Salish Good EA – Flathead National Forest

Objection Responses – Native Ecosystems Council, Swan Valley Coalition, Brian Peck

Issue 1: Canada Lynx

Contention 1-1: Best Science

Failure to use the current best science in ensuring the conservation of Canada lynx as required by the ESA.

Objector(s): Native Ecosystems Council

Response: The Forest Service, Northern Region regularly evaluates new information concerning lynx management including in the Salish Good project. The Northern Region Lynx Biologist regularly reviews emerging lynx science and shares findings about the potential implications for lynx management with Forest and District biologists (for example see Q2 in project file). The outcome of this information sharing is the inclusion of up-to-date research in the NEPA and the ESA consultation processes. Indeed, both the Environmental Assessment (EA) and the Biological Assessment (BA) submitted to the USFWS include the Kosterman et al. 2018 reference objectors highlight, indicating that the findings relative to the Kosterman research were considered. An additional analysis based on, but not completely replicating, the Kosterman approach was conducted and included in the project file, however, the effects analysis in the EA was limited to the Northern Rockies Lynx Management Direction (project file, document Q2).

Although the other very recent paper objectors cite, King et al. 2020, was not specifically referenced in the EA, the importance of abiotic factors in shaping lynx distribution is well founded in lynx management within the Region (see Northern Rockies Lynx Management Direction) and the Flathead National Forest specifically. King et al. state that their results "**add** [bold added for emphasis] to the growing literature regarding the importance of abiotic effects to predicting lynx distribution" (p. 741). The updated lynx habitat model for the Flathead National Forest acknowledges this fact by incorporating both snow cover and elevation, two abiotic conditions, as indicators of habitat conditions for lynx (Kuennen et al. 2017).

I find that the project complies with the requirements to consider new science as outlined by the NFMA, NEPA, and ESA.

Contention 1-2: Critical Habitat

Failure to identify and measure impact of roads on Canada lynx critical habitat.

Objector(s): Native Ecosystems Council

Response: The effects of road construction on lynx critical habitat are quantified in the Canada Lynx section of the EA (pp. 54-65) and Lynx Critical Habitat Effects assessment (project file, document Q2b, pp. 3-4). Most new roads will be closed to the public and limited to administrative use (project file, document Q5e, for expected administrative use). The ESA requires consultation with the USFWS which will be completed prior to the project's final decision. A Biological Assessment was submitted to the USFWS with "May affect, likely to adversely affect" determinations for lynx critical habitat.

I find the project is consistent with the Forest Plan and that the responsible official complied with NEPA and the ESA by conducting appropriate analyses and consulting with the USFWS.

Contention 1-3: Monitoring – Failure to demonstrate lynx conservation due to a lack of population monitoring.

Objector(s): Native Ecosystems Council

Response: Monitoring is an important component of the new Flathead National Forest Plan, including monitoring of lynx populations (see Table 54, p159-160, Flathead National Forest and Land Management Plan 2018). Working in conjunction with partners, the Northern Region instituted a Regional meso-carnivore monitoring program aimed at assessing species distribution and population indices. The Flathead National Forest is a participating Forest within this monitoring program, which surveys locations throughout the Region on a rotating basis.

I find that the responsible official, working with the on-going regional monitoring programs, is being consistent with the Forest Plan.

Contention 1-4: WUI Definition – Failure to appropriately define the Wildland Urban Interface as outlined by the Lynx Amendment

Objector(s): Native Ecosystems Council

Response: According to Appendix A of the FNF LMP (which incorporates the Northern Rockies Lynx Management Direction), the specific definition of the Wildland urban interface (WUI) is defined as in the Healthy Forests Restoration Act. In summation, the WUI is the area adjacent to an at-risk community that is identified in the community wildfire protection plan. If there is no community wildfire protection plan in place, the WUI is the area 0.5 miles from the boundary of an at-risk community; or within 1.5 miles of the boundary of an at-risk community if the terrain is steep, or there is a nearby road or ridgetop that could be incorporated into a fuel break, or the land is in condition class 3, or the area contains an emergency exit route needed for safe evacuations. (Condensed from HFRA. For full text see HFRA § 101) The WUI boundary as defined in that plan was used for analysis of the Salish Good project and is the same area of WUI that was consulted on for the Forest Plan (Forest Plan BA, USDA FS 2017 and BO USDI FWS 2017).

I find the responsible official appropriately defined the Wildland Urban Interface consistent with the Forest Plan.

Contention 1-5: Habitat Impacts/Connectivity

Failure to analyze how openings will affect home ranges and habitat connectivity as required by the Forest Plan.

Objector(s): Native Ecosystems Council

Response: The effects of changes in habitat conditions, including habitat that facilitates connectivity (PCE 1d), are disclosed in the Canada Lynx section of the EA (pp. 54-65) and Lynx Critical Habitat Effects assessment (project file, document Q2b). Within the WUI, connectivity will depend largely on riparian corridors, although corridors for large scale movement of carnivores such as lynx were incorporated into some areas where very large regeneration openings (project file, document Q9) are proposed to help ensure habitat conditions align "with landscape-level habitat selection exhibited by Canada lynx" (Squires et al. 2013, Holbrook et al. 2017a; cited in Kosterman et al. 2018). As such the ability for lynx to move at a large landscape-scale will be maintained through applicable Forest Plan components (project file, document Q1).

I find the project is consistent with the Forest Plan and that the responsible official complied with NEPA and ESA by conducting appropriate analyses and consulting with the USFWS.

Issue 2: National Forest Management Act

Contention 2-1: Diversity of Wildlife

Objector(s): Native Ecosystems Council

Response: The course-filter approach was used in the revision of the Flathead National Forest Land Management Plan (2018) to "provide for the diversity of plant and animal communities in the plan area and the long-term persistence of native species in the plan area" (coarse-filter definition in glossary, p. 174) provides for maintaining a variety of successional stages that will add to forest diversity and ensure maintenance of habitat for forest birds with different successional stage habitat needs (Forest Plan FEIS, Volume 2, p. 67 and Section 3.3.4). Most of the habitat needs of wildlife species are ensured through consistency with the course-filter Forest Plan components for coniferous and hardwood forest habitat and associates and for riparian management zones. The EA does continue to identify numerous species-specific plan components and discloses that all alternatives would comply with Forest Plan direction for these species (EA, pp. 71-72).

The objector states that wildlife surveys were not done and therefore protection is not provided for nesting sites. The Forest Plan does not require that wildlife surveys be conducted prior to vegetation management activities. It is stated in the EA and listed as a design feature in the Draft Decision Notice (DDN, pp. 48-49) PDF-WDL-08 that "If any of the following are found within 0.25 miles any vegetation management or burn unit or road location, operations within

that unit or on that road would cease until the wildlife biologist is notified, and activities would be modified if necessary:…. Active nesting sites used by bald eagles, northern goshawks, black-backed woodpeckers, or flammulated owls." This is consistent with the Forest Plan.

Snag retention designed to ensure habitat requirements are met for large tree and snag associated species is included as a design feature in the DDN as well as discussed in the EA, snag retention standard (GA-SM-STD-02) and is consistent with the Forest Plan FEIS (pp. 100-118) and section 3.3.8 on Snags and Downed Wood. The Snag Analysis Report (project file, document P-10) further discusses snags and provides information on the retention of live, dead, and downed trees that would ensure that an adequate amount of green canopy, cavity habitat, and large woody material would be available over time. The EA (p. 50) discusses the effects of regeneration harvest, removing forested cover needed by many species, and intermediate harvest which would remain functional habitat for 66 associated species.

The objector contends that the project will create 8,000 acres of unsuitable hare habitat which will impact lynx and other forest predators. The Canada lynx section of the EA includes a discussion of effects to snowshoe hare habitat (pp. 57-59). It discloses that treatments would temporarily convert lynx foraging habitat resulting in adverse effects to lynx, but these treatments are allowed under exceptions and exemptions provided for in the NRLMD for fuel treatment projects in the WUI. The Canada Lynx analysis (including effects to snowshoe hare habitat) are also discussed in the lynx effects document in the project file (Q-2a). With regard to reducing the number of hare and affecting other predators, this was considered in the course-filter analysis for the Forest Plan through associated habitat for species affected. This information is found in Appendix 6 of the Forest Plan FEIS.

I find the project complies with wildlife direction in the Revised Forest Plan and there is no violation of NFMA.

Contention 2-2: Old Growth

Inadequate identification of and analysis of impacts related to Old Growth as required in the Revised Forest Plan

Objector(s): Native Ecosystems Council/Alliance for the Wild Rockies

Response: The Forest Plan states that "vegetation management activities must not modify the characteristics of the stand to the extent that stand density (basal area) and trees per acre above a specific size and age class are reduced to below the minimum criteria in Green et al. Vegetation management shall maintain or promote old-growth forest characteristics and ecosystem processes" (Forest Plan, Standard FW-STD-TE&V-01, p. 41). Guidelines for lodgepole-pine dominated stands adjacent to old growth include using regeneration harvest to increase the long-term development of old growth forest structure and composition, because lodgepole pine stands are not conducive to developing into old growth (Forest Plan, Appendix C FW-GDL-TE&V-06, p. C-39).

To maintain connectivity and avoid adverse impacts to old-growth forest, new road construction or reconstruction should not be located within old-growth forest. Exceptions may

occur, such as when there are no feasible alternative road locations. (Forest Plan Guideline FW-GDL-TE&V 07, p. 43)

This concern was responded to in the Draft Decision Notice at pages 69-70. It was made clear that old growth was mapped in the project area and the information is in the project file (Exhibit P-9). A map has been included in the record which displays old-growth stands in relation to treatment units and road construction (Exhibit P-15). The EA discloses the indirect effects of road construction in, and regeneration harvest adjacent to, old growth stands (pp. 49-50). Effects are minor and do not merit inclusion of the additional map in the EA. To show compliance with the Forest Plan, the Salish Good Final Decision Notice will clarify that there were no feasible alternative road locations to avoid road construction in old-growth stands.

I find the project complies with old growth direction in the Revised Forest Plan and there is no violation of NFMA.

Contention 2-3: Key Species Analysis

Failure to analyze impacts to elk, which is a "key species" in the Revised Forest Plan.

Objector(s): Native Ecosystems Council

Response: Elk was discussed and summarized completely in the EA (pp. 71-72) and an analysis of vegetation alteration and roads and the effects on forage, hiding cover and snow intercept for elk were analyzed and mapped in the project record (Q-7b). Most of the habitat needs of elk are provided through consistency with course-filter Forest Plan components for coniferous and hardwood forest habitat. All the alternatives in the Salish Good EA comply with these components. The project also complies with the Forest Plan guideline GA-SM-GDL-01 which provides for elk security. It is defined in the Forest Plan as "an area at least 0.5 miles from a route open to public motorized use during the elk hunting season that provides a mosaic of cover and forage" (p. 180). The EA discusses the 21.3 miles of road construction in elk security habitat and states that, "Security would be reduced during the project implementation and remain less effective after the project due to nonmotorized use of these roads and loss of hiding cover which would make elk more vulnerable to hunting." The responsible official acknowledges the effects of new roads to elk security.

I find the responsible official complied with elk and key species direction in the Revised Forest Plan.

Issue 3: Wolverine

Contention 3-1: Wolverine

Violation of ESA and NFMA regarding the Wolverine.

Objector(s): Native Ecosystems Council/Alliance for the Wild Rockies

Response: The objectors assert a violation of ESA and NFMA based on the programmatic biological assessment for the wolverine. This has been remedied by including the wolverine, a species proposed for listing, in the biological assessment for the Salish Good Project, which was submitted to the USFWS on 6/19/2020. The determination was "may affect, not likely to adversely affect" wolverine (Project file Exhibit Q5d).

Issue 4: National Environmental Policy Act

Contention 4-1: Range of Alternatives

The range of alternatives is inadequate

Objector(s): Native Ecosystems Council

Response: The objector alleges the range of alternatives is inadequate. Under CEQ regulations for NEPA in section 102(2)(E) of the Act and (40CFR 1502.2(c) and 40 CFR 1502.14(c) a range of reasonable alternatives to the proposed action should fulfill the purposed and need and address unresolved conflicts to the proposed action.

The *Public Engagement* section of the EA (pp. 5 – 7) and the *Alternatives Considered but Not Analyzed in Detail* section (EA p. 7) address the concerns raised during scoping, including the alternative proposed during the EA comment period that "…promotes the conservation of [threatened Canada lynx and threatened grizzly bear]."

The purpose and need for the project (EA pp. 4 – 5) includes timber and fire/fuel reduction. Indirectly lynx, grizzly bear, wolverine, and other wildlife species would benefit as the project is in compliance with the Forest Plan, which incorporates the NRLMD, as modified, as well as all Forest Plan standards and guidelines (project file, document Q1), which ensures the maintenance of a diversity of wildlife species and their habitat.

The effects analysis sections in the EA for lynx (pp. 55-57, 63) and grizzly bear (pp. 68-71) include '*Affected Environment..'* and '*Environmental Consequences*' sections. The affected environment sections disclose the existing condition for lynx and grizzly bears, which in effect is the No Action Alternative. For wolverine the EA discloses that the project area does not contain any maternal or denning habitat and that habitat needs are met through consistency with Forest Plan components (p. 75).

The effects analysis sections in the EA for lynx (pp. 55-57, 63) and grizzly bear (pp. 68-71) include *Affected Environment* and *Environmental Consequences* sections. The affected environment sections disclose the existing condition for lynx and grizzly bears. The EA also discloses that the project area does not contain any maternal or denning habitat for wolverine.

I conclude the Responsible Official appropriately reviewed a range of alternatives in compliance with NEPA and Forest Service Handbook direction.

Contention 4-2: Proposed mitigation for weeds is not effective.

The objector is concerned that the proposed mitigation for invasive weeds is not effective, and an EIS is required.

Objector(s): Native Ecosystems Council

Response: This concern is addressed in the EA on page 126 and in the DDN on page 57 (Appendix B).

Contention 4-3: Inadequate Response to Comments

Response to comments are arbitrary and capricious and fail to adequately respond to concerns.

Objector(s): Swan View Coalition

Response: CEQ regulations for implementing NEPA require that an agency preparing a final environmental impact statement (EIS) "shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised." (40 CFR 1502.9) This requirement is specific to preparation of an EIS and therefore does not apply to the Salish Good EA.

Forest Service regulations 36 CFR 218 (Project-Level Predecisional Administrative Review Process) require that "comments on a proposed project or activity to be documented in an *environmental assessment* (emphasis added) shall be accepted for 30 days beginning on the first day after the date of publication of the legal notice." (36 CFR 218.25 (a)(i)) As far as consideration of comments, for an environmental assessment, the regulations require the responsible official to *consider* all written comments submitted and that all written comments received be placed in the project file and become a matter of public record (36 CFR 218.25 (b)). Consideration of public comments are a required component of preparing an EA and responding individually to all comments is not.

I find the Responsible Official adequately considered public comments in compliance with NEPA.

Contention 4-4: Proposed Action

Changes to the Proposed Action from initial scoping aren't adequately defined and analyzed.

Objector(s): Swan View Coalition

Response: The objectors point to the lack of changes within Table 45 on page 102 of the EA from scoping to publication of the draft decision notice as evidence that the Forest did not adequately address comments from initial scoping. Within the table, estimated sediment delivery under both of the proposed action alternatives is zero [tons]. The paragraphs following the table provide background on how these values were estimated. Review of the project record found that a consistent methodology was used to analyze the likelihood of sediment delivery associated with culvert failures across all alternatives. This was also explained in response to comments.

Please see the response to Contention 6-1 for more in-depth discussion.

Issue 5: Grizzly Bear

Contention 5-1: Roads Analysis

Failure to analyze the impacts of new roads on grizzly bear displacement.

Objector(s): Native Ecosystems Council

Response: The effects of road construction and access management were disclosed in the project EA and BA and discussed in the project file (project file, document Q3a). Moreover, Alternative C was introduced and designed in part to address issues associated with grizzly bear sensitivity to roads because the Forest is aware that as detailed in these documents and outlined in the abstract of the Proctor et al. 2020 paper cited by the objector,

> "motorized access affected grizzly bears at the individual and population levels through effects on bears' habitat use, home range selection, movements, population fragmentation, survival, and reproductive rates that ultimately were reflected in population density, trend, and conservation status." (p. 16)

However, equally important and building on a body of research and management success, Proctor et al. go on to make it clear that '[m]otorized access management was effective in mitigating these effects'. To address this concern, roads developed by the proposed action will be either gated or bermed and not open to public motorized use (Table 5, pp.13-14, for Alt. B and Table 6, p.16 for Alt. C). Moreover, the Flathead National Forest has instituted regulatory policy (GA-SM-STD-01) to ensure the efficacy of access management because as made clear in Proctor et al.:

> "after considering many years of voluntary closures and their ineffectiveness over time, we suggest that when MACs are applied, that they be regulatory rather than voluntary" (p. 33).

This is the reason 0.24 miles of new public motorized access have been offset by road closures along other public access roads within the Forest, resulting in a net decrease in open roads. The Forest Plan does not limit administrative road use in the Salish demographic connectivity area of Zone 1 (see Forest Plan BA USDA FS 2017 and BO USDI FWS 2017 for justification) that includes the project area. Unlimited administrative use within the project area was disclosed in the EA (pp. 68-69), and such a need was acknowledged in Proctor et al. 2020 (p. 33) and the citations within as a reality of grizzly bear management within managed landscapes. Illegal use of closed roads is possible, but effective barrier instillations along with planned monitoring of road closures by the Flathead National Forest are intended to minimize this risk and the corresponding effects to grizzly bears and other species sensitive to road use.

I find the project is consistent with the Forest Plan and that the responsible official complied with NEPA and ESA by conducting appropriate analyses and consulting with the USFWS.

Issue 6: Culverts

Contention 6-1: Culvert Failure Potential

Failure to quantify the risks of culvert failure is a violation of NEPA and ESA.

Objector(s): Swan View Coalition

Response: The objectors allege that the Salish Good Project [analysis] "fails to distinguish between and quantify the risks of culvert failure in abandoned, temporary, open, gated, and barricaded roads. As a result, it draws arbitrary and capricious conclusions to support the building of more roads and culvert crossings in watersheds already suffering from too many roads and culverts." They contend that "the DDN and EA fail to develop and disclose the results of a reasonable estimation of the number of culvert failures and sediment delivery that can be expected in the future under the Proposed Action" and that this failure is a violation of the APA, NEPA, NFMA, and the ESA.

Under a series of applicable regulatory authorities (including, but not limited to the Clean Water Act, National Forest Management Act (1976), Montana Surface Water Quality Standards and Procedures (ARM 17.30.6), and the Flathead National Forest Management Plan (2018)), project activities need to ensure maintenance of beneficial uses through defensible analyses of all aspects of water quality and quantity that could be compromised through project activities. The core of this contention is whether culvert failure may substantively contribute to adverse water quality impacts and compromise aquatic habitat quality and endangered species viability.

Within the Salish Good EA, it is disclosed that the Good Creek watershed is Functioning Properly, per the Forest Service's Watershed Condition Class assessment conducted in 2011 and that beneficial uses as designated by Montana DEQ (delegated regulatory authority for CWA compliance) are being maintained (EA, p. 77); no evidence is provided by the objectors that the Good Creek watershed is currently persisting in a compromised state and evidence to the contrary is shared by the responsible official. The responsible official shared and contextualized culvert/crossing inventory field data indicating where existing culverts are in unsatisfactory condition and anticipates rectifying those issues under the Proposed Action.

An empirically-based probabilistic risk assessment was conducted within the EA. Review of the project record indicates that this assessment was grounded in best science, field observations, professional judgement, and analysis of site-specific indicators of crossing susceptibility to failure. The analysis provided within the Salish Good EA applied a conservative estimate of failure probability under both the existing condition and multiple alternatives- including the No Action Alternative- to characterize the potential for sediment delivery associated with crossing failure. That sediment delivery potential, when coupled with a drainage-scale sediment budget, suggested a low risk to aquatic resources from culvert failure within the Selected Alternative.

Assessment of culvert failure risk was conducted based on current crossing condition, not road management strategy (permanent, temporary, abandoned, or closed), since risk of failure does not vary across road management strategies. The responsible official acknowledges within the EA that continued maintenance is critical to avoid crossing failure and that application of all appropriate crossing design standards may not prevent future crossing failure (EA, pp. 5, 91).

The objectors point to Table 45 on page 102 of the EA as partial evidence that the Forest has not conducted an adequate analysis of crossing failure. Within the table, estimated sediment delivery under both of the proposed action alternatives is zero [tons]. In the paragraphs following the table, the EA describes how four "unsatisfactory" culverts would remain on the landscape (of note is that none of these are within Forest Service jurisdiction) following project implementation. With an assumed conservative failure rate of 10 percent, this means that less than one in four culverts (i.e. zero) may fail through the 30-year analysis timeframe, thereby not delivering sediment to channels. The responsible official used a consistent methodology to analyze the likelihood of sediment delivery associated with culvert failures across all alternatives. This was also explained in response to comments.

I conclude that a robust analysis of culvert failure risk has been conducted within the Salish Good EA in alignment with all applicable law, regulation, and policy pertaining to water quality and aquatic habitat.