because the agencies have not shown that these trails will not meet the definition of high-use trails and that the project will meet the Blue-Grass BMU’s core area standard if they are designated as high-use trails, the agencies have violated NFMA.

Response: Monitoring of these trails has indicated they are not now high-use trails. As stated in FEIS Table 3.2.33, “If future monitoring data shows that these trails are exceeding an average of 20 parties per week, they would be buffered, and the buffered area surrounding the trails would be removed from core area habitat.” It goes on to state that, “If this situation occurs, the Forest Service would then evaluate approaches to ensure that the 55% core area standard for the Blue-Grass BMU is maintained.” (FEIS, p. 151).

Issue 5 – Hard Look and analysis

Issue 5a: Grizzly bear

Contention 1: The objector contends that the agencies failed to take a hard look at the impacts. The objector states the agencies do not adequately analyze how detrimental the restricted movement for grizzlies in the western portion of the Blue-Grass BMU could be to this population to grizzly bears.

Response: Habitat fragmentation impacts to grizzly bears was identified as one of the major issues in the FEIS (p. 10). One of the analysis measures used for alternative comparison was impacts to fragmentation and linkages as seen in Table 2.4.4, Summary Comparison of Alternatives (ibid, p. 47). As stated in the FEIS, the U.S. portion of the SRZ is not of sufficient size to support a minimum population without connectivity to Canada, the SRZ population recovery may be inhibited. (ibid, p. 113). The FEIS went on to state that, “Bog Creek Road repair and maintenance would result in a long-term semipermeable barrier to grizzly bear movement because the vegetation would be removed, it would be maintained, and vehicles would drive on the road. The surrounding habitat would no longer function as core habitat.” In section 3.2.5.3, goes on to disclose that, in the long term, the Bog Creek Road repair would reduce the permeability of the west side of the movement corridor and improve the permeability in the center of the BMU for grizzly bears (ibid, p. 132).

The current condition in the Selkirk Recovery Zone was also discussed in the BA in section 6.3 and the importance of the connectivity and genetic exchange between the U.S. and Canada, (BA p. 23). The Movement section in the Affected Environment in the BA discussed importance of the Blue-Grass BMU as a movement corridor, the centrally located high-quality habitat, and the availability and juxtaposition of preferred seasonal habitats. That section also discussed that the B.C. roads, combined with roads open to motorized use within the U.S. portion of the SRZ, likely are acting as a semipermeable barrier to grizzly bear movement due to bear road-avoidance behavior as well as elevated levels of mortality risk. (ibid, pp. 35-36). The reduction in landscape permeability and genetic exchange was analyzed in sections 6.6 and 6.8. These sections state that the opening of the Bog Creek will reduce the ‘permeability’ (i.e., the likelihood of bear movement, especially females) from this gateway BMU into and out of B.C. in both the short and long term (ibid, pp. 67 and 76). BA Figures 3.1, 3.2, 3.3 show core habitat before, during, and after implementation (pp. 11, 12, and 13). The analysis showed that while 749 acres of core would be gained in large core blocks from 2017 functional core conditions, the core acres ‘gained’ are a combination of existing functional core and other secure habitat (i.e. areas around the ~8 miles of road that have been undrivable for <10 years) which are currently available to grizzly bears within the Action Area prior to project implementation (PF, Project Documents, BogCreek_BA_Final, p. 74). This was part of the rationale for the determination of may affect and are likely to adversely affect for grizzly bears.

I conclude that the Forest Service took a hard look at the impacts to grizzly bears.

Contention 2: The objector contends that the claim is incorrect that the project will help grizzlies. The objection includes comments on effects of route designation changes and subsequent use; maintenance and restoration effects; and effects of existing brushed in routes contributing to core.

Response: The TMRD, OMRD and Core numbers disclosed in the FEIS, Tables 2.2.2 through 2.2.8, include the roads shown in FEIS Figures 2.2.1 through 2.2.6. FEIS Figure 2.2.2 in the FEIS Errata Sheet for the Bog Creek Road Project shows the current motorized route drivability status within the Blue-Grass BMU (p. Errata-5). The TMRD and OMRD are based off road densities and defined in the FEIS (p.3). For the core calculations the open roads, such as FSR 1013, would be buffered out for 500 meters which would be the influence of that open road. Closing roads parallel to the open roads does increase core, but not as much due to the influence of that open road. This can be seen when comparing Figures 2.2.1 and 2.2.4 (FEIS, pp.17 and 27).

The BA contains analysis of the planned closures and looks at the drivable and undrivable roads being closed. It states on page 6 of the BA, “The Forest Service proposes motorized road closure of approximately 26.2 miles of currently seasonally restricted FSRs 2464 (Lower), 2464 (Upper), 1322, 1322A, 1013D, 1013C, 1388A, 1388, and the terminal 2.7 miles of FSR 2253. Five of these roads are considered undrivable at present (i.e., 1322, 1322A, 1013C, 1013D, and 1388A) having received no motorized use in at least 10 years (Table 3.1). For this reason, they are considered to be providing secure habitat for grizzly bears using the area (i.e., functional core). The 2.7 miles of FSR 2253 and 5.65 miles of FSR 2464 Upper and Lower are also considered undrivable but motorized activity has occurred more recently (8 miles) (<10 years). These closures will allow the Forest Service to meet the numerical Forest Plan standards for grizzly bear core area habitat requirement of at least 55 percent and the TMRD (> 2 miles per square mile) requirement of no more than 26 percent.” Both the core and the functional core effects are considered throughout the BA analysis and summarized in Table 6.21 (BA, p. 75).

All the roads proposed for closure are seasonally restricted roads. This means that there is limited motorized access. Within the BMU up to 57 trips per year are allowed on seasonally restricted roads between April 1 and November 15. When these seasonal trips are exceeded on a road, that road is modeled as open for that given year. If trips annually adhere to the designated motorized use, the OMRD for the BMU would be 14.9 percent. The 2017 OMRD was 28 percent because some seasonally restricted roads received more than 57 trips. (FEIS, pp. 3-4)

The changes in motorized road use and impacts to use with implementation of Alternative 3 Modified are shown in Table 3.2 of the BA. The BA explains that Bog Creek road and Blue Joe Creek road would be modeled as administratively open at the conclusion of the road repairs and motorized road closures within the BMU. This is because the CBP motorized use in tandem with the Continental Mine owners use and other agency use is anticipated to exceed the seasonal and/or annual trip limits for the purposes of this analysis. (BA, pp. 8)

Short and long term effects to grizzly bears are analyzed separately in both the FEIS (pp. 108-116 and 132-135) and the BA. (pp. 65-73) Short-term and long-term are defined in the introduction to Chapter 3 of the FEIS. (FEIS, pp. 67) Short-term are the effects during the road repair and motorized closure actions. Long-term are the effects are those that would occur under the maintenance and use actions.

Contention 3: The objector contends that the forest violates the NEPA by relying on outdated research.

Response: Volsen’s 1980s research was used in the FEIS and the BA because it is local research that still pertains to the area. However, it was not the only research used or relied on to discuss bear seasonal habitat use. The Proctor and Kasworm 2017 fine scale grizzly bear habitat modeling for the South Selkirk ecosystem was used to look at spring, summer, and fall habitats within the BMU (FEIS, pp. 88-89; BA, pp. 20-23, 39-41; Proctor and Kasworm 2017). See additional research used in the BA used to predict and assess grizzly bear elevation and seasonal habitat usage in the Blue-Grass BMU (BA, pp. 20-23).

Contention 4: The objector contends the agencies overstate the potential benefits and effects are vague.

Response: The FEIS lists the recovery targets and the current status of those targets (PF, Project Documents, 20190215_Bog Creek Road Project FEIS, Table 3.2.4, p. 87). As stated in the FEIS, “It is thought that the south Selkirks are slowly being repopulated by remnant bear populations in the north Selkirks as grizzly bear secure habitat conditions improve.” It goes on to say that, “Improvements to grizzly bear secure habitat conditions have likely occurred as a result of managed motorized access, increased human regulation enforcement, and hunter information and education.” (ibid, pp. 87) Tables 3.2.26 through 3.2.28 compare different habitat parameters between alternatives that would have the potential to effect secure habitat and therefore the potential to affect the recovery targets. Table 3.2.29 compares whether the alternatives are compatible with MS1 management direction to prioritize ESA-threatened grizzly bear recovery needs: 1) maintain and improve habitat; 2) minimize bear–human conflict to avoid mortalities; and 3) maintain genetic connectivity and distribution of breeding animals across the recovery zone. (ibid, pp. 133-135).

The BA reviewed all the recovery targets and how the project would affect those habitat parameters (BA, pp. 75, Table 6.21). At the beginning of the BA it states that, “According to the Grizzly Bear Recovery Plan (Recovery Plan), adequate effective habitat is the most important element in grizzly bear recovery (USFWS 1993a). Effective habitat is a reflection of an area’s ability to support grizzly bears based on the quality of the habitat (composed of foraging, denning, rearing, and secure habitats) and the type/amount of human disturbance imposed on it.” (ibid, pp. 2).

The BA looked at the occurrences and home ranges for both male and female grizzly bears in the BMU (ibid, Figures 6.5, 6.6, 6.7, 6.8, 6.10, 6.11, 6.12, 6.13, 6.14, pp. 42-51). This telemetry data, home range, and habitat modeling was used through the analysis to paint the picture of past and current grizzly bear use in the BMU and how the project would not only effect that use but the recovery parameters as well (ibid, pp. 33-36, 74-76). Table 6.21, provides a summary of the quantitative parameters that were used to measure the effects, both positive and negative, to grizzly bears from the proposed action (Alternative 3 Modified) in the Blue-Grass BMU.

Issue 5b: Woodland Caribou

Contention 1: The objector contends that the FEIS fails to acknowledge recent events and the current absence of caribou in Idaho. This is a serious omission demonstrating the agencies’ failure to adequately analyze impacts to caribou and caribou habitat.

Response: NEPA requires analysis of direct, indirect, and cumulative effects, which include ecological, aesthetic, historic, cultural, economic, social, or health impacts. These effects may also include those resulting from actions having both detrimental and beneficial effects.

GIS data representing caribou habitat on the IPNF were used to quantify habitat available in Section 3.2.3.2 and habitat affected in Section 3.2.5 (FEIS, pp. 93, 94, 118, 119, and 137; GIS, Map Package, Chapter 3, Fig3.2.4). See also responses to Comments #104-201 and #104-202 in Appendix C of the FEIS (FEIS, p. C-63) in response to the Kootenai Tribe of Idaho (KTOI). This was reiterated in the revised Appendix C of the FEIS (Appendix C_Response to Comments from DEIS, p. C-74) and the Errata Sheet Bog Creek Road (FEIS_ErrataSheet_040819, p. Errata-2) in response to CBD and WEG (Comment #108-217). Included in the Errata revisions are these disclosures on FEIS page 92: “the analysis area is considered unoccupied.” and “The last suspected use in the U.S. Selkirks was in 2016 (Hershey 2016).” (Hershey_20160605_CaribouObservationAtWatchLake, pp. 1, 2).

As part of the FEIS revisions for Comment #104-202, Section 3.2.3.2 was revised to also discuss the 2018 draft management plan developed by the interagency Selkirk Caribou International Technical Working Group (SCITWG), which addresses caribou recovery planning efforts, and to include the plan’s 11 current threats to caribou (PF, Project Documents, 20190215_Bog Creek Road Project FEIS, pp. 91-92).

I conclude the Forest Service adequately analyzed the effects to woodland caribou.

Contention 2: The objector states the FEIS contains inaccurate information regarding the status of woodland caribou, which is out of date and inadequate to inform the public as to the current status of the woodland caribou.

Response: The objector states that the status of caribou is under review by USFWS and that critical habitat has been designated approximately one mile west of the project’s caribou analysis area. However, USFWS’ current proposal would declare that the southern Selkirk herd is actually part of a larger population known as the southern mountain caribou distinct population segment (DPS) and that this population warrants protection as a threatened species. The hope is that the new DPS will be able to repopulate its historic range, included the project area. This project will make that far less likely to happen given that the Bog Creek Road runs parallel to the Canadian border.

Under NEPA, an agency must take a “hard look” at the impacts of a proposed action and must ensure the scientific integrity of its analyses. NEPA’s implementing regulations direct agencies to focus only on issues “that are truly significant to the action in question rather than amassing needless detail,” 40 CFR 1500.1(b), and to discuss environmental impacts “in proportion to their significance.” 40 CFR 1502.2(b).

The Forest Service disclosed that, “Critical habitat has been designated approximately 1 mile west of the woodland caribou analysis area (USFWS 2012).” (USFWS 2012, pp. 71082; FEIS, pp. 91). Within their 2014 and 2016 Proposed Rules to include the southern Selkirk herd as part of a larger southern mountain caribou DPS and amend their listing to a threatened species, the USFWS reaffirms their decision to use the geographic area for DCH from the 2012 Final Rule (USFWS 2014c, pp. 26504, 26532-26535; USFWS 2016c, pp. 22961, 22962; USFWS 2012, pp. 71082).

The FEIS also discloses the action alternatives' potential to affect caribou linkage corridors and population connectivity (FEIS, pp. 137, 143, 146, and 149-155). The BA discusses this potential impact as well (pp. 89-91).

I conclude that the Forest Service complied with NEPA and took a hard look using up-to-date and accurate information regarding woodland caribou.

Contention 3: The objector contends the agencies violate NEPA by ignoring public comment regarding ongoing illegal public snowmobiling within the caribou closure area.

Response: The objector says "NEPA does not provide an exemption allowing agencies to ignore illegal activities that impact the environment. The agencies statement that "[t]he agencies' effects analysis does not include analysis of illegal activities" demonstrates a failure to take the requisite "hard look" at the impacts of the project." The objector also maintains that the response and analysis in the FEIS ignores effects happening on the ground, which is a violation of the hard look requirement.

CEQ Regulations at 40 CFR 1503.4 (a) require that "An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. In the objection the objector refers to response to DEIS Comment #48-89. The Responsible Official responded to objector's comment to the DEIS with the statement "The EIS discloses the potential effects on caribou from CBP winter motorized patrol and public snowmobiling on designated trails. The agencies' effects analysis does not include analysis of illegal activities." (FEIS, p. C-27) Although the objector disagrees with the response, the Forest Service did not ignore the comment.

See also response above to Issue 5b, Contention 1; the caribou analysis area is considered unoccupied. The project does not propose to increase illegal snowmobiling, and improved CBP presence has the potential to reduce illegal activities. Illegal snowmobiling has the same, or higher, likelihood of occurring under the current condition (No Action Alternative), than under the action alternatives.

I conclude that that the Forest Service complied with NEPA by appropriately responding to comments.

Issue 5c: Bull Trout

Contention: The objector contends that the agencies failed to take a hard look at the impacts to bull trout. They state the FEIS lacks sufficient analysis of the environmental consequences to bull trout and its designated critical habitat (DCH) under each alternative, specifically with regard to sedimentation from Bog Creek Road with emphasis on the culverts.

Response: Table 3.1.1 of the FEIS lists the road repair actions, including replacement of 6 of the existing 67 corrugated metal pipe culverts and Table 3.1.2 lists the road maintenance and road use actions. (FEIS, p. 69) The BA states "Effects to individual bull trout are discountable and insignificant. Effects of traffic is discountable because the type of roads in the area generally allow access for high-clearance vehicles, and therefore traffic is normally minor, usually

consisting of one or a combination of administrative, permitted, dispersed recreation, or other specialized uses.” (BA, pp. 111-112)

Figure 9.1 of the BA displays a list of bull trout streams and bull trout Designated Critical Habitat (DCH) in the bull trout action area for the project. The BA states “at the closest, bull trout occur downstream of the impassable migratory barrier 4,200 feet downstream of the Bog Creek Road (Stash 2018).” (BA, p. 106)

The BA also states “no in-stream work would occur in stream segments occupied by bull trout or designated as critical habitat. Bull trout distribution and migratory corridors would not be affected by the proposed action. In-stream work would occur upstream of streams occupied by bull trout and mapped as DCH and has the potential to cause minor downstream impacts”. (BA, p. 106) Section 9.7 of the BA states, “The proposed action may affect, but is not likely to adversely affect bull trout. There would be no direct impacts to bull trout because they do not occur at the locations where in-stream work would occur. There is the potential for temporary insignificant indirect impacts from the proposed action to bull trout (4,200 feet downstream). The determination is based on the proposed action including the design features (Appendix F) that will result in effects that would not exceed the level of insignificant or discountable effects.”

I conclude that effects to both bull trout and bull trout DCH were adequately analyzed and documented in the FEIS and associated project documentation.

Issue 5d: Climate Change

Contention 1: The objector contends the FEIS needs to fully analyze the environmental consequences from the Forest Service road system, especially in the context of climate change.

Response: As stated in response to Issue 6, “NEPA requires analysis and disclosure of potential cumulative effects, which is the impact on the environment that results from the incremental impact of the action when added to other past, present (ongoing), and reasonably foreseeable actions, regardless of which agency or person undertakes such actions (40 CFR 1508.7). Although it may be argued that the source of climate change is anthropogenic, climate change is not an ‘action’ undertaken by a person or agency. There is no NEPA requirement for the responsible official to analyze the effects of uncertain potential future events such as wildfire, floods, insect and disease infestations, or climate change on this proposal or its alternatives. The FEIS does discuss the effects of climate change on woodland caribous (FEIS, p. 92), and wolverine (FEIS, p. 99, p.156, p. 198).”

See Response to Issue 9b Design Criteria for additional information.

Issue 5e: Snowmobile Use Impacts

Contention 1: The objector contends more should have been done to disclose the related potential environmental impacts to grizzly bear denning habitat and den emergence from increased winter patrols by border patrol.

Response: See response to Harry Jageman – Issue 2.

It is recognized that snowmobiling may have the potential to disturb bears while in their dens and after emergence from their dens in the spring (IGBC 2018, pp. 42-43). However, as stated in the response to comments, this would not be a newly authorized activity in this analysis (Comment #108-216). These activities were also disclosed in the cumulative effects table (FEIS, Table 3.2.33, p 150 and 152). That dispersed motorized use results in periodic vehicle noise in backcountry areas year-round could cause species to flee while vehicles are present in the area. This would include snowmobiles. Additionally, the table identified that dispersed snowmobile use could disturb grizzly bears.

The recent conservation strategy for the Northern Continental Divide Ecosystem showed that the best available information suggests that current levels of snowmobiling use are not appreciably reducing the survival or recovery of grizzly bears (IGBC 2018, pp. 42-43). The information that is available on the impacts of snowmobiling on grizzly bears is based on small sample sizes and opportunistic sightings of disturbance. (IGBC 2018, pp. 42-43). This is consistent with the USFWS 5-Year Review which says “In summary, the evidence we have about the potential for disturbance while denning and den abandonment from nearby snowmobile use is extrapolated from other studies examining the impacts of human activities other than snowmobiling and identify themselves as “anecdotal” in nature (Swenson et al. 1997) or have sample sizes so small they cannot be legitimately applied to assess population-level impacts (Harding and Nagy 1980, Reynolds et al. 1986)... There are no reports of litter abandonment by grizzlies in the lower 48 States due to snowmobiling activity (Hegg 2010; Servheen 2010). Our best information suggests that current levels of snowmobile use are not appreciably reducing the survival or recovery of grizzly bears.” (USFWS 2011b, pp. 36-38)

Contention 2: The objector alleges that the analysis discusses the importance of caribou population connectivity with Canada, yet the agencies still propose to allow unlimited winter patrols in the analysis area. Given population connectivity’s importance, the agencies should have considered limiting winter patrols or other management options that objectors provided in the comments on the DEIS.

Response: See responses to Alliance for the Wild Rockies – Issue 6; Harry Jageman – Issue 2.

Contention 3 – The objector alleges the Forest Service provided an inadequate effects analysis regarding lynx and the impacts related to snowmobiling, including snowmobile patrols by Customs and Border Patrol (CBP). The objector further alleges the Forest Service did not consider design criteria recommended in comments of the DEIS to mitigate harm from increased winterized use.

Response: The Forest Service analyzed the impacts to lynx and identified lynx effects as a specific issue to analyze in the FEIS. (FEIS, p. xvii) The potential for displacement and increased competition is disclosed in the FEIS (pp. 137-138) and Biological Assessment (pp. 99 and 101).

The design criteria and BMPs that were cited by the objector in the DEIS comments and the objections, are very closely aligned with the requirements in the NRLMD (FEIS, pp. E-1 to E-4; BA pp. I-2 to I-5). Both are looking to limit, reduce, or identify routes and areas of potential disturbance to wildlife, such as grizzly bears, wolverine, lynx, and ungulates. Under the proposed action the 5.3-mile segment of designated ungroomed snowmobile trail that is currently open in the Upper Priest LAU would remain; snow-compacting activities on this trail would remain unchanged. No developed recreation and ski areas, mineral development, or highways are proposed. This meets all the objectives, standards, and guidelines in the NRLMD (BA, Appendix H, p. I-3) and the intent of the BMPs.

Additionally, as stated in the response to comments, this would not be a newly authorized activity in this analysis. (20190405_Appendix C_Updated Response to Comments from DEIS, Response to Comment #108-220, p. C-80) These activities were also disclosed in the cumulative effects table (FEIS, Table 3.2.33, pp. 150 and 152). It was acknowledged in the table that dispersed motorized use results in periodic vehicle noise in backcountry areas year-round that could cause species to flee while vehicles are present in the area.

I conclude the Forest Service adequately analyzed the effects of winterized motorized use on lynx.

Contention 4: Objectors contend that their DEIS comments provided extensive information about the harmful effects of winter motorized use on wolverine, including disrupting natal denning areas, den abandonment, increased stress levels and reduced foraging success. While the EIS acknowledges the potential for CBP winter patrols via snowmobile to increase the potential for temporary wolverine displacement, which would all be detrimental impacts, the agencies still assert that displacement of an individual or family group would not be likely to affect species at the population level. This statement lacks supporting evidence. The agencies also failed to discuss any design criteria objectors proposed in their DEIS comments.

Response: See response to Issue 1. See also responses to Comments #108-220 and #108-227 regarding wolverine denning and CBP “occasionally [accessing] these roads via snowmobile” (Appendix C_Response to Comments from DEIS_040519, pp. C-70 and C-80) and the FEIS Errata (pp. Errata 2 and Errata-3) in response to Center for Biological Diversity and WildEarth Guardians (Comments #108-220 and #108-227). The USFWS found that “The best scientific information available does not substantiate dispersed recreational activities as a threat to wolverine” (USFWS 2013b, pp. 7877 and 7878). In the Region 1 Wolverine Programmatic BA and subsequent BO, it was found that the dispersed recreational activities in the proposed action are not considered a threat to the DPS of the North American wolverine (Forest Service 2014a, pp. 4).

The design criteria and BMPs that were cited by the objector in the DEIS comments and the objections, advise looking at ways to limit or reduce routes and areas of potential disturbance to wildlife, such as grizzly bears, wolverine, lynx, and ungulates (PF, References, Switalski 2016,

pp. 13-20). As stated in the FEIS, only law enforcement actions are exempt from the snowmobile closure, while with the improvement of the Bog Creek Road has the potential to increase CBP snowmobile use this would still meet the BMPs intent to limit routes and activities that have the potential to disturb wildlife (FEIS, Table 3.2.33, pp 137-138). Under the proposed action snow-compacting activities on this trail would remain unchanged.

I conclude that the Forest Service adequately responded to comments regarding wolverine in compliance with CEQ regulation 40 CFR 1503.4

Issue 6: Cumulative Impacts

Issue 6a: Cumulative Impacts – Climate Change

Contention 1: The objector alleges that the FEIS fails to consider the cumulative impacts of climate change and forest roads (i.e., how climate change is expected to lead to more extreme weather events, resulting in increased flood severity, more frequent landslides, altered hydrographs, and changes in erosion and sedimentation rates and delivery processes).

Response: Objectors comments on the DEIS are similar to their objection points. However in their comment letter they state “The Agencies must analyze in detail the impact of climate change on forest roads and forest resources.” For the purposes of this review it was assumed the objector is concerned about the effects of the Bog Creek Road proposed project when added to the effects of climate change.

NEPA requires analysis and disclosure of potential cumulative effects, which is the impact on the environment that results from the incremental impact of the action when added to other past, present (ongoing), and reasonably foreseeable actions, regardless of which agency or person undertakes such actions (40 CFR 1508.7). Although it may be argued that the source of climate change is anthropogenic, climate change is not an ‘action’ undertaken by a person or agency. There is no NEPA requirement for the responsible official to analyze the effects of uncertain potential future events such as wildfire, floods, insect and disease infestations, or climate change on this proposal or its alternatives. The FEIS does discuss the effects of climate change on woodland caribous (FEIS, p. 92), and wolverine (FEIS, p. 99, p.156, p. 198).

Contention 2: The objector contends the FEIS focuses only on authorized use of system roads without addressing the cumulative impacts of unauthorized routes.

Response: Objectors state that “the analysis lacks any discussion or evidence that unauthorized use contributes to the open road densities in the project area, or poses other management challenges.” Section 1.2 of the FEIS contains background on the Bog Creek Road and other routes in the grizzly bear Blue-Grass BMU (FEIS, p.2). It states “Vehicles currently operating on restricted roads within the BMU are there for law enforcement, medical/search and rescue, fire suppression, forest management, and grazing, and to access the Continental Mine property.” Although unauthorized use is not specifically mentioned in the FEIS the project record indicates that many roads or portions of roads are impassable. For example Table 3.1.3 in the FEIS (p. 70) contains actual use figures for roads in the Blue-Grass BMU. The BA (Table 3.1, p. 7), and

Travel Analysis Report (under ‘The Analysis’ section, pages not numbered) also state that much of the project area is “brushed in”, “impassable”, “gated” etc.

The Access Amendment to the Idaho Panhandle Forest Plan requires monitoring of the use of routes and annual reporting to the U.S. Fish and Wildlife Service.

Issue 6b: Cumulative Effects – non-motorized use

Contention 1: The objector contends that because the FS has acknowledged that hiking participation is on the rise and will only increase in the future the designation of the Upper Priest and American Falls hiking trails within the BMU as high use trails is not only foreseeable, but inevitable. Given this reasonably foreseeable designation, which will bring the BMU out of compliance with its core habitat standard for grizzly bear, the agencies cannot just ignore this inevitable problem and hope that it goes away. They have a duty to analyze this reasonably foreseeable cumulative impact and set for solutions that will be implemented to deal with the problem. Failure to do so is a clear violation of NEPA.

Response: See Response to Issue 4, Contention 2. CEQ regulations for implementing NEPA define cumulative effects as “..the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” (40 CFR 1508.7) Because a future increase in non-motorized trail use in the Blue-Grass BMU has the potential to impact core area habitat, it fits the definition of a ‘reasonably foreseeable future action’.

CEQ provides further guidance on future actions. It directs “When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking” 40 CFR 1502.22. In the case of future increases in non-motorized trail use it isn’t known when this may occur. The FEIS says “If future monitoring data shows that these trails are exceeding an average of 20 parties per week, they would be buffered, and the buffered area surrounding the trails would be removed from core area habitat. This would reduce core area within the Blue-Grass BMU and the adjacent Salmo-Priest and Sullivan-Hughes BMUs. With a reduction in core area, the adjacent BMUs would still be expected to meet their core area standards, but the Blue-Grass BMU may not, depending upon which segment(s) of trail incur high use and which alternative is chosen for implementation. If this situation occurs, the Forest Service would then evaluate approaches to ensure that the 55%core area standard for the Blue-Grass BMU is maintained.” (FEIS, Table 3.2.33, p. 151)

I conclude that the Forest Service properly analyzed the potential future increase in non-motorized trail use, disclosed it in the cumulative effects section, and presented future actions to deal with the potential increase.

Issue 6c: Cumulative Effects – road work

Contention: The objector contends the agencies have violated NEPA by failing to analyze cumulative impacts from illegally performed work on the Bog Creek Road. CBP did not complete any NEPA analysis prior to this roadwork and now claims that the premature roadwork is beyond the scope of NEPA analysis.

Response: See responses to Issue 3.

Issue 7: Range of Alternatives

Issue 7a: Range of Alternatives – changed Purpose and Need

Contention: The objector contends that although the agencies changed the purpose and need in the FEIS to include project adherence to the Grizzly Bear Recovery Plan, they did not propose any additional alternatives that would meet this newly stated purpose. Instead they continued to analyze the alternatives proposed in the DEIS, altering two alternatives slightly and concluding that its new preferred alternative was now the only alternative that would meet the purpose and need of the project. Several other alternatives were put forward by objectors, but the agency refused to analyze them.

Response: As the objector points out NEPA requires “Federal agencies shall to the fullest extent possible: (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” (42 USC 4332(2)(e)). The Council on Environmental Quality (CEQ) further defines agency responsibility “Federal agencies shall to the fullest extent possible: (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” (40 CFR 1500.2)

In the DEIS (p. 6), the stated Purpose and Need is to:

- Provide improved east–west access across the Selkirk Mountains on National Forest System (NFS) lands to enable CBP to execute its statutory mission to protect the U.S. northern border and for the safety of CBP and other law enforcement officers while carrying out their duties; and
- Meet legally required IPNF Forest Plan standards for motorized access in grizzly bear habitat in the Blue-Grass BMU.

The Purpose and Need stated in the FEIS is identical except for the addition of a clarification at the end of the 2nd bullet that reads “that are compatible with the needs of grizzly bear as defined in the Recovery Plan (USFWS 1993a).” The added verbiage does not constitute a major change but restates the statement already in the FEIS (Section 1.3, p. 7) that says “As identified in the Access Amendment ROD (see Forest Service 2011a) and the 2015 Forest Plan (Forest Service 2015a), proposed land management uses—which include the transportation system—should be compatible with the needs of the grizzly bear as defined in the Recovery Plan (USFWS 1993a).” A clarification of the Purpose and Need does not in and of itself require that additional alternatives be analyzed.

The objector correctly claims that they (Center for Biological Diversity) submitted comments to the DEIS suggesting an alternative in which “..the Agencies would work to close open roads and meet the Access Amendment standards before moving forward to repair and open to increased use Bog Creek and Blue Joe Creek roads. By closing roads before conducting construction and repair activities, the Agencies could lessen the negative impacts to wildlife by limiting where human activity is conducted in the Blue-Grass BMU.” The objector’s letter submitting comments to the DEIS was misplaced by the Forest Service (see response to Issue 1). The letter was subsequently located and objector’s comments were considered. The responsible official responded to these comments in a revised FEIS Appendix C published on the Idaho Panhandle National Forest’s website on April 5, 2019 (Appendix C Updated Response to Comments from DEIS, p. C-83). The response to the suggested alternative states “The shorter the construction activities’ timeframe, the better and less impactful overall for grizzly bear. By concentrating construction within phases (for up to three seasons), the bears have more room to move to less impacted parts of the BMU.”

Issue 7b: Alternatives proposed by objectors

Contention: The agencies violated NEPA by failing to analyze the alternative proposed by objectors, which would close open roads and meet Access Amendment standards first, and then repair and open to increased use the Bog Creek and Blue Joe Creek roads, thereby staggering the work so that there is less human presence and negative impact to wildlife at any given time. The agencies did not consider this alternative nor even explain why it was not considered.

Response: See response to Issue 7a. NEPA directs “Federal agencies shall to the fullest extent possible: ... (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” (40 CFR 1500.2) Chapter 2 of the FEIS discusses Alternatives Analyzed in Detail (pp. 15-37) and Alternatives Considered but Eliminated from Detailed Study (pp. 39-42). Rationale for why alternatives proposed in public comments to the DEIS were not analyzed in detail is presented. The objectors proposed alternative is not addressed in the FEIS because their comment letter was misplaced, but it is addressed in the Appendix C Updated mentioned in the response to Issue 7a.

Issue 7c: Range of Alternatives – original alternative proposed

Contention: The agencies, without supporting evidence demonstrating why seasonal restrictions would prevent the agencies from achieving the stated purpose and need, eliminated analyzing alternatives with such seasonal use restrictions from the EISs. An alternative reflecting the action as originally proposed during the May 2016 scoping period – that would maintain season restricted designations on Bog Creek and Blue Joe Road, limiting administrative motorized access to 57 trips per active bear year is reasonable and should have been considered in detail. Simply providing conclusory statements without supporting evidence is arbitrary and capricious and a violation of NEPA.

Response: The Draft Record of Decisions says The Selected Alternative (Alternative 3 with modifications) and the Proposed Action (Alternative 2) provide the best balance among the alternatives by providing CBP agents unimpeded west–east access to and along the border north of Continental Mountain from both directions in the event of emergency or exigent circumstances, providing reliable and as-needed access from the west for routine patrol and other purposes, and limiting the detrimental effects to situational awareness and threat identification of the general public traversing the immediate border area.”

The FEIS states “Since 2000, there are almost double the open roads within 0.5 mile north of the border (in Canada): there were 21 miles in 2000, and now there are 39 miles (see Chapter 2 for details). Given the significant border access to this area from the north, the ongoing threats of terrorism facing this Nation, and the existence of a maintained network of roads throughout the Blue-Grass BMU, restoring and maintaining access to the area north of Continental Mountain has been identified by CBP as a priority.” (p. 6). Although the proposed action originally proposed in 2016 met the Forest Service’s portion of the Purpose and Need it did not meet CBP’s. (Project File; USBP LEO Comparison of Action Alternatives Final V3, Comparison of Alternatives as it Relates to Border Security)

Issue 8: Compliance with the ESA

Contention: The objector contends that the agencies have failed to demonstrate compliance with the Endangered Species Act.

Response: Objectors claim this project will result in the “take” of listed species in violation of Section 9 of the ESA. They believe the Forest Service and CPB would be violating the ESA by implementing any of the action alternatives for the Bog Creek Road project, which would impede rather than further conservation of numerous listed species, including grizzly bears, caribou, Canada lynx, and bull trout.

A Biological Assessment (BA) was completed for this project and formal consultation was initiated on March 5, 2019. Effects to listed species were addressed within the BA. It is anticipated that the IPNF will receive a Biological Opinion (BO) including an incidental take statement (ITS) from the USFWS prior to a final decision. This would fulfill Section 9 requirements. See also the project design features within the BA (page 9 and Appendix F), FEIS (Appendix B), and Mitigation in the Draft ROD included to minimize the effects of the project on listed species. It is also expected that the BO and ITS will include additional Conservation Measures and required monitoring.

This issue was raised by another commenter and a response was provided (see the FEIS, page C-39, #58-119) although the word “take” was not included in the FEIS comment response. A determination regarding take is under the discretion of the regulatory agency. The Forest Service has conducted its biological assessment and provided its determination with respect to the ESA. The U.S. Fish and Wildlife Service will provide its biological opinion and any statement regarding take.

Issue 9, Clean Water Act:

Contention 1: The objector contends that the Agencies have failed to demonstrate compliance with the Clean Water Act (“CWA”).

Response: Section 3.4.5.5 of the FEIS states, “The action alternatives (the Proposed Action, Alternative 3, Alternative 4, and Alternative 4 Modified) would adhere to the aquatic resources requirements of the Forest Plan (Forest Service 2015a) (see Table 3.4.3), as amended by INFISH (Forest Service 1995b), and in compliance with the State of Idaho’s implementation of the CWA. Vegetation clearing in the RHCAs for road repair and maintenance is consistent with the CWA and the Forest Plan, including INFISH. The loss of large woody debris input within the vicinity of the road–stream crossing removals and replacements would be a long-term minimal impact, with less than 1 percent of the RHCAs affected under the action alternatives.” (FEIS, p. 225)

The diversity and persistence of native fish species in the fish-bearing streams in the analysis area would continue to be supported, as directed by the NFMA under the 2012 Forest Service planning rule (Forest Service 2012c) (FEIS, p. 225) This is reiterated in the Draft ROD which says, “The Selected Alternative will adhere to the aquatic resources requirements of the Forest Plan, as amended by Inland Native Fish Strategy: Interim Strategies for Managing Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana and Portions of Nevada (INFISH), and in compliance with the State of Idaho’s implementation of the Clean Water Act (CWA).” (p. 25). Additionally, the Draft ROD states, “Project activities will need to be consistent with these strategies and the National Best Management Practices for Water Quality Management on National Forest System Lands.”

With respect to specific project impacts, the Selected Alternative will be required to comply with Sections 402 and 404 of the CWA. Section 402 limits point source discharge of stormwater runoff and requires preparation of a Stormwater Pollution Prevention Plan. Section 404 limits “dredge and fill” within waters of the U.S. (including wetlands) and requires permitting by the U.S. Army Corps of Engineers (USACE).

The stream-crossing culvert removals and replacements will be permitted under the USACE Nationwide Permit 14 (Linear Transportation Projects) and providing the USACE with a preconstruction notification will not be necessary. It may be necessary, however, to coordinate with the IDEQ to obtain IDEQ’s 401 certifications for the culvert replacements and their associated fill material.” (Draft ROD, pp. 30-31).

Road-specific BMPs and design criteria specific to protecting aquatic resources would be incorporated into the proposed project are included in Appendix A of the FEIS. Additionally, the matter of sedimentation and stream temperature was responded to in Appendix C (see Response to Comments 108-236) and in response to Issue 5c regarding Bull Trout.

I conclude that the Agencies have demonstrated compliance with the Clean Water Act and the State of Idaho’s implementation of the Clean Water Act.

Contention 2: The objector contends that design criteria, such as the what the Agencies propose, must be able to function properly with new climate conditions, a fact the FEIS fails to address. Additionally, the analysis cites only one study to support the assertion these design criteria will be effective and lacks any actual evidence such as previous monitoring data or best management practice audit reports.

Response: See Response to Comment 108-223 in *Appendix C_Updated Response to Comments from DEIS* (project file). See also response to Issue 6a.

Bog Creek Road Project – Idaho Panhandle National Forest

Chuck Roady – Continental Lands, Inc.

Issue 1, Illegal limitation of access:

Contention: The objectors allege that the selected alternative illegally limits access to their private land inholding in the Blue Joe Creek drainage.

Response: Objectors also contend that “the Secretary of the respective federal agency in charge of managing the lands involved must assure owners of privately-owned property adequate and feasible entry for the reasonable enjoyment and economic purposes to access their land. They assert the selected proposed action for the Bog Creek Road Project does not even come close to meeting this legal criterion in regards to the private inholding of CLI. They further assert appropriate access to private inholdings has been verified and confirmed through numerous legal precedence under ANILCA.

Forest Service regulations implementing the Alaska National Interest Lands Conservation Act (ANILCA) are found at 36 CFR 251. 36 CFR 251.114(a) and state that in issuing a special-use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize impacts on the Federal resources. In addition, the route is so located as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land (36 CFR 251.114(f)(2)) and the location and method of access is consistent with the Forest Plan (36 CFR 251.114(f)(3)). Regulations also require that “A landowner shall apply for access across National Forest System lands in accordance with the application requirements of § 251.54 of this part. Such application shall specifically include a statement of the intended mode of access to, and uses of, the non-Federal land for which the special-use authorization is requested.” (36 CFR 251.112(a))

Forest Service decisions to grant access must be made in compliance with the National Environmental Policy Act (NEPA) of 1969. Access authorizations must be conditioned to assure that the use and occupancy of federal lands for access purposes is exercised in a manner that complies with all applicable laws and regulations, including the Endangered Species Act. Management of grizzly bear habitat (BMUs within the Selkirk Recovery Zone) on the IPNF is regulated by the 2015 Forest Plan (Forest Service 2015a). The Forest Plan incorporated the 2011 Access Amendment direction (Forest Plan, Appendix B) related to motorized access in and around the Selkirk Recovery Zone (SRZ). The Access Amendment design elements and terms and conditions of the accompanying USFWS biological opinion were incorporated into the 2015 IPNF Forest Plan as standards (FW-STD-WL-02). To be consistent with the Forest Plan, the respective project must be designed in accordance with the standard. Deviation from a standard requires an amendment to the forest plan.

The Responsible Official has worked closely with the USFWS to ensure the Purpose and Need of the project is met while avoiding a jeopardy determination for the grizzly bear and providing adequate access to the objector’s private land. During informal discussions, the USFWS concluded that bears were already accustomed to road use on the east side and it would be better for them to continue this use than to change it and create new disturbance by providing different

access from the west. As a result of discussions with USFWS and the CLI landowners (objectors) at their objection resolution meeting, the Forest Service committed to modifying the final decision to include unlimited access from the east for the CLI landowners utilizing the appropriate authorizing instrument.

I conclude that the Forest Service is in compliance with law, regulation, and policy including NEPA, ANILCA, and the Forest Plan.

Issue 2, Rationale for Bog Creek Road to be Administratively Open:

Contention 1: The objector contends “it makes absolutely no sense and has no scientific basis to designate Bog Creek as “Administrative Open” simply because the CPB cannot, for obvious security reasons, inform the other agencies when and how many vehicle trips they may utilize the 5.6 miles of the Bog Creek Road.”

Response: The FEIS says that CBP requires safe, reliable, efficient access to the border area north of Continental Mountain (FEIS, pp. 6-7). The Proposed Action would provide CBP “as-needed administrative motorized access along Bog Creek Road from the west. The current seasonal restrictions, which limit the number of motorized administrative trips along Bog Creek Road, would be removed.” (FEIS, pp. 19-21). After repair activities, the 5.6-mile section of the existing Bog Creek Road would change from the current seasonally restricted designation (limited motorized access) to an administrative open designation (as-needed administrative motorized access). It would not be open to the public for motorized travel.

I conclude that this designation is appropriate.

Contention 2: The objector contends that the assumption that a grizzly bear’s travel habits to cross the Bog Creek Road will be interrupted or impeded by the very limited CBP traffic is a fallacy.

Response: The objector also states that there are multiple ongoing grizzly bear research projects now providing conclusive proof that vehicle travel does not permanently impact the movements of grizzly bears, such as numerous bears crossing back and forth across the Swan Highway MT 83, US Highway 95 within the Flathead Indian Reservation, and across US Highway 2 between Glacier National Park and the Flathead National Forest.

The Responsible Official addressed a similar comment made to the DEIS by the Kootenai Tribe of Idaho. (see Response to comment 104-195) The response to the comment says that the discussion in Section 3.2.5.2 of the FEIS was revised and now states “Due to bear road-avoidance behavior described above, this could discourage some bear individuals from moving through the BMU, ultimately decreasing the genetic flow between the U.S. and the Canadian portion of this population in the short term. As described in Section 3.2.3.1, the U.S. portion of the SRZ is ‘not of sufficient size to support a minimum population’ (USFWS 1993a); without connectivity to Canada, the SRZ population recovery may be inhibited.” (FEIS, p. 113, C-61) The “ongoing grizzly bear research projects” mentioned by the objector were not provided or cited in the objector’s letter. However, the Bog Creek Road Project file contains science used in the analysis such as research by Ament et. al. 2014 in northwest Montana which recognizes that bears avoid roads and that there is a potential for direct mortality losses. And Proctor et. al. (2018) found that grizzly bears have three different responses to motorized human access; increased human-caused mortality, habitat displacement, and direct habitat loss although it

recognizes that some bears will cross and use roads. Work by Proctor et. al. in 2017 and 2018 demonstrates the link between the positive influences of quality food resources (i.e., huckleberry patches >10 ha) and negative impact of mortality risk in the form of road density. I conclude that the Forest Service properly addressed effects to grizzly bears from roads.

Contention 3: Providing CLI property owners unlimited access through the Bog Creek Road coming from the West route is not scientific rational to have more traffic on the Bog Creek road when the access to the CLI property could be contained to the East route from Bonners Ferry. If the USFWS & USFS were truly concerned about Grizzly Bear security intrusion upon the bears' core habitat then it would readily appear the impact would be far greater by having the CLI owners travel a much longer distance around through Priest Lake through multiple BMUs than in the Blue-Grass BMU.

Response: The objector also states that if the "USFWS & USFS were truly concerned about Grizzly Bear security intrusion upon the bears' core habitat then it would readily appear the impact would be far greater by having the CLI owners travel a much longer distance around through Priest Lake through multiple BMUs than in the Blue-Grass BMU"

See Response to Issue 1.

Bog Creek Road Project – Idaho Panhandle National Forest

Brad Smith – Idaho Conservation League

Issue 1: No Action Alternative

Contention 1: The objector contends the Forest Service has misrepresented the No-action Alternative, which violates NEPA, by failing to measure the true effects of the project to grizzly bears (the functional changes in core, OMRD, and TMRD). The misrepresentation of the difference between the No-action Alternative and Alternative 3 would suggest that the project will benefit grizzly bears, when in reality, the opposite is true.

Response: See response to CBD 5a.

Objectors state “..the FEIS suggests that 24.7 miles of roads will be closed under Alternative 3 (see Table 2.2.4 on page 26). However, 20.25 of these miles are presently undrivable (i.e. they are impassible and not used for motorized travel). Only 4.45 miles of roads are presently drivable and will truly be closed as far as a grizzly bear is concerned. On the other side of the ledger, there will be an increase of 5.6 miles in drivable roads as a result of rebuilding and reopening the Bog Creek Road. The balance is a net increase of 1.15 miles of drivable roads.”

The Idaho Panhandle National Forest Plan (revised 2015) established grizzly bear habitat management direction that incorporates the 2011 Grizzly Bear Access Amendment (Forest Plan, Standard FW-STD-WL-02, p. 31). Direction includes numerical standards for Motorized Access Management and establishment of core areas for the purpose of providing secure habitat for grizzly bears within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones. (Forest Plan Appendix B, pp. 151-155). The attributes of core areas are described in the Forest Plan (beginning on p. 152). The FEIS discloses the differences in these standards by alternative including the No Action alternative. (pp. 108-116) It states “There would be direct and indirect detrimental impacts from road repair and motorized closure actions under the Proposed Action. Grizzly bears would be likely to avoid these areas during repair and motorized closure activities, which affects the bears’ use of available resources. Also, during repair activities and over the long term, the Bog Creek Road repair would fragment habitat that has been effectively functioning as core area habitat because the road is currently impassable to motorized use.” (p. 116). The effects to grizzly bears from all alternatives were adequately analyzed following standards established in the Forest Plan and leading to a determination of “may affect, likely to adversely affect” grizzly bears. (BA, p. 76) The responsible official properly represented the effects of all alternatives on grizzly bears.

Issue 2: NEPA - Alternatives

Contention 1: The Forest Service violated NEPA (reasonable alternatives which would avoid or minimize adverse impacts.....) by failing to consider in detail, alternatives that would: 1) at least result in a no-net difference in functional core habitat, when compared with the No-action Alternative; 2) dismissed objectors recommendation to maintain existing season trip limits on the Bog Creek and Blue Joe Roads, and; 3) failed to consider closing the Blue Grass BMU to grazing.

Response: See response to Issue 1 above. See also response to issue 7B CBD. NEPA requires “Federal agencies shall to the fullest extent possible: ... (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” (40 CFR 1500.2) Chapter 2 of the FEIS discusses Alternatives Analyzed in Detail (pp. 15-37) and Alternatives Considered but Eliminated from Detailed Study (pp. 39-42). Rationale for why alternatives proposed in public comments to the DEIS were not analyzed in detail is presented.

The objector proposed three alternatives to the proposed action presented in the DEIS. 1) Limit roads open for administrative access to “seasonally restricted,” meaning 57 trips or fewer per year. Adequately monitor and report on administrative use and compliance with these limitations. 2) Permanently close and fully decommission roads in Upper Grass Creek and road 1388 on the Priest Lake side. 3) Add roads to core that are currently open to motorized use, to create a true 1:1 compensation and increased core habitat. These proposed alternatives were considered and eliminated from detailed analysis in the FEIS. The rationale for not carrying them forward is presented in Appendix C of the FEIS (p. C-33).

Objector Alternative 1) This alternative was the Proposed Action published for scoping in May 2016. The response to comments “The agencies determined that this designation would not allow CBP adequate access to the border to effectively conduct its statutory mission and thus it would not meet the project’s purpose and need as presented in Section 1.3 of the FEIS.”

Objector Alternative 2) The response in Appendix C says “The range of alternatives analyzed in the FEIS includes both closing to motorized use the roads in Upper Grass Creek (as a feature of Alternative 3) and closing to motorized use FSR 1388 (as a feature of Alternative 2). Compensating for the administrative open designation of Bog Creek Road and increasing core habitat is provided in Alternative 3 to the extent feasible by the proposed closure of roads in Upper Grass Creek.”

Objector Alternative 3) The response to this alternative states “Currently, the only open roads within the Blue Grass BMU are either encumbered by potential ANILCA (Alaska National Interest Lands Conservation Act) claims, legal agreements, or are necessary for CBP border access and, therefore, are not available for closure to all motorized use as requested by the commenter.

The responsible official considered and responded to the objector’s proposed alternatives.

Issue 3: Road identification

Contention 1: The Forest Service has failed to identify which roads would be decommissioned and which roads would be stored, which is important for mitigating impacts to grizzly bear, because decommissioning is a higher commitment to long-term protection of grizzly bear core habitat. Failure to identify the method of closure makes it difficult for the public and decision-maker to evaluate the comparative merits of the alternatives.

Response: The Access Amendment ROD stipulates that roads that are closed, decommissioned, or barriered to create core area are viewed as equally effective from a core area habitat perspective (Forest Service 2011a, p. 60-61, Design Elements I (B)(1)(b); I (B)(1)(e), and I (B)(1)(f)). What is important is core areas contain no motorized travel routes or high use trails and do not include any gated or restricted roads (ibid I (B)(1)(a) and I (B)(1)(b)). Once route closures to create core areas are established and effective, these core areas should remain in place for at least 10 years and except for emergencies or other unforeseen circumstances requiring independent section 7 consultation, newly created core shall not be entered for at least 10 years after creation (Forest Service 2011a, p. 60-61, Design Elements I (B)(1)(e); I (B)(2)(a) and (b); and I ((B)(3)). Whether a road segment is decommissioned or placed into storage, if an emergency situation or other unforeseen circumstance arises before the elapse of 10 years then consultation with USFWS would be required and handled on a case-by-case basis through standard section 7 consultation procedures (see Forest Service 2011a, p. 60, Design Elements, I (B)(2)(b)).

Issue 4: Grizzly bear habitat

Contention 1: The objector claims the project violates NFMA because it fails to maintain and improve grizzly bear habitat, as required by IGBC guidelines and therefore the IPNF Forest Plan, which incorporated the IGBC guidelines (FW-GDL-WL-18)

Response: One of the primary purposes of the project is to meet Forest Plan standards for grizzly bear habitat in the Blue-Grass Bear Management Unit. The Responsible Official is working to do this and to also accommodate Homeland Security and Customs and Border Protection's need for access on the Bog Creek Road. The Selected Alternative would close nine road segments (approximately 25 miles) to create core habitat and comply with the Access Amendment requirements of 55 percent and the Total Motorized Road Density of 26 percent. (FEIS pp. 26, 43, 45, 47, 126).

I find the Forest Service complies with the Forest Plan.

Issue 5: Access Amendment

Contention 1: The objector contends the Forest Service is derelict in its duty to enforce the seasonal trip limits as required by the Access Amendment, which is a violation of the Forest Plan.

Response: The Forest Service tracks and reports seasonal trip counts every year (Annual SCYE Access Amendment Monitoring Reports). It was recognized in the Monitoring Reports, FEIS (Table 3.1.3), and the BA (Table 3.2) that the roads have typically exceeded the seasonal trip restrictions. Therefore, these roads have been modeled as "open" routes when reporting the OMRD, TMRD, and core values.

The Access Amendment requires that administrative use on all roads seasonally restricted is limited to 57 vehicle round trips per active bear year. The Continental Mine Owners will be

required to have a special use permit to use Blue Joe Creek Road (FSR 2546). This special use permit would allow unlimited trips from the west on the Bog Creek Road via the administratively open 5.6-mile Bog Creek Road and 5.5-mile Blue Joe Creek Road (following Bog Creek Road repair) and would require compliance of trip counts from the east side (within the seasonally restricted use designation criteria in coordination with the Forest Service) (Bog Creek BA Final, p. 8). Additionally, to meet Forest Plan requirements (Appendix B of Forest Service 2015a), the Forest Service would continue to submit its annual motorized trip monitoring report for the Blue-Grass BMU to the USFWS, with the assistance of CBP. The draft ROD (p. 17) discusses the roads along the eastern approach to Bog Creek retaining their current seasonally restricted road classification for administrative vehicle trips. Appendix A of the ROD also discusses the 57 trip limit from the east - see page A-2, 2nd paragraph.

I conclude the Forest Service complied with the IPNF Forest Plan.

Bog Creek Road Project – Idaho Panhandle National Forest

Harry Jageman

Issue 1: Border Security Effectiveness

Contention 1: The objector contends that the current condition of the Bog Creek Road is a much better deterrent to illegal border entry than what will occur if the road is reconstructed and opened to motorized traffic.

Response: The objector also states that opening the Bog Creek Road will “encourage illegal use and increase the amount human activity along the road corridor”. The FEIS states that “The current risk environment in which CBP operates is characterized by a variety of constantly evolving terrorist and transnational criminal threats that are both complex and varying. Although firearms, bulk cash, human smuggling, and illegal immigration are some of the cross-border threats in this area, the most persistent threat is the bi-directional flow of illicit drugs across the international boundary.” (FEIS, p. 290) The indication is that the current condition of the Bog Creek Road is not a deterrent to illegal border activity. This fact is reflected in the purpose and need (FEIS, pp. 6-7; Draft ROD, pp. 6-9)

I conclude that the Forest Service appropriately framed the purpose and need for the project.

Contention 2: The objector contends that opening the road will only serve to increase risks for listed species like the grizzly bear, mountain caribou, wolverine and lynx.

Response: The FEIS acknowledges that all the alternatives, including the Preferred Alternative, would have direct and indirect detrimental and beneficial impacts to all threatened and endangered wildlife species resulting from increased human activity on the Bog Creek Road. However, Table 2.4.4 indicates that in terms of short-term road repair and motorized closure activities the Preferred Alternative (Alternative 3) would be more beneficial to Threatened and Endangered wildlife than the Proposed Action (Alternative 2) (FEIS, pp. 45-46) In terms of long-term road maintenance and use activities there would be direct and indirect detrimental and beneficial impacts to all threatened and endangered wildlife species. With regard to “fragmentation and linkages” the FEIS says “The administratively open Bog Creek Road and Blue Joe Creek Road would have an increased barrier effect on migrating wildlife because these roads would shift from very low and low motorized use to moderate (see Table 3.1.3). However, because of the lower speed limit (25 mph) and moderate (not high) motorized use, a detrimental reduction in gene flow throughout the analysis area is unlikely for Canada lynx or wolverine, but could occur for grizzly bear and woodland caribou” (FEIS, p. 45)

I conclude that the Forest Service adequately disclosed impacts to wildlife species from project activities.

Contention 3: The objector states that he sees no reason why the border patrol needs to drive over the Selkirks, when access is available from both Priest Lake (on the West) and

Bonnars Ferry (on the East). The objector also questions Why an agent can't be assigned to the Priest Lake area if the risk is so great.

Response: The objector made a similar comment to the DEIS which was considered as an alternative to the Proposed Action but eliminated from detailed study. (FEIS, p. 39) The rationale presented for not analyzing it further was that CBP agents currently camp in the Priest Lake area as part of their missions and would continue to do so. But "their mission execution does not alleviate the need for CBP agents to have motorized access to this portion of the international border." (FEIS, p. 39)

I conclude that the Forest Service adequately considered other alternatives to the Proposed Action.

Contention 4: The objector contends that the claim that people can "blend in with legitimate activities" doesn't appear to be related to whether the road is open to motorized travel or not. Once people get off the Bog Creek Road (which they can do quicker with a motorized vehicle) they can make this claim regardless of the road status.

Response: See responses to Contentions 1, 2, and 3 above. Further, the description of the Purpose and Need in the FEIS says "In addition to access for patrol and prevention purposes, vehicular access to areas north of Continental Mountain is required for the potential future installation and maintenance of technological assets designed to detect incursions into the United States and provide information on the nature and manner of those incursions." The FEIS indicates that technological assets would allow an additional surveillance, and that the ability to install, service, and maintain those assets could significantly reduce the need for regularly occurring patrols into the BMU but points out that "Technology is passive in nature; any detected incursion can only be remedied via an active law enforcement response." (FEIS, p. 7)

Issue 2: Snowmobile effects

Contention: The objector contends that continued acceptance of snowmobile use within the Blue Grass Bear Management Unit not only threatens grizzly bears, wolverines, lynx and the recovery of the mountain caribou, but it also creates a situation that makes it easier for people cross the border illegally.

Response: The objector adds that “Once the road is reconstructed it will be relatively easy for snowmobiles to illegally traverse the 5.6-mile section of the Bog Creek Road that will be reconstructed.” The FEIS states “Much of the analysis area has restricted over-the-snow motorized use due to a 2007 Federal court order (U.S. District Court, Eastern District of Washington, Court Order No. CV-05-0248-RHW) to protect Selkirk Mountain woodland caribou. This closure restricts motorized over-the-snow vehicle access to designated timing and trails on NFS lands” It further explains that the winter motorized closure “provides an exception for national security and law enforcement purposes; if necessary, the agencies’ law enforcement personnel can access the area any time. In the winter, the CBP prefers aerial patrol of this area, and over-the-snow motorized use off of designated trails is infrequent.” (FEIS, p. 95) The FEIS also states that “Because of the court-ordered snowmobile closure, the repair of Bog Creek Road would not improve public winter motorized access.” (FEIS, p.117)

I conclude that the Forest Service adequately addressed the effects from snowmobile use.

Issue 3: Purpose and Need

Contention 1: The objector contends that options for bringing the Blue-Grass Bear Management Unit up to standard are immaterial to the discussion regarding opening the Bog Creek Road to motorized administrative use.

Response: The objector points out that the U.S. Forest Service is required to meet Access Amendment standards by 2019 regardless of what happens to the Bog Creek Road and opening of the road only contributes to more disturbances in the bear unit. If the road is opened, the Forest Service will be required to close additional roads to offset the losses of habitat associated with the Bog Creek road reconstruction.

The Purpose and Need stated in the FEIS acknowledges the Forest Service’s need to “meet legally required IPNF Forest Plan standards for motorized access in grizzly bear habitat in the Blue-Grass BMU that are compatible with the needs of grizzly bear as defined in the Recovery Plan (USFWS 1993a).” (FEIS, p. 6) However it is documented throughout the FEIS that the second of the twofold purpose and need is to “provide improved east–west access across the Selkirk Mountains on NFS lands to enable CBP to execute its statutory mission to protect the U.S. northern border and for the safety of CBP and other law enforcement officers while carrying out their duties” The Purpose and Need for the project makes what happen to the Bog Creek Road relevant to the discussion and analysis.

Furthermore, in the Draft Record of Decision the Responsible Official presents the rationale for the selected alternative. She says the selected alternative best meets the purpose and need to “ensure that recovery standards for the grizzly bear are met, including grizzly bear motorized access standards within the Blue-Grass BMU.” (Draft ROD, p. 4)

I conclude the Forest Service complied with law, regulation, and policy.

Bog Creek Road Project – Idaho Panhandle National Forest

Michael Rapatti

Issue 1: Scientific bias

Issue 1a: “Anti-road” bias

Contention: The impact that roads and human activity have on grizzly bears is largely overstated in the final EIS. Early studies contained a high degree of anti-road bias originating in the 1970s against roads and logging traffic.

Response: The FEIS and the Biological Assessment used recent research in assessing the impacts of roads and human activities on grizzly bears (FEIS, pp. 81-82 and BA_Final, p. 24). The 5-year grizzly bear review showed that habitat loss and direct and indirect human-caused mortality were still a threat for the Selkirk grizzly populations. I conclude that the Forest Service objectively analyzed the roads issues in this project.

Issue 1b: Grizzly bear history in area

Contention: The objector contends there is no mention of grizzly bear displacement due to the Sundance Fire, the Trapper Peak Fire, and the Kaniksu Mountain Fire, all of which occurred in the south Selkirks in 1967. It is hard to believe that no bears were killed or displaced, or habitats destroyed, by these fires. All studies seem to be directed at roads and human activity instead of toward the food sources that the bears thrive on. After the fires in 1967 burned off the ridge tops and displaced the grizzly bears, the return of their favorite food supply (huckleberries) to these areas has contributed more to their increased population in the south Selkirks than managed motorized access.

Response: The objector presented no contention with the project but provided an opinion.

Nonetheless, the FEIS and BA discuss the fire history and other bear resources in the area.

The BA did identify fires, like the 1967 Trapper Peak wildfire, in the past and ongoing activities (pp. 36-37). It was recognized in the analysis that this and other fires have benefited huckleberry production. The BA states that, “Huckleberries are a preferred forage for grizzly bears in this ecosystem with the latter found in forested stands as well as in openings created by wildfire and timber harvest. Huckleberry production post-wildfire is dependent on the severity of the fire (Hobby and Keefer 2010; Miller 1977), with Proctor et al. (2017) observing that a combination of underlying soils, climate, topographical conditions, and canopy opening all contributing to good huckleberry development.” (p. 26). The BA continues on page 28 to say, “As mentioned earlier, seasonal habitat selection is driven by both quality of foraging habitat and existing road density. This BMU has sustained a number of noteworthy wildfires in the last 50 years. The Trapper Peak burn occurred in 1967 in the Grass Creek headwaters and Continental Mountain area (located along the southern border of the BMU, shown in Figures 5.2, 5.3, and 5.4) and

provides exceptional huckleberry production, as do areas burned on Kaniksu Mountain in 1967 and 1982.”

The FEIS identified past and ongoing activities within the BMU that contribute to fragmentation. The 1967 Trapper Peak wildfire was listed as one of the activities. The FEIS concludes that section with, “While vegetation regrowth has certainly occurred and fragmentation is less stark than immediately after these activities, vegetation in areas fragmented by harvest and fire likely have not reached that of a climax community only 45 to 55 years after disturbance.” (FEIS, pp. 90). I conclude the Forest Service appropriately analyzed events effecting grizzly bear in the project.

Issue 1c: Wildlife use and climate

Contention 1: The objector contends that, in the Pacific Northwest, plant and animal populations are under the influence of a 50 to 60-year climate cycle called the Pacific Decadal Oscillation. This influence on plant growth also influences the insect populations that feed on them and the animals that depend on the plants.

Response: The influence of the Pacific Decadal Oscillation on plant and animal populations of the Pacific Northwest is outside the scope of this project.

NEPA requires analysis and disclosure of potential cumulative effects, which is the impact on the environment that results from the incremental impact of the action when added to other past, present (ongoing), and reasonably foreseeable actions, regardless of which agency or person undertakes such actions (40 CFR 1508.7). I conclude that the Forest Service appropriately analyzed effects in compliance with NEPA.

Bog Creek Road Project – Idaho Panhandle National Forest

James Lea – Selkirk Conservation Alliance

Issue 1: Impacts to Grizzly (and cold climate wildlife Species)

Contention 1: The objectors object to the reopening of the Bog Creek road and the re-designation of both the Bog Creek and Blue Joe Creek roads as administratively open due to deleterious effects on the survival of grizzly bear and other cold climate species.

Response: Objectors contend that re-opening of the Bog Creek road and re-designation of the Bog Creek and Blue Joe Creek roads as administrative open adversely affect grizzly bear and other cold climate species. Objectors do not define the “other cold climate species.”

The effects determination in the BA with respect to the proposed selected alternative concluded there would be short-term direct and indirect adverse impacts from road repair and motorized closure actions under the proposed action. Grizzly bears would be likely to avoid these areas during the up to three-season project implementation period, which affects the bears’ use of available resources for breeding, feeding and sheltering. While the BMU does have high quality habitat throughout, use of those foraging sites will be dependent on the age, sex, reproductive status and other social/kinship factors. This may result increased mortality risk and/or use of habitats outside the BMU during the short-term. The lack of offset in the loss of 4.8% of functional core will reduce the reproductive success of female grizzly bears in the area during project implementation, i.e. females with cubs of the year that use the area would be the most vulnerable during this short-term period.

There would be direct and indirect adverse impacts to grizzly bears from long-term maintenance and use actions under the proposed action, resulting in behavioral changes, loss of preferred habitat, reduced foraging efficiency, potential range contractions, and reduced demographic and genetic exchange for a number of years until bears develop new use strategies.

For the reasons stated above, direct, indirect, and cumulative impacts from the proposed action may affect, and are likely to adversely affect, grizzly bear.

I conclude the Forest Service adequately analyzed the effects of re re-opening the Bog Creek road and re-designation of the Bog Creek and Blue Joe Creek. Since the objector did not identify the specific cold climate species, there will be no additional response (36 CFR 218.8(d)(5)).