February 12, 2020

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Rd.
Missoula, MT 59804
Submitted via email to: appeals-northern-regional-office@usda.gov

Re: Objection to Sawmill-Petty Project Draft Decision and Finding of No Significant Impact

To the Objection Reviewing Officer,

WildEarth Guardians, the Center for Biological Diversity and the Flathead-Lolo-Bitterroot Citizen Task Force submit this objection to the U.S. Forest Service's December, 2020 draft decision notice ("Draft DN"), finding of no significant impact ("FONSI"), and updated 2020 environmental assessment ("Updated EA") for the Sawmill Petty Project on the Ninemile Ranger District of the Lolo National Forest. In its Draft DN and FONSI the Forest Service's selected alternative includes, inter alia, commercial logging on 5,749 acres, noncommercial logging on 13,231 acres, and adding 142 miles of road to the system, including 5 miles of previously decommissioned roads, 57 miles the agency labels as "undetermined,"and 80 miles from acquired lands. In addition, the draft decision authorizes constructing an additional 19 miles of new system roads and 9 more miles of temporary roads. The project area covers 64,400 acres. The responsible official is Lolo National Forest Supervisor, Carolyn Upton. As required by 36 C.F.R. § 218.8(d):

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These objections are timely filed. Notice of the Draft Decision Notice and FONSI was published in the Missoulian (the newspaper of record) on December 29, 2020. The deadline to submit objections is thus February 12, 2021.

WildEarth Guardians, the Center for Biological Diversity and the Flathead-Lolo-Bitterroot Citizen Task Force submitted timely comments on the September, 2020 Sawmill-Petty Project Environmental Assessment ("Sept. EA"). Our comments advocated for thoughtful management of the agency's road system, its associated impacts, and the overall need to protect and improve the ecological integrity of watersheds and wildlife habitat in the planning area. Each of the objectors has organizational interests in the proper and lawful management of forest resources, including the road system and its associated impacts on the Lolo National Forest's wildlife and wild places.

OBJECTIONS

We recognize and support the Forest Service changes to the original proposed action reflected in the modified Alternative B, (selected alt.) that will reduce harmful ecological effects such as "dropping construction of approximately 3.6 miles of permanent road (PS-1) and some of the treatment units that were associated with it (S36, S39, S41, S42, S43, S49, and part of S50; total approximately 201 acres)..." Draft DN at 1. In addition we support the obliteration of 32 miles of road, and committing to a decommissioning schedule, though the Forest Service fails to adequately ensure funding will be available for the decommissioning treatments. Overall, these changes were meant to address concerns raised by the public, but they are minor (see Updated EA at 9), and still fail to adequately address the issues we raised in our previous comments.

I. Failure to Prepare an Environmental Impact Statement

Our comments urged the Forest Service to prepare an EIS because the length and complexity of the 2020 EA demonstrates that the agency should have prepared an EIS based on past court rulings and CEQ rules that we included in our comments. The Forest Service failed to adequately respond to our October 2020 comments, and the need to update the previous analysis further demonstrates the project's complexity that only an EIS can adequately analyze. Further, this project may have a significant impact on the environment. The Council for Environmental Quality's (CEQ) regulations define significance in terms of context and intensity, which includes *inter alia* the scope of beneficial and adverse impacts, unique characteristics of the geographic area, degree of controversy, degree of uncertainty, and degree to which an action may affect species listed or critical habitat designated under the Endangered Species Act. 40 C.F.R. § 1508.27 (defining "significantly"). We noted that this project may significantly affect the human environment for a number of reasons, all of which still remain. In the draft Draft DN, the agency fails to provide or offers flawed rationales for dismissing as significant the reasons and examples we provided in our comments.

- Will cause significant impacts, both beneficial and adverse.
    - The selected alternative will still have a significant adverse impact through regeneration harvest that exceed the 40-acres opening limitations, and that will still result in a 90 mile net expansion of the road system.
    - Log hauling on will increase road-related sedimentation by a staggering 706.6 tons/yr during project implementation, in addition to 8.9 tons/yr from new road construction.
    - The Forest Service acknowledges that "[l]ong-term impacts (>5 years) potentially related to increased traffic from log haul and new permanent road construction activities associated with commercial vegetation treatment are anticipated." Draft DN at 9.
    - The proposed action will still result in massive increases of sedimentation to 303(d) impaired streams.

- Involves a geographic area with unique characteristics, including ecologically critical areas such as areas of connectivity for grizzly bears dispersing from recovery areas, as well as in Inventoried Roadless Areas. The project includes commercially logging 464 acres within the Garden Point IRA. The Forest Service fails to adequately explain why the planning area does not constitute an ecologically critical area.
- Involves effects on the human environment that are likely to be highly controversial. We provided numerous examples where scientific controversy exists, in particular as it pertains to a reliance on best management practices, or resource protection measures. We recognize that the agency provides some discussion to address this scientific controversy in the Project File, (Response to Literature Submitted is documented in the Project File. See Sawmill-Petty Draft DN at page 83). In this response, the agency asserts that Carlson et al. (2015) "... is not necessarily representative of one particular administrative unit," since it "summarizes data on BMP monitoring on implementation and effectiveness for 11 different resource activities across 97 administrative units throughout the US." *Id.* at 2. This response fails to differentiate the Sawmill-Petty Project planning area from the 97 administrative units and any scientific study that focused on just one unit would not have provided sufficient sampling size for the broad-scale study. Here the Lolo National Forest (LNF)seems to assert that because the study had a large sampling size, then somehow it is not applicable to the Sawmill Petty Project. This is counterintuitive and fails to address our comments. Likewise was the agency's response to Edwards et al., (2015) highlights the findings that while BMPs evaluated in the study were generally effective the degree of which is highly site-specific and argue that while they provide important resource protections, more research is necessary. *Id.* at 3. The acknowledged high variability of BMP implementation and effectiveness, and that more research is necessary, supports the need for an EIS, especially to demonstrate in the analysis how biennial BMP reviews apply to the project area. Draft DN at 69 (stating, "[f]or the Sawmill-Petty project, Resource Protection Measures (EA, pp. 17-25) provide standard and site specific actions to protect aquatic resources, utilizing BMPs which have shown to be effective on Lolo NF (Ziesak 2018 and USDA 2002)."

  Further, we explained in our previous comments that the Forest Service's claimed need for retaining system roads and adding unauthorized roads to the system relies on the premise of active management as an effective means of achieving the project's purpose and need. However, there is significant scientific controversy regarding the effectiveness of logging, thinning and prescribed burning as a means of restoring resilient stand conditions as the agency claims Alternative B would achieve. 2020 EA at 5. The Forest Service response was buried in a project file titled "Response to Literature submitted"referenced in its response to comments, (as noted above). The significant scientific controversy reflected in the agency's own response cannot be fully addressed in a table buried in a project file that was not even available on the project webpage. Such a brief and cursory response fails to convincingly demonstrate that vegetative treatments will in fact actually maintain or restore ecological integrity, and also exemplifies the need for robust analysis in an EIS.
- Involves effects that are highly uncertain or involve unique or unknown risks, which is certainly the case in the context of the need to address the high variability of BMP implementation and effectiveness, and the inherent uncertainty of relying on vegetation treatments to reduce wildfire risk.

- May adversely affect species listed or critical habitat designated under the Endangered Species Act, including grizzly bear and bull trout.
    - The Forest Service arbitrarily changed the determination for grizzly bears to not likely to adversely affect (NLAA) from the 2020 EA that did find the project would adversely affect grizzly bears. We address this fatal flaw in the analysis below, but certainly changing such a determination supports the need for an EIS.
    - The Forest Service acknowledges that the project May Affect, Likely to Adversely Affect Bull trout and Critical Habitat. Updated EA at 81. Yet, the agency fails to adequately explain why such a determination does not rise the level of significance that would require additional analysis in an EIS. Draft DN at 12.
- Threatens to violate the Roadless Area Conservation Rule and the Clean Water Act.

Suggested Resolution: The Lolo National Forest should prepare an EIS because the Sawmill-Petty Project may have a significant impact on the environment to ensure the Forest Service takes the required "hard look" at the impacts of its actions.

II. Flawed support for the claimed needs, failure to articulate the statement of purpose and need to include the Forest Service's duty to identify the minimum road system, failure to meet the purpose and need.

Our October 2020 comments explained that the agency's over-reliance on historic conditions to inform desired conditions is inherently flawed, and as such, the basis of the Sawmill-Petty EA purpose and need, along with the proposed actions, involves effects on the human environment that are likely to be highly controversial, and and involves effects that are highly uncertain and involve unique or unknown risks, all of which necessitate promulgation of an EIS. The Forest Service fails to adequately address this controversy and uncertainty in the Updated EA, even while acknowledging our concern in its response to comments: "[t]he historic reference condition of the project area does not represent a desired condition but, when compared to the existing condition, can inform landscape departures from resilient conditions and identify landscape components that are important for vegetation restoration." Draft DN at 51. The Forest Service's response suggests that specific vegetation treatments do not attempt to mimic stand conditions based on HRV, and that the agency did in fact incorporate current and future climate conditions in its analysis to determine the project's desired condition. Yet, the agency also explains:

> Restoration of patterns of burning and fuels and forest structure that reasonably emulate pre-fire exclusion historical conditions is consistent with reducing the susceptibility of these ecosystems to catastrophic loss...The prescribed burning and timber harvest activities proposed in Sawmill-Petty are designed with ***historic reference conditions in mind***, and they focus on developing patterns of fuels and forest structure that are resilient to many of the natural disturbances common to this landscape including wildfires, insects, diseases, and drought.

Updated EA at 45. As we stated in our comments, HRV is certainly useful and valid to assess how current conditions have departed from those that existed before European settlement, and over a century of Forest Service fire suppression and timber production. Yet, when relying on such historic conditions to inform vegetative treatments the Forest Service must account for the fact that climate change is fundamentally

altering the agency's assumptions about the efficacy of the proposed actions. In other words, it is arbitrary and capricious for the Forest Service to rely solely on historic reference conditions to formulate its vegetation treatments. Rather, the agency must also include current reference conditions from areas that have a passive management emphasis, in addition to predicted uture reference conditions based on the best available climate models. The Updated EA fails to incorporate such reference conditions.

In addition, we urged the agency to carefully evaluate the Sawmill-Petty Project and both alternatives through the lens of the Travel Management Rule's (TMR) direction under subpart A, and incorporate into an EIS the need to identify and implement a minimum road system. In fact, the Forest Service explains one of the project's purposes is to "[h]ave a transportation system that supports the project, meets public and administrative needs, and accounts for resource concerns." Updated EA at 5. This closely mirrors direction under the TMR that directs the responsible official to "identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands." 36 C.F.R. § 212.5(b)(1). In its response to comments, the Forest Service cites the 2015 forest wide Travel Analysis Report (TAR) with the assertion that "[i]t identifies the minimum road system and the roads that are no longer needed to meet forest resource management objectives, consistent with the above cited regulations." Draft DN at 74. This statement is incorrect.

Past Forest Service direction clarified that producing a TAR is meant to inform future analysis under NEPA and that complying with the TMR subpart A requires a NEPA-level decision.[1] We provide an overview of the agency's past 20 years of trying to comply with its duty to identify a minimum road system and unneeded roads in our paper titled, "A Dilapidated Web of Roads - The Forest Service's Departure From a "Sustainable" Forest Road System. See Attachment A. It clarifies the agency's duties under subpart A, which were confirmed in a recent Montana District Court ruling explaining, "... any analysis contained in the Darby Lumber Lands Travel Analysis Report cannot cure any deficiencies in the Environmental Assessment because it is well settled that a site-specific project may not tier to a non-NEPA document. *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1073 (9th Cir. 2002)." *Friends of Bitterroot v. Marten*, No. 9:20-cv-00019-DLC, 2020 WL 5804251 (D. Mont. Sept. 29, 2020). Past Forest Service Washington Office direction and the court ruling precludes the Lolo National Forest from relying on its 2015 TAR to meet its regulatory obligations under the TMR subpart A.

The Forest Service also responds to our comments with the explanation that it completed a project-specific TAR for the Sawmill-Petty project planning area: "[t]his analysis documented the need for new road construction, identified some roads to be stored, some roads to be decommissioned, and found that some existing non-system (undetermined) roads need to be added to the National Forest Road System." Draft DN at 74. Our comments detail specific and fundamental flaws with the Sawmill-Petty TAR that the agency failed to adequately address in the Updated EA or in its response to our comments. The former contains a one-page discussion of the transportation system, solely focused on changes to the Motor Vehicle Use Map and directs the following: "[p]lease refer to the Transportation Report for a

[1] Forest Service Memorandum, March 29, 2012 by Deputy Chief Leslie Weldon, (stating, "[t]he nextstep in identification of the MRS is to use the travel analysis report to develop proposed actions to identify the MRS. These proposed actions generally should be developed at the scale of a 6th code subwatershed or larger. Proposed actions and alternatives are subject to environmental analysis under NEPA. Travel analysis should be used to inform the environmental analysis.").

discussion of the Travel Analysis Process (TAP), which explains how the transportation system in the project area was evaluated, as well as detailed information about the area's transportation system, a road-by-road description of the current conditions and recommendations resulting from the TAP, and maps, costs, and definitions." Updates EA at 120. Further, in its response to our comments the agency states "[t]he analysis was conducted with the "amount of detail that is appropriate and practicable for travel analysis" (FSM 7712.1 (3)). The travel analysis was consistent with the Travel Planning Handbook (FSH 7709.55, chapter 20)." Draft DN at 75. To be clear, the amount of detail necessary is that which supports a NEPA-level decision with sufficient detail to demonstrate the minimum road system complies with the four factors provided in the TMR subpart A requirements:

> The minimum road system is the road system necessary: (1) to meet "resource and other management objectives" consistent with the forest plan; (2) to meet applicable statutory and regulatory requirements"; (3) to reflect "long term funding expectations"; and (4) to ensure the road system "minimizes adverse environmental impacts associated with road[s.]" 36 C.F.R. § 212.5(b)(1).

Friends of Bitterroot v. Marten, No. 9:20-cv-00019-DLC, 2020 WL 5804251 (D. Mont. Sept. 29, 2020). Having established that both the forest wide and project level TARs cannot replace actual NEPA-level analysis and that the agency cannot tier to non-NEPA documents to meets its analysis requirements, and moreso, that the Sawmill-Petty TAR and Updated EA fail to demonstrate compliance with the TMR subpart A direction, the question turns to whether or not the Updated EA and Draft DN results in a transportation system that accounts for resource concerns. The latter is necessary to comply with forest plan direction: "[t]he Lolo Forest Plan directs that roads be kept to the minimum number and size needed to meet user and resource needs (Forest Plan, pages II-2 and II-17)." Updated EA at 5. Flaws in the Sawmill-Petty TAR coupled with the lack of analysis in the Updated EA preclude any determination of forest plan compliance, which also results in a failure to meet the project's purpose as stated above.

Throughout our objection we provide examples where the agency failed to keep roads to the minimum number needed to meet resource needs or adequately accounts for resource concerns. Looking at the project level TAR as whole and the selected alternative, the Forest Service proposes a net increase of 90 miles to the transportation system in addition to the 165 miles of road in the planning area that the agency will retain with no changes. While road densities in some watersheds may decrease, the overall expansion of the road system requires an EIS to demonstrate how such an action actually results in the minimum number of necessary roads. In particular, the Forest Service proposes to retain Rd. #5540, (LOWER ED'S CREEK (SECTION 33)) that ranks low for all resource benefits and high for risks associated with wildlife, fisheries and watersheds. In addition, the selected alternative would add Rds. #44168, #44542 and keep #16739 all of which have moderate benefits but high risks. Road #44542 has low recreation and fire/fuels benefits, and only moderate vegetation management (i.e. timber) benefit. Retaining high risk roads should require specific analysis in an EIS, but ultimately the moderate benefits should not outweigh the high risks.

Further, the Forest Services proposes to add or retain roads with high or moderate risks to wildlife, fisheries, watersheds (hydrological), and soils, with the assertion that resource protection measures will adequately address any resource concerns. Updated EA at 17, Table 3. Yet, the Updated EA fails to

provide the necessary evidence or discussion to support such a conclusory and arbitrary assertion. Overall, we found the agency proposes to add or retain approximately 126 miles of roads with high resource risks for one or more categories and 284 miles of road with moderate risks. See Table 1.

Table 1. Miles of Road added or retained with High & Moderate Risk Rankings from the Sawmill-Petty TAR* (Based on Transportation Analysis Process Resource Ratings Spreadsheet Data (12/2019)).

	Wildlife	Fisheries	Hydrological	Soils
High	81 mi.	31 mi.	14 mi.	7 mi.
Moderate	121 mi.	49 mi.	80 mi.	34 mi.
Total	202 mi.	80 mi.	94 mi.	41 mi.

* Some roads have multiple high/moderate risks and are counted more than once in the total miles.

Quite a number of roads have multiple high risks including 25 miles that are high risk to both wildlife and fisheries. Four road segments are of particular concern as they rank high risk to wildlife, fisheries and hydrology: Rds. #5540 (2 segments), #5542, and #5544. As we note above, one segment of Rd. #5540 ranks low for all benefits, the other only ranks high for recreational value, but considering the extensive amount of recreational access in the planning areas and those nearby, we urge decommissioning both segments. Further, the selected alternative would add roughly 59 miles of roads rated high risk to wildlife to the system, of which 3.6 mi. were previously decommissioned. We strongly object to adding decommissioned roads back onto the system, especially considering the Forest Service fails to explain why these roads were decommissioned or their original purpose. The Forest Service has a history of failing to remove or effectively decommission system, temporary and unauthorized roads in a manner that precludes future use. Adding roads back to the system or expanding the road system with new construction and unauthorized roads, especially those found to have high risks, runs counter to the forest plan and fails to adequately account for resource concerns.

Finally, the Sawmill-Petty TAR failed to provide risk and benefit rankings for approximately 133 road segments totaling 66 miles, many of which the Forest Service labels as "undetermined." It is unclear from reviewing the Updated EA and DN how many miles of undetermined roads would be added to the system that did not receive risk or benefit rankings, which demonstrates the need for an EIS. At the very least, the agency should have included all roads it proposed be added to the system in its project-level TAR with the appropriate risk and benefit rankings. The Updated EA lacks the requisite specificity necessary to add these roads to the system. Adding roads to the road system without carefully weighing the environmental costs and benefits violates NEPA.

Suggested Resolution: The Lolo National Forest should prepare an EIS that uses reference conditions as we proposed, and that includes meeting TMR subpart A direction as a purpose and need. The Lolo National Forest should revise the Sawmill-Petty TAR to address the aforementioned deficiencies, making sure to summarize the risk/benefit rankings for roads in each subwatershed in the EIS.

III. Failure to adequately assess and disclose direct, indirect, and cumulative impacts, including detailed, site-specific information.

NEPA requires the Forest Service to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2(d). A critical part of this obligation is presenting data and analysis in a manner that will enable the public to thoroughly review and understand the analysis of environmental consequences. NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. 40 C.F.R. § 1500.1(b). The Data Quality Act expands on this obligation, requiring that influential scientific information use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515. Our previous comments detail numerous flaws with the Forest Service's analysis of the direct, indirect and cumulative impacts of the Sawmill-Petty Project 2020 Environmental Assessment. The Updated EA failed to adequately address these flaws or respond to our past comments. As such the Forest Service failed to take a hard look at the environmental consequences of the selected alternative in violation of NEPA. In addition to the analysis failures already mentioned above, the following sections provide specific examples and demonstrate the need for the Forest Service to prepare an EIS.

A. Baseline Condition

In our October 2020 comments, we explained that the Forest Service must differentiate between the existing condition in its No Action Alternative and the legal baseline of system roads and trails in order to fully disclose the environmental consequences between alternatives as NEPA requires. In response, the Forest Service explains, "[t]he existing situation with regards to roads in the project area is summarized on EA pp. 5 – 6 which also discusses the Transportation Analysis Process (TAP) that was included in the project analysis. This is further discussed in the Road Treatments section (EA p. 12-14)." Draft DN at 89. As we note above, the Forest Service proposes to add 58 miles of undetermined roads and an additional 80 miles of roads it received in land transfers, with an unknown number of road segments that lack any risk or benefit rankings in the Sawmill-Petty TAR. The Updated EA fails to differentiate between system and non-system roads in its analysis as our comments direct, which the agency's response fails to address. Separating the legal baseline from the existing condition is meant to disclose the current environmental consequences between system and non-system roads. Without such differentiation, the agency cannot disclose the environmental consequences specific to non-system roads, or the specific impacts from adding them to the system.

B. Reliance on Resource protection measures

Our past comments explained that the Forest Service cannot rely on best management practices (BMPs), design features or resource protection measures (RPMs) as a rationale for omitting proper analysis or for assuming the selected alternative would not result in significant environmental impacts. Yet, the Forest

Service response dismisses the two studies that demonstrate the Forest Service cannot assume BMPs and RPMs will be implemented correctly and be effective 100 percent of the time, ultimately concluding that "[f]or the Sawmill-Petty project, Resource Protection Measures (EA, pp. 17-25) provide standard and site specific actions to protect aquatic resources, utilizing BMPs which have shown to be effective on Lolo NF (Ziesak 2018 and USDA 2002)." Draft DN at 96. As stated above, the Forest Service cannot rely on non-NEPA documents to satisfy its hard-look requirements, and if the agency had studies, monitoring reports or other evidence showing the effectiveness of BMPs and RPMs in the planning area, then those should have been disclosed in the Updated EA, or more appropriately, in an EIS. Absent such evidence and discussion, the Forest Service failed to adequately respond to our comments. Further, we explained the reliance on BMPs and RPMs cannot replace the need for detailed analysis, and provided the fact that the GRAIP-Lite model estimating sediment delivery should have been run with and without the assumption of BMPs and RPMs being 100 percent effective. In response, the Forest Service states "[v]erification of model outputs regarding road BMP effectiveness was confirmed with the model developers (personal communication 02/21/2020 Black)." We do not argue the ability of GRAIP-Lite to incorporate BMP effectiveness, rather we explained the agency cannot assume 100 percent effectiveness as a rationale to forego conducting the requisite analysis NEPA requires.

In sum, the Forest Service failed to adequately respond to our comments or to include the sufficient analysis of its BMPs and RPMs in the updated EA. It also continues to rely on BMPs and RPMs instead of taking a hard look at the environmental consequences of the selected alternative as we detail below.

C. Watersheds/Fisheries

Our previous comments explained several flaws in the agency's analysis of watersheds and fisheries, all of which still apply as the Forest Service failed to provide sufficient additional analysis or adequately respond to our comments. For example, we explained that under the proposed action, seven out of eight 6th HUC watersheds in the project area will remain functioning at unacceptable risk (FUR) for the sediment and road density/location indicators. We asked the Forest Service to consider and disclose actions necessary to improve watershed conditions from FUR to even just functioning at risk. The agency's response to comments failed to acknowledge or respond to this request.

As another example, we raised specific concerns related to the amount of sedimentation that will result during project implementation under the proposed action, and those amounts remain unchanged under the selected alternative. Specifically we explained that increased sedimentation from construction of new and temporary roads under Alternative B would produce an additional 1399 t/y resulting in 195 t/y of sedimentation during the 10 years of project implementation. EA Fisheries Report at 25, Table 13. Post project implementation, new roads would produce 76.4 t/y of sediment, which the Forest Service optimistically believes would only result in 9 t/y of sediment delivery due to the use and maintenance of BMPs. *Id.* In fact, the Forest Service recognizes the severity of road-related sedimentation: "GRAIP-Lite output shows that NFS roads contribute approximately 72% of the stream delivered sediment within the project area." Updated EA at 74. Yet, during the 10 year implementation period, use of roads for log hauling is expected to produce 849.6 tons/yr, but then drop to 78.5 tons/yr post project. The reduction is due to installation and use of BMPs as the agency explains: "[a]fter implementing the Sawmill-Petty project, BMPs that were implemented for haul activities (primarily additional drainage) would remain,

resulting in shorter road segments between drainage points and thus overall less sediment production and delivery. This reduction is reflected in the post-implementation values shown in Table 14." Updated EA at 71. While additional drainage will help reduce stream sedimentation, the Forest Service fails to demonstrate it has the capacity to maintain the additional drainage. We raised this issue in our October 2020 comments, as well as our overarching concern related to the agency's reliance on all other BMPs post-implementation to achieve sediment reductions. Here we explained it is arbitrary to assume they will remain effective after project completion, and such a failure is particularly concerning as it relates to the determination that the selected alternative may impact WCT and the Western Pearlshell Mussel individuals or habitat, but will not likely contribute to a trend towards federal listing or loss of viability to the population or species.

In response to our concerns about BMP maintenance and the erroneous assumption that they will effectively reduce sedimentation in the long-term (i.e. post 10 yrs), the agency responds as follows: "[t]his project does not rely on BMPs for long-term benefits to aquatic resources. Our anecdotal monitoring suggests BMPs on open road surfaces usually last 3-5 years without proper maintenance." Draft DN at 71. We agree, which is why the Forest Service should have demonstrated its capacity for BMP maintenance both during the 10 yr implementation period, and then for subsequent years following project completion. At the very least, the agency should have provided cost estimates to maintain the road BMPs and compared those to past and current funding levels. Further, the agency should have disclosed sediment reductions it expects to achieve from other BMPs and RPMs besides installation of additional drainage features, but the Updated EA lacks such analysis.

The need for such analysis is further demonstrated by the fact that Petty Creek and West Fork Petty Creek are water quality impaired due, in part, to excessive road-related sedimentation and have corresponding TMDLs. Our comments explained the need to disclose how increases in sedimentation rates affects the agency's ability to meet the TMDLs, and how such increases comply with the requirement to reduce sediment in the West Fork Petty Creek by 71% and 76% for Petty Creek. In response, the Forest Service explains that the Hydrology report (p. 41) and the Updated EA (p. 73) "list actions proposed in the project in addition to BMPs, which would improve stream conditions and contribute to the sediment reduction as required by the TMDL, thus meeting the TMDL requirements." Draft DN at 71.

Such conclusory statements are not supported by the analysis and in fact the cited pages reveal no additional analysis to demonstrate compliance with NEPA and the Clean Water Act:

> "Specific road treatments are prescribed with the proposed project that lead to culvert upgrades, as well as road decommissioning, and road drainage improvements. In addition, BMPs would be employed to further reduce sedimentation from Forest road activities…"
> Hydrology Report at 41.
> ---
> "BMPs would be employed to further reduce sedimentation from Forest road activities, and forestry BMPs and Forest Plan RHCAs, streamside protective buffers, would be employed which are intended to retain large woody debris, habitat, and detain any sediment production."
> Updated EA at 73.

To reiterate, the Forest Service makes no attempt to compare the road-sediment TMDLs with the amount of sedimentation that will occur from the selected alternative, and it is arbitrary for the agency to rely on BMPs to meet sediment TMDLs in the post-project completion when the "project does not rely on BMPs for long-term benefits to aquatic resources." Draft DN at 71. Moreso, given that during project implementation sedimentation will increase by 760.6 tons/yr overall, the Forest Service should have estimated the amount of sediment reduction it expects to achieve, and how those compare with the TMDLs. Given that road mitigations were included in the GRAIP-Lite model, such a comparison is not unreasonable to expect in the analysis. Updated EA at 69 ("Riparian roads, which are most likely to deliver sediment to stream channels, would be targeted for site-specific RPMs for haul, including gravel lift in on West Fork Petty NFSR 5538 and dust abatement on South Fork Petty NFSR 5547. These mitigations were included in the GRAIP-lite sediment modeling which resulted in this output.").

In addition, the Forest Service explained in its response to comments calling for specific (i.e. quantifiable) sediment reductions for BMPs that "[a]s a whole, the proposed activities would provide long-term benefits to aquatic resources, including sediment reduction. The Technical Memo on the Mainstem Petty Restoration provides specific sediment reductions by stream restoration (Project File)." Draft DN at 70. The Forest Service failed to include the referenced Technical Memo in its list of reports on the project webpage, but more concerning is that the Updated EA lacked any summary or discussion of the memo. The agency cannot tier to internal non-NEPA documents to satisfy its requirements under the same law.

In regards to how the selected alternative will affect bull trout, WCT and their habitats, we explained several flaws that the agency did not address in its analysis or response to comments. For example, we explained that based on the modeling, the Forest Service identified just 7 out of 330 fish passages as being partially or fully blocked, EA Fisheries Report at 13, and asked how modeling from 18 years ago was still applicable and if there were any field verifications of these modeling results that may support its continued use. In response, the agency cited the same Fisheries Report as providing this information, which fails to discuss any field verification of the modeling results or summarize recent surveys to assess the condition of road stream crossings. In responding to a separate comment on this same issue, the Forest Service refers to the Hydrology Report as a source of information discussing the status of stream crossings. Here, the agency states, "[f]ield crews surveyed the majority of the mapped road-stream crossings in the analysis area in 2019. Resulting data is available in the Project File (InRoads Consulting 2019)." Hydrology Report at 19. Again, the Updated EA failed to summarize the findings from this internal non-NEPA document that the agency now relies on to demonstrate it met its hard look requirements under NEPA. The Hydrology Report references primary crossings, but remains unclear how many of the 330 crossings qualify as primary, and how many of those crossings were not surveyed. *Id.*

D. Roads

Our comments explained the deficiencies and lack of specificity in the 2020 EA and Sawmill-Petty TAR, which the Forest Service failed to adequately address. In fact, the Updated EA's analysis of the transportation system spanned just two-pages, and relies almost entirely on the Sawmill-Petty TAR. The agency asserts that "[a] summary of the existing condition of the transportation system and proposed road treatments are discussed in this EA under the need for the proposal, proposed actions sections, and Appendix E." Updated EA at 120. Those sections in the EA fail to provide the requisite analysis NEPA

requires and the agency failed to adequately respond to the concerns we raised with the Sawmill-Petty TAR. In addition to the deficiencies we explain in Section II of this objection, the following expands on those examples.

Specifically, the Forest Service failed to summarize the risk/benefit rankings for roads in the planning area as we provide in Table 1 above. The agency should have disclosed the total number of high and moderate risk roads it proposes to add from acquired lands, as well as for "undetermined" roads. Further, we explained how the TAR failed to provide the temporal range for assigning high vegetation management benefits as we detailed in our comments. The Forest Service response was simply that it followed its own directives: "[t]he analysis was conducted with the "amount of detail that is appropriate and practicable for travel analysis" (FSM 7712.1 (3)). The travel analysis was consistent with the Travel Planning Handbook (FSH 7709.55, chapter 20)." Draft DN at 75. The response fails to address our comment and by omitting the timeframe, there is no way to determine how long the agency considered a road as necessary; it could be 15, 20 or even 30 years or more. In addition, we explained the need to consider roads as a vector for human wildfire ignitions in the TAR questions. The agency failed to respond to this comment as well.

Furthermore, we asked for a history of undetermined roads in the planning area given that the Forest Service proposes to add 58 miles to the system, which is separate from the 80 miles the agency proposes to add from acquired lands. Updated EA at 10, Table 1. The agency failed to respond to this comment, instead it referenced the flawed TAR as providing justification for adding these roads to the system: "[w]here undetermined roads are needed for long-term forest management consistent with the Lolo NF Plan, the transportation analysis recommended adding them to the NFRS." Draft DN at 75. Including the history of these roads, such as if they were past system roads or temporary roads that were not fully decommissioned, is relevant to the project especially where there may have been a decision to remove them from the system to address resource concerns, or where they were simply abandoned after use.

Overall, the Forest Service fails to adequately respond to our comments regarding the lack of proper roads analysis, or provide the additional information and discussion we explained was necessary to comply with NEPA. As such, all our past comments remain unresolved.

Suggested Resolution: The Lolo National Forest should prepare an EIS that fully addresses the issues we raised, and include actions necessary to improve watersheds to the degree necessary that they achieve a functioning appropriately classification, specifically for the road density/location and sediment measures.

E. The Updated EA Fails to Disclose the Project's Impacts on Climate Pollution.

1. The Climate Crisis

The climate crisis is the overriding environmental issue of our time, threatening to drastically modify ecosystems, alter coastlines, worsen extreme weather events, degrade public health, and cause massive human displacement and suffering. Its impacts are already being felt in the United States, and recent studies confirm that time is running out to forestall the catastrophic damage that will result from 1.5 degrees Celsius of warming. See IPCC, Summary for Policymakers, Global Warming of 1.5°C. An IPCC

Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways (2018), attached as Attachment B. More recent studies have confirmed that climate change is accelerating, making the need to protect carbon stores even more urgent than it was just a few years ago. See, e.g., H. Fountain, Climate Change Is Accelerating, Bringing World 'Dangerously Close' to Irreversible Change, The New York Times (Dec. 4, 2019), attached as Attachment C.

Climate change is impacting Montana. A 2017 assessment found that temperatures in Montana had risen between 2.0-3.0°F (1.1-1.7°C), and concluded that:

> Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century. By mid-century, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C) depending on the emission scenario. By the end-of-century, Montana temperatures are projected to increase 5.6-9.8°F (3.1-5.4°C) depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally.

Whitlock C., Cross W., Maxwell B., Silverman N., Wade A.A. 2017. Executive Summary. Montana Climate Assessment. Bozeman and Missoula MT: Montana State University and University of Montana, Montana Institute on Ecosystems. doi:10.15788/m2ww8w. At pp. 8-9. Available at http://montanaclimate.org/sites/default/files/thumbnails/image/2017-Montana-Climate-Assessment-Executive-Summary-lr.pdf, and attached as Attachment D.

Objectors raised the issue of the EA's climate change analysis in our letter on the draft environmental assessment. See A. Rissien, WildEarth Guardians, Comment letter on Sawmill-Petty Project Environmental Assessment (Oct. 2, 2020) at 26-29.

2. President Biden requires prompt action to assess and reduce climate pollution.

On the day he was inaugurated, President Biden committed to overturning the prior administration's failure to address, and its outright denial of, the climate emergency.

> It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; *to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change*; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.
>
> To that end, this order directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years

> that conflict with these important national objectives, and *to immediately commence work to confront the climate crisis*.

Executive Order 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021) at Sec. 1 (emphasis added), see Attachment E.

Days later, President Biden further committed to taking swift action to address the climate crisis. Per Executive Order 14,008, he has recognized that "[t]he United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents." Executive Order 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021), attached as Attachment F. Pres. Biden announced that under his administration,

> The Federal Government must drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy, marshaling the creativity, courage, and capital necessary to make our Nation resilient in the face of this threat. Together, we must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy.

Id. at 7622 (Sec. 201). Addressing the need for the accurate assessment of climate costs, Pres. Biden announced on day one that "[i]t is *essential* that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account." Executive Order 13,990 (Attachment E), 86 Fed. Reg. at 7040, Sec. 5(a) (emphasis added). The President also re-established Interagency Working Group on the Social Cost of Greenhouse Gases, on which the Secretary of Agriculture will serve. *Id*., Sec. 5(b). The President directed the Working Group to publish interim values for the social cost of carbon by February 19, 2021. *Id*., Sec. 5(b)(ii)(A).

3. NEPA requires the Forest Service to disclose the climate impacts of proposed actions.

The Forest Service must analyze the direct, indirect, and cumulative impacts of a proposed action. *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1176 (10th Cir. 1999); *see also* 40 C.F.R. § 1508.25(c) (1978) (when determining the scope of an EIS, agencies "shall consider" direct, indirect, and cumulative impacts). NEPA and NFMA require the Forest Service to use high quality, accurate, scientific information to assess the effects of a proposed action on the environment. *See* 40 C.F.R. § 1500.1(b); 36 C.F.R. § 219.3.

Meaningful consideration of greenhouse gas emissions (GHGs) and carbon sequestration (carbon storage) lies within the scope of required NEPA review. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin*., 538 F.3d 1172, 1217 (9th Cir. 2008). As the Ninth Circuit has held, in the context of fuel economy standard rules:

> The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct. Any given rule

> setting a CAFE standard might have an "individually minor" effect on the environment, but these rules are "collectively significant actions taking place over a period of time."

Id., 538 F.3d at 1216 (quoting 40 C.F.R. § 1508.7 (1978)). *See also WildEarth Guardians v. BLM*, 870 F.3d 1222, 1237 (10th Cir. 2017) (failure to disclose climate impacts of various alternatives "defeated NEPA's purpose"). Courts have held that a "general discussion of the effects of global climate change" does not satisfy NEPA's hard-look requirement. *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1189-90 (D. Colo. 2014).

Further, courts have ruled that federal agencies must consider indirect GHG emissions resulting from agency policy, regulatory, and fossil fuel leasing decisions. For example, agencies cannot ignore the indirect air quality and climate change impact of decisions that would open up access to coal reserves. *See Mid States Coal. For Progress v. Surface Transp. Bd*., 345 F.3d 520, 532, 550 (8th Cir. 2003); *High Country Conservation Advocates v. U.S. Forest Serv*., 52 F. Supp. 3d 1174, 1197-98 (D. Colo. 2014); *Montana Environmental Information Center v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074 (D. Mont. 2017), *amended in part, adhered to in part*, 2017 WL 5047901 (D. Mont. 2017). A NEPA analysis that does not adequately consider the indirect effects of a proposed action, including climate emissions, violates NEPA. *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 2020 U.S. App. LEXIS 38033, *20 (9th Cir. 2020).

NEPA requires "reasonable forecasting," which includes the consideration of "reasonably foreseeable future actions … even if they are not specific proposals." *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (citation omitted). That an agency cannot "accurately" calculate the total emissions expected from full development is not a rational basis for cutting off its analysis. "Because speculation is ... implicit in NEPA," agencies may not "shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry." *Id*. (citations omitted). The D.C. Circuit has echoed this sentiment, rejecting the argument that it is "impossible to know exactly what quantity of greenhouse gases will be emitted" and concluding that "agencies may sometimes need to make educated assumptions about an uncertain future" in order to comply with NEPA's reasonable forecasting requirement. *Sierra Club v. Federal Energy Regulatory Commission*, 863 F.3d 1357, 1373-74 (D.C. Cir. 2017).

The 2016 final CEQ *Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Review* provides useful direction on the issue of federal agency review of greenhouse gas emissions as foreseeable direct and indirect effects of a proposed action. Notice available at 81 Fed. Reg. 51,866 (Aug. 5, 2016); full guidance available at https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf (last viewed Feb. 12, 2020). The CEQ guidance provides clear direction for agencies to conduct a lifecycle greenhouse gas analysis that quantifies GHG emissions or storage because the modeling and tools to conduct this type of analysis are available:

> If the direct and indirect GHG emissions can be quantified based on available information, including reasonable projections and assumptions, agencies should consider and disclose the reasonably foreseeable direct and indirect emissions when analyzing the

> direct and indirect effects of the proposed action. Agencies should disclose the information and any assumptions used in the analysis and explain any uncertainties. To compare a project's estimated direct and indirect emissions with GHG emissions from the no-action alternative, agencies should draw on existing, timely, objective, and authoritative analyses, such as those by the Energy Information Administration, the Federal Energy Management Program, or Office of Fossil Energy of the Department of Energy. In the absence of such analyses, agencies should use other available information.

Id. at 16 (citations omitted).

The guidance further specifies that estimating GHG emissions is appropriate and necessary for actions such as federal logging projects.

> In addressing biogenic GHG emissions, resource management agencies should include a comparison of estimated net GHG emissions and carbon stock changes that are projected to occur with and without implementation of proposed land or resource management actions. This analysis should take into account the GHG emissions, carbon sequestration potential, and the changes in carbon stocks that are relevant to decision making in light of the proposed actions and timeframes under consideration.

Id. at 26 (citations omitted).

Although the Trump administration withdrew the 2016 CEQ guidance, 82 Fed. Reg. 16,576 (Apr. 5, 2017), the underlying requirement from federal caselaw to consider climate change impacts under NEPA, including indirect and cumulative combustion impacts and loss of sequestration foreseeably resulting from commercial logging decisions, has not changed. *See S. Fork Band Council of W. Shoshone v. United States Dept. of Interior*, 588 F.3d 718, 725 (9th Cir. 2009); *Ctr. for Biological Diversity*, 538 F.3d at 1214-15; *Mid States Coalition for Progress*, 345 F.3d at 550; *WildEarth Guardians v. United States Office of Surface Mining, Reclamation & Enf't*, 104 F. Supp. 3d 1208, 1230 (D. Colo. 2015) (coal combustion was indirect effect of agency's approval of mining plan modifications that "increased the area of federal land on which mining has occurred" and "led to an increase in the amount of federal coal available for combustion."); *Diné Citizens Against Ruining Our Env't v. United States Office of Surface Mining Reclamation & Enf't*, 82 F. Supp. 3d 1201, 1213-1218 (D. Colo. 2015); *High Country Conservation Advocates*, 52 F. Supp. 3d at 1174. Further, President Biden on January 20, 2021 rescinded the Executive Order that directed the withdrawal of the 2017 CEQ guidance, effectively reaffirming the importance of the guidance. *See* Executive Order 13,990 (Attachment E), 86 Fed. Reg. at 7040, Sec. 7 (rescinding Executive Order 13783). That same order explicitly rescinded the Trump administration's draft climate guidance, and ordered CEQ to "review, revise, and update" its 2016 climate guidance. *Id*. at Sec. 7(e), 86 Fed. Reg. at 7042.

4. The Forest Service's failure to disclose and quantify the Sawmill-Petty Project's climate damage violates NEPA.

The Forest Service's analysis of the Sawmill-Petty Project violates NEPA and is arbitrary and capricious because it focuses exclusively (but qualitatively) on the alleged benefits of purporting to make the forest more "resilient" to climate change through logging and other means, while denying and refusing to quantify the impacts on climate pollution and carbon storage of logging, burning, and trucking trees from the forest.

The Updated EA repeatedly asserts that the project's purpose and effect includes making treated areas more resilient to climate change. *See, e.g.*, Updated EA at 5 ("The enhanced growth and vigor [allegedly result from logging] will increase resilience to … climate change in the future"); *id*. at 8 ("Unit specific treatments are designed to increase resilience within the stands to … climate change."); *id*. at 14 ("Areas that would be priority for treatment [include] those … areas most vulnerable to climate change"); *id*. at 41 ("In order to measure how the proposed treatments meet the Purpose and Need of the project (Chapter 1), the forested vegetation treatments were analyzed by evaluating effects on the following criteria [including] … climate change resilience"); *id*. at 45-46 ("These treatments are consistent with an adaptive management approach toward reducing the susceptibility of the project area to catastrophic loss from any of the primary natural disturbances or from long-term stressors like climate change."). The Updated EA asserts that once areas are logged and burned,

> The resulting stand structures, compositions, and densities would be resilient and adaptive to the effects of climate change because expected fire severity would be less, susceptibility to bark beetles, root disease, and white pine blister rust would be decreased, and susceptibility to drought would be lessened by reducing competition for moisture.

Updated EA at 48. The Forest Service asserts that logging and burning will "[i]mprove resilience to climate change on 33 percent of NFS lands within the project area by restoring patterns of burning and fuels and forest structure that reasonably emulate pre-fire exclusion historical conditions." *Id*. at 51.

Although reacting to climate change is a primary project purpose, the Updated EA contains *nothing* on the project's impact on climate pollution or climate change, in violation of NEPA. The Sawmill-Petty Project will have at least two types of climate impacts that the EA ignores.

a. The Forest Service fails to disclose and quantify the Sawmill-Petty Project's impact on carbon storage.

First, the Sawmill-Petty Project will have direct, indirect, and cumulative impacts on climate change because logging and burning forests will impact the ecosystem's ability to store carbon.

Science makes clear that the Sawmill-Petty Project will worsen climate emissions by removing trees that are currently fixing carbon, turning them into wood products (which results in a significant loss of that carbon fixed in wood), and leaving a landscape with no trees and (eventually) seedlings that fix far less carbon than mature forests.

The Updated EA fails to contain any analysis of the Sawmill-Petty project's impact on climate stores and carbon pollution, despite the fact that the project will remove nearly 85,000 ccf, or more than 40 million

board feet, of timber. Updated EA at 10, 129. In addition, the Sawmill-Petty project will log nearly half a square mile within old old-growth stands, and likely decrease the ability of those stands and that land to sequester carbon. *See* Updated EA at 51 (proposed action involves 304 acres of "regeneration" cuts in old growth stands). The Updated EA states that "regeneration harvest" in old-growth stands will not involve clearcutting, and will not remove "large old trees," snags, or downed wood. Updated EA at 11 (alleging that "proposed regeneration harvests are not clearcuts. The largest and healthiest trees would be retained in varying densities, from scattered individuals to larger groups."); *id*. at 51 (re: large old trees). However, the proposed action will involve removing trees up to 120 years old, which are assuredly fixing carbon. Updated EA at 51 (selected alternative will involve removal of trees "up to 120 years old in the commercial treatments").

The Updated EA does not explain how the Forest Service or contractors determine the age of trees it will (or will not) remove, or how the agency or contractors will determine which large old trees will remain. It does not address or assess whether the old-growth forest "stands" that remain after the "regeneration harvest," consisting of a few scattered individual old trees, will continue to fix carbon at the same rate as the forest before it was cut, or how logging trees 120 years and younger will impact recruitment and retention of old-growth over the ensuing decades.

Logging old forests in particular worsens climate change by releasing significant amounts of carbon and by preventing such forests from continuing to sequester carbon. As the Forest Service has admitted regarding mature forests in Alaska, such forests "likely store considerably more carbon compared to younger forests in this area (within the individual trees themselves as well as within the organic soil layer found in mature forests)." Forest Service, Tongass Land and Resource Management Plan, Final EIS (2016) at 3-14, excerpts attached as Attachment G. This is so because when a forest is cut down, the vast majority of the stored carbon in the forest is released over time as CO2, thereby converting forests from a sink to a "source" or "emitter." *See, e.g*., D. DellaSala, The Tongass Rainforest as Alaska's First Line of Climate Change Defense and Importance to the Paris Climate Change Agreements (2016) at 5, attached as Attachment H. According to a 2019 IPCC report, deforestation causes climate pollution, and avoiding deforestation will reduce climate pollution. Intergovernmental Panel on Climate Change, Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse gas fluxes in Terrestrial Ecosystems, Summary for Policymakers (Aug. 2019) at 7, 23, attached as Attachment I. *See also* B. Law et al., Land use strategies to mitigate climate change in carbon dense temperate forests, Proceedings of the Nat'l Academy of Sciences, vol. 115, no. 14 (Apr. 3, 2018) at 3663 ("Proven strategies immediately available to mitigate carbon emissions from forest activities include ... reducing emissions from deforestation and degradation."), attached as Attachment J.

A 2019 report found that protecting national forests in the American Northwest, including in Montana, would be an effective way to reduce the contribution of land management to climate pollution. The study concludes:

> If we are to avert our current trajectory toward massive global change, we need to make land stewardship a higher societal priority. Preserving temperate forests in the western United States that have medium to high potential carbon sequestration and low future climate vulnerability could account for approximately 8 yr of regional fossil fuel

> emissions, or 27–32% of the global mitigation potential previously identified for temperate and boreal forests, while also promoting ecosystem resilience and the maintenance of biodiversity.

P. Buotte *et al*., *Carbon sequestration and biodiversity co-benefits of preserving forests in the western United States*, Ecological Applications, Article e02039 (Oct. 2019) at 8, available at https://esajournals.onlinelibrary.wiley.com/doi/pdf/10.1002/eap.2039 (last viewed Nov. 13, 2020), and attached as Attachment K. This study was funded in part by the USDA. The coarse-scale map provided with the study indicates that there are likely forest stands in the Sawmill-Petty project area that are rated as "medium" priority for preservation to mitigate climate change. *Id*. at 4 (Figure 1).

Recent studies agree that maintaining forests rather than cutting them can help reduce the impacts of climate change. "Stakeholders and policy makers need to recognize that the way to maximize carbon storage and sequestration is to grow intact forest ecosystems where possible." Moomaw, *et al*., Intact Forests in the United States: Proforestation Mitigates Climate Change and Serves the Greatest Good, Frontiers in Forests and Global Change (June 11, 2019) at 7), attached as Attachment L (emphasis added). One report concludes:

> *Allowing forests to reach their biological potential for growth and sequestration, maintaining large trees* (Lutz et al 2018), reforesting recently cut lands, and afforestation of suitable areas *will remove additional CO2 from the atmosphere*. Global vegetation stores of carbon are 50% of their potential including western forests because of harvest activities (Erb et al 2017). Clearly, western forests could do more to address climate change through carbon sequestration *if allowed to grow longer*.

T. Hudiburg *et al*., Meeting GHG reduction targets requires accounting for all forest sector emissions, Environ. Res. Lett. 14 (2019) (emphasis added), attached as Attachment M.

Further, a June 2020 literature from leading experts on forest carbon storage reported:

> *There is absolutely no evidence that thinning forests increases biomass stored (Zhou et al. 2013).* It takes decades to centuries for carbon to accumulate in forest vegetation and soils (Sun et al. 2004, Hudiburg et al. 2009, Schlesinger 2018), and it takes decades to centuries for dead wood to decompose. We must preserve medium to high biomass (carbon-dense) forest not only because of their carbon potential but also because they have the greatest biodiversity of forest species (Krankina et al. 2014, Buotte et al. 2019, 2020).

B. Law, et al., The Status of Science on Forest Carbon Management to Mitigate Climate Change (June 1, 2020), attached as Attachment J.

The Forest Service failed to address this information and these studies in the Updated EA, violating NEPA. Instead, in its Draft Decision Notice, the Forest Service points to appendices to a report that is not identified by name in the EA. Draft Decision Notice at 83 (citing appendices 3 and 4 to the "Forest

Vegetation Report"). Specifically, the Forest Service states that the "Forest Carbon Cycling and Storage Report (Appendix 3) [to the Forest Vegetation Report] discusses the project's effects on climate change and carbon storage." *Id*.

That Carbon Storage Report is inadequate, and tantamount to climate denial, for numerous reasons. The report acknowledges that the Lolo National Forest plays a role in capturing carbon, and thus mitigating climate pollution. C. Aniballi, *et al*., Lolo Nat'l Forest, Sawmill-Petty Project Forest Carbon Cycling and Storage Report (Feb. 26, 2020) (hereafter "Carbon Report") at 3-5 (stating that the Lolo National Forest stores about 135 terragrams of carbon, or about 135 million tons; or about 4 times as much as emitted by the State of Montana in a year), attached as Attachment N. Despite the importance of intact forests to maintaining carbon stores, and the fact that timber removal proposed for this project will degrade those stores, the Forest Service concludes that "[t]he Sawmill-Petty Project would affect only a tiny percentage of the forest carbon stocks of the Lolo National Forest, and an infinitesimal amount of the total forest carbon stocks of the United States." *Id*. The Draft Decision Notice apparently relies on this conclusion to assert that "[t]here will be no discernable impact on atmospheric concentrations of greenhouse gases or global warming." Draft Decision Notice at 6-7. The Carbon Report specifically states that it will not attempt to quantify climate impacts but instead will provide only a "qualitative analysis." Carbon Report (Attachment N) at 1. Such summary, qualitative conclusions do not constitute the hard look NEPA requires, nor do they assist the public or the decisionmaker in distinguishing between the alternatives.

In addition, the Carbon Report is like a time capsule from the past. It ignores all science concerning climate change and/or carbon sequestration that has been published in the last eight years. The most recent study the report relies on is dated 2013, and the vast majority of studies it cites predate 2010. *See id*. at 3-6 – 3-9. And little wonder, because the Carbon Report appears to be cut and pasted, with only minor alterations, from a report prepared *nearly six years ago* for an Idaho timber sale. *Compare* Carbon Report (Attachment N) *with* T. Little *et al.*, Idaho Panhandle NF, Jasper Mountain Project Forest Carbon Cycling and Storage Report (Mar. 30, 2015), attached as Attachment O. For example, the vast majority of the text and the entirety of the "References Cited" section in the Sawmill-Petty Carbon Report is verbatim identical to that prepared for the Jasper Mountain Project which was prepared years earlier.

Recycling the old Idaho Panhandle report to take a "hard look" at the Sawmill-Petty Project's impacts violates NEPA's mandate that the agency use the best available science, particularly in light of the climate and forest sequestration science that has developed since 2013, and some of which the Objectors provided to the Forest Service in comments on the EA.

The Carbon Report's outdated, cut-and-paste analysis also distorts the Project's climate impacts, using metrics tailored to make the impacts of logging on carbon storage look small by comparison. Virtually any individual project impacting the climate, except perhaps those on a national scale, will look small when compared to climate emissions from all U.S. forests. This is the fundamental difficulty at the heart of climate change: it is the product of thousands of different decisions, yet each one adds to and worsens a problem that threatens trillions in dollars in damage, will impair public health, and will disproportionately burden people of color and those with lower incomes, among other impacts. Carbon emitted or not stored today will warm the climate for centuries and have impacts far beyond those in the U.S.

Any attempt by the agency to decline to address such impacts as "infinitesimal" in comparison to "total forest carbon stocks of the United States" is thus not only misleading, it would mask the fact that every additional bit of climate pollution, or elimination of carbon sequestration ability, makes the problem worse, and that every bit of sequestration is critical to the solution. *WildEarth Guardians v. Zinke*, 2019 U.S. Dist. LEXIS 30357 (D. Mont. Feb. 11, 2019) at *25 (proposed findings) ("But by only comparing the estimated emissions to total U.S. emissions, OSM potentially diluted the adverse environmental effects of coal combustion at a local level. The Ninth Circuit has stated that when assessing the effects of an agency action, the appropriate analysis must include consideration of both broad scale and local impacts."); *Pac. Coast Fed. of Fisherman's Ass'ns v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028, 1036-37 (9th Cir. 2001); *Or. Nat. Res. Council Fund v. Brong*, 492 F.3d 1120, 1129-30 (9th Cir. 2007) (noting that averaging environmental effects based on a broad scope can lead to misleading results). The Forest Service must provide the public and the decision-maker with a sense of the relevant scale of the climate harm of each alternative.

The Carbon Report's statements deriding the impacts as "tiny" and "infinitesimal" are thus tantamount to climate denial, something we cannot imagine is Forest Service policy under the Biden administration.

Further, to address the climate crisis, agencies cannot rely on the re-growth of cleared forests to make up for the carbon removed when mature forest is logged. One prominent researcher explains: "It takes at least 100 to 350+ years to restore carbon in forests degraded by logging (Law et al. 2018, Hudiburg et al. 2009). If we are to prevent the most serious consequences of climate change, *we need to keep carbon in the forests because we don't have time to regain it once the forest is logged* (IPCC, 2018)." B. Law, et al., The Status of Science on Forest Carbon Management (Attachment P) (emphasis added).

Even if the logging permitted in the Sawmill-Petty project—when viewed in isolation—may only result in a relatively minor climate impacts, NEPA expressly requires agencies to consider whether agency actions are "related to other actions with individually insignificant but cumulatively significant impacts." 40 C.F.R. § 1508.27(b)(7) (2019). Thus, the Forest Service may not blithely dismiss and deny the climate impacts of the Sawmill-Petty project without considering the cumulative significance of the project when added to other past, present, and reasonably foreseeable logging projects and Forest Service timber sales in the state, region, and nation. 40 C.F.R. § 1508.7; *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019) (holding that BLM erred by failing to consider the cumulative climate impacts of oil and gas leases together with "GHG emissions generated by past, present, and reasonably foreseeable BLM lease sales in the region and nation"). The Forest Service failed to address these cumulative effects, violating NEPA.

The Forest Service's approach also violates NEPA because the Forest Service did not use its best efforts or the best available information to address climate impacts, as required by NEPA. Methods exist that would have allowed the agency to quantify those impacts. For example, a 2018 study concludes that carbon storage impacts can be estimated, accounted for, and factored into a model that calculated the net amount of carbon lost due to forest logging in Oregon over two five-year periods. *See* Law *et al*., *Land use strategies* (Attachment J) at 3664 ("Our LCA [life-cycle assessment] showed that in 2001–2005, Oregon's net wood product emissions were 32.61 million tCO2e [tons of carbon dioxide equivalent in net GHG emissions] (Table S3), and 3.7- fold wildfire emissions in the period that included the record fire

year (15) (Fig. 2). In 2011–2015, net wood product emissions were 34.45 million tCO2e and almost 10-fold fire emissions, mostly due to lower fire emissions."). This is precisely the type of analysis the Forest Service should, and could, have undertaken for Sawmill-Petty EA.

Similarly, Dr. DellaSala's 2016 report addressed carbon stores from wood products and concluded that logging Tongass old-growth forest under the 2016 Forest Plan would result in net annual CO2 emissions totaling between 4.2 million tons and 4.4 million tons, depending on the time horizon chosen. DellaSala (Attachment H) at 14. The Bureau of Land Management more than a decade ago completed an EIS for its Western Oregon Resource Management Plan in which that agency also predicted the net carbon emissions from its forest and other resource management programs. *See* Bureau of Land Management, Western Oregon Proposed RMP Final EIS (2009) at 165-181, excerpts attached as Attachment Q. Because agencies and academics have quantified and compared the carbon emissions of alternative logging proposals, NEPA requires the Forest Service to do that here.

The Forest Service failure to address or acknowledge that there are peer-reviewed scientific approaches to estimating net climate damage caused by logging forests is another independent NEPA violation. NEPA requires agencies to explain opposing viewpoints and their rationale for choosing one viewpoint over the other. 40 C.F.R. § 1502.9(b) (2019) (requiring agencies to disclose, discuss, and respond to "any responsible opposing view"). Courts will set aside a NEPA document where the agency fails to respond to scientific analysis that calls into question the agency's assumptions or conclusions. *See Ctr. for Biological Diversity v. U.S. Forest Serv*., 349 F.3d 1157, 1168 (9th Cir. 2003) (finding Forest Service's failure to disclose and respond to evidence and opinions challenging EIS's scientific assumptions violated NEPA); *Seattle Audubon Soc'y v. Moseley*, 798 F. Supp. 1473, 1482 (W.D. Wash. 1992) ("The agency's explanation is insufficient under NEPA – not because experts disagree, but because the FEIS lacks reasoned discussion of major scientific objections."), aff'd sub nom. *Seattle Audubon Soc'y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993) ("[i]t would not further NEPA's aims for environmental protection to allow the Forest Service to ignore reputable scientific criticisms that have surfaced").

Here, neither the Updated EA nor the Carbon Report grapples with the most recent science on forests and carbon sequestration, including many of those studies attached here, many of which were specifically provided to the Forest Service with WildEarth Guardians' comments. The Carbon Report ignores the last 8 years of climate science that: underscores the desperate need for action on climate change; shows that forest logging like that proposed in the Sawmill-Petty Project will worsen climate pollution and the climate emergency; and demonstrates, contradictory to the Forest Service's assumptions, that the climate impacts of the Project can be quantified.

The only "response" we could locate to the climate studies contradicting the Carbon Report's conclusions is contained in a memo buried in the project file, and nowhere referenced in the Updated EA or Draft Decision Notice. *See* "Literature from Wild Earth Guardians Sawmill-Petty EA Comments December 2020," attached as Attachment R. In response to the scientific literature concerning climate change provided by WildEarth Guardians, the "Literature" document contains a one-sentence introduction describing the documents Guardians submitted, followed by three paragraphs quoting verbatim from the Carbon Report – the report that neither acknowledged nor responded to *any* literature after 2013. Compare *id*. at 10-11 with Carbon Report (Attachment N) at 3-4 – 3-5 (containing identical language).

Parroting prior statements without engaging with new scientific data is the essence of an arbitrary and capricious response, and one courts will overturn. *See Seattle Audubon Soc'y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993) (finding that the Forest Service was required to address in the final environmental impact statement scientific criticisms opposing evidence upon which the final statement's management strategy rested); *Sierra Club v. Bosworth*, 199 F. Supp. 2d 971, 981 (N.D. Cal. 2002) (concluding that a reasoned discussion of major scientific objections must be disclosed in the final impact statement); 40 C.F.R. § 1502.9(b) (2019). The Forest Service's failure to disclose *and analyze* these opposing viewpoints violates NEPA and 40 C.F.R. § 1502.9(b). *Ctr. for Biological Diversity v. United States Forest Serv*., 349 F.3d 1157, 1167-68 (9th Cir. 2003); *Cal. v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1983) (stating that NEPA's requirement that responsible opposing viewpoints are included in the final impact statement "reflects the paramount Congressional desire to internalize opposing viewpoints into the decision-making process to ensure that an agency is cognizant of all the environmental trade-offs that are implicit in a decision") (citing *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979)).

The Forest Service's response to WildEarth Guardians' numerous comments on climate change with one sentence pointing to its Carbon Report is yet another NEPA violation because that law requires agencies to respond to comments. *See* 40 C.F.R. §§ 1502.9(b); 1503.4.

The Updated EA's studied ignorance on climate change, and its failure to provide a quantitative assessment to enable a comparison with the no action alternative also violates NEPA. The EA carefully quantifies economic benefits of logging – a complex task – while declining to calculate the climate costs. The Updated EA tallies the "Total Employment and Labor Income over the life of the Sawmill-Petty Project," and the project's present net value. Updated EA at 129-30 (Table 30). Yet the Forest Service fails not only to estimate the volume of climate emissions, it fails to weigh the economic benefits of the project against the costs of climate change, which can be estimated using the Interagency Working Group's global estimate of the social cost of carbon. *See High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190-93 (D. Colo. 2014). Once an agency chooses to "trumpet" a set of benefits, it also has a duty to disclose the related costs. *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983). "There can be no hard look at costs and benefits unless all costs are disclosed." *Id*.

The U.S. District Court for the District of Montana earlier this month set aside a federal agency NEPA analysis for failing to quantify the social costs of agency action's climate pollution. *WildEarth Guardians v. Bernhardt*, 2021 U.S. Dist. LEXIS 20792 at *25-*32, 2021 WL 363955, CV 17-80-BLG-SPW (D. Mont. Feb. 3, 2021) (endorsing magistrate judge's determination that the Office of Surface Mining "failed to take a 'hard look' at the costs of greenhouse gas emissions and failed to reasonably justify its reasoning for not quantifying the costs of the mining plan when the Social Cost of Carbon Protocol ... was available to do just that").

As noted above, President Biden has already announced that his administration would reinstate the Interagency Working Groups' Social Cost of Carbon using a metric that includes global damage from climate-forcing pollution. Further, the Updated EA repeatedly uses the impacts of climate change as an excuse for undertaking more than 40 million board feet of logging, only to dismiss the project's contributions to climate change as "infinitesimal" and of "no discernible impact," though the agency makes no attempt to actually quantify the impacts. It is arbitrary and capricious to place climate at the

center of the project's purpose and need and then to utterly ignore (and effectively deny) the impacts the project will have on climate change.

Finally, we note that the Carbon Report relies on agency direction that is out of date and out of step with the present administration. The Forest Service relies on guidance entitled "Climate Change Considerations in Project Level NEPA Analysis," a flawed document that was the product of the final week of the George W. Bush administration, and that has long been overtaken by both federal case law requiring robust project level NEPA analysis and by improved modeling and scientific data. *See* Carbon Report (Attachment N) at 3-2 (citing Forest Service Jan. 2009 guidance).

b. The Forest Service fails to disclose and quantify the carbon pollution of implementing the Sawmill-Petty Project.

Logging and burning within the project area for a decade will require the use of heavy equipment, almost certainly exclusively powered by fossil-fueled engines, to bulldoze or "reconstruct" roads, chainsaw forests, and remove trees and take them to market. This activity will result in greenhouse gas pollution that will worsen climate change for centuries, and that pollution caused by the proposed action will be over and above the pollution that will occur under the no action alternative. Neither the Carbon Report nor any other document in the record acknowledges or attempts to disclose such impacts.

This contrasts to the approach taken elsewhere by the Forest Service and by other agencies, such as the Office of Surface Mining, which have disclosed in NEPA documents the estimated pollution from internal combustion engines necessary to mine, process, and ship coal to market. *See, e.g.*, Office of Surface Mining & Bureau of Land Management, Environmental Assessment, Colowyo Coal Mine Collom Permit Expansion Area Project (Jan. 2016) at 4-15 – 4-18 (including table assessing "direct GHG emissions" from "drills," "dozers," "graders," "haul trucks," etc., for the proposed action), excerpts attached as Attachment S; U.S. Forest Service, Supplemental Final Environmental Impact Statement, Federal Coal Lease Modifications COC-1362 & COC-67232 (Aug. 2017) at 102-113 (publishing tables estimating emissions of air pollutants, including greenhouse gases CO2 and Ch4 (methane) for activities including road and well pad construction, heavy equipment use, and commuter vehicle trips for the no action and proposed action alternatives), excerpts attached as Attachment T.

We do not endorse as sufficient either the OSM or Federal Coal Lease Modifications analyses, but they demonstrate that agencies (including the Forest Service itself) can and do attempt to disclose direct climate emissions from construction and transport activities. The Forest Service provides no reasonable basis for failing to do the same for the Sawmill-Petty Project, and thus violates NEPA.

Suggested Resolution: The Lolo National Forest should prepare a subsequent NEPA document (preferably a draft EIS) that quantifies and discloses the carbon emissions and carbon sequestration impacts of each of the alternatives for the Sawmill-Petty Project, including impacts due to: (1) removal of carbon stores through a life-cycle carbon analysis, and (2) from the construction, logging and log transport the project will involve. The Lolo National Forest should employ the social cost of carbon to disclose climate impacts, or explain in a non-arbitrary manner why it need not do so.

IV. The Forest Service failed to properly analyze Grizzly bear impacts, and violated the ESA, APA.

Our previous comments explained and illustrated the importance of the planning area to grizzly bear recovery, especially as it relates to connectivity. We agreed with the Forest Service's September 2020 determination that the proposed action would likely adversely affect (LAA) grizzly bears, especially given the addition and use of so many roads. Yet, rather than modify the proposed action to ensure grizzly bear security and connectivity, the Forest Service simply changed its LAA determination to "not likely to adversely affect" (NLAA), based on flawed analysis and assumptions that we address below. Overall, the Forest Service failed to adequately respond to our comments or failed to provide the necessary analysis to comply with NEPA.

There is significant information regarding the Project that was available but was not used for the analysis contained in the Updated EA or the NLAA determination for grizzly bears. The failure to base the EA and the grizzly bear effects analysis on the best available science violates both NEPA and the Endangered Species Act § 7(a)(2). The Updated EA, associated documents and the arbitrary and capricious, evades consideration of an important aspect of the issue, in violation of the Administrative Procedure Act.

From the NLAA determination:

> The NLAA determination is based on the absence of resident female bears in the action area (or evidence of even transient bears at this point), so direct effects of the project are only anticipated to potential transient bears. The analysis and determination in the updated report reflects the analysis and determination in the BA.

In addition, the agency states, "[t]he Sawmill-Petty project area likely has only non-resident, transient grizzly bears and will likely not have established female bears for at least another 10 years." Updated EA at 97.

This is cookie cutter language that is also being used for the Redd Bull project (also on the Lolo NF) and other projects. It seems to say that "since female grizzly bears will be here in 10-15 years, let's do large-scale habitat degradation before they get here." The presence of female grizzly bears in the Project Area is reasonably foreseeable and perhaps even imminent, therefore analysis of impacts on female grizzly bears is required. It is important to note here that, "[e]ffects of the project on grizzly bears could occur as soon as project activities begin (2022) and last for up to 30 years during the regrowth of vegetation changed by the project (2052)." Updated EA at 95.

The Forest Service reached these conclusions by relying on outdated and incomplete information on verified grizzly bear observations within or directly adjacent to the Project Area. This failure to incorporate the best available scientific and commercial information DCA violates the ESA. In 2020 a female grizzly bear and cubs were documented on Ellis Creek Road in the Ninemile Demographic Connectivity Area (DCA) just 2-3 km from the south side of the Clark Fork River and the Project Area, meaning she could already be in the Project Area. Other grizzly bears were verified within the DCA in

2020 (James Jonkel, Region 2 Bear Manager, Montana Fish, Wildlife and Parks 2021, see Attachment U, Jonkel email 2/8/21).

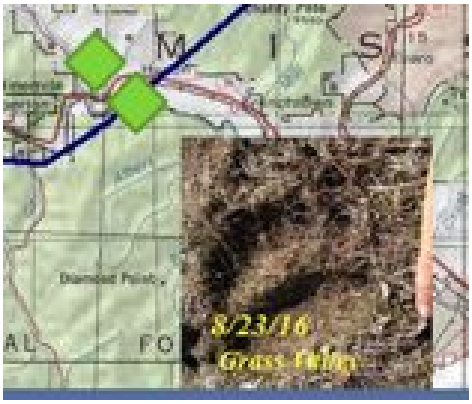

Figure 1. Verified tracks of a grizzly bear south of the Clark Fork River in 2016 within the Project Area (Montana Department of Fish, Wildlife and Parks 2017).

In fact, the Project Area is within known dispersal distances for female grizzly bears west of the Continental Divide, which average 10-14 km and as high as 78 km (see Attachment V combining - McLellan and Hovey 2001; Proctor et al. 2004; Graves et al. 2014).

Another grizzly bear was verified moving back and forth across the Clark Fork River and spent time within the Project Area in 2016 as shown in Figure 1 (James Jonkel, pers. comm.) The U.S. Fish and Wildlife Service printed the route of grizzly bear 927 which is presumed to have crossed within or directly adjacent to the Project Area in 2019.

Moreover, switching from the LAA to NLAA shows evidence of collusion between the Forest Service and USFWS in a transparent attempt to evade Sec. 7 consultation requirements for areas where grizzly bears may be present as per the U.S. Fish & Wildlife Service letter of February 2020. The "May Be Present" map prepared by USFWS is based on entirely arbitrary, subjective and unscientific methods, ignoring all the unknown locations of grizzly bears as well as undetected bears.

Not only was the NLAA determination based on incomplete information, the EA fails to analyze the potential for the Project to impede or prevent movements of female grizzly bears into the Project Area and on to the Bitterroot Ecosystem, even though the area has been identified as a part of grizzly bear recovery strategy. Thus, potential impacts are not limited to individual bears but to the species as a whole.

The Conservation Strategy for grizzly bears in the NCDE is co-authored by the Forest Service and the U.S. Fish and Wildlife Service and prescribes standards for achieving grizzly bear recovery and maintaining and increasing the number of grizzly bears. The Conservation Strategy at page 10 states:

> In addition, occupancy of this area by grizzly bears will allow for future connectivity with other grizzly bear ecosystems. On the northwest and southwest corners of Zone 1, there are two DCAs with specific habitat measures to support female grizzly bear occupancy and eventual dispersal to the CYE and BE.

A. Failure to analyze the nexus between the Project Area and strategic level grizzly bear recovery contained in the Grizzly Bear Recovery Plan and the Conservation Strategy.

As we explained in our previous comments, the FWS has adopted a recovery strategy for the Bitterroot Recovery Area based on natural immigration (FWS letter 1/21/20). Movements of female grizzly bears are projected to go through the Ninemile DCA and the Sawmill Petty Project Area and on to the Bitterroot Grizzly Bear Recovery Area, as shown in Figure 2. This would greatly decrease the risk of extinction to the species by providing demographic and genetic aid. One arrow runs right through the Sawmill-Petty Project Area.

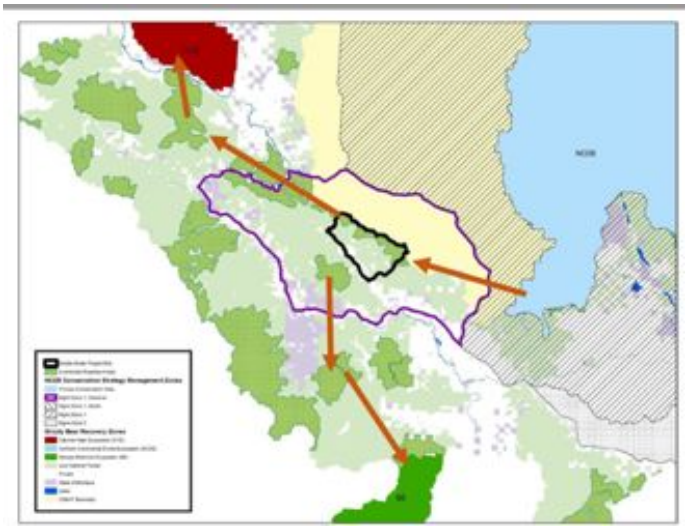

Figure 2. U.S. Forest Service Map from Soldier-Butler Griz Situation 2018

On page 47 the Conservation Strategy states:

> *Population Connectivity*
> Connectivity among grizzly bear populations mitigates genetic erosion and increases resiliency to demographic and environmental variation. One way to mitigate potential impacts from climate change is through well-connected populations of grizzly bears in the lower-48 States and Canada. This Conservation Strategy envisions the NCDE serving as a "source population" for grizzly bear populations in the CYE, BE, and GYE. Attaining habitat connectivity between these areas would benefit multiple wildlife species and would be consistent with the USFWS Grizzly Bear Recovery Plan (USFWS 1993), the Grizzly Bear Management Plan for Western Montana (Dood et al. 2006), the Grizzly Bear Management Plan for Southwestern Montana (MFWP 2013), the interagency statement of support for the concept of linkage zones signed by the State wildlife agencies in Montana, Washington, Idaho, and Wyoming and the USFS, USFWS, USGS, NPS, and BLM (IGBC 2001), the Western Governors' Association Resolution 07-01 (2007), and Tribal forest management plans.

The Action area, as defined by the ESA, is the entire area to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. The Forest Service has failed to consider the cumulative effects of past, present and reasonably foreseeable federal actions that in sum will lower the probability of female grizzly bear immigration to the Bitterroot Ecosystem. This failure to consider an important aspect of the issue before the agency is a violation of the APA, NEPA, and the ESA.

Shown on Figure 3 are the locations of the Frenchtown Face Project (39 miles of road decommissioning unilaterally cancelled by the Forest Service through the approved Soldier-Butler Project); the recently approved Soldier-Butler Project which will result in 16 miles of new road; the recent Rennick-Stark Project, the proposed Sawmill-Petty, Redd Bull and Wilkes Cherry Projects, all within key connectivity habitats.

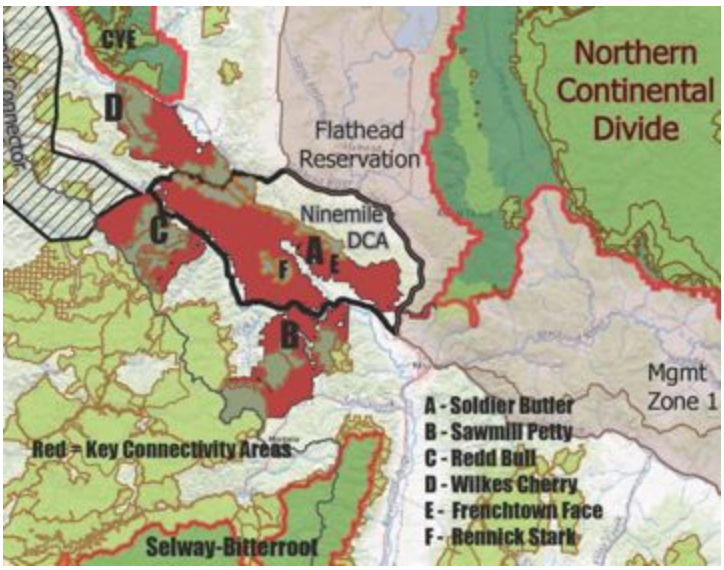

Figure 3. Locations of Current and Recent Timber Sales.

Moreover, the Forest Service has not considered the cumulative effects of its concurrent and unilateral decision to renege on commitments made in the Frenchtown Face Project to decommission 39 miles of roads within the Ninemile DCA. This failure to keep its word renders the Forest Service commitments made in the Sawmill-Petty Project meaningless.

The Forest Service must assess the cumulative impact of these projects on female grizzly bears and connectivity between the NCDE, CYE, and BEs.

Suggested Resolution: The Lolo National Forest should prepare an EIS that addresses the aforementioned deficiencies in the agency's analysis, and that includes actions to increase grizzly bear habitat security and provide for connectivity to the extent necessary to provide for the recovery of the species.

V. Failure to include a reasonable range of alternatives

Our comments urged the Forest Service to analyze in detail an alternative that will meet the desired condition for fish habitat, and provide for the recovery of threatened bull trout. Such an alternative would also provide the necessary habitat security for migrating grizzly bears to securely utilize the planning area. The agency's response was that

> "[n]o specific number of alternatives is required or prescribed in an environmental analysis (36 CFR 220.7(b)(2)) when there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the environmental assessment need only analyze the proposed action and proceed without consideration of additional alternatives. (36 CFR 220.7(b)(2)(i))."

Draft DN at 90. While the above response is not in dispute, the Lolo National Forest has an obligation to comply with its Forest Plan as we explained in our comments, and an alternative that provides for the recovery of the threatened and endangered species is necessary to comply with NEPA and NFMA, as we explain below in Section VI.

In addition, we asked the Forest Service to analyze in detail an alternative that identifies the minimum road system necessary to provide for the protection of National Forest Service System lands and reflects long-term funding expectations per 36 C.F.R. 212.5(b). The agency's response was dismissive: "The Forest Service is not required to identify a minimum road system for every project. However, a travel analysis was conducted for the Sawmill-Petty project that informed the need and/or proposal for road maintenance, reconstruction, and decommissioning. This work would help move the Forest towards a minimum road system." Draft DN at 90. We explained at length how compliance with the TMR subpart A direction requires a NEPA-level decision, and given the need identified for this project to have a transportations system that accounts for resource concerns, it is reasonable for the Forest Service to include subpart A compliance as part of meeting this need.

We also suggested a separate alternative – one that would bar only logging and road construction in inventoried roadless areas (IRAs) and roadless expanse areas, but permit prescribed fire activities to go forward. The Forest Service fails to respond to this request, and simply repeats the explanation in the 2020 EA: "[m]odeling was also used to predict flame lengths from a wildfire in the proposed EMB units under severe weather conditions with and without fuels treatments. These results also support the need for the treatments. More details about this analysis are included in the Project File." 2020 EA at 8, Updated EA at 8. The agency's response refers to this statement:

> The treatments proposed in Alternative B (both within and outside of the IRAs) are what was determined was necessary to sufficiently meet the purpose and need for the project. This is supported through field data collection and preliminary analysis as is explained on EA pp. 7-8 ("These results…support the need for the treatments" as proposed).

Draft DN at 85. The Forest Service did not explain, discuss or demonstrate in its analysis why prescribed fire would not meet the purpose and need within the IRAs, instead referring to a project file. The Forest Service cannot dismiss an otherwise reasonable alternative based on such arbitrary (or non-existent) reasoning, and its attempts to do so have been overturned in the recent past. *See, e.g., High Country*

Conservation Advocates v. U.S. Forest Service, 951 F.3d 1217, 1229 (10th Cir. 2020) ("NEPA and the APA require agencies to act reasonably in eliminating alternatives from detailed study. In this case, the Forest Service failed to provide a logically coherent explanation for its decision to eliminate the Pilot Knob Alternative.").

Suggested Resolution: The Lolo National Forest should prepare an EIS that includes a range of reasonable alternatives, including compliance with the TMR subpart A direction, precludes logging inside the IRA and road reconstruction the agency characterises as road maintenance, and ensures the recovery of threatened and endangered species.

VI. Failure to comply with NFMA

The Lolo Forest Plan requires the Forest Service to manage all threatened and endangered species for recovery to non-threatened status. Lolo Forest Plan at II-13 to II-14 (Standard 24). However, as we explained in our comments, the project threatens to impede grizzly bear recovery by negatively impacting connectivity habitat necessary to allow grizzly bear populations to connect and expand. Similarly, the proposed action will significantly increase sedimentation within bull trout critical habitat. In fact, the Forest Service acknowledges that Alternative B is likely to adversely affect bull trout and its critical habitat. Draft DN at 12. The Forest Service fails to address this comment in any meaningful way, and given the acknowledgement that "[t]his project does not rely on BMPs for long-term benefits to aquatic resources," Draft DN at 71, the agency cannot rely on those BMPs to meet its forest plan obligations to recover bull trout. In addition, the agency arbitrarily changed its grizzly bear determination to not likely to adversely affect, and in so doing, also violated Standard 24.

Suggested Resolution: The Lolo National Forest should prepare an EIS that demonstrates compliance with Forest Plan Standard 24.

VII. Failure to comply with CWA

Under the Clean Water Act ("CWA"), states are responsible for developing water quality standards to protect the desired conditions of each waterway within the state's regulatory jurisdiction. 33 U.S.C. § 1313(c). Water bodies that fail to meet water quality standards are deemed "water quality-limited" and placed on the CWA's § 303(d) list. The CWA requires all federal agencies to comply with water quality standards, including a state's anti-degradation policy. 33 U.S.C. § 1323(a). The Forest Service must ensure all activities in this proposal comply with the CWA. In particular, it must ensure its proposal for logging, and the associated road reconstruction, maintenance, and ongoing log hauling other uses of these roads, will not cause or contribute to a violation of water quality standards. The Forest Service's analysis for the Project fails to ensure compliance with the CWA, primarily due to its reliance on BMPs to ensure mitigate sedimentation without demonstrating their effectiveness under changing climatic conditions, as we described above. Much of the Forest Service assertion that the project does not violate the CWA rests with its reliance on BMPs during project implementation and the long-term sediment reductions the agency assumes post-implementation, which in turn rely on BMPs and RPMs. Yet, in its response to comments the Forest Service acknowledges "[t]his project does not rely on BMPs for long-term benefits to aquatic resources. Our anecdotal monitoring suggests BMPs on open road surfaces usually last 3-5

years without proper maintenance." Draft DN at 71. Not only will the proposed action contribute sediment to water quality limited streams, it will also degrade existing water quality in violation of antidegradation rules.

Suggested Resolution: The Lolo National Forest should prepare an EIS that demonstrates compliance with the CWA and details how the proposed action will meet the road-related sediment TMDLs. Any sedimentation reductions expected from BMPs must be specified in the GRAIP-Lite model results.

VIII. Failure to comply with ESA

The Forest Service fails to ensure all of the activities authorized under this Draft DN will not jeopardize the continued existence of grizzly bear, Canada lynx, and bull trout, and that the project will not result in the destruction or adverse modification of designated critical habitat as required by the Endangered Species Act ("ESA"). 16 U.S.C. § 1536(a)(2). We were prevented from providing meaningful comments on the content of the consultation or conference documents because the Forest Service failed to provide this documentation during the official notice and comment periods.

The Forest Service has an independent duty to ensure this proposed action complies with the Endangered Species Act ("ESA"). The project area on the Lolo National Forest provides habitat for species listed under the ESA, including threatened bull trout and its designated critical habitat, threatened grizzly bear, and Canada lynx and its designated critical habitat. Section 7 of the ESA imposes a substantive obligation on federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of" habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2). The Forest Service fails to demonstrate how the project will ensure the survival and recovery of bull trout, grizzly bear, or Canada lynx in the project area.

In addition to the explanation we provide above regarding the failure to provide for the recovery of grizzly bears, the contradictory statements regarding the agency's reliance on BMPs to improve bull trout habitat is another example of the agency's failing to comply with the ESA. Specifically, the Forest Service acknowledges that under the selected alternative, each watershed would maintain its current FUR or FAR status. EA Fisheries Report at 17, Table 8. Further, for each Petty Creek subwatersheds, the "Habitat Integration Determination" rankings show a degraded status during the 10 year period of project implementation and a restore status afterward. EA Fisheries Report at 32, Table 18. It is now unclear how the agency arrived at a restore status given the response to comments that explain the project does not rely on BMPs for long-term aquatic resource benefits.

Suggested Resolution: The Lolo National Forest should revise its approach to clearly prohibit treatment in RCAs where bull trout may be present, and decommission roads to the extent necessary to bring watersheds into a restored status. The Lolo National Forest should also provide the public with all of the ESA consultation documentation supporting this decision, including any Letters of Concurrence of Biological Opinions from the Fish and Wildlife Service. The Lolo National Forest should comply with the ESA consultation requirements for grizzly bear as a species likely to be adversely affected by the selected alternative.

IX. The Forest Service Fails to Comply with NEPA or the Roadless Area Conservation Rule.

The U.S. Forest Service adopted the Roadless Area Conservation Rule (Roadless Rule) in 2001 "to protect and conserve inventoried roadless areas on National Forest System lands." Forest Service, Special Areas, Roadless Area Conservation, Final Rule, 66 Fed. Reg. 3244 (Jan. 12, 2001). The rule observed:

> Inventoried roadless areas provide clean drinking water and function as biological strongholds for populations of threatened and endangered species. They provide large, relatively undisturbed landscapes that are important to biological diversity and the long-term survival of many at risk species. Inventoried roadless areas provide opportunities for dispersed outdoor recreation, opportunities that diminish as open space and natural settings are developed elsewhere. They also serve as bulwarks against the spread of non-native invasive plant species and provide reference areas for study and research.

66 Fed. Reg. at 3245. The Rule "prohibits road construction, reconstruction, and timber harvest in inventoried roadless areas because they have the greatest likelihood of altering and fragmenting landscapes, resulting in immediate, long-term loss of roadless area values and characteristics." 66 Fed. Reg. at 3244.

Despite the institutional command that the Forest Service safeguard and conserve these areas, the Sawmill-Petty Project proposed action would attempt to use the Roadless Rule's narrow exceptions to approve approximately 464 acres of logging in the Garden Point inventoried roadless area (IRA). Updated EA at 123; *see also* Draft DN at 76 ("Within the Garden Point IRA, vegetation treatment includes approximately 395 acres of intermediate harvest and 69 acres of regeneration harvest.").[2] The Forest Service does so without providing the site-specific analysis the agency required and expected when it adopted the Roadless Rule. The Forest Service's proposal and analysis of roadless area logging thus violates the Roadless Rule and NEPA.

A. The Roadless Area Conservation Rule

The Roadless Area Conservation Rule (Roadless Rule) generally prohibits road construction and timber removal within IRAs. 36 C.F.R. § 294.12(a) (generally prohibiting road construction); 36 C.F.R. § 294.13(a) (generally prohibiting timber removal). The Roadless Rule contains narrowly tailored exceptions to the logging prohibition:

> Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in inventoried roadless areas if the Responsible Official determines that one of the

[2] The Forest Service protests that the "proposed regeneration harvests are not clearcuts. The largest and healthiest trees would be retained in varying densities, from scattered individuals to larger groups." Updated EA at 11. However, the EA does not state how trees would be selected for removal or retention, the size of trees that would be cut, or the number of trees per acre that would remain. In short, there is no guarantee that regeneration harvest will not be equivalent to clearcutting.

following circumstances exists. The cutting, sale, or removal of timber in these areas is *expected to be infrequent*.

> (1) The cutting, sale, or removal of *generally small diameter timber* is needed for one of the following purposes *and* will *maintain or improve one or more of the roadless area characteristics* as defined in § 294.11.
>
> (i) To *improve* threatened, endangered, proposed, or sensitive species habitat; or
>
> (ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period.
>
> ….
>
> (4) Roadless characteristics have been substantially altered in a portion of an inventoried roadless area due to the construction of a classified road and subsequent timber harvest. Both the road construction and subsequent timber harvest must have occurred after the area was designated an inventoried roadless area and prior to January 12, 2001. Timber may be cut, sold, or removed only in the substantially altered portion of the inventoried roadless area.

36 C.F.R. § 294.13(b)(1), (b)(4) (emphasis added).

The Roadless Rule defines "roadless area characteristics" as including:

> (1) High quality or undisturbed soil, water, and air;
>
> (2) Sources of public drinking water;
>
> (3) Diversity of plant and animal communities;
>
> (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;
>
> (5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation;
>
> (6) Reference landscapes;
>
> (7) Natural appearing landscapes with high scenic quality;
>
> (8) Traditional cultural properties and sacred sites; and
>
> (9) Other locally identified unique characteristics.

36 C.F.R. § 294.11. The Roadless Rule anticipates that the Forest Service will engage in a highly site-specific analysis before it can consider logging in IRAs, given the regulation's emphasis on "*locally identified* unique characteristics." *Id.* (emphasis added).

B. The Forest Service's proposed action violates the Roadless Rule.

1. *The Forest Service fails to delineate or justify any boundary for the allegedly "substantially altered" roadless area.*

The EA alleges that the about 395 acres of intermediate harvest and 69 acres of regeneration harvest under the proposed action alternative would meet the definition in 36 C.F.R. § 294.13(b)(4), which allows some tree removal within inventoried roadless areas (IRAs) where "[r]oadless characteristics have been substantially altered in a portion of an [IRA] due to the construction of a classified road and subsequent timber harvest." Updated EA at 123.

The EA alleges that this logging "would occur within the substantially altered portion of the Garden Point IRA," and alleges that this logging would comply with the exception to the prohibition on logging in IRAs contained in 36 C.F.R. § 294.13(b)(4). Updated EA at 128. The Forest Service, however, has failed to demonstrate that logging on these acres can occur pursuant to that exception.

The EA nowhere specifically identifies and delineates that part of the IRA that it alleges was "substantially altered" between 1979 and 2001, or in any way describes its extent or location. Yet, the preamble to the Roadless Rule explains that this key determination must be made at the site-specific, project level.

> Decisions on whether or not an inventoried roadless area's characteristics have been substantially altered would occur during project planning and decisionmaking.
>
> ….
>
> The [Roadless Rule] DEIS estimated that approximately 2.8 million of the 58.5 million acres of inventoried roadless areas had been roaded since the areas were designated as inventoried roadless areas. Some portion of these roaded areas had also been impacted by subsequent management activities facilitated by the road access. It is unknown exactly what portion of these 2.8 million acres has sustained sufficient road construction and timber harvest to substantially alter their roadless characteristics. The determination of whether roadless characteristics have been substantially altered is to be made following a site-specific evaluation. Before any project is authorized that allows the cutting, sale, or removal of timber in an inventoried roadless area, *it will [be] subject to site-specific analysis following existing laws and regulations*.

66 Fed. Reg. 3244, 3251, 3261 (emphasis added). The need for site-specific review is particularly important because Final EIS for the Roadless Area Conservation rule declined to identify the degree of impairment of the 2.8 million roaded acres. "Because the Agency believes it would be difficult to identify the 'roaded portions' in a manner that would be ecologically meaningful and administratively consistent, the term and concept have been deleted in this FEIS." Forest Service, Roadless Area Conservation Final

EIS (Nov. 2000) at 2-23, available at https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_5198878.pdf (last viewed Feb. 12, 2021).

The Roadless Rule preamble's discussion also implies that some level of logging and road construction may not render an area "substantially developed," given that only those areas that have received "*sufficient* road construction and timber harvest to substantially alter their roadless characteristics" are considered "substantially developed." 66 Fed. Reg. at 3261 (emphasis added).

The preamble elsewhere reinforces both points, stating that the "exception recognizes that road construction and timber harvesting in inventoried roadless areas *may* have altered the roadless characteristics *to the extent that the purpose of protecting those characteristics cannot be achieved*.") *Id*. at 3258 (emphasis added). This passage, with use of the word "may," reinforces that not all road construction and timber harvest will "substantially alter" roadless areas. It also makes plain that the Forest Service must evaluate past logging proposals on a site-specific basis to determine their impact on individual roadless characteristics.

Here, while the EA alleges that "substantially altered portions" of the Garden Point IRA exist, and puts a number on the acreage so altered, it fails to provide the most critical pieces of information: the precise *location* of the "substantially altered portion" of the Garden Point Roadless Area and *how* the Lolo National Forest drew any boundaries delineating what constituted that "substantially altered portion" (to the extent that it did so). Updated EA at 122, 125. The Updated EA does allege that "approximately 4,216 acres of the Garden Point IRA were developed due to timber harvest and road construction." Updated EA at 121. *See also* Lolo National Forest, Sawmill-Petty Project, Inventoried Roadless Area Report (updated Dec. 18, 2020) at 10 (hereafter "Updated Roadless Report") (in project file) ("[a]pproximately 4,216 (67%) acres of the Garden Point IRA have been developed since 1986 when the Forest Plan was established and prior to the adoption of the 2001 Roadless Areas Conservation Rule on January 12, 2001.") The Updated Roadless Report asserts that three timber sales occurred in the Garden Point IRA, resulting in commercial logging and road construction, one of them more than 30 years ago, and the most recent 24 years ago. *Id*. ("Records indicate that timber harvest and associated road construction was completed in the following timber sales and time periods: Johns Creek, 1990; Eds Creek, 1993; and Deer Peak Salvage, 1997."). *See also* Updated EA at 121 (alluding to "past timber harvests in upper Eds Creek and Johns Creek"). But neither the EA nor the Roadless Report identifies or maps the location or provides boundaries of the 4,216 acres of the 6,315-acre Garden Point IRA allegedly "substantially altered," nor tries to establish a boundary line between what has been "substantially altered" and what has merely been "altered," and on what basis the line has been drawn. *See* Updated EA at 121 (total acreage of Garden Point IRA). The Forest Service's failure to delineate and specifically identify the "substantially altered" area of the Garden Point IRA, and the reasons justifying any such delineation, violates both NEPA's disclosure mandate and the Roadless Area Conservation Rule.[3]

[3] The Forest Service also avers that the area's roadless character is lessened because "[t]he IRA is completely surrounded by roads." Updated Roadless Report at 11. This is a non sequitur because most roadless areas, defined by the absence of roads, are bounded by roads. The Roadless Report also asserts that evidence of livestock grazing detracts from the area's naturalness. *Id*. This ignores the fact that livestock grazing is permitted in many IRAs as well as a significant portion of the National Wilderness Preservation System. 16 U.S.C. § 1133(d)(4) (recognizing livestock grazing may occur and continue within designated wilderness).

The Updated EA provides a map depicting previously logged units in some portions of the Garden Point IRA, together with units proposed for cutting under the proposed action. Updated EA at 124; *see also* Update Roadless Report at 19 (Figure 5), 27 (Figure 6) (same). But neither this map nor any other part of the updated EA or Roadless Report identifies the precise location, boundaries, or parameters of the purported 4,216-acre "substantially altered" portion of the Garden Point IRA, or how this 4,216-acre figure was derived.

Further, the Updated EA makes clear that the logging under the proposed action would occur on lands *not* previously altered by roads or logging, but on undisturbed areas *near* those altered areas. The Updated EA states that "[h]arvest treatments would occur *adjacent* to existing National Forest System roads and *in between* previously harvested areas." Updated EA at 128 (emphasis added). Thus, the action alternative would approve logging in areas that had been *left alone* by prior Forest Service action, and that remain both unroaded and unlogged. The map shows that some proposed logging will take place in areas hundreds of yards from prior clearcuts or road construction. *See* Figure 2, Updated EA at 124 (showing parts of cutting units J11, J12, and J18 more than 200 yards from previous clearcuts or road construction within the IRA). *See also* Update Roadless Report at 27 (Figure 6) (same). This raises the question of how and why the Forest Service determined that these undisturbed lands *near* (and in some cases, relatively far from) old clearcuts and roads have been labelled as "substantially altered." Roadless characteristics within these un-altered areas are high; roads and clearcuts are unlikely to be seen or experienced from inside dense forests, nor are such alterations likely to otherwise influence unaltered stands.

Nothing in the Roadless Rule or its preamble supports a conclusion that the Forest Service meant this exception to permit logging of undisturbed forest merely because it was located within hundreds yards of an area altered and damaged by Forest Service actions between 1979 (when RARE II was completed) and 2001. In fact, the preamble to the Roadless Rule states, to the contrary, that "*Timber harvest should not expand the area already substantially altered by past management*." 66 Fed. Reg. at 3258 (emphasis added). As such, undisturbed lands targeted for logging in the Garden Point IRA are precisely the type of lands the Roadless Rule meant to protect.

The Forest Service's only reply to this legal violation is to assert that impacts to roadless values of the Garden Point IRA "are not limited to the footprint of past treatments but, as described throughout the IRA Report, affect a larger area which encompasses areas adjacent to past treatments and existing roads." Draft DN at 80. But h*ow much larger an area* and why? The Forest Service's response is specious because nowhere in the Roadless Report does the Forest Service identify how far beyond the footprint of past treatments the impacts to varying roadless values extend, or where and why those impacts end.

Unless and until the Forest Service properly identifies and maps the boundaries of lands it deems "substantially altered," and explains why currently undisturbed forest should be included within that designation, any attempt to justify logging these portions of the Garden Point IRA under the "substantially altered" exception to the Roadless Rule would violate that law because it fails to provide the site-specific justification the Forest Service instructed should be required.

We note that the Forest Service's apparent interpretation of the Roadless Rule to designate lands not previously logged nor roaded as "substantially altered" would appear to conflict with, and is a more restrictive standard than, the standard Congress directed the agency to apply to *wilderness* designation. In

adopting the Endangered American Wilderness Act of 1978, Congress emphatically chastised the Forest Service for using "outside sights and sounds" to disqualify wilderness areas, and for adopting an overly restrictive definition of "purity" to do the same. Report to Accompany H.R. 3454, the Endangered American Wilderness Act, H. Rep. No. 95-640, 95th Cong. 1st Sess. at 5 (1977) ("[M]any areas … received lowered wilderness quality ratings because the Forest Service implemented a 'sights and sounds' doctrine that subtracted points in areas where the sights and sounds … could be perceived anywhere within the area…. The committee is ... in emphatic support of the Administration's decision to immediately discontinue this 'sights and sounds' doctrine."). Yet, the approach that Congress emphatically rejected with respect to wilderness is one the Forest Service embraces here, labeling an undisclosed area of the Garden Point IRA as "substantially altered" because "[s]ights and sounds of past human impacts and timber harvesting operations and current road use are easily seen and heard from [a never specified area] within the unit." Adoption of this conflicting standard is arbitrary and capricious.[4]

Objectors are deeply concerned about the Forest Service's approach here because it would appear to be prone to significant abuse. To our knowledge, this project will set a precedent in the Forest Service's interpretation of the Roadless Rule by alleging that areas untouched by prior logging and road construction are "substantially altered." Under this approach, logging before 2001 anywhere in an IRA would appear to justify logging and road construction everywhere within that IRA, until nothing of the IRA was left unaltered. Such an unlimited and ill-defined approach undermines the letter and purpose of the Roadless Rule, and betrays a cavalier attitude about protection of roadless values, one that we do not believe the new Biden administration shares.

2. *The Forest Service fails to demonstrate that it may undertake road reconstruction under the guise of "maintenance."*

Under the Roadless Rule, "[a] road may not be constructed or reconstructed in inventoried roadless areas of the National Forest System" unless a narrow set of exceptions apply. 36 C.F.R. § 294.12(a). The Rule defines both road "maintenance," which is generally permitted, and "road reconstruction" which is not:

> *Road maintenance.* The ongoing upkeep of a road necessary to retain or restore the road to the approved road management objective.
>
> *Road reconstruction.* Activity that results in improvement or realignment of an existing classified road defined as follows:
>
> > (1) *Road improvement.* Activity that results in an increase of an existing road's traffic service level, expansion of its capacity, or a change in its original design function.
> >
> > (2) *Road realignment.* Activity that results in a new location of an existing road or portions of an existing road, and treatment of the old roadway.

36 C.F.R. § 294.11.

[4] It is also nonsensical. It is unclear how a 30-year-old clearcut, or roads open only to infrequent administrative use, would have "sounds" that impair forest users hundreds of yards away.

The Updated EA fails to demonstrate that the use and "maintenance" of roads to facilitate logging within the Garden Point IRA meets the definition of "road maintenance" permitted by the Roadless Rule, rather than "road reconstruction" or construction barred by the Rule.

Site-specific information, including current on-the-ground route condition, is required to ensure that any use or alteration of travel routes within the Sawmill-Petty logging project complies with the Roadless Rule. This is underscored by a 2020 U.S. District Court decision from Montana holding that the Helena-Lewis and Clark National Forest violated the Roadless Rule by failing to ensure that existing routes used for timber harvest in IRAs would not be effectively "reconstructed" under the guise of "maintenance." *Helena Hunters & Anglers Ass'n v. Marten*, 470 F. Supp. 3d 1151, 1169-72 (D. Mont. 2020). That decision requires the Forest Service to provide detailed, on-the-ground information concerning road use and "maintenance" to ensure compliance with the Roadless Rule, including but not limited to: which routes will be used, what condition each routes is in now, the precise nature of the equipment needed to perform the timber harvest, and what road clearance and width such equipment will require.

Here, it appears that the Forest Service will reconstruct closed and little-used roads within IRAs, in violation of the Roadless Rule, by alleging that recontouring, removing rocks and down trees, and scraping or chainsawing trees growing in the middle of routes is merely "maintenance" that is exempt from the Rule's prohibition. The Forest Service's approach does not pass legal muster.

The Updated EA described the proposed activities related to roads in IRAs as follows:

> Portions of existing roads 5539-2 (ML2), 5543 (ML2), 16299 (ML2), 16300 (ML2), and 18051 [(]ML1) would be maintained and used for forest management and timber haul. Road maintenance treatments would treat the road within its assigned design standard and maintenance level, and would not improve the road to a higher standard. All of the roads in the IRA for proposed use with the project are National Forest System roads designed for a log truck design vehicle. Road maintenance work items typically include: vegetation removal, reestablishing a road prism suitable for haul, road surface blading and reshaping, road drainage maintenance and improvement, and BMP installation.

Updated EA at 123. The Updated Roadless Report further asserts:

> Roads would not be brought up to a higher standard than that for what they are classified (i.e., there would be no change in maintenance level, design class, travel way width, or travel service level). All of the roads in the IRA proposed for use in the project are National Forest System roads designed for a log truck design vehicle. They would be maintained according to the FSM 7700 definition of maintenance which typically includes: vegetation removal, re-establishing a road prism suitable for haul, road surface blading and reshaping, road drainage maintenance and improvement, and BMP installation.

Updated Roadless Report at 26. See also Updated EA at 128 (making similar allegations).

The agency asserts its proposed "maintenance" does not rise to the level of reconstruction by focusing on road "improvement" and then only if such improvements move the road to a higher standard (ML 1 vs ML 2). Yet, the Roadless Rule also defines "improvement" (which meets the definition of prohibited "reconstruction") to mean expansion of route *capacity*. Here, "reestablishing a road prism" and "reshaping" the road will certainly increase the existing capacity of routes within IRAs.

Further, the Roadless Rule qualifies road maintenance to mean "ongoing upkeep," and the Forest Service fails to address whether the routes within the IRA have had "ongoing" maintenance, and, if so, how frequently. The Forest Service fails to disclose the Road Management Objectives for each of the roads proposed for "maintenance" in the IRA, which would include a maintenance schedule, the current operational ML and the objective ML. If the roads proposed for use have missed their scheduled maintenance, the agency cannot consider its road treatments as "ongoing upkeep." In fact, Road #18051 is closed and in an ML 1 status, so not only has it likely not been maintained, the selected alternative will definitely change the existing road's traffic service level from closed to all traffic to open to high clearance vehicles. Further, from looking at the map in the updated Inventoried Roadless Area Report and the GIS information, it is clear that access to roads #16300 and #16299 must occur from Rd. #18051 because the former two do not connect to any other roads. As such, it is reasonable to expect road maintenance on all three road segments has not been ongoing, and that these roads are functionally closed. The Forest Service appears to be in contradiction with its assertion that timber removal in the IRA qualifies as "infrequent" but then characterizes the road treatments as ongoing upkeep.

The Forest Service asserts that "there would be no change in maintenance level, design class, travel way width, or travel service level" under the selected alternative in order to characterize the road treatments as only maintenance. Updated EA at 128. As noted, Rd. #18051 will not remain in ML 1 status and opening the road will change the operational travel service level. Further, if ML 2 roads in the IRA operate as ML 1 roads, then bringing them up to their objective maintenance level constitutes a change in traffic service level, an expansion of capacity and likely travel way width depending on the road conditions. Given the Forest Service analysis failed to properly disclose the current road conditions within the IRA, agency assertions that the selected alternative complies with the Roadless Rule are arbitrary and a violation of NEPA. Fundamentally "roadless" means no roads, and the narrow exemption in the rule is not an invitation for the agency to characterize road treatments as ongoing maintenance when in fact the roads in question may have been abandoned for years, as the District of Montana federal court has recognized. See *Helena Hunters & Anglers Ass'n v. Marten*, 470 F. Supp. 3d at 1169-72.

In regards to the reduction in roadless character, the Updated EA fails to account for the long term effects from the road treatments, and fails to adequately describe their current condition other than providing their objective maintenance level. As such, the agency fails to consider the long-term effects to naturalness from its road treatments that more appropriately qualify as reconstruction. The Forest Service also fails to recognize the unique value of the area as providing a crucial grizzly bear connectivity. Further, several road segments have high or moderate impact rankings assigned in the project's travel analysis process report:

- 5539-2 - This road has 7 separate segments, with one 2.5 mi segment passing through the Garden Pt IRA and the TAP rankings give this road a High risk score (high - wildlife, soils).

- 5543 - Approximately, 2.15 mi of this 6.09 mi segment traverses the IRA, though the TAP report only lists this road as 0.96 mi., so there is a discrepancy between the GIS data and the TAP report, which assigns this segment high risk ranking for wildlife.
- 16299 - This road ends near the IRA boundary and begins deep inside the IRA starting from a center ridge D4 (16300). It has a moderate wildlife impact raking.
- 16300 - This road connects 16299 with 18051 and has an endpoint on a hillslope, though the soil impact ranking is low and has moderate wildlife impacts.
- 18051 - This road connects to 16300 and 5543. It ranks low for all impacts and is currently in an ML 1 status.

The agency's failure to incorporate the TAR rankings into its IRA analysis is an arbitrary omission that violates NEPA, and road treatments under the selected alternative qualify as reconstruction, not maintenance.

C. The Forest Service's proposed logging violates NEPA

Logging, including clearcutting, has the potential to significantly degrade the naturalness, scenic beauty, and other valleys of Garden Point IRA, by piling new clearcuts and other logging next to previous clearcuts, and potentially expanding the area currently substantially altered by human activity. The Updated EA dismisses these impacts two ways. First, it calls logging impacts "short term and temporary in nature," focusing largely on only the "sights and sounds of human activities related to vegetation treatments." Updated EA at 125. This ignores the long-lasting scenic and other impacts of turning a forest into a field of stumps.

Second, the EA excuses the impacts to scenic beauty on the grounds that the roadless area is already trashed by logging: "An indirect effect may be that the signs of human intervention and disruption of natural forces would be renewed and more obvious to the visitor. However, the project would not have notable indirect effects in the longer term beyond what is already quite obvious on the landscape." *Id*. *See also id*. ("past impacts have changed the character of the area to the degree that it no longer has the scenic quality and lack of human activity and developments that contribute to this value.")

These points are contradictory. Logging impacts cannot simultaneously both be so "short term" that they have no impact beyond sights and sounds, and also so long term that areas logged 23-30 years ago continue to significantly degrade the area's naturalness and scenic character. The Forest Service's failure to provide a rational explanation of the nature of logging's impact on roadless values violates NEPA's hard look mandate. The agency's failure to dismiss the significance of these potential impacts is also arbitrary and capricious.

The EA fails to address that fact that while the IRA will eventually recover its scenic and natural values from 20th Century logging, and that new logging in the area could delay that progress for additional decades. The agency's failure to address this fact is arbitrary and capricious.

D. The Forest Service's analysis of "roadless expanse areas" violates NEPA

The EA identifies a more than 3,000-acre "roadless expanse area," area number 9, near the southern project boundary in the South Fork Petty Creek drainage. Updated Roadless Report at 7 (Figure 2). This appears to be one of the largest blocks of undisturbed contiguous habitat in the project area. *See id*. The proposed action would construct 0.77 miles of new system road and approve 73 acres of logging within this roadless expanse. Updated Roadless Report at 16-17.

The Forest Service fails to provide a reasonable rationale for logging and road construction in Roadless Expanse Area 9. The Forest Service proposes to decommission a portion of route 5547 along South Fork Petty Creek to "improve water quality and fisheries habitat over the longer term" and "replace" with a new route (P-K6) inside the Roadless Expanse Area. Updated Roadless Report at 21-22. We do not object to the decommissioning of route 5547. But the Forest Service does not explain why a "replacement" for 5547 is necessary. The Forest Service, in response to comments, does attempt to explain why a replacement for route 5547 makes sense at the proposed location. Draft DN at 81. But it fails to explain why a replacement is necessary at all. *Id*. At a minimum, the Forest Service must explore these issues.[5] The Updated Roadless Report also asserts that while the new road construction will cut off scores of acres from Roadless Expanse Area 9, that loss of roadless character lands is not significant.

> The roadless expanse would not be markedly changed or bisected by a road. This limited boundary adjustment would not result in a notable direct or indirect impact to potentially managing the area as Wilderness.

Updated Roadless Report at 25. This ignores the fact that this is exactly the type of intrusion that the Roadless Rule sought to prevent, and that this is the way roadless areas were damaged or destroyed by the Forest Service: one slice at a time. Failure to address or quantify this loss violates NEPA.

E. The Forest Service's proposed logging in roadless areas will trigger oversight from the Secretary of Agriculture.

The Biden administration has launched new policy initiatives that emphasize the protection of vast swaths of public land to assist in the preservation of biodiversity and to assist in ensuring ecosystem resilience in the face of climate change. For example, Executive Order 14,008 directs

> [t]he Secretary of the Interior, in consultation with the Secretary of Agriculture … [to] , submit a report … within 90 days of the date of this order recommending steps that the United States should take, working with State, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of our lands and waters by 2030.

E.O. 14,008, Sec. 216(a), 86 Fed. Reg. 7619, 7627 (Jan. 27, 2021).

As a result of the new administration's emphasis on public lands protection, as well as other policies, the Acting Under Secretary of Agriculture for Natural Resources and the Environment issued a directive on

[5] The Updated Roadless Report asserts that "[n]ew road construction along the South Fork of Petty Creek … is proposed to improve water quality." Updated Roadless Report at 20, 21. This is false. The new road construction will *not* improve water quality; the decommissioning of a portion of route 5547 will do so.

February 1, 2021 which required that Forest Service field staff submit to the Under Secretary by February 12 for further review any project for which the Forest Service expects or intends to make a decision prior to March 31, 2021 where that project would involve "[r]oad construction, road reconstruction and timber harvesting activities on lands originally designated pursuant to" the Roadless Rule. C. French, Acting Deputy Under Secretary, U.S. Dep't of Agric., Instructions for Agency Action Reviews (Feb. 1, 2021), see Attachment W.

This directive applies to the Sawmill-Petty Project because the project involves, at a minimum, road reconstruction and timber harvest within IRAs designated by the Roadless Rule, and the Forest Service could resolve objections and issue a final decision on the project before March 31. The Lolo National Forest therefore must provide the Under Secretary's office by February 12, 2021 with information concerning the Sawmill-Petty Project.

Suggested Resolution: The Lolo National Forest should drop all harvest units from the selected alternative, and only implement prescribed burning where it can access the areas on currently passable, open roads. The Lolo National Forest should decommission all roads in the IRAs.

CONCLUSION

WildEarth Guardians, the Center for Biological Diversity and the Flathead-Lolo-Bitterroot Citizen Task Force appreciates your consideration of the information and concerns raised in our comments and highlighted in this objection to the Sawmill Petty Project.

Cordially,

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Attachments

A. A Dilapidated Web of Roads - The Forest Service's Departure From a "Sustainable" Forest Road System.
B. IPCC, Summary for Policymakers, 1.5 C (2018).pdf
C. H. Fountain, Climate Change Is Accelerating, NYTimes (Dec. 2019).pdf
D. Montana Climate Assessment, Exec. Summ, (Sep. 2017).pdf

E. Exec. Order 13,990 (Jan. 20, 2021).pdf
F. Exec. Order 14,008 (Jan. 27, 2021).pdf
G. Tongass NF Plan FEIS (2016) (excerpts).pdf
H. GEOS report - Tongass emissions final report compressed.pdf
I. IPCC - Land Use 2019 Summary for Policymakers.pdf
J. Law et al. Land use and climate change (2018).pdf
K. Buotte et al., Carbon Sequestration (2019).pdf
L. Moomaw et al., Proforestation (2019).pdf
M. Hudiburg, Life-Cycle Assessment (2019).pdf
N. Lolo NF, Forest Carbon Report (2020).pdf
O. Carbon Report, Jasper Mountain Project (2015).pdf
P. B. Law et al., Status of Science on Forest Carbon Management (2020).pdf
Q. BLM, Western Or. RMP FEIS (2009).pdf
R. Lolo NF, Literature from WildEarth Guardians Sawmill-Petty EA Comments December 2020.pdf
S. OSM & BLM, Colowyo EA (2016) (excerpts).pdf
T. USFS, Coal Lease Mods SFEIS (2017) (excerpts).pdf
U. Email correspondence - James Jonkel, Region 2 Bear Manager, Montana Fish, Wildlife and Parks 2021.
V. McLellan and Hovey 2001; Proctor et al. 2004; Graves et al. 2014
W. C. French, USDA, Final Agency action review guidance - 2021-02-01.pdf