

Hellroaring Basin Improvements – Flathead National Forest Objection Responses – Swan View Coalition, Friends of the Wild Swan, and Brian Peck

Issue 1: Insufficient grizzly bear effects analysis

Contention 1A: Lack of Quantitative Analysis

Objectors state that a 500 meter buffer around roads should have been used in analysis because security habitat for grizzly will be reduced within 500 meters of the service roads. The objector further claims this 500 meter buffer would be compliant with Amendment 19 of the 1986 Forest Plan, IGBC Task Force report, and relevant research.

Objector(s): Swan View Coalition and Brian Peck

Response:

The Hellroaring Basin Improvements Project EA discloses that direction from the Grizzly Bear Conservation Strategy (NCDE Subcommittee 2018) is incorporated into the revised 2018 Flathead Land Management Plan (Forest Plan) and lists those forest plan components that apply to grizzly bears in the project area (EA, pp. 79-80). The EA also discloses that there would be some impacts to grizzly bears from the proposed activities. For example, it states that “human activity during project implementation could negatively affect grizzly bears by causing disturbance or temporary displacement from preferred habitats,” (EA, p. 81). However, project design features have been incorporated into the proposed action to reduce effects. Namely, project design feature 59 would help reduce effects to grizzly bears:

59. All maintenance activities in the Hellroaring drainage, with or without heavy machinery, will be limited to a single three-week maintenance period each year between July 1 and November 30, unless an exemption is approved in writing by the Forest. This maintenance activity restriction does not include items such as routine inspections, monitoring, assessments, visual checks, or addressing minor safety items. Exempted activities will be limited to 10 round trips of motorized use per year per road. (GA-SMMA7- Big Mtn-DC-04 and FW-GDL-TE&V-01; US Fish and Wildlife Service biological opinion term and condition) (draft decision notice, p. A-17).

The objector contends that road impacts should have been analyzed with the 500-meter buffer, which would be compliant with Amendment 19 of the 1986 Forest Plan. As mentioned above, the 2018 Forest Plan incorporates direction from the conservation strategy, which supersedes Amendment 19 of the 1986 Forest Plan. In response to comments received from objectors on this issue, the responsible official replied that “roads authorized under special use permits were consistently treated as private roads for Amendment 19 motorized access analysis and monitoring reports. Special use permit roads have always been classified as private roads, and private roads have always been excluded in open motorized route density and total motorized route density calculations and included in core calculations. This method was carried forward in the conservation strategy for grizzly bear in the Northern Continental Divide Ecosystem (NCDE Subcommittee 2019, appendix 6),” (draft decision notice, response to comments, p. C-13).

I conclude the responsible official appropriately analyzed the effects to grizzly bears from the proposed action and is consistent with the 2018 Forest Plan.

Contention 1B: Arbitrary and Capricious Biological Opinion

Objectors claim that the US Fish and Wildlife Service's biological opinion for grizzly bears is arbitrary and capricious and not in accordance with science.

Objector(s): Swan View Coalition

Response:

The responsible official discussed the impacts to grizzly bear habitat and grizzly bears in the EA (pp. 81-82), the biological assessment (pp. 23-25), and biological opinion (p. 14-23). In the biological opinion, the rationale for surrogate measures of take is provided because actual take would be difficult to quantify (biological opinion, p. 26). These surrogates are measurable, and an incidental take statement is provided that incorporates these measures (biological opinion, pp. 23-30). Furthermore, the project's EA is tiered to the FEIS for the 2018 Forest Plan. In addition, the project's ESA consultation tiers to the ESA consultation for the Forest Plan and is consistent with its biological opinion and incidental take statement (USDI 2018). Therefore, the EA and supporting documentation clearly support a scientifically valid, logical examination of facts and conclusions reached.

I conclude the responsible official fully addressed this objection in the analyses and supporting documentation.

Issue 2: Need for and Environmental Impact Statement (EIS)

Contention: The Forest Service must prepare an EIS

Objectors claim the Forest Service must prepare an EIS in order to comply with NEPA because the project would result in significant adverse cumulative effects to lynx and grizzly bears.

Objector(s): Friends of the Wild Swan

Response: Referring to both the Hellroaring Basin Improvements Project under review and the Taylor Hellroaring Project, the objector states that "both projects have significant impacts for lynx, lynx critical habitat and grizzly bears indicated by the Likely to Adversely Affect determinations. Both projects have common timing or geography,".

The biological assessment (BA) prepared for the Hellroaring Basin Improvements Project discloses that the determination of effects to Canada lynx and Canada lynx critical habitat from proposed activities is "May Affect, Likely to Adversely Affect" within the project area. The BA explains the rationale for the determinations, which include 43 acres that would no longer provide lynx habitat due to permanent vegetation clearing for the improvements. As explained in the BA, within the lynx analysis unit (LAU) this represents a 0.2 percent change (BA, pp. 15-20) Other impacts include 42 acres of winter lynx foraging habitat that would be either thinned or cleared, but would still leave an abundance of this kind of habitat, and construction of ski area features that would affect habitat along linear corridors but would not impede lynx movements (Ibid.).

For the grizzly bear, the determination of effects from project activities is also "May Affect, Likely to Adversely Affect". This determination was based on several factors, including the presence of grizzly bears in the area, the Canyon McGinnis and Werner Creek subunits currently not meeting motorized access parameters, and proposed project activities permanently decreasing some hiding cover in the project area (BA, p. 26).

Cumulative effects to wildlife from other activities including the Taylor Hellroaring Project that overlaps portions of the proposed action are discussed in the EA. (pp. 69-70) The EA states “Twenty-eight miles of non-motorized trails constructed for the proposed Taylor Hellroaring Project would contribute to long-term potential displacement of wildlife along the corridors.” (p. 70) The responsible official disclosed that there will be effects from the proposed action to Canada lynx, Canada lynx Critical Habitat, and grizzly bears as required by NEPA. However, the presence of effects does not necessarily mean they are significant. Under NEPA, context and intensity of effects are taken into consideration when determining significance. (40 CFR 1508.2). In terms of context, the responsible official determined that the effects of the proposed action are not significant for several reasons including the relatively small size of the area affected (802 acres), the impacts would occur within the area already permitted for the ski area, and the area is designated for these type of ski area activities in the forest plan. (DN, p. 4) As far as impacts to grizzly bears and Canada lynx, the responsible official determined and the US Fish and Wildlife Service concurred that “the proposed action would not be likely to jeopardize the continued existence of the grizzly bear or Canada lynx, nor would it be likely to result in the destruction or adverse modification of designated Canada lynx critical habitat (project file exhibit 12-3, part 4).” (DN, p. 11)

I conclude the responsible official complied with NEPA in disclosing effects to wildlife, considering cumulative effects, and adequately supported the Finding of No Significant Impact. Preparation of an EIS is not warranted.

Issue 3: Failure to comply with Forest Plan Desired Condition GA-SM-MA7-Big Mtn-DC-04

Contention 3A: The objector claims the responsible official is in violation of NFMA because the project fails to comply with the Forest Plan desired condition GA-SM-MA7-Big Mtn-DC-04.

Objector(s): Friends of the Wild Swan

Response:

The 2018 Forest Plan desired condition, GA-SM-MA7-Big Mtn-DC 04, referenced by objectors says the following:

Year-round recreational opportunities in an alpine setting exist at the Whitefish Mountain Resort on Big Mountain. Winter recreation opportunities occur in all portions of the Whitefish Mountain Resort permit area. During the grizzly bear non-denning season, developed recreation opportunities are provided on the south-facing slope in the Whitefish Mountain Resort permit area. 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)

To be consistent with a desired condition or objective one of two criteria must be met (Forest Plan, p. 3):

1. the project or activity contributes to the maintenance or attainment of one or more desired conditions or objectives; or
2. does not foreclose the opportunity to maintain or achieve any desired conditions or objectives over the long term.

The proposed action satisfies the second item because there would be no permanent change in Hellroaring Basin grizzly habitat security. Vegetation conditions would change as a result of the project;

however, grizzly bear security habitat would remain available, in compliance with criteria 2. Future opportunities to meet the desired condition would remain available.

The BA discusses that the Hellroaring drainage has “added value as security habitat immediately adjacent to an area of relatively high levels of human use, although it is not large enough to be considered “secure core”” (BA, p. 25) The Forest Plan indicates the long term goal, or desired condition, for the portion of the upper Hellroaring watershed below Taylor Creek Road (National Forest System Road 9790) is to provide higher levels of grizzly bear habitat security than the rest of the Whitefish Mountain Resort permit area which has higher levels of human use. Although the proposed action would result in a slight reduction of habitat security due to the reduction of hiding cover, limited ski-area maintenance activities, and a possible increase in huckleberry picking, other human uses resulting indirectly from the reduction in conifer cover, the Hellroaring drainage below the Taylor Creek Road would continue to provide higher levels of the grizzly bear security than the rest of the area. (Biological assessment, p. 24)

The EA states that project design features that contribute to security in and near the Hellroaring drainage include limiting maintenance activities to one 3-week period, prohibition of bicycles on service roads as well as gates on these roads, and prohibition of public motorized use of the cat track. (EA, p. 82)

I conclude the responsible official complied with the Flathead National Forest Plan by ensuring the proposed action maintains a higher level of grizzly bear habitat security below the Taylor Creek Road.

Contention 3B: Compliance with Springtime Restrictions

Objectors states that the Forest does not comply with the Forest Plan because it would allow project activities in the project area before July 1.

Objector(s): Swan View Coalition

Response:

The objectors refer to their previous comments on the environmental assessment in which they asked: “since when are such activities allowed prior to July 1 in grizzly habitat?” The comment pertains to project design feature 16, which states that “proposed action activities would be completed between June 1 and November 30 each year...”

The Flathead National Forest component in question is guideline FW-GDL-TE&V 01 which states, “Within the NCDE primary conservation area, measures to reduce the risk of disturbance to the grizzly bear population should be incorporated into *vegetation and fuels project* [emphasis added] design criteria, which vary on a site-specific basis (e.g., some activities should be restricted in spring habitat during the spring time period; areas with low levels of human activity should be provided adjacent to areas with high levels of disturbance). Note: Management activities such as pre-commercial thinning, burning, weed spraying, and implementation of road best management practices may need to be completed during the spring time period in order to meet resource objectives (especially if needed to prevent resource damage), in which case other measures should be used to reduce the risk of disturbance (e.g., limiting the duration of the activity or limiting the use of closed roads).” (Forest Plan, pp. 42-43) Because the Hellroaring Basin Improvements Project is not a vegetation and fuels project the Forest Plan guideline would not apply. However, there would be a relatively small amount of vegetation removal occurring for ski area developments.

Because the Hellroaring Basin Improvements Project is not a vegetation and fuels project the Forest Plan guideline would not apply.

The response to this comment also points out that although FW-GDL-TE&V 01 does not apply to this project, “the project was designed to reduce impacts to grizzly bears at this important time and also to stay aligned with the 1995 Big Mountain Expansion record of decision (USDA 1995). Allowing construction activities to occur in the Hellroaring Basin in June is necessary so that the project could be completed within fewer years, as discussed during consultation with the US Fish and Wildlife Service...” (draft decision notice, response to comments, p. C-13).

I conclude that the responsible official complied with applicable direction in the Forest Plan.

Issue 4: Issues Outside the Scope of the Project Not Subject to Objection Review

Contention 4A: Disagreement with Forest Plan and Northern Continental Divide Ecosystem (NCDE) Direction for Grizzly Bear Management on the Forest

The objector states that:

- Forest Plan direction for grizzly bear habitat management “does not maintain the on-the-ground habitat conditions that existed in 2011, as required by the Forest Plan and Conservation Strategy, and allows the degradation to remain unaccounted for in the Baseline parameters”; and
- Forest Plan and NCDE direction to not include special use permit service roads in the calculations for total road density.

Objector(s): Swan View Coalition

Response:

Forest Service regulations for the project-level pre-decisional administrative review process (objection process), require that issues raised in objection must include specific issues related to the project (36 CFR 218.8 (d)(5)). Therefore, issues raised by objectors related to the forest plan or other direction for which decisions have already been made are set aside from further review.

Contention 4B: The Purpose and Need Statement Should Have Included a Wildlife Desired Condition

The objector states that it is arbitrary and capricious for the project’s purpose and need statement not to include a wildlife desired condition, namely GA-SM-MA7-Big Mtn-DC-04.

Objector(s): Friends of the Wild Swan

Response:

A desired condition is a forest plan component defined as “a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates,” (36 CFR 219.7 (e)(1)(i)).

Desired conditions in a forest plan apply to a plan area such as a national forest. Projects, on the other hand, are designed to move toward desired conditions that pertain to the areas in which they are located. The desired condition referred to by the objector is specific to Management Area 7 that represents “focused recreation areas” (Forest Plan, p. 109).

Forest Service regulations for preparing EAs state “The need for action discusses the relationship between the desired condition and the existing condition in order to answer the question, “Why consider taking any action?” The breadth or narrowness of the need for action has a substantial influence in the scope of the subsequent analysis,” (FSH 1909.15 (41.21)). The Hellroaring Basin Improvements Project purpose and need is written in response to the Whitefish Mountain Resort’s (the Resort) proposal “to amend their master plan in order to provide additional winter recreation opportunities within the existing permit area,” (EA, p. 1). The EA states “the District has prepared this environmental assessment in order to consider this proposal’s effects to the human environment under the National Environmental Policy Act,” (Ibid.).

Since the responsible official is responding to the Resort’s proposal, the project’s purpose and need is relatively narrow. However, the responsible official must still ensure the proposed action complies with the Forest Plan. In the draft decision notice on pages 15-19, the responsible official discloses how the proposed action complies with applicable components of the Forest Plan including the desired condition GA-SM-MA7-Big Mtn-DC-04 referred to by the objector.

Please see information applicable to GA-SM-MA7-Big Mtn-DC-04 in response to Issue 3, Contention 3A.

I conclude the responsible official appropriately defined the purpose of the project in compliance with Forest Service direction and the Flathead Forest Plan.