

# Taylor Hellroaring Project – Flathead National Forest

## Panel Responses – COMBINED ISSUE

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### Issue 1, NEPA: Purpose and Need

**Contention:** Not enough evidence showing the need for trails. Objectors disagree with part of stated purpose and need that says “Conflicts among user groups are increasing, in part due to the increase in use and the limited availability of trails adjacent to the city of Whitefish...”

**Objector(s):** Brian Peck, Dennis and Marilyn Bain

**Response:** The objectors also contend the Environmental Assessment (EA) and Draft Decision Notice do not have enough evidence to demonstrate the need for more recreation opportunities within the project area.

The purpose and need for the project are discussed in the EA and the Draft Decision Notice (DDN). The discussion tiers to the recent Flathead Forest Plan that details the overarching goals and desired condition for the Forest. Sustainable recreation is discussed in the Forest Plan on pages 55-56. Specifically, on page 55 it states, “With the increasing numbers of recreationists, the Forest faces the task of managing the land in a way that offers a wide spectrum of opportunities while minimizing conflict between different uses and effects on the environment.”

The majority of the project area and project activities related to recreation are within Forest Plan Management Area (MA) 7. MA 7 information in the Forest Plan states, “Recreational use is already occurring in many of these areas, but in some cases the use would be enhanced through an emphasis on trail, road, and facility maintenance; increased visitor contact, education, and/or the development of additional recreation opportunities such as mountain bike trails, hiking trails, or boat ramps.” (Flathead Forest Plan, 2018, p. 109)

Forest Service counts at the Education Center show increased use from previous years (Project File, Document L-11\_FS\_Counts\_trail\_use\_2018\_2019). Whitefish Mountain Resort shows that the 2019 summer use for the scenic lift was at almost 66,000 which is up from the previous season. (Project File, Exhibit L-12) Data from 2005-2015 NVUM surveys show documented increased use of the Forest. Currently in the project area, trail systems are located only in the WMR special use permit area. There are also limited trails on Flathead National Forest lands adjacent to the project area. The proposed trails will create non-motorized front country recreational opportunities in a designated MA 7 area (Flathead Forest Plan, 2018) where focused recreation is appropriate.

I find that the purpose and need of the project is well-defined and disclosed in the environmental analysis and project file.

## Issue 2, NEPA: Disclosure of Effects

**Contention:** No specific information is given as to the method of logging, access to the trails for new construction, trail design or treatment of slash material.

**Objector(s):** Dennis and Marilyn Bain

**Response:** The objectors contend there is not enough site-specific information in the EA as to the effects of the project activities.

The proposed action and alternatives are discussed in Chapter 2 of the EA. These sections describe the various activities that are proposed under the two action alternatives. The proposed vegetation management activities are the same for both alternatives. The amount of trail to be constructed varies between the two action alternatives. Tables 2-1 and 2-2 in the EA (pp. 2-6 through 2-8) displays the proposed vegetation management activities, including the silvicultural treatment, logging system and fuels treatment. Trail construction activities, including design and access, are discussed on pages 2-9 through 2-11 of the EA.

The effects of the proposed activities are covered in Chapter 3 of the EA. Vegetation management effects are covered under the various resource areas, but especially under Coniferous Forest Habitat and Associates (pp. 3-16 to 3-26), Fire, Fuels and Air Quality (pp. 3-33 to 3-37), and Recreation (pp. 3-69 to 3-75).

I find the EA and project file discuss and display the anticipated project effects adequately as directed by NEPA and its implementing regulations.

## Issue 3, NEPA: Alternatives

**Contention:** The Taylor Hellroaring project fails to adequately analyze a range of alternatives. The EA fails to provide any evidence that the alternatives will meet the purpose and need to maintain and improve terrestrial wildlife species.

**Objector(s):** Friends of the Wild Swan

**Response:** The objector asserts that the EA does not contain or analyze enough alternatives nor does the EA adequately disclose how the proposed project activities will help achieve the purpose and need to “maintain and improve terrestrial wildlife species habitat and security.”

Forest Service regulation 36 C.F.R. §220.7(b) requires an EA must include the following regarding alternatives: “(2) Proposed action and alternative(s). The EA shall briefly describe the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed...” The purpose of alternatives in NEPA is to address significant effects or reduce overall environmental harms while meeting the project objectives.

The objector states the Forest should have considered alternatives that do not maintain degraded habitat conditions and do not construct mountain bike trails through sensitive wildlife habitat.

Alternatives are covered in Chapter 2 of the EA. There are two action alternatives that were analyzed in detail. Vegetation management is the same for both alternatives. A number of Wildlife Habitat

Improvement proposals were included in these alternatives and can be found in the EA. (p. 2-14) Additionally, there were three alternatives considered but not studied in detail (EA, pp. 2-3 to 2-4).

The effects of the proposed activities are covered in Chapter 3 of the EA. Vegetation management effects are covered under the various resource areas, but especially under Coniferous Forest Habitat and Associates (pp. 3-16 to 3-26) and Wildlife (pp. 3-131 to 3-176). Specifically, on page 3-21 and 3-22, the effects of vegetation management are discussed in relation to improvement of terrestrial wildlife species. Creating openings with a mosaic of trees increases habitat diversity (contributing to conservation and recovery of lynx), huckleberry production (beneficial to grizzlies), and foods for ungulates. Whitebark pine restoration, shrub or tree planting, and signing of wildlife trees would all be beneficial to wildlife.

I find the responsible official is in compliance with NEPA's requirements for consideration of alternatives.

## Issue 4, NEPA: EIS needed

**Contention:** The Forest Service needs to prepare an Environmental Impact Statement for the Taylor Hellroaring Project.

**Objector(s):** Friends of the Wild Swan, WildEarth Guardians

**Response:** Several objectors argue that an Environmental Impact Statement (EIS) should be prepared for this project because there are or may be significant environmental effects from the proposed actions, especially when considered with actions from other Forest Service projects and other activities occurring on non-Federal lands. Objectors claim an EIS is warranted because of uncertainty, unique risks, and scientific controversy associated with project activities.

The projected environmental harms to area resources, including wildlife and habitat, as the analysis supports, are limited. Cumulative effects were analyzed and disclosed by all resources in the project EA. The Taylor Hellroaring FONSI documents that no significant impacts were identified that would warrant an EIS. The effects of large openings on wildlife and wildlife habitats were analyzed and disclosed in the EA and in the project file (Project File, Rg-07\_ForestedConnectivity).

NEPA does not require the Forest Service to amass and explain an encyclopedic amount of detail when there is no risk of significance. The fact that contrary opinions may exist does not make these practices controversial, unscientific, or potentially significant. I find the responsible official took the requisite hard look at the factors involved in its decision and find no supportive reason to prepare an EIS for this project.

## Issue 5, NEPA: Best Available Science

**Contention:** The Forest Service failed to use the best available science.

**Objector(s):** Friends of the Wild Swan

**Response:** An objector states that the best available science was not used in the analysis for the project. The objector includes a list of scientific papers they believe should have been used. Their concerns focus on the fire and fuels analysis and how it was conducted.

The NEPA regulations specifically require agencies to insure the scientific integrity of the discussions and analyses in part by identifying methodologies used and scientific and other sources relied on for conclusions (40 CFR 1502.24).

The Fire, Fuels and Air Quality section of the EA discloses the literature used to conduct analysis. A literature review was conducted by the interdisciplinary team and is located in the project file (Project File, documents D-01\_2019THLitReview and D-02\_2018TaylorHellroaringDraftLitReview). All the scientific papers submitted were reviewed, except for Davis and Six 2014 (complete citation not provided to Forest Service) and Golladay (not cited in comment letters).

I conclude that the responsible official conducted a review of the accessible literature provided by the objector. The selected treatments may differ from the findings in the literature provided, however, the literature review documents in the project file provide the reasoning for those differences. I find the responsible official has demonstrated that predictions and judgments used in analysis are reasonable and supported with studies that the Forest Service deems reliable.

## Issue 6, NEPA: Cumulative Effects

**Contention:** Nowhere has the Flathead conducted a cumulative effects analysis of the impacts of this trail system, the current awarding of Special Use Permits for trail-running races and resulting commercial promotion of the trail system, nor the reasonably foreseeable issuance of Special Use Permits for mountain bike races and resulting commercial promotion of the trail system as a reward to the Flathead's trail-building mountain bike partners.

**Objector(s):** Swan View Coalition

**Response:** Objectors argue that the cumulative effects of multiple recreation activities and events, including special use permits, have not been analyzed or accounted for in the EA.

CEQ Regulation 40 C.F.R. §1508.7 defines a cumulative impact 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” In order for cumulative effects to occur, there must be an overlap in space and time of the actions being considered (FSH 1909.15, Chapter 10, 15.2).

Reasonably foreseeable future actions are defined as those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals. Identified proposals for Forest Service actions are described in § 220.4(a)(1). The Forest has not identified or been notified of any future bike or foot race special use permit requests at this time. Therefore, there would be no reasonably foreseeable special uses to be included in the cumulative effects analysis.

Project activities that were analyzed for resource specific cumulative effects analysis are listed in the EA Cumulative Effects Table (EA, pp. 3-3 to 3-7). Mountain biking and other human activities and their effects on wildlife are discussed in multiple places in the EA (pp. 3-141, 158, 159, 163, 164, 175, and 176).

Having reviewed the EA and supporting project information contained in the project file, I conclude that the responsible official adequately analyzed the cumulative effects associated with the trail system.

## Issue 7, NEPA: Comments and Legal Notice

**Contention:** Continual blatant disregard of our rights to legal notice...

**Objector(s):** Dennis and Marilyn Bain

**Response:** Objectors are concerned they haven't received notice about project activities and opportunities for comment even after requesting to be notified of such opportunities. They allege they submitted comments during the 30-day comment period for the EA, however, the EA does not include them as commenters and does not respond to their comments.

Comment and notification requirements for an environmental assessment are governed by the Project-Level Predecisional Administrative Review Process (36 CFR 218). Specifically, this project is subject to Subpart A and B of those regulations.

Any designated comment periods for EAs (other than those developed under the Healthy Forests Restoration Act) must be initiated with a legal notice (36 CFR 218.22 and 36 CFR 218.24(1)). A legal notice published in the newspaper of record announcing the opportunity to comment on a proposed project or activity is required for EAs. This was done in accordance with the CFRs (Project File, document B-20\_20190424EALegalNotice). The legal notice included the Forest Service Northern Region Office's (regional office) physical address in Missoula, fax number, and email address to which objections are to be sent. The objectors were also included on the mailing list for the letter that was sent to the public notifying them of the opportunity to comment on the EA (Project File, Document B-39\_20190423\_THEAMailing).

Objectors claim they have proof their comment letter was mailed in a timely manner because it was sent certified mail. Flathead National Forest personnel claim the letter was not received in their office therefore making it unavailable to them for response. The district ranger attempted contact with the objectors upon learning of the comment letter in their objection (Project File, document B-55\_201901001\_CommunicationAttemptBain) but has not heard back from them.

The objectors also submitted comments during project scoping and on the 2018 EA (Project File, documents E-93\_Bain\_04242017 and E-111\_Bain). 36 CFR 218.5 states that: *"Individuals and entities who have submitted timely, specific written comments...during any designated opportunity for public comment may file an objection."* Therefore, in accordance with the regulations at 36 CFR 218, I have reviewed and responded to the objectors.

## Issue 8, Climate Change: Hard Look

**Contention:** The Forest Service did not take a hard look at how climate change affects and is affected by this project.

**Objector(s):** Friends of the Wild Swan

**Response:** Objectors allege the project does not properly analyze the impacts of the project activities on climate change. This includes analysis of the effects of climate change with regard to emissions from the proposed action and future forest resiliency to climate change and carbon storage. Objectors also contend the EA did not analyze the impacts to fish due to climate change.

The responsible official addressed these climate change and carbon sequestration issues in the EA and in the project file. A carbon cycling report was prepared and is found in the Project File (Document P-1). The report details that the climate change analysis for the project tiers to the Forest Plan FEIS. Tiering to the Forest Plan FEIS is appropriate because the Forest Plan is the proper scale at which to analyze climate change. The report concludes, "...all action alternatives do not fall within, and are different from, any of the primary contributors of global greenhouse gas emissions; fossil fuel combustion, deforestation, and agriculture (IPCC 2007, p. 36). Nor are the actions similar to the primary human activities exerting negative pressure on the carbon sink that currently exists in U.S. forests, namely land use conversion. The affected forests will remain forests, not converted to other land uses. Long-term forest services and benefits will be maintained." (Project File, Document P-1\_CarbonCyclingReport, p. 3)

Climate change impacts to fish are indirectly addressed in the EA. Design features of the proposed action in the EA articulate that vegetation management activities would not occur within Riparian Management Zones (RMZ) (EA, pp. 2-27 through 2-29). The EA identifies water yield as a resource indicator with equivalent clearcut area (ECA) and associated water yield or peak flow increase as the unit of measure for analysis. Methodology used for analysis of water yield and peak flow increases (EA, pp. 3-51) follow procedures outlined in Kendall (2015) which considers climate change stating "In the context of current climate change predictions, contemporary forest management may be an important tool to delay or slow, rapid change to forested watersheds through natural disturbance." The EA presents results for the ECA analysis which suggest measurable changes in water yield or peak flow are unlikely to occur through implementation of the proposed action. Furthermore, the EA (p. 3-57) discloses that no fish bearing streams exist within the project area on NFS lands.

After review of the project file, I conclude that the responsible official complied with NEPA and took the appropriate hard look at the effects of the proposed action.

## Issue 9, Recreation: Trail design

**Contention:** According to your stated trail design requirements the trails will have a 10% average grade. This is not humanly possible, as shown on the actual terrain.

**Objector(s):** Dennis and Marilyn Bain

**Response:** Objectors question whether a 10% grade can be constructed on newly proposed trails given the topography of the project area. The 10% grade is an average of the entire length of trail, and sections will be steeper than that due to topography (EA, p. 2-19). Appendix B from the EA discusses that local deviations from any Trail Class descriptor may be established based on trail-specific conditions, topography, or other factors, provided that the deviations do not undermine the general intent of the applicable Trail Class (ibid). Exact trail locations will be determined during implementation adhering to trail design specifications from the Forest Service Handbook 2309.18, Chapter 20 (EA, p. 2-20).

The Draft Decision notice states that "flexibility of exact trail location is incorporated within the design to address issues such as topography, soils, available materials, degree of trail difficulty, and to avoid sensitive areas such as seeps, springs and sensitive plant and wildlife species" (DDN, p. A-8).

The EA also says "Trails would be designed to minimize sustained steep pitches. Grade reversals will be used to reduce the chance for water to gain enough speed to recruit and encourage erosion. Rock

needed for trail stabilization, sediment traps, and erosion control would be from on-site sources” (EA, p. 2-20).

I conclude that the responsible official is in compliance with the Flathead National Forest Plan.

## Issue 10, Recreation: Effects of Trails

**Contention:** This project should depict all of the trails, even the possible trails on adjoining private property. Private property owners can not realize the impact on their property without full disclosure of this information.

**Objector(s):** Dennis and Marilyn Bain

**Response:** The objector contends that all trails, including future potential and existing trails on private property were not displayed on project maps nor disclosed. Therefore, it is their belief that property owners cannot understand the effect the proposed new Forest Service trail additions will have on properties.

The analysis area’s scope is limited to past, future, and existing trails on NFS lands.

The EA states, “This analysis of the recreational resource will focus on recreational activities specific to NFS lands within the project area as described in Chapter 1. The area analyzed for recreation cumulative effects is recreation opportunities within the project area. The time period considered is from 10 years prior to project implementation, to 10 years into the future, and includes all known and relevant past, present, and reasonably foreseeable actions, listed earlier in the introduction to Chapter 3. Past, present, and reasonably foreseeable activities with the greatest potential impact on recreation include the growing population and visitor use to the Flathead Valley and adjacent areas such as Glacier National Park” (EA, p. 3-66).

The proposed trails depicted in the project maps are general locations. Exact location will vary- dictated by topography and vegetation. All trails depicted on maps within the Taylor Hellroaring EA and Draft DN are proposed corridors. All NFS trails will be constructed, managed, and maintained according to standards and guidelines outlined in Forest Service Handbook 2309.18, Chapter 20 (DDN, p. A-8).

I conclude that the responsible official is in compliance with the Flathead National Forest Management Plan.

## Issue 11, Recreation: Planned budget costs/funding

**Contention:** If a proposed budget for this project has not been determined, then this project should not be reviewed at this time by the public.

**Objector(s):** Dennis and Marilyn Bain

**Response:** Objectors maintain that without a proposed budget the project is not ready for public review. As stated in the EA “Implementation of this trail network would depend upon availability of funding and support from private groups and individuals as well as Forest resources, While the implementation of this plan may be accomplished over take [sic] several years, the Forest is dedicated to implement priority actions with the aid of outside groups and resources.” (p. 3-75) Table 3-33 in the EA is an estimated implementation plan and timeline for trail activities by priority 1 to 3 (EA, p. 3-75).

Further, responding to comments the Draft Decision Notice states, “Finally, we recognize the implementation strategy of all the trail networks will depend upon availability of funding and involvement of private partners, local organizations, the National Forest Service, and its resources as noted in the EA.” (DDN, p. C-35)

I conclude that the responsible official appropriately disclosed the effects of proposed trails as part of this analysis and disclosed that these activities are contingent upon finding partner funding.

## Issue 12, Recreation: Trails – Potential for Trespass

**Contention:** This project does not protect adjoining property owners from trespass by the public using the trail system.

**Objector(s):** Dennis and Marilyn Bain

**Response:** Objectors contend that the project inadequately protects adjacent landowners from potential trespass from National Forest System trail users. NEPA requires the Forest Service to disclose the environmental impacts of the proposed action. (40 CFR 1508.9) The EA includes design features incorporated into the proposed action to reduce impacts to private property and to protect landowners from potential trespass. These efforts include educational trailhead signage, trail design, and avoiding building sections of trail (when possible) adjacent to private property. (EA, p. 2-20)

The responsible official addressed impacts of trails on adjacent landowners. The Draft Decision Notice states, “The ID team spent time working with neighbors and responding to their comments about proposed trail near to their property. During alternative development, I partially addressed the concern that L1B is too close to adjacent neighbors, by dropping the northern portion of the trail segment, which is in closest proximity to the Eagles Nest properties on the northern boundary of the Holbrook parcel.” (DDN, pp. 16-17)

I conclude that the responsible official adequately considered and disclosed impacts to adjacent landowners in compliance with NEPA.

## Issue 13, Recreation: Weed Suppression and Control on Trails

**Contention:** This project is very inadequate in the statement regarding weed suppression and control on the trails.

**Objector(s):** Dennis and Marilyn Bain

**Response:** Objectors contend that the project inadequately addresses weed suppression and weed control on new projects trails. The EA addresses the risk of invasive weed spread and introduction to the project area. It states, “People and associated activities contribute to the introduction and spread of invasive species within the project area. The trails and roads in the ski permit area have infestations and are treated often; however, those roads and trails are used often by recreationists and resort personnel. Weed seed is likely introduced on a regular basis. The risk increases with each person or vehicle.” (EA, p. 3-106) The EA further discloses “Based on Forest Service policy, regulations, and management requirements, the risk of invasive species spread, introduction, establishment, and persistence as a result of project actions, would be moderate in Alternatives 2 and 3. The risk is moderate due to the few



documented infestations in the project area, the level of increase of light and soil disturbance from proposed treatments, as well as the required preventative measures of equipment washing, pre-treatment of haul routes, temporary road rehabilitation, and seeding disturbed areas with an approved seed mix” (EA, p. 3-108).

About new trails the EA says, “Additional trails in the action alternatives would contribute to the effects mentioned above, providing more vectors for weeds. However, trails can be traversed with backpack sprayers and accessed more easily than timber units.” (ibid.) Objectors disagree with the above statement in the EA and state, “It is totally impracticable to state that toxic weed spray will be carried in and sprayed from hikers wearing these backpacks. Toxic weed spray experts need to be licensed for applying this spray.” Nevertheless, this technique is a component of the Forest’s integrated weed management program. The Flathead National Forest’s 2001 Noxious and Invasive Weed Control EA (Project File, USDAFS\_2001b\_FNFWeedEA) states “Herbicide application to treat weeds would be performed by, or directly supervised by, a State licensed applicator following all current legal application procedures administered by the Montana Department of Agriculture.” (p. II-11)

I conclude that the responsible official adequately disclosed and addressed invasive species introduction and spread as a result of the proposed action.

## Issue 14, Travel Management: Travel analysis

**Contention:** Objector reiterates previous comments on summer and winter travel management and travel analysis.

**Objector(s):** WildEarth Guardians

**Response:** The objector asserts the project does not identify the minimum road system as required by the 2005 Travel Management Rule. They argue the project travel analysis fails to identify unneeded roads in the project area.

The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

A Flathead National Forest forestwide travel analysis report was completed in 2014 to identify the minimum road system in accordance with 36 CFR 212.5(b) Subpart A. The report determined that all system roads within the project area are needed for long term management. No unneeded roads were identified in the project area (Project File, Document M-07aForestTAR). Preparation of a forest wide science-based roads analysis in December 2014 and a project-level travel analysis for the Taylor Hellroaring project area is consistent with travel management regulations (Project File, Document M-01\_ProjectTravelAnalysis).

The Draft Decision Notice, *Appendix C: Response to Comments* also addresses compliance with the Travel Management Rule. The response to a similar comment made on the Draft EA states, “The project does not propose changes to existing over snow vehicle access or use. Skid trails, temporary roads, and permanent roads placed in intermittent stored service are not expected to receive over snow motorized use, as stated in the Canada Lynx analysis of the environmental assessment.” (DDN, pp. C-5 to C-6) No new areas of winter use are being authorized in this decision. The EA addresses this on page 3-74.

I conclude that the project complies with the Travel Management Rule under Subpart A (36 CFR 212.5(b)). A minimum roads analysis, including a risks and benefits matrix, was conducted during project analysis in accordance with 36 CFR Part 212 and Forest Service Manual 7703 (Project File document M-01\_ProjectTravelAnalysis).

## Issue 15, NFMA: Forest Plan and 2012 Planning Rule

**Contention:** “Our comments outlined how the Forest Service fails to demonstrate how this project is consistent with the 2018 Forest Plan, as required by the National Forest Management Act (“NFMA”). 16 U.S.C. § 1604(i). We also explained the Forest Service fails to demonstrate how this project is consistent with the Forest Service’s 2012 Planning Rules.”

**Objector(s):** WildEarth Guardians

**Response:** The objector contends that the analysis does not show how the project is compliant with the 2018 Flathead Forest Plan or the 2012 Planning Rule.

As stated in 36 C.F.R. §219.2(c), the vast majority of 219 planning rule regulations do not apply to individual projects or activities:

“Project and activity planning. The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official acts as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as provided in the plan consistency requirements in §219.15, none of the requirements of this part apply to projects or activities.”

Project consistency with NFMA and ESA is well established and documented in numerous project record exhibits and throughout the EA and Draft Decision Notice. For Wildlife, Project File document Rg-01\_WildlifeRegConsistency provides summary information on project consistency with NFMA (which is supported by Project File Documents Q-10, Rb-1, Rb-8, Rd-3, Rs-2, Rs-8, Rs-10, Rs-11, Rs-13, Rs-15, Rs-17, Rs-19, and Rs-22).

The Forest Service Project-Level Predecisional Administrative Review Process Rule (36 CFR 218, subparts A, B and C) establishes the process for members of the public to seek administrative review of specified proposed projects and activities implementing land management plans before the responsible official makes a final decision regarding project approval. This process does not apply to forest plans. Issues with Flathead Forest Plan components are not ripe for review under this project objection process.

I conclude that the consistency with the Flathead Forest Plan was demonstrated throughout the EA, Draft Decision Notice, FONSI and Project File.

## Issue 16, Wildlife: Lynx – Effects on Habitat

**Contention 1:** The Taylor Hellroaring project should not proceed until the baseline conditions in the LAUs improve to comply with Veg-S2; An EIS should be prepared that fully analyzes the impacts to lynx and critical habitat from both the Taylor Hellroaring and Hellroaring Basin Projects that will occur in the same place at the same time.

**Objector(s):** Friends of the Wild Swan

**Response:** Standard VEG S2 states “Timber management projects shall not regenerate more than 15 percent of lynx habitat on NFS lands within an LAU in a ten-year period.” The objectors incorrectly include stand initiation habitat in their percentages with early stand initiation. The pre- and post-project percentages of early stand initiation habitat in lynx habitat are 4 to 8% of the Lakalaho LAU and 22% (both pre- and post-) of the Upper Big LAU. These are all within the 30% upper limit set by Standard VEG S1. The project would not cause regeneration of close to 15% of lynx habitat in either LAU in a 10-year period with no other actions in the last decade in either LAU and this project equaling 0.1% in the Upper Big LAU and 1.7% in the Lakalaho LAU (Standard VEG S2) documented in project file exhibit Rt-15. The cumulative effects sections for lynx and lynx critical habitat in the EA include the Hellroaring Basin Improvement Project. Therefore, the project adheres to both the standards.

I conclude the responsible official is in compliance with direction for lynx management as required by the NRLMD including Vegetation Standard S2.

**Contention 2:** The project will not maintain and improve terrestrial wildlife habitat and security because it increases road densities and increases disturbance and displacement to grizzly bears and impacts lynx by affecting habitat in a lynx connectivity corridor.

**Objector(s):** Brian Peck

**Response:** The objector contends the project area increases disturbance of lynx and grizzlies in a lynx connectivity corridor.

The project does lie in one of the connectivity corridors described by Squires et al. (2013). Landscape-level corridors were modeled by Squires et al. in 2013 and quantified roads as one of the major threat to lynx connectivity, the corridors modeled did not include trails. Project file exhibit Rt-8 includes maps of the project in relation to Squires’ corridors. Maps and tables in the project file (Documents Rt-15\_LynxHabitatAnalysis and Rt-28\_TaylorHellroaringLynxNewScienceReview) show the effects on lynx habitats and the distribution and connectedness of lynx and snowshoe hare habitats before and after project implementation. This includes recognition that proposed regeneration harvest would create open areas that lynx and hares may avoid (EA, p. 3-137) as well as acknowledgement that lynx and grizzly bears will be displaced by the roads and trails. The project record indicates an adequate analysis on lynx and grizzly bears, the responsible official properly documented the effects as required by NEPA and ESA.

## **Issue 17, Wildlife: Wolverine - Effects**

**Contention:** The Taylor Hellroaring Environmental Assessment fails to analyze the impacts of logging roads and mountain biking trails on wolverine.

**Objector(s):** Friends of the Wild Swan

**Response:** As a proposed species for listing under the ESA, wolverine were included in the programmatic consultation (i.e. conferencing) for the Flathead National Forest's 2018 Forest Plan (Project File, Programmatic Biological Assessment for North American Wolverine, 2014) to which this project is tiered. Logging roads and mountain biking are not considered a threat to the persistence of the wolverine. The EA and Biological Assessment describe the analysis of project effects on wolverine including displacement over time. This included cumulative effects that were incorporated the Hellroaring Basin Improvement Project and existing roads and trails.

I conclude the responsible official complied with NEPA and the ESA.

## Issue 18, Wildlife: ESA Compliance

**Contention:** The project fails to demonstrate compliance with the Clean Water Act and Endangered Species Act. The rules under this act must be enforced and do not appear to be under this project.

**Objector(s):** WildEarth Guardians, Dennis and Marilyn Bain

**Response:** Please see response to Issue 32 on Clean Water Act compliance.

The Forest Service consulted with the US Fish and Wildlife Service as required by Section 7 of the ESA. The Biological Assessment submitted, and the resultant Biological Opinion are in the project file (Rt-04\_BiologicalAssessment and Rt-03\_21080504\_BiologicalOpinion, respectively).

I find the responsible official complied with the Endangered Species Act and with Clean Water Act.

## Issue 19, Wildlife: Grizzly bears – Effects of Trails, Mountain Bikes, and Roads

**Contention:**

- This project elevates the risk of harm to grizzly bears with the inclusion of new trails that allow for mountain bike use.
- The DN and EA ignore the importance of the interagency Board of Review Report and Recommendations following the death of Brad Treat when he collided with a grizzly bear while mountain biking at high speed.
- The project is adversely affecting grizzly bears via its trail proposals and does not adequately mitigate their harm by either seasonally closing roads or trails.

**Objector(s):** Brian Peck, Swan View Coalition, Dennis and Marilyn Bain

**Response:** The objectors contend the project adversely affects grizzly bears and ignores the recommendations of the board of review report. The effects of trail construction and long-term use on grizzly bears were acknowledged in the project and forest plan analysis and ESA consultation, and documented in the EA and forest plan EIS, and in other project records. Conflict between wildlife (especially grizzly bears) and mountain bike (high speed) trail use as well as the density of proposed trails and impacts to wildlife habitat and security and aquatic resources were key issues that drove project alternative development. (EA, pp. 2-2 to 2-3) Displacement from trails is part of the rationale for the ESA determination for grizzlies of "May Affect, Likely to Adversely Affect". Design features included

in the proposed action are included to reduce impacts to grizzly bears. For example, one trail design feature reads “Trails will be located, designed, constructed and maintained to reduce the likelihood of human/bear conflict. These may include increased vegetation clearing to increase sight distance, layout and design to reduce speed, particularly for mountain bikes, and locations outside of concentrations of known preferred food sources. In addition, information on how to avoid and respond to bear-human encounters would be posted at trailheads.” (EA, p. 2-18) Another states, “If needed to resolve grizzly bear-human conflict situations, activities will be modified, cancelled, suspended, or temporarily ceased.” (EA, p. 2-21)

The recommendations that accompany the Board of Review report on the death of Brad Treat include “careful evaluation of the safety and reasonableness of enhancing mountain bike access in these areas where bear density is high” (Project File, Rt-22\_BoardOfReviewRecommendations2017, pp. 4-5) and lists sight distances, productivity of bear foods, and the possibility of seasonal restrictions as elements that should be part of the evaluation. The EA (p. 3-154) describes proposed trail locations in relation to likely huckleberry production and riparian habitats. The response to a comment about seasonally restricting trail use for grizzly bears says “Seasonal trail restrictions were not analyzed in this project. That does not mean that they cannot be considered in the future as a management tool or made on an emergency basis for the safety and well-being of our visitors, wildlife and natural resources, if issues are identified.” (DDN, p. C-39)

I find the responsible official adequately disclosed impacts to grizzly bears from and included design features to minimize effects.

## Issue 20, Wildlife: Grizzly bear and Lynx – Forest Plan/project ESA Compliance

**Contention:** Both the Taylor-Hellroaring Project (THP), and the 2018 Flathead Forest Plan improperly, and illegally, act as though grizzly bears (and lynx) have been recovered; are no longer listed as Threatened under the Endangered Species Acts; no longer require adherence to the “Best Available Science”; and are no longer subject to ESA Section 9 protection from “Harm.” None of the above is true.

**Objector(s):** Brian Peck

**Response:** Please see response to Issue 18. The EA, Draft Decision Notice, BA, BO and other documents in the project file document recognition of both grizzly bears and lynx as threatened species. The BA for Threatened and Endangered Terrestrial Species includes grizzly bears and Canada lynx. The *Methodology* sections for both species state that data used in the analysis included a review of best available science. (Project File, Rt-04\_BiologicalAssessment, pp. 13 and 35)

I conclude that the responsible official addressed all federally listed species and complied with the ESA.

## Issue 21, Wildlife: Grizzly Bear Conservation Strategy

**Contention 1:** The project indicates that the baseline parameters (i.e. motorized access density and secure core) used to assess grizzly bear recovery can be updated and this violates the revised forest plan and the NCDE grizzly bear conservation strategy.

**Objector(s):** Swan View Coalition

**Response:** Forest Plan standard FW- STD-IFS, 02 lists conditions that can be used to update the 2011 baseline. The standard says, “The following conditions are not considered a net increase/decrease from the baseline” The list includes thing such as “updated/improved data on a motorized route without an actual change on the ground”, etc. (Forest Plan, Chapter 2, pp. 64-66). I conclude the decision maker followed the forest plan.

**Contention 2:** The project fails to provide grizzly bear habitat security in the Hellroaring Basin including cumulative impacts of the Taylor Hellroaring and HBIP projects, where habitat security was to be maintained as mitigation for the prior expansion of the ski area elsewhere. Construction of Trail 2 and Trail L5 through Hellroaring Basin does not maintain the level of grizzly bear security.

**Objector(s):** Swan View Coalition

**Response:** Forest Plan Desired Condition GA-SM-MA7-Big Mtn-DC-04 says that “The portion of the upper Hellroaring watershed below Taylor Creek Road (NFS Road 9790) provides higher levels of grizzly bear habitat security” (Forest Plan, p. 135).

The Biological Assessment indicates the project would not affect grizzly bear secure core. It states, “Open Motorized Access Density (OMAD), Total Motorized Access Density (TMAD), and Security Core (CORE) direction in A19 do not apply in the Lazy Creek subunit, where all road construction would occur. Nevertheless, at completion of project activities, all temporary roads (0.5 miles) would be rehabilitated and system roads (4.0 miles) would be treated to meet the reclaimed definition under amendment 19 of the forest plan (see Regulatory Consistency section and project design features in Appendix G) and placed in storage.” (BA, p. 42)

Effects from non-motorized trails were evaluated and disclosed in the EA (p. 3-154) stating “displacement would be long-term and increasing over time” due to the increased human activity resulting from the proposed trails. The effects of proposed Trails 2 and L5 on wildlife in the Hellroaring Basin were analyzed and omitted from Alternative 3 but included in part in the proposed action. The responsible official states, “Either Trail 2 or Trail 3 would be built depending on access to private land. Both trails would not be built.” (DDN, p. A-6).

I find the responsible official appropriately addressed impacts to grizzly bear habitat security.

**Contention 3:** The Forest Service’s reliance on a BiOp for this Project is based on a misunderstanding that “the project would create 28 miles of new, non-motorized trails. Fifteen of those miles would follow existing open roads.” The DN, at 2 however, notes that the 15 miles of trails co-located on roads is in addition to the 28 miles of new trails and is arbitrary, capricious, and an abuse of discretion, and not in accordance with law.

**Objector(s):** Swan View Coalition

**Response:** The objector is correct. The EA (Table 2-3, pp. 2-9 to 2-10) and Decision Notice (Table 1, p. 2) show that the 15 miles of trail located on existing open roads is in addition to the 28 miles of new nonmotorized trail construction. During consultation, a misunderstanding occurred regarding the total miles of trails proposed, and the US Fish and Wildlife Service (USFWS) was contacted by the Forest Service in May of 2018 about the discrepancy. The USFWS replied on May 17, 2018 stating “The error does not change the Service's conclusion that the Taylor Hellroaring Project will not jeopardize the grizzly bear. Our conclusions did not rely on the mileage of trails; whether 28 miles of trail total or an additional 15 miles of trail that were formerly roads does not have a significant bearing on our conclusion.” (Project File, document Rt-02\_USFWS\_ConsultationCommunicationsRecord, p. 29)

I conclude the Responsible Official appropriately consulted with the US Fish and Wildlife Service in compliance with the ESA.

## Issue 22, Wildlife: Lynx NRLMD and Population Viability

**Contention:** The agencies use the Northern Rockies Lynx Management Direction hereafter "Lynx Amendment") as an invalid proxy for maintaining lynx population viability in the Northern Rocky Mountains.

**Objector(s):** Native Ecosystems Council

**Response:** 36 CFR 218.10 states “Objections set aside from review, (4) except for issues that arose after the opportunities for comment, none of the issues included in the objection are based on previously submitted specific written comments and the objector has not provided a statement demonstrating a connection between the comments and objection issues.” The objector did not comment on this issue during public opportunities to comment. Therefore, pursuant to 36 CFR 218.10(a)(4) no further response is warranted.

## Issue 23, Wildlife: Lynx Amendment

**Contention 1:** The agencies make invalid claims that adverse impacts to lynx habitat and critical lynx habitat are not significant for the project because impacts are "temporary."

**Contention 2:** Lynx amendment

- did not include the current best science for lynx by either agency
- did not include the requirement of well-distributed lynx habitat in this conservation strategy based on Britten et al. 1989, which results in the potential for large blocks of non-lynx and non-hare habitat to be created in lynx habitat and lynx critical habitat, with adverse impacts on lynx persistence, in violation of the ESA.
- allows an invalid limitation of what is identified as lynx foraging habitat, which means it lacks an effective conservation strategy for lynx.
- has no valid conservation value for the lynx because lynx habitat is not measured according to elevation and slope

**Contention 3:** The measurement of vegetation treatments on lynx and hares was invalid.

**Contention 4:** The agencies falsely claim that the application of the Lynx Amendment will not jeopardize the continued existence of the lynx, in violation of the NEPA, NFMA and the ESA.

**Objector(s):** Native Ecosystems Council

**Response:** Please see response to Issue 22.

## **Issue 24, Wildlife: Lynx – Effects on Snowshoe Hare Habitat**

**Contention:** The agencies failed to evaluate how the project would impact snowshoe hare habitat as per the current best science, in violation of the NEPA and the ESA.

**Objector(s):** Native Ecosystems Council

**Response:** Please see response to Issue 22.

## **Issue 25, Wildlife: Lynx – Effects of Roads, Trails and Mountain Bikes**

**Contention 1:** The analysis of roads on lynx in the Taylor Hellroaring NEPA analysis, including in the BiOp, does not address any actual increases in traffic volumes on roads, which means the disturbance impacts have not been assessed, in violation of the NEPA and the ESA.

**Contention 2:** The analysis of mountain bike trails that currently exist, and those that will be added via new trail construction or conversion of roads to mountain bike trails, was not evaluated in the Forest Service or FWS analysis of project impacts on lynx.

**Objector(s):** Native Ecosystems Council

**Response:** Please see response to Issue 22.

## **Issue 26, Wildlife: Lynx – Effects of Vegetation Treatment**

**Contention:**

- Vegetation treatment would have a permanent adverse impact across this landscape on lynx, which is a violation of the ESA.
- The rationale for burning forests at upper elevations in the project area as per lynx critical habitat was never identified or evaluated.
- The measurement of vegetation treatments on lynx and hares was invalid.

**Objector(s):** Native Ecosystems Council

**Response:** Please see response to Issue 22.

## **Issue 27, Wildlife: Lynx – Inadequate BO**



**Contention:** The Taylor Hellroaring Project Biological Opinion fails to include a detailed discussion of effects of the project. It is invalid because it tiers to the Lynx Amendment instead of using more current science to measure impacts to the lynx.

**Objector(s):** Native Ecosystems Council

**Response:** Please see response to Issue 22.

## Issue 28, Visuals: Scenic Quality

**Contention:** To downgrade SIOs in order to then conclude they will be met “in the long term” ignores the actual impacts to scenic quality (which includes not meeting SIOs in the short term) and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

**Objector(s):** Swan View Coalition

**Response:** The objectors claim that Scenic Integrity Objectives (SIO) were intentionally downgraded in the revised Flathead National Forest Plan and claim that SIO will not be met in the short or long term. The change in SIO between the 1986 Forest Plan and the revised Forest Plan (2018) are outside the scope of the analysis for this project. Within the Taylor Hellroaring proposed action, the EA states, “As noted within the direct and indirect effects analysis, all units with design features applied should meet or exceed their scenic integrity objectives in the long-term and therefore ensure the scenic character of the landscape remains intact. While some of the units may not meet their scenic integrity objectives in the short-term, the design features should address and mitigate these concerns to the extent feasible (economically and technically) and will ensure the scenic character is sustained over the long-term by improving the health and resilience of the stands.” (EA, p. 3-47)

Scenic quality in the project area is addressed in the Purpose and Need of the proposed action. It notes that the desired condition is to “increase forest resilience to insect infestation and disease infection and wildland fire disturbances while maintaining a natural-appearing forested setting viewed from the surrounding area” (EA, p. 1-7).

## Issue 29, Vegetation: Purpose and Need – Fuels Treatment

**Contention:** While there is certainly a need to protect human lives and infrastructure, the manner in which this is justified by the project invalidates the way in which the project is implemented. Thus the project as designed, will not meet the stated Need of reducing large, stand-replacing fires, and may well increase that risk for several decades.

**Objector(s):** Brian Peck

**Response:** The purpose and need of the Taylor Hellroaring proposed action is multi-faceted and includes several objectives. (EA, pp. 1-4 to 1-9) The objector contends that the project will not meet the stated purpose under *Fuels* (EA, p. 1-8) that says “Reduce the risk and severity of large scale stand-replacing fires to protect values at risk within the wildland-urban interface, Whitefish Mountain Resort, and electronic sites along the Whitefish Divide.” The proposed action is designed to meet all aspects of the purpose and need, not just the one mentioned above for fuels. Vegetation treatments are intended not only to reduce the risk and severity of large scale fires, but also “that vegetation conditions and

patterns contribute to resistant (the capacity to remain relatively unchanged following disturbances) and/or resilient (the capacity to regain normal functioning following disturbances) forest conditions at both the stand and landscape level (FW-DC-TE&V-03; USDA FS 2018b, p. 26).” (EA, p. 1-6) The EA further explains that to reach this desired condition “management actions would be necessary to promote forest cover types, such as ponderosa pine, western larch, and whitebark pine/western white pine.”

As pointed out by the objector, this issue was raised during the comment period. The responsible official responded (DDN, p. C-18) by directing the commenter to the EA that states “although future fire intensity will be reduced, rate of spread can increase in the post treatment environment due to a reduction in shading from the sun and sheltering from the wind. Faster moving lower intensity surface fires tend to have more desirable fire effects than a slow moving really intense fire due to the fact that fire adapted/resistance tree species are more likely to survive thus creating a more resilient forest. Treatments will also reduce the risk and severity of a large scale stand-replacing fire by breaking up the continuity of continuous heavy fuel across the landscape and give future fire managers more options to manage and/or control a fire in the future,” (EA, pp. 3-33 and 3-34). The response to comments in the Draft Decision Notice also discloses the science used to inform the fire and fuels analysis. (DDN, p. C-18)

I conclude that the responsible official appropriately considered the purpose and need of the project, identified proposed actions needed to reach desired conditions, disclosed the effects of the proposed action and the science used in the analysis.

## Issue 30, Vegetation: Whitebark Pine Restoration

**Contention:** “To restore whitebark pine and western white pine where suitable habitat conditions exist.” Clearly, if there is no enforceable/binding Standard to restore either species, the Flathead Forest cannot claim with any credibility that Purpose and Need #4 is either real, or has any chance of being achieved – either by this project, or the broader Forest Plan.

**Objector(s):** Brian Peck

**Response:** The objector states “Compared to Standards, Desired Conditions are little more than an “aspirational wish list”, akin to people having a “desired condition” of world peace with no concrete plan to achieve it. Therefore, both in the EA and DDN, there is zero probability that this claimed Need is either a credible one, or an achievable purpose and need.” The objector also says “If the Flathead is serious about this Purpose and Need, it must change the above Desired Conditions to Standards”

Desired Conditions and Standards are forest plan components. The NFMA addresses plan components at 36 CFR 219.7 (e): “Plan components guide future project and activity decisionmaking.” It further specifies plan components required in every plan (36 CFR 219.7 (e)(1) as: Desired Conditions, Objectives, Standards, Guidelines, and Suitability of lands.

Desired conditions are specific social, economic, or ecological characteristics of a plan area toward which management is directed. Although they may be “aspirational” Forest Service regulations require that all projects must contribute to one or more Desired Conditions, Goals, or Objectives, or not foreclose long-term achievement of any of these. (36 CFR 219.15 (d)(1)) Standards, on the other hand, are constraints on management activities designed to avoid or mitigate undesirable effects or meet legal requirements. For example, the following soil standard in the Flathead Forest Plan for vegetation management activities requires “Vegetation management activities do not create detrimental soil conditions on more than 15 percent of an activity area. In activity areas where less than 15 percent

detrimental soil conditions exist from prior activities, the cumulative detrimental effect of the current condition and proposed activity must not exceed 15 percent following project implementation and restoration.” (Forest Plan, p. 23) Therefore restoration of whitebark and western white pine is a desired condition, not a standard, in the Flathead National Forest Plan.

I conclude that the responsible official is in compliance with Forest Plan direction including plan components, and appropriately designed the proposed action to meet Forest Plan desired conditions.

## Issue 31, Legal Access: Road Ownership

**Contention:** Clarify and agree on which documents govern different portions of the roads used by the Eagles Nest HOA for access in order to disregard this objection.

**Objector(s):** Eagles Nest Homeowners Association

**Response:** The easement dated May 10, 1982 (Project File, document L-13) and the MOU dated April 15, 2010 (Project File, document L-9) are the governing documents for the section of road outside of the special use permit area.

## Issue 32, Water: Clean Water Act Compliance

**Contention:** The project fails to demonstrate compliance with the Clean Water Act.

**Objector(s):** WildEarth Guardians

**Response:** The objector contends that the analysis fails to show all the activities proposed in this project will not cause or contribute to a violation of water quality standards as required by the Clean Water Act.

The Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.) is the foundation for surface water quality protection in the United States with the objective to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. Sections 303(d) and 305(b) direct states to list water quality impaired streams (WQLS) and develop total daily maximum loads (TMDLs) to control non-point source pollutants in stream segments not supporting beneficial uses.

The effects of the proposed actions on water quality are covered in the EA (pp. 3-60 to 3-62). On page 3-64 the analysis concludes that “Measurable effects to the aquatic resource from action alternatives are primarily limited to sediment delivery (measure 3) associated with use of a temporary bridge or culvert removal. These effects would not result in any changes to water quality beneficial use designations or long-term changes to aquatic habitat, channel morphology, or aquatic species.” Field reviews for State BMP implementation and effectiveness in 2016 showed that across all ownerships, BMPs were properly applied 97.5 percent of the time and were effective in protecting soil and water resources 98 percent of the time (Project File, Document G-17\_2016BMPMonitoringReport).

I conclude the project is consistent with the Clean Water Act.