Sawmill Petty EA

Lolo National Forest

Objection Responses

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Issue 1: NEPA and NFMA

Contention 1.1: Analysis of Impacts of Activities Beyond 15 Years

An objector contends that the project is in violation of NEPA because the responsible official did not analyze effects past 15 years, and the objector claims activities will be implemented beyond 15 years.

Objector(s): Native Ecosystems Council

Response:

Effects of projects are considered based on their expected temporal and spatial impacts. The Sawmill Petty Environmental Assessment (EA) (p. 40) projects that the majority of actions would be implemented over an 8-10-year period, with some prescribed burning, weed spraying and non-commercial tree thinning occurring for up to 15 years. This is reaffirmed in numerous places in the EA (pp. 78, 90, 92, 102). Effects to key wildlife and fish species reflect that timeline, as well as effects that may persist for a longer time. Appendix C is only an example of the likely timeline for the primary activities in the project and is labeled as such. Longer term effects from an action are disclosed where applicable.

Implementation activities occurring beyond 15 years after the date of the Decision Notice is purely conjecture on the part of the objector.

I find the responsible official complied with NEPA by disclosing the timeframe of the proposed action and analyzing the effects at the appropriate temporal scale.

Contention 1.2: Prepare an EIS

An objector contends that the responsible official must prepare an EIS because the project has significant impacts on the environment, provides flawed rationales for dismissing significant effects, and the degree of controversy (regarding effectiveness of Best Management Practices and of thinning as a means of restoring resilient stand conditions) of this project.

Objector(s): WildEarth Guardians

Response:

Agencies make the determination to prepare an environmental impact statement based on the environmental assessment prepared for the project (40 CFR 1501. 4) (2003 CEQ regulations in place at the time of this proposal). The finding of no significant impact (FONSI) for the Sawmill Petty Projects cites to the analysis and determination for each resource analyzed in the EA. The responsible official submitted the biological assessment to the US Fish and Wildlife Service (USFWS) with a finding of “May affect, not likely to adversely affect” and awaits their concurrence. An area designated as an inventoried roadless area does not mean it is necessarily an ecologically critical area.

As used in the Council on Environmental Quality’s guidelines for implementing NEPA, the term “controversial” refers to whether substantial dispute exists as to the size, nature, or effect of the major federal action, rather than the existence of opposition to a use. The responsible official reviewed public comments, the scientific literature, and the analysis, and concluded that there were no controversial effects to the human environment. Best management practices have been shown to be effective on the Lolo National Forest (Ziesak 2018 and USDA 2002), and resource protection measures (EA Table 3) will be applied. Decades of fire science research has been conducted regarding the efficacy of fuel treatments (leading to resilience), and much of it is referenced in the Sawmill Petty EA, including work by Jack Cohen (pp. 63-66). Literature submitted by the objector was considered.

I concur with the responsible official’s finding of no significant impact. An EIS is not warranted for this project.

Contention 1.3: Effects Analysis

An objector claims that the responsible official did not disclose direct, indirect, and cumulative impacts, including site specific information in violation of NEPA at 40 CFR 1500.2(d) and 1500.1(b).

Objector(s): WildEarth Guardians

Response:

The 2003 CEQ regulations at 40 CFR 1500.2(d) state that agencies shall encourage and facilitate public involvement in decisions which affect the quality of the human environment. 1500.1(b) states that environmental information is available to the public 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 important, NEPA documents must concentrate on the issues that are truly significant to the action in question rather than amassing needless detail.

Public involvement opportunities were provided through public meetings, scoping information mailings and postings on the Lolo National Forest website, and a 30-day comment period on the EA was held in September of 2020. In response to comments, two alternatives to the proposed action were considered but eliminated from detailed study (EA, p. 7). Environmental information has been made available to the public and a pre-decisional objection opportunity was offered. It is clear from this review the regulation at 40 CFR 1500.2(d) has been met. The EA is issue-based, not amassing needless detail.

The objector challenges the sufficiency of the analysis and the resulting conclusions, particularly for roads and trails, the application of best management practices and resource protection measures, watershed and fisheries, and roads on acquired lands.

It is unclear what the objector perceives as the "legal baseline of system roads and trails", or its relevance to environmental effects. Existing roads on acquired lands have no "legal baseline." When proposed travel management decisions would result in changes in motor vehicle use of routes or areas (such as changes in vehicle class, traffic patterns, and road standards) and where there may be adverse environmental effects, those decisions must be informed by travel analysis (FSM 7712.4). The Forest-level and project-level travel analysis processes informed the decision regarding which roads were needed for access, which roads could be placed in storage, need maintenance, or were candidates for decommissioning, etc.

Existing features on the landscape acquired from Plum Creek were assessed the same way. The cost to bring acquired roads up to Forest Service standards was assessed. Adding an existing road to the National Forest System is a record-keeping activity, not a ground-disturbing action. This is particularly true for this project, as all but .2 miles out of 138 miles of existing undetermined road being added to the NF System will be closed to motorized access yearlong. Realignment and maintenance such as culvert replacements are ground-disturbing, and their effects are accounted for. Decommissioning may or may not be ground disturbing. If the acquired roads were not needed or road use would conflict with planned management objectives, the travel analysis process, and economics report (Table 3) disclosed the cost to close them and rehabilitate the area. These actions are described in the EA on pages 6, 12-14. The effects of road actions are considered for noxious weeds, water, fish, wildlife, inventoried roadless areas, and the transportation system. This pragmatic approach is acceptable. Further, the objector's comments were responded to in the draft DN on page 75. The responsible official must show that comments were considered. (Also see response to Contention 7.1).

Resource protection measures and the application of best management practices are an integral part of the proposed action, allowing for design of a project that will minimize effects to resources. There is no claim that BMPs are 100 percent effective all the time. The hydrologist and fisheries biologist considered the effects of the proposed action, using field data, monitoring reports, literature, and modeling, as well as showing compliance with the regulatory framework (EA, pp. 68-81). See hydrology report and fisheries specialist report. Also see response to Contention 4.1.

I find the analysis was conducted with scientific rigor and accurate data, and the responsible official has responded to public scrutiny of the NEPA process.

Contention 1.4: Reliance on Protection Measures

An objector contends that best management practices (BMPs) and resource protection measures (RPMs) as rationale for omitting analysis is in violation of the "hard look" requirement.

Objector(s): WildEarth Guardians

Response:

Resource protection measures and the application of best management practices are an integral part of the proposed action, allowing for design of a project that will minimize effects to resources. The purpose of each RMP is disclosed in EA Table 3. An effect avoided is an effect that does not need discussion. There is no claim that BMPs are 100 percent effective all the time. The hydrologist and fisheries biologist considered the effects of the proposed action, using field data, monitoring reports, literature, and modeling, as well as showing compliance with the regulatory framework (EA, pp. 68-81). They have analyzed for sediment, physical barriers, refugia, road density and location, and riparian management objectives. See full hydrology report and fisheries specialist report (posted on the Lolo National Forest website). Also see response to Contention 4.1.

Contention 1.5: Reasonable Range of Alternatives

An objector asserts that the responsible official is in violation of NEPA at by failing to include a reasonable range of alternatives 36 CFR 220.7(b)(2), (36 CFR 220.7(b)(2)(i), and NEPA, section 102(2)(E).

Objector(s): WildEarth Guardians

Response:

NEPA does not require an environmental document to include a "reasonable range of alternatives." 36 CFR 220.7(b)(2)(i) states "When there are no unresolved conflicts concerning alternative uses of available resources, the EA need only analyze the proposed action and proceed without additional alternatives." NEPA Sec. 102(2)(E) involves developing appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources. Alternative uses of available resources are not at issue in this analysis. Two alternatives to the proposed action were developed and not carried forward.

I find the alternatives in the EA are adequate and comply with NEPA.

Contention 1.6: Inadequate Response to Comments

Two objectors claim that the responsible official did not provide an adequate response to comments in violation of NEPA at 40 C.F.R. § 1502.9(b); 1503.4

Objector(s): Claudia Narcisco, WildEarth Guardians

Response:

One objector expressed dissatisfaction with the response to her comments on the proposed action and states comments submitted were not responded to in a meaningful way. Another objector alleges that the way the Forest Service responded to his numerous comments about climate change, with a onesentence response pointing him to the Carbon Storage Report, is a violation of law because NEPA requires agencies to respond to comments.

NEPA does not require a response to comments in an environmental assessment (EA). Requirements noted by one objector (40 CFR 1502.9(b); 40 CFR 1503.4) refer to environmental impact statements (EIS). However, Forest Service regulations at 36 CFR 218.25(b)(1) require that, “The responsible official shall consider all written comments submitted in compliance with paragraph (a) of this section” (emphasis added).

Although not required by NEPA, the responsible official documented her response to comments in Appendix D of the draft Decision Notice. The introduction to Appendix D on p. 49 states “Responses to comments on the EA are primarily referenced to where the information is located in the individual specialist reports. The information in these reports was used to develop the EA which is intended to be a concise summary (EA, p. 1).” Responses to objector’s and other’s comments are reflected in the response to comments.

In the Updated EA (p. 7) the responsible official explains “Further analysis and project development addressed comments by modifying the scoping proposal; developing project design criteria and Resource Protection Measures (RPM) to avoid, offset, or reduce potential effects; developing and evaluating alternatives; incorporating the comment into the analysis to check and confirm that no significant effects would be caused by the treatments; or explaining why the comments did not warrant further agency response.” Although objectors disagree with responses to their comments, I conclude the responsible official adequately considered comments in compliance with Forest Service regulations.

Contention 1.7: Concerns with Public Involvement

An objector contends that the responsible official was not equitable in his public involvement and favored state agencies who are Good Neighbor Authority partners, timber industry, and "stakeholders" who were allowed to participate in the project planning process much sooner than other members of the public were allowed.

Objector(s): Claudia Narcisco

Response:

Please see response to Contention 1.3 regarding opportunities for public involvement.

The objector submitted similar comments to the EA and was responded to in the draft Decision Notice (p. 87). The responsible official replied that “the Lolo National Forest responds to requests from individuals and groups to discuss specific projects (for example, the project area was visited as part of a 2019 field trip organized and hosted by the AFRC (American Forest Resource Council). Another example is a field trip that was requested by the Friends of the Lolo, Flathead, Bitterroot Citizens Task Force to a nearby project area in October 2020).”

The objector is also concerned that the responsible official responded to others besides the 10 commenters listed as having submitted comments because the notation following each comment in the Response to EA Comments section of the draft DN (Appendix D) goes as high as 16. However, the draft DN explains that the two numbers in parentheses and separated by a comma following the comment, denote the comment ID number corresponding to the commenter and the number of the comment within the letter. The example given is that “(1, 3)” denotes comment ID no. 1 Tom Partin and the comment identified as 3rd in his letter (p. 49). The ID numbers do not exceed the 10 who commented.

Regarding the Good Neighbor Authority (GNA) the responsible official provided the objector background information about it including the 2014 Farm Bill that authorized the states to utilize their contracts to carry out forest, rangeland, and watershed restoration services on both National Forest System and Bureau of Land Management (BLM) lands (project file, document F-7). The 2018 Farm Bill expanded those authorities beyond states to counties and tribes to add capacity to the federal government to increase the amount of work collectively accomplished on federal ground. The state of Montana is a participant in the GNA program and documentation provided to the objector indicates that the Montana Department of Natural Resources and Conservation (MT DNRC) is performing botany surveys for the Sawmill Petty EA to support NEPA analysis (document F-7, p. 5). Interagency coordination including communication about proposed activities would be expected during the planning phase.

I conclude the responsible official appropriately involved the public, responded to requests for meetings and field trips, and communicated with partners.

Contention 1.8: Forest Plan Compliance and Need for Amendment

An objector contends the following issues regarding compliance with the forest plan and NFMA:

1. The project has no conservation strategy as required by the Lolo Forest Plan in order to maintain wildlife diversity in violation of NFMA.
2. A forest plan amendment is needed for Management Indicator Species across the project area in order to address viability of Management Indicator Species and because no surveys have been completed.
3. The objector also questions why elimination of the hiding cover standards for elk through a plan amendment is considered ecological restoration of roadless lands.

Objector(s): Native Ecosystems Council

Response:

The Lolo National Forest Plan (1986) requires “For plant and animal species that are not threatened or endangered, but where viability is a concern (i.e., sensitive species), manage to maintain population viability. Habitat for management indicator species, which include the elk, goshawk, and pileated woodpecker, will be monitored” (Forest Plan Standard 27, p. II-14).

The Wildlife Report for the proposed action discloses which species were considered in the effects analysis and the rationale for considering them (pp. 7-8, Table 1). The Report also presents analysis methods used to analyze effects on wildlife including assumptions, methodologies, and the scientific basis for analysis tools applied (pp. 12-15).

The objector contends that a “forest plan amendment is needed for this project as MIS will not be managed for persistence across the project area,” as required by the forest plan due to a lack of high quality surveys (see response to Contention 3.2). The Wildlife Report includes an overall Regulatory Framework section (pp. 9-11) and a more specific Regulatory Framework for each species considered. These sections describe legal and forest plan requirements for wildlife. Impacts are disclosed for each species, some negative at least in the short term. However, the Wildlife Report concludes that viability is maintained for all species. See migratory bird species (Table 4, p. 17); MIS (pp. 23, 29-30, 40); TES (pp. 54-55, 66-67, 74); and Sensitive Species (pp. 79, 81-82, 84, 88-89, 92, 99, 106, 109, 112).

The objector questions why a forest plan amendment is required to eliminate the hiding cover standards for elk, and also asks, “Why is elimination of wildlife forest plan standards considered "ecological restoration" of roadless lands?” The Lolo Forest Plan does not contain a standard for elk hiding cover. The Wildlife Report states, “The panel of experts that reviewed the best available science for elk management on Montana's east side Forests (USDA Forest Service and Montana Fish, Wildlife & Parks 2013) concluded that a specific quantifiable cover recommendation was not supported by the scientific literature, and that coniferous cover should be managed within the ecological context or Natural Range of Variation" (p. 32).

Table 25 in the EA discloses the proposed action would change the cover/forage percentages therefore affecting the cover/forage ratio (p. 112). Three winter range Management Areas (18, 22, 23) in the project area have forest plan standards requiring a 50:50 ratio of cover to forage where the majority of the cover should be thermal. The proposed action would temporarily deviate from the 50:50 ratio standard by reducing cover in order to meet other forest plan goals and objectives (EA, Appendix F, p. F-5). Therefore, a site-specific plan amendment is included in the proposed action for the standard.

I find the responsible official complies with NFMA and the Lolo Forest Plan.

Contention 1.9: Project Monitoring

An objector claims that the forest plan requirement for monitoring a 10 to 20-year project cannot be done in violation of NEPA. Additionally, the objector claims that the responsible official did not define project monitoring or ensure it will continue in the long term.

Objector(s): NEC

Response:

The objector states, "the agency was not able to define how yearly and biennial monitoring could be applied to a 15-20-year project. As with using long-term projects to escape the timeliness of the NEPA, the Forest Service is also using long-term projects to escape the monitoring requirements of the NFMA. How can you apply recent monitoring results to a project that will continue for 15-20 years?"

Implementation of the majority of the Sawmill Petty proposed action is expected to occur over an 8 to 10-year period with harvest and associated road activities occurring over a 5 to 10-year period (EA, p. 40). The responsible official responded to similar comments about the ability to monitor and make corrections to the project that may be needed as a result of monitoring. The response states, "During and after project completion, implementation and effectiveness monitoring would be conducted to:(1) determine whether the original objectives of the activities are met; (2) determine the need for additional action; and (3) educate and assist in the design of future projects." Additionally, she specifies where project-related monitoring is disclosed in specialist reports (draft DN, p. 87).

I find the responsible official appropriately disclosed planned project monitoring.

Issue 2: Wildlife, Threatened and Endangered Species

Contention 2.1: Project Activity Impacts to Wildlife Species

An objector contends that the responsible official failed to define how project activities will be implemented to prevent excessive disturbance to wildlife, which if it occurs will violate NEPA.

Objector(s): Native Ecosystem Council

Response:

The Endangered Species Act (ESA); Forest Service Manuals (FSM) 2670.11, 2670.11, and 2670.13; and Lolo National Forest Plan Standards (Lolo NF Plan, pp. II-13-14) all pertain to this objection issue. The ESA requires that "All Forest Service planned, funded, executed, or permitted programs and activities must be reviewed for possible effects on endangered, threatened, proposed, or sensitive species. The biological evaluation is the means of conducting the review and of documenting the findings." The FSM directs the Forest Service to develop and implement management practices to ensure that sensitive species do not become threatened or endangered because of Forest Service actions (FSM 2670.22 and 2670.32). Lolo NF Plan, Standard #27 (page II-14) also directs the responsible official to manage sensitive species to maintain population viability. There are no forest plan management areas (MA) specific to sensitive species.

The EA (p. 40) discusses the implementation plan for the proposed action within a timeframe for most activities up to a 10-year period. Some burning, weed spraying, and non-commercial thinning could occur up to 15-years. The draft DN (Section 5.9, p. 13) notes that "Resource Protection Measures are included in Appendix C (Draft DN, pp. 28-48) that would alter management activities in the event of any threatened, endangered, proposed, or sensitive species being located during project layout or implementation." Multiple resource protection measures speak to Threatened and Endangered Species, Sensitive Species, and Management Indicator Species: TES-1, WILD 1-WILD 13 (Draft DN App C, pp. 35, 45-48; EA pp. 25, 35-39) and are applicable through the life of the project.

The Wildlife Report disclosed project effects to wildlife species as a biological evaluation and the responsible official submitted a Biological Assessment on 12/17/2020 to the US Fish and Wildlife Service regarding effects determinations on Threatened and Endangered Species. Environmental consequences to migratory birds (pp. 16-18), management indicator species (pp. 18-40), threatened and endangered species (pp. 41-67), and sensitive species (pp. 67-112) are disclosed, discussed, and analyzed for effects. Resource protection measures are incorporated into the proposed action to minimize impacts.

I conclude the responsible official complies with the requirements for assessing effects to wildlife species from the Endangered Species Act, NFMA, NEPA, and Forest Service Policy.

Contention 2.2: Lack of Wildlife Surveys

An objector contends that the impacts to wildlife are uncertain due to a lack of surveys for wildlife species in the project area in violation of NEPA.

Objector(s): Native Ecosystem Council

Response:

The Endangered Species Act (ESA, section 7(a)(2)) requires agencies to use the "best scientific and commercial data available in analyzing effects to listed species and their designated critical habitats." The National Forest Management Act (NFMA) requires the Secretary of Agriculture to specify "guidelines for land management plans developed to achieve the goals of the Program which provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives" (16 USC 1604(g)(3)(B)). Forest service policy requires: "fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area" (36 CFR 219.19).

Objectors' Contention that "impacts to wildlife are uncertain due to lack of surveys" and a violation of NEPA, is incorrect. The Wildlife Report discloses all of the currently available data in the environmental baseline regarding wildlife surveying and monitoring within the project area for each species analyzed (Wildlife Report, pp. 16-17, 19, 24-25, 33-34, 45, 57-58, 75-76, 80, 83, 86, 95-96, 101). The Biological Assessment submitted on 12/17/2020 in the project file further discloses the environmental baseline of population status of grizzly bear and lynx. Furthermore, the report describes the analysis framework in detail (Wildlife Report, pp. 12-13). This framework is based on population viability analysis and discusses applicable literature to the approach. The project file includes information, analyses, and maps used in determination of effects including:

- Map: MTNHP Peregrine Falcon Territories. Accessed 11/12/2020

- Map: MTNHP Bald Eagle Nests. Accessed 11/12/2020
- Spreadsheet: Sawmill-Petty Vicinity Bald Eagle Nests, from MTHNP Map Viewer. Accessed 9/16/2020
- Map: Pileated Woodpecker Modeled Habitat in Sawmill-Petty Project Area (Existing Condition), with Proposed Units
- Spreadsheet: Northern Goshawk Modeled Nesting and Foraging Habitat Query for Sawmill-Petty Project Area (Existing Condition and Alt. B)
- Spreadsheet: Northern Goshawk Modeled Foraging Habitat Query (Size Class) (Existing Condition and Alt. B)
- Spreadsheet: Pileated Woodpecker Modeled Habitat Query for Sawmill-Petty Project Area (Alt. B)
- Map: MTNHP Sawmill-Petty Flammulated Owl Detections
- Spreadsheet: Sawmill-Petty Modeled Flammulated Owl Habitat by Treatment Type
- Rocky Mountain Bird Observatory Pileated Woodpecker Data 2009-2015
- Spreadsheet: Pileated Woodpecker Modeled Habitat Query for Sawmill-Petty Project Area (Existing Condition)
- Map: Northern Goshawk Modeled Nesting Habitat in Sawmill-Petty Project Area (Existing Condition)
- Map: Sawmill-Petty Modeled Flammulated Owl Habitat
- Lolo National Forest Plan Wildlife Monitoring Report 2001-2013
- Geospatial Post-Burn Habitat Analysis, 2016
- Assessment of Snags and Old Growth for the Lolo NF

Lolo NF Bird Population Trends - Integrated Monitoring in Bird Conservation Regions trend estimates for 128 bird species detected on Lolo NF during surveys from 2010-2020

Other materials in the project file provide background information for analyses for other species considered in the Wildlife Report. In addition, resource protection measures TES-1, WILD 1-WILD 13 (Draft DN App C, pp. 35, 45-48; EA pp. 25, 35-39) are included in the proposed action to minimize impacts to species found within the project area.

I conclude the responsibly official complies with the requirements for assessing effects to wildlife species from the Endangered Species Act, NFMA, NEPA, and Forest Service Policy as the best scientific and commercial data available was used in these analyses.

Contention 2.3: Effects to Pileated Woodpecker and Goshawk

An objector contends that the responsible official's claim that habitat for pileated woodpecker and northern goshawk will benefit from the project activities is false and is in conflict with best science and violates the forest plan regarding Management Indicator Species.

Objector(s): Native Ecosystem Council

Response:

The Lolo National Forest Plan contains a standard regarding management indicator species (p. II-14), which states: “Habitat for management indicator species, which include the elk, goshawk, and pileated woodpecker, will be monitored… as monitoring technology becomes available for the goshawk and pileated woodpecker, population trends will be monitored.”

The updated EA (Table 21, pp. 82-83) discloses revised effects analysis for pileated woodpecker and northern goshawk to: “Potential disturbance effects and impacts to nesting and foraging habitat.” The Wildlife Specialist Report discloses the affected environment including most recent monitoring data, environmental consequences of the proposed action, and the conclusion of effects to both pileated woodpecker and northern goshawk (Wildlife Report, pp. 18-30). Furthermore, the Wildlife Report discussed recent trend data for these species from the most current data available.

I conclude the forest complies with the Lolo National Forest Plan and NFMA for assessing impacts to pileated woodpecker and northern goshawk.

Contention 2.4: Snags

An objector claims the responsible official did not provide information on snag habitat and snag management in the EA in violation of NEPA, further the objector claims that density of snags from insect infestations should be larger across the project area to ensure adequate habitat for 20 species of snag associated wildlife species.

Objector(s): Native Ecosystem Council

Response:

The Lolo National Forest Plan contains a standard regarding snag habitat and snag management (p. II-14). Resource Protection Measure WILD-1 directs management activities to follow the Lolo National Forest Guidance for Snags and Course Woody Debris (Draft DN, p. 45; EA, p. 35). The Wildlife Report includes analysis for snags and coarse wood (pp. 15-16) and presents a table related to snag densities across national forest from FIA data, that shows the Lolo National Forest is meeting or exceeding its snag management guidelines. The project file contains the Assessment of Snags and Old Growth for the Lolo National Forest completed in 2018, which supports these determinations. In addition, the Wildlife Report documents analysis of effects to management indicator species dependent on snag habitat (pp. 18-23).

I conclude Lolo National Forest complies with the Lolo National Forest Plan and NFMA for assessing and analyzing snag habitat.

Contention 2.5: Elk Analysis

An objector contends that elk habitat, cover, and security analysis is lacking, does not represent actual on-the-ground conditions and therefore the responsible official is in violation of NEPA. Further, there is no analysis of the impacts of prescribed burning on elk winter range and elk calving areas, also in violation of NEPA.

Objector(s): Native Ecosystem Council

Response:

The Lolo National Forest Plan contains multiple standards regarding elk habitat management (pp. II-13 to 14). The draft DN and EA contain resource protection measures designed to minimize impacts to elk and elk habitat: WILD-3, 4, and 8 (draft DN, pp. 45-46; EA, pp. 35-37). Elk analyses regarding population status, distribution, and trend; winter range; habitat effectiveness; and vulnerability are contained in both the EA (pp. 107-115) and Wildlife Report (pp. 30-40).

Furthermore, the Wildlife Report and EA include effects analysis of prescribed burning (pp. 37-38; EA, pp. 112-113) citing relevant literature on the effects of prescribed fire on forage.

I conclude the Lolo National Forest complies with the Lolo National Forest Plan and NFMA for assessing and analyzing elk cover, habitat, and security, and disclosing the effects of prescribed fire.

Contention 2.6: Forest Plan Amendment Suitability Impacts on Wildlife

An objector claims the forest plan amendment for converting unsuitable timber lands to suitable timber lands did not evaluate impacts to wildlife across the Lolo National Forest as required by the forest plan (and FEIS), in violation of NFMA.

Objector(s): Native Ecosystem Council

Response:

Appendix E to the draft DN discloses the purpose and need for the amendment related to changing management areas from MA27 to MAs 16-18, and 23 (p. 93). The EA Appendix F discloses that the majority of the area proposed for MA changes (about 6,000 acres), which lie in the northeast portion of the analysis area in Peppard, French Gulch, Tank, and Corral Creeks, is an important area for big game species, particularly for bighorn sheep (p. F-1). Management area changes from MA 27 to MA 16 and from MA 27 to MA 23 were noted to be important for wildlife. The effects of the amendment and the management area change are considered in the environmental consequence section for each species included in the analysis.

I conclude the responsible official properly assessed the effects of the forest plan amendment to change management area designation, in compliance with NFMA.

Contention 2.7: Migratory Bird Treaty Act and 2008 Memorandum of Understanding with the US Fish and Wildlife Service

The objector claims that the responsible official is in violation of the Migratory Bird Treaty Act (MBTA) and the Memorandum of Understanding (MOU) (2008) between the FWS and the Forest Service to conserve neotropical migratory birds and evaluate project impacts on such, which was very limited and in violation of NEPA.

Objector(s): Native Ecosystem Council

Response:

The MBTA prohibits the take of protected migratory bird species without prior authorization by the US Fish and Wildlife Service. Executive Order 13186 provides broad guidelines on conservation responsibilities and requires the development of more detailed guidance in Memoranda of Understanding with Federal Agencies. The MOU between the USFWS and US Department of Agriculture – Forest Service was finalized on 12/08/2008.

The Draft DN disclosed the finding that the project complied with the Executive Order (Draft DN, p. 17). Resource Protection Measures WILD-1 to 6, 8,9,11, and 13 are included in the EA and Draft DN (Draft DN, pp. 45-48; EA, pp. 35-38) which direct the Forest Service to retain habitat features important to birds and/or restrict project activities during nesting seasons. The Wildlife Report discusses the Migratory Bird Treaty Act in regard to the project (p. 10) and sections throughout the Report disclose effects to both migratory birds as a group (pp. 16-18), and individual species that may be affected by project activities (pp. 18-23, 23-30, 79-82, 82-84, 84-89, 100-106). Furthermore, the following project files include more information regarding population trends for different species on the Lolo National Forest:

Rocky Mountain Bird Observatory Pileated Woodpecker Data 2009-2015

Lolo NF Bird Population Trends - Integrated Monitoring in Bird Conservation Regions trend estimates for

128 bird species detected on Lolo NF during surveys from 2010-2020

I conclude the Lolo National Forest complies with the Migratory Bird Treaty Act and 2008 Memorandum of Understanding with the US Fish and Wildlife Service for conserving neotropical migratory birds and evaluating project impacts.

Contention 2.8: Impacts to Grizzly Bears

Objectors claim the following issues regarding grizzly bear and its habitat:

- The effects analysis for grizzly bears including the location and amount of grizzly bear security areas during each year of the project are not included in violation of NEPA, NFMA, and the Endangered Species Act because increased roads will result in grizzly bear mortality and project activities will decrease food availability.
- The responsible official arbitrarily changed its effects determination for grizzly bears from likely to adversely affect (LAA) to not likely to adversely affect (NLAA) in violation of NEPA and the Endangered Species Act § 7(a)(2).
- Two objectors contend that the responsible official is in violation of the Northern Continental Divide Ecosystem Grizzly Bear Forest Plan Amendment (NCDE) by not considering connectivity to the Bitterroot ecosystem (see NCDE table 183).

Objector(s): Native Ecosystem Council, Claudia Narcisco, WildEarth Guardians

Response:

The Lolo National Forest Plan contains two standards related to threatened and endangered species (Section II(e)(24 and 27) pp. II-13-14), and conservation measures contained in the Northern Continental Divide Ecosystem (NCDE) Conservation Assessment were amended to the Plan in 2018; however, the Sawmill Petty project area is outside of the NCDE Primary Conservation Area Zones 1 and 2, thus these conservation measures do not apply. The Endangered Species Act (ESA) and Forest Service Manuals (FSM) 2670.11, 2670.11, and 2670.13 also pertain to this objection issue. The ESA requires that "All Forest Service planned, funded, executed, or permitted programs and activities must be reviewed for possible effects on endangered, threatened, proposed, or sensitive species. The biological evaluation [assessment] is the means of conducting the review and of documenting the findings."

The Draft DN discloses effects determinations to grizzly bear (pp. 3, 7, 10, 12, and 16) and contains Resource Protection Measures (RPM) WILD-6,7, and 8 (Draft DN, p. 46). The EA and Wildlife Report contain a thorough analysis of project effects to grizzly bears (EA, pp. 94-107; Wildlife Report, pp. 55-67). Both the EA and Wildlife Report discuss the effects of the proposed action to grizzly bear security areas. Furthermore, the project file contains the following supporting documentation:

- Biological Assessment for Grizzly Bear and Canada Lynx for the Sawmill-Petty Project
- Map: Sawmill-Petty GBAUs Canopy Cover (from VMAP)
- Map: Sawmill-Petty GBAUs Grizzly Bear Secure Habitat During Project Implementation
- Map: Sawmill-Petty GBAUs Grizzly Bear Secure Habitat After Project Implementation
- Map: Sawmill-Petty Grizzly Bear Analysis Units Ownership
- Map: Areas Grizzly Bears Listed as Threatened May be Present in Montana (USFWs 2018)
- Map: NCDE Grizzly Bear Management Zones and Sawmill-Petty Project Area Vicinity
- Lolo NF NCDE Conservation Strategy Forest Plan Amendment

Regarding the Contention on secure habitat, it was analyzed for pre- and post-project implementation (Wildlife Report, pp. 62-63) and evaluated under a “maximum possible decrease in secure habitat” scenario (p. 63), which assumes all roads used for project implementation are used during the same time period. Because the implementation would actually occur over an 8-10-year period with different activities occurring at different times, evaluating grizzly bear effects to security habitat on a year-to-year basis is not feasible. Thus, the “maximum extent” scenario is appropriate for project analysis. See also response to Contention 3.1.

To the second point about the change in determination of effects to grizzly bear, the Draft DN discusses the rationale for the change (p. 3). The EA and Wildlife Report contain extensive analysis results and discussion on the effects of the proposed action on grizzly bears and conclusions (EA, pp. 94-107; Wildlife Report, pp. 55-67). The project file contains the Biological Assessment for Grizzly Bear and Canada Lynx for the Sawmill-Petty Project which was submitted to the US Fish and Wildlife Service to fulfill ESA Section 7 consultation requirements on 12/17/2020. The responsible official is waiting for the US Fish and Wildlife Service’s letter of concurrence on the Not Likely to Adversely Affect grizzly bear determination “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” (Draft DN, p. 3).

As far as the issue of connectivity the EA, Wildlife Report, and Biological Assessment in the project file address connectivity between the project area as related to the Ninemile Demographic Connectivity Area of the Northern Continental Divide Ecosystem (EA, pp. 94-97, 103, and 106; Wildlife Report, pp. 55-57, 63, and 66; Biological Assessment, pp. 8, 15, and 19). However, as mentioned above, the project area is outside of the NCDE.

I conclude the responsible official complies with the Endangered Species Act Section 7 consultation requirements, appropriately analyzed the effects to the species, and appropriately addressed connectivity of the project area with respect to grizzly bears.

Contention 2.9: Impacts to Canada Lynx

An objector claims the following issues regarding Canada lynx and its habitat.

This project will have adverse impacts on the ability of the project area to promote the conservation of Canada lynx in violation of NEPA, NFMA, and the Endangered Species Act.

The responsible official's conclusion that roads will not impact Canada lynx is not supportive of best science.

There is no evidence in the EA that the project complies with forest plan direction which requires maintenance of connectivity across lynx analysis units and there was no map displaying how connectivity will be maintained during each year of the project's implementation.

Objector(s): Native Ecosystem Council

Response:

The Lolo National Forest Plan contains two standards related to threatened and endangered species (Section II(e)(24 and 27) pp. II-13 to II-14), and the Northern Rockies Lynx Management Direction (NRLMD) amendment to the forest plan in 2007. The Endangered Species Act (ESA) and Forest Service Manuals (FSM) 2670.11, 2670.11, and 2670.13 also pertain to this objection issue. The ESA requires that “All Forest Service planned, funded, executed, or permitted programs and activities must be reviewed for possible effects on endangered, threatened, proposed, or sensitive species. The biological evaluation [assessment] is the means of conducting the review and of documenting the findings.”

The Draft DN states that the project will be "well within the bounds set by the NRLMD and supported by the LCAS [Lynx Conservation Assessment]" (p. 7). It also includes Resource Protection Measure (RPM) WILD-11 that protects small isolated patches of lynx habitat (p. 47). The EA and Wildlife Report document a thorough analysis of project effects to lynx (EA, pp. 84-94; Wildlife Report, pp. 41-55) and disclose how the alternatives comply with the NRLMD (EA, pp. 91-93; Wildlife Report, pp. 51-53). Furthermore, the project file contains supporting documentation regarding the lynx analysis.

The project file contains the Biological Assessment for Grizzly Bear and Canada Lynx for the Sawmill-Petty Project which was submitted to the US Fish and Wildlife Service to fulfill ESA Section 7 consultation requirements on 12/17/2020. The responsible official is waiting for US Fish and Wildlife Service's letter of concurrence on the Not Likely to Adversely Affect Canada Lynx determination which was based on the conclusions provided in the Biological Assessment (BA) (BA, p. 29), the Wildlife Report (pp. 54-55), and the EA (p. 94).

The Draft DN and EA include Resource Protection Measure (RPM) WILD-6 which states, "Newly constructed permanent roads that will not be open to the public will be gated immediately upon construction" (Draft DN, p. 46) The EA discloses the change to the baseline condition would be a decrease of public access on 6.1 miles and an increase in access of 6.7 miles resulting in a net gain in miles of road access of 0.6 miles (EA Table 27, p. 121). The Wildlife Report further discusses roads and effects to connectivity (pp. 48-49) and cites applicable literature and rationale regarding effects of roads. Furthermore, the Report states, "Other activities such as road construction, reopening, and decommissioning may result in a minor amount of disturbance to lynx. These impacts would be minor because:1) they would occur on a phased basis within the LAU for a period of up to 8-10 years; and 2) due to low quality and amount of lynx habitat within the LAU and corresponding lack of recent detections, it is unlikely that transient lynx are regularly present in the area" (p. 51).

Connectivity of the LAUs that intersect the project area and lynx habitat are addressed in the BA (pp. 25, 28), Wildlife Report (pp. 48-49), and EA (pp. 88, 91). The LAUs are isolated from other LAUs and other mapped lynx habitat.

Appendix D in the BA (pp. 37-44) contains the assessment of the project regarding compliance with the NRLMD, which is amended to the forest plan.

I conclude the responsible official complies with the Endangered Species Act Section 7 consultation requirements and appropriately analyzed the effects to Canada lynx.

Contention 2.10: Forest Plan Compliance for Threatened and Endangered Species

An objector contends that the responsible official is in violation of the forest plan because he does not provide for the recovery of threatened and endangered species in violation of NEPA and NFMA.

Objector(s): WildEarth Guardians

Response:

Please see response to Contentions 3.8 and 3.9.

The Draft DN discusses compliance with the Endangered Species Act (pp. 16-17). The EA discloses effects of the proposed action to bull trout (pp. 73-82), grizzly bear (pp. 94-107), and Canada lynx (pp. 84-94). The Wildlife Report discloses progress towards grizzly bear recovery goals (p. 56), and notes that the project is well within the bounds of the NRMLD for Canada Lynx. The project file includes the Northern Continental Divide Ecosystem Recovery Strategy which states, "As a result of ongoing efforts of multiple agencies and partners, the NCDE Subcommittee believes the grizzly bear population in the NCDE is recovered from threats to its long-term persistence. The USFWS has stated it is moving forward with its intentions to delist the NCDE population" (NCDE Conservation Strategy, pp. 34-35).

The Fisheries Report discloses the project effects to bull trout (pp. 21-33) and the Bull Trout Biological Assessment (BA for Bull Trout) concludes, "When all actions are qualitatively combined together it creates a long-term (starting at year six, provided that there are no timber sale extensions with in Petty) benefit due to the increased fish passage, existing and potential sediment reduction from road surfaces due to decommissioning, and moving road farther away from stream channels with the proposed reroute, and rehabilitation of the lower portions of mainstem Petty Creek" (BA for Bull Trout, p. 33).

The project file contains BAs for grizzly bear, lynx, and bull trout in accordance with Endangered Species Act Section 7 consultation requirements.

I conclude the Lolo National Forest complies with the Endangered Species Act and the forest plan standards to provide for the recovery of threatened and endangered species.

Contention 2.11: Forest Plan Standard 24 for Threatened and Endangered

An objector contends that the responsible official is in violation of Lolo forest plan standard 24 because the project threatens to impede threatened and endangered species recovery.

Objector(s): WildEarth Guardians

Response:

Please see response to Contentions 3.8-3.10.

Contention 2.12: Alleged Violations of the Endangered Species Act

An objector claims that the responsible official is in violation of the Endangered Species Act at 16 U.S.C. 1536(a)(2) because there is a failure to ensure that activities under the draft Decision Notice 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 of these species.

Objector(s): WildEarth Guardians

Response:

Please see response to Contentions 3.8-3.10.

The project area does not include any designated critical habitat for grizzly bear or Canada lynx (BA, p. 1), therefore project activities will not affect critical habitat for those species. Critical habitat for bull trout is assessed in the BA for Bull Trout (pp. 33-37) and was determined to "may affect and is likely to adversely affect" bull trout and bull trout critical habitat. These BAs fulfill the requirements of the ESA to consult with the US Fish and Wildlife Service regarding project effects. The response to these effects determinations is pending from the US Fish and Wildlife Service.

I conclude the responsible official complies with the stated provisions of the Endangered Species Act to ensure that activities under the draft Decision Notice 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 of these species.

Issue 3: Watershed, Fisheries, and Riparian

Contention 3.1: Watershed and Fisheries Analysis Concerns

The objector contends that the Sawmill Petty EA contains flawed fisheries and watershed analyses. The objector states that the Forest Service failed to answer questions regarding what actions are necessary to transition watersheds currently Functioning at Unacceptable Risk to Functioning at Risk. The objector also raised concerns about sediment analysis and claims that the Forest Service did not respond to comments.

The concerns with the sediment analysis primarily revolve around BMP effectiveness. The objector claims that the FS predicates its analysis on BMPs installed during project implementation. Not only is the overall effectiveness of BMPs and their ability to mitigate sedimentation a concern, but also the fact that BMP effectiveness cannot be guaranteed beyond project completion due to an inability to assure BMP maintenance in perpetuity.

This concern with reliance on BMPs to mitigate sediment delivery has led the objector to suggest that it is “arbitrary” to have made the preliminary “MA/LAA” for FWS listed and “MIIH” determinations for Region 1 Sensitive Species.

Objector(s): WEG

Response: Please see response to Contention 4.2

Contention 3.2: Clean Water Act Concerns

The Objector asserts that deciding official has not disclosed how increases in sedimentation rates may affect the Forest Service’s ability to meet the Total Maximum Daily Loads (TMDL) that are currently in place. The objector further contends that the existing analysis is insufficient for demonstrating how targets outlined in the sediment TMDL would be met, thereby violating antidegradation rules and the Clean Water Act.

Objector(s): WEG

Response:

Nonpoint source pollution is regulated under a variety of federal and state Clean Water Act (CWA) authorities, including but not limited to Sections 208 and 319 of the CWA and the State of Montana Water Quality Act (MCA 75-5-101 through -327). Where impairment is a concern, Section 303 of the CWA requires designation of the impaired waterbody and sets in motion a set of actions whereby state regulatory agencies evaluate the scope of an impairment, develop TMDLs, and create plans to meet pollutant goals as outlined in a TMDL. The Sawmill Petty project falls within the Central Clark Fork Tributaries TMDL analysis area. A water quality improvement plan is also in place to outline a strategy for achieving targets outlined in the TMDL.

The Sawmill Petty EA contains an abbreviated portion of the analysis documented in the Sawmill Petty Hydrology and Fisheries Resource Reports. The Hydrology analysis assessed potential water quality effects through a multi-indicator approach. Road density, road encroachment on stream channels, road sediment delivery, and stream crossings were all designated indicators that were assessed in the context of proposed project activities and collectively were used to analyze whether project activities would be in compliance with the Central Clark Fork Tributaries TMDL and other applicable regulatory authorities.

The fisheries report similarly used a series of diagnostic pathways and indicators to make a preliminary determination of effects on federally listed species and USFS Region 1 Sensitive Species. The objector specifically expressed concern around the lack of Forest Service response to questions around FUR watershed status. The responsible official’s response - documented on page 71 of the draft DN - specifically responds to the crux of the commenter’s concern, which is around reliance on BMPs to achieve regulatory compliance; the question was noted evaded during comment responses. As noted in comment response and directly above, a weight-of-evidence approach has been used to make effects determinations.

Within the Sawmill Petty Fisheries and Hydrology reports, BMP effectiveness is interchangeably discussed in two ways:1) direct effectiveness at reducing or eliminating sediment delivery to streams and 2) effectiveness at mitigating or avoiding adverse water and aquatic resource effects from project implementation. BMP effectiveness from both perspectives was demonstrated within the project analysis through literature citations (see Fisheries Specialist Report p. 26 as a specific example, also Appendix H of the Hydrology Specialist Report), model application (see Hydrology Specialist Report for GRAIP Lite sediment modeling outputs), and local monitoring, along with broader analysis documented within the two specialist reports. While an important component of the overall strategy for minimizing sediment delivery during and after project implementation, BMPs (and the longevity of their effectiveness at reducing or completely avoiding sediment delivery) did not comprise the sole line of evidence used to justify Findings of No Significant Impact and compliance with applicable laws, regulations, and policy. Through comment response (draft DN, p. 71), the responsible official directly acknowledged the need for continued maintenance of BMPs following project completion.

TMDL compliance is a core focus of the Hydrology Resource Report. That focus culminates with a summary on page 41 of the Hydrology Report outlining the series of project activities that would contribute to sediment reduction, i.e. TMDL compliance, within Petty Creek and West Fork Petty Creek. The multi-faceted approach undertaken within the analysis demonstrates how direct sediment delivery and risk of sediment delivery would be reduced following project implementation. The Central Clark Fork Tributaries sediment TMDL does not expressly forbid elevated pollutant loading while project activities are being undertaken and no timeline is placed on meeting pollutant targets outlined in the water quality plan. The Lolo NF would be subject to all necessary permits (including, but not limited to Montana SPA 124, ACOE Section 404, and Montana Short-Term WQ Standard for Turbidity (318) permits) required during project implementation. Sediment conveyance is necessary in order to implement a portion of the project activities proposed, including those that will contribute to a net reduction in risk of sediment conveyance or direct sediment delivery to tributaries within the project area. Of note is that the Central Clark Fork Tributaries TMDL and Water Quality Improvement Plan explicitly calls out use of BMPs for maintaining unpaved roads as a tool for addressing sediment concerns within the planning area.

In summary, I find that the responsible official demonstrated compliance with the Clean Water Act and NEPA.

Issue 4: Vegetation/Silviculture

Contention 4.1: Larger than 40-acre openings

Objectors contend that large openings greater than 40-acres are harmful to wildlife and the responsible official is in violation of Northern Regional Office direction, NEPA, and NFMA by failing to identify the number and size of these openings in the project area, which include regeneration harvest. The objectors contend the agency completed no analysis of how the planned openings will impact wildlife. Additionally, objector claims that the Regional Office review to authorize these openings was not included in the project record, which indicates this review does not need to be disclosed to the public.

Objector(s): Native Ecosystem Council, WildEarth Guardians

Response:

The creation of openings larger than 40 acres requires 60-day public review and Regional Forester approval (FSM 2471.1 R1 Supplement 2016). Guidance from the Regional Forester regarding public notice and approval for projects proposing regeneration harvest units that exceed 40 acres was issued on October 21, 2020, well after the scoping materials and environmental assessment for Sawmill Petty were released.

The Sawmill Petty scoping letter dated 10/10/2019 provides notification that the project would result in openings in excess of 40 acres, and includes a map depicting proposed regeneration harvest units. This notification is repeated in the environmental assessment published in September of 2020. Appendix A to the EA, published to the Lolo National Forest website, is the table of units depicting the acreage of each unit. Appendix B, also posted on the website, depicts the numbered regeneration harvest units on a map.

Effects of openings on wildlife are analyzed in the Wildlife Report (goshawk pp. 28, 33; elk p. 39; Lynx p. 44; grizzly bear pp. 60, 63-66; wolverine p. 73; bighorn sheep p. 77; fisher p. 97; flammulated owl pp. 103-104; Townsend's big-eared bat p. 111). Disturbance and connectivity are also discussed.

Review and approval by the Regional Forester's Office must occur before a decision is signed. Approval has been requested by the responsible official, and this request is part of the project file. If and when approved, the documentation will be placed in the project file.

The final Decision Notice will disclose the approval by the Regional Forester's Office.

Contention 4.2: Effects to Old Growth

An objector claims the responsible official failed to provide information on the distribution, amount, and percentage of old-growth forests across the project area in violation of NEPA and the forest plan , and they did not analyze the impacts of logging and prescribed burning on old growth.

Objector(s): Native Ecosystem Council

Response:

The objector was directed to the Forested Vegetation Report for the information regarding old growth in the EA (p. 51) and in the draft Decision Notice (Appendix D p. 52). This information has been posted on the Lolo NF website since 9/4/2020. Treatment within old growth, and the effects of small-tree-thinning and prescribed burning are described in the report on pages 5-4 to 5-12. The literature citations indicate effects of such treatments are understood.

As included in Draft DN Appendix D, p. 88, the Wildlife Specialist's Report (pp. 14, 19, 22, 29) discloses that there are no vertebrate species on the Lolo NF or Region 1 that rely solely on old growth, and that stable populations of old growth MIS indicate an adequate amount and distribution of the components of mature and old growth forest used by these species.

The treatments will retain the old growth characteristics that define old growth. Large trees and snags will remain.

The existing condition of old growth in the project area was disclosed and the effects of treatment were adequately analyzed and disclosed.

Issue 5: Noxious Weeds

Contention 5.1: Noxious Weed Impacts

An objector claims impacts were not accurately disclosed in the EA and Draft DN and are in violation of NEPA. The proposed action will exacerbate an already severe noxious weed problem in this landscape which is a significant impact that requires analysis in an Environmental Impact Statement.

Objector(s): Native Ecosystem Council

Response:

The Noxious Weed Report complies with analysis requirements in Forest Service regulation 36 CFR 220.7[b][3]. Direct, indirect, and cumulative effects were detailed and analyzed with the most current data (Project file, Noxious Weed Report). Forest Service Manual 2900 and National Invasive Species Program Direction requires that all weed inventories and treatments be entered in the national database of record.

The responsible official determined that the proposed action would not have a significant effect on the quality of the human environment based on the context and intensity of its impacts (40 CFR 1508.27). The Finding of No Significant Impact (FONSI) is based on information summarized in the Sawmill-Petty Project EA, supporting documentation in the project file, and consideration of issues, public comments, and current relevant science. This decision is consistent with the Lolo Forest Plan, laws, regulations, and agency policy outlined in Forest Service Manuals and Handbooks, and also considers potential cumulative effects.

The Noxious Weed Report discloses that proposed action treatments “would meet forest plan Amendment 11, which puts in place a weed control program based on weed prevention through specific management requirements, and reduces the risk of noxious weed spread by treating the transportation system used to access and manage vegetation and roads that would be mechanically stored or decommissioned” (p. 20) Table 6 Summary of Impacts for Alternative B in the Noxious Weeds Report (ibid.) discloses that proposed action activities are determined to have minor impacts which are defined as “Noxious weed infestations would be increased over a relatively small area, the effects would be localized and are not expected to expand beyond a specific disturbance area. No new noxious weed species would be introduced or the potential would be low” (p. 14). In the Response to Comments appendix to the draft DN (p. 56) a question was responded to about how the productivity of the land and soils may be impacted by noxious weed infestations.

I conclude the responsible official adequately and accurately addressed the effects of the proposed action on the noxious weed population and management; therefore, the Finding of No Significant Impact is the appropriate determination.

Contention 5.2: Funding for Noxious Weed Treatment

The Objector claims USFS should expend monies budgeted for this project on a massive weed control program, but the Draft EA states noxious weed management would only occur if funding becomes available.

Objector: Native Ecosystem

Response:

The proposed action includes noxious weed treatment (ground-based, aerial, and biological control) on 1,800 acres (draft DN Table 1, p. 1). The Noxious Weeds Report states “Treatment of weeds within the Sawmill-Petty project area can be implemented under the authority and guidelines of the 2007 FEIS. All methods will continue regardless of the decision from this analysis in order to maintain previous noxious weed control and suppression efforts” (p. 9). The responsible official will fund noxious weed management identified in the Draft Decision Notice in compliance with Forest Service Manual 2900, National Direction (Fiscal Year 2021 National Forest Service Invasive Species Management Program Direction and Business Area Requirements), and Regional Program Direction.

I conclude the responsible official complies with USFS policy and Invasive Species Management Program Direction.

Issue 6: Travel Management

Contention 6.1: Travel Management Rule – Subpart A

An objector contends that the responsible official is in violation of subpart A of the Travel Management rule (36 CFR 212.5(b)) because he did not establish a minimum road system for the project area.

Objector(s): WildEarth Guardians

Response:

The objector refers to the section of the Travel Management Rule, subpart A that says, "the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands" (36 CFR 212.5(b)(1)). A proposal to identify a minimum road system for a portion of a Forest or Grassland may be made as a stand-alone decision or incorporated into project decision-making. However, the regulations do not require the Forest Service to identify the minimum road system for every project. The responsible official has the discretion to determine whether travel analysis at a scale smaller than a ranger district or an administrative unit is needed and the amount of detail that is appropriate and practicable for travel analysis (FSM 7712.1 and 7715.2).

The objector says that the statement in the EA in the Need for the Proposal that reads, "Have a transportation system that supports the project, meets public and administrative needs and accounts for resource concerns" (p. 5) closely mirrors direction under the Travel Management Rule (TMR) that directs the responsible official to identify the minimum road system 36 CFR 212.5(b)(1). In Appendix D of the Draft Decision Notice (p. 75) the responsible official responded to comments from the objector on the minimum road system. The response states that the 2015 Forestwide travel analysis followed the science-based travel analysis process required by the Travel Management Rule. However, the statement that the Forestwide travel analysis also identified the minimum road system is inaccurate. Requirements for identification of the minimum road system are described in 36 CFR 212.5 (b)(1). The responsible official will correct the response to comment statement that says the 2015 Lolo National Forest Travel Analysis Report (TAR) "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."

Although the transportation subsection of the Need for the Proposal section in the EA (p. 5) contains similar language to subpart A of the Travel Management Rule as noted by the objector, there is no indication in the narrative that the responsible official intended to identify the minimum road system in this project analysis. However, Table 1 Alternative B Summary in the EA (pp. 9-10) contains two entries that indicate the intent to "Keep NFSR", in other words to keep roads already designated as National Forest System roads. This information seems to be identifying the minimum road system needed at the project level although it does not appear to be intentional. Since the requirements under the Travel Management Rule (36 CFR 212.5 (b)(1)) for identifying the minimum road system have not been met, I am instructing the responsible official to clarify the decision being made for the transportation portion of the proposed action and to reference the analysis required to add roads the NFSR.

Contention 6.2: Inadequate EA and Travel Analysis Report (TAR)

An objector contends that the responsible official failed to respond to his comments regarding the deficiencies and lack of specificity in the EA and Transportation Management Report (TAR) in violation of NEPA.

Objector(s): WildEarth Guardians

Response:

The objector states "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."

The Road Action Summary Table in the project level TAR (pp. 3-4) displays 58 miles of undetermined roads that would be added to the NFSR. The project record also contains the Transportation Analysis Resource Ratings Spreadsheet which displays the risk ratings for roads. The Transportation Report says "The Travel Analysis Process (TAP) analyzed all roads under Forest Service jurisdiction within the project analysis area, including NFSRs and undetermined roads. Transportation planners identified and mapped undetermined roads using field survey data, Google Earth©, aerial photographs, and GIS" (p. 7). However, it is unclear from the risk ratings spreadsheet what type of roads are listed (i.e. NFSR, 'Undetermined', etc.). Therefore, it is also difficult to tell what the risk/benefit rankings are for those undetermined roads. The responsible official will clarify the information on roads by providing a clearer link from the EA to the support documents in the project file and by clarifying the risk/benefit ranking for the undetermined roads being added to the system.

Issue 7: Fire and Fuels

Contention 7.1: Concerns with meeting purpose and need

An objector claims that the purpose and need for the project to reduce fuels cannot be met because only 10 percent of the project area is being treated.

Objector(s): American Forest Resource Council

Response:

The objector asks for the responsible official to treat more acres, particular harvest acres, prior to burning and to better explain how low severity prescribed burning can be safely accomplished. This comment was addressed in the response to comments (draft DN, pp. 52-53). Although the objector says that less than 10 percent of the project area is proposed for treatment, actual proposed treatments in Alternative B would reduce wildfire severity on 33 percent of national forest system lands within the project area (EA, pp. 49-50). The EA and Fire and Fuels Report disclose how the proposed treatments would address the purpose and need of reducing hazardous fuels (EA, pp. 48-50; Fire and Fuels Specialist Report, pp. 30-34).

I conclude that the responsible official provided thorough analysis and rationale for how the proposed treatments would meet the purpose and need.

Contention 7.2: Response to Comments regarding Fuels and Fire

An objector asserts that her comments about the extent of fuel and logging treatments were not responded to. In her comments, the objector suggested that logging and road building should not occur far from homes and values at risk. Further, the objector contends that the responsible official did not address her comments regarding private landowners' responsibility to treat within the home ignition zones and feels the treatments should be only pre-commercial thinning and prescribed fire. (see objector's 2020 comments).

Objector(s): Claudia Narcisco

Response:

The responsible official responded directly to this comment in the draft DN (p. 55). The response references where the issue is addressed in the EA (pp. 2-3) and Sawmill-Petty Fire, Fuels, and Air Quality Specialist's Report (Fire/Fuels Report) (pp. 32-33) providing rationale for treating beyond the home-ignition zone. The need for treatment for the wildland-urban interface is identified in the Missoula County and Mineral County Community Wildfire Protection Plans (Fire/Fuels Spec Report, pp. 6-9). The Fire/Fuels Specialist Report (pp. 32-39) provides a thorough description of how the proposed treatments would meet the purpose and need of the project.

I conclude that the responsible official adequately responded to comments, prepared a thorough analysis, and disclosed rationale for the proposed treatments.

Issue 8: Climate Change

Contention 8.1: Reliance on Climate Change Science

An objector contends that the responsible official failed to address or acknowledge peer-reviewed science regarding approaches to estimating net climate damage caused by logging forests in violation of NEPA at 40 CFR 1502.9(b).

Objector(s): WildEarth Guardians

Response:

The objector states "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")." The NEPA requirement cited by objectors states, "At appropriate points in the draft statement, the agency shall discuss all major points of view on the environmental impacts of the alternatives including the proposed action." These regulations apply specifically to draft environmental impact statements. NEPA requires that an EA "Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." Although specified for EIS preparation, the Forest Service also applies requirements for scientific integrity in environmental analysis under 40 CFR 1502.24 to environmental assessments.

Regarding acknowledgement of the objector's literature submitted with comments, the responsible official prepared a table (project file, document 2020_12_28_resp_to_commenters_lit.pdf) available on the project website that documents how literature submitted by the objector was considered. Although the objector believes this document is inadequate, the responsible official appropriately disclosed how the submitted literature was considered.

I find the responsible official considered and addresses literature submitted by the objector on climate change, in compliance with NEPA.

Contention 8.2: Climate Change Analysis

An objector contends that the responsible official fails to disclose and quantify the project's climate change damage in violation of NEPA.

Objector(s): WildEarth Guardians

Response:

The objector's assertion that the responsible official failed to quantify damage the proposed action would inflict on climate change is addressed in Appendix 3 of the Forested Vegetation Report (project file, Sawmill-Petty Project Forest Carbon Cycling and Storage Report). Appendix 3 contains a discussion of Forest Service guidance for analyzing climate change in NEPA analysis for projects (Climate Change Considerations in Project Level NEPA Analysis, 2009) and why it is relevant. Under the section Other Contextual Considerations (pp. 3-2 to 3-3) rationale is provided for why further analysis is not warranted. Effects of the proposed action on greenhouse gas and carbon storage are disclosed relative to the No

Action alternative in qualitative terms, including science applied, assumptions, and rationale for conclusions. Quantitative analysis at the scale of the proposed action is neither practical nor accurate because “These changes would be localized and infinitesimal in relation to the role the world’s forests play in ameliorating climate change and indistinguishable from the effects of not taking the action” (Appendix 3, p. 3-1).

I conclude the responsible official adequately addressed the effects of the proposed action on climate change in compliance with NEPA and Forest Service Guidance.

Contention 8.3: Carbon Storage

An objector contends that the responsible official does not quantify the project's impact on carbon storage since logging, road construction and use, and burning impacts the ecosystem's ability to store carbon.

Objector(s): WildEarth Guardians

Response:

Please see response to Contention 9.2. Appendix 3 of the Forested Vegetation Report discusses the effects of the proposed action on carbon storage and cycling (pp. 3-4 to 3-5). The objector states “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 Carbon Cycling and Storage Report acknowledges the proposed action would affect carbon storage. “In the short term, Alternative B would remove and release some carbon currently stored within treatment area biomass through harvest of live and dead trees and other fuel reduction activities, including prescribed burning” (p. 3-4). It further discloses that in the short term the proposed vegetation and fuels treatments would reduce net carbon sequestration rates within treated stands which would possibly emit more carbon than they sequester until carbon uptake by new and remaining trees exceeds the emissions from decomposing dead organic material. As tree stands continue to grow the strength of the carbon sink increases until impacted by high tree mortality from future disturbances (ibid.). The risk of a high mortality disturbance event is greater under the no action alternative (Carbon Cycling and Storage Report, p. 3-5).

I find the responsible official appropriately considered and disclosed effects from the proposed action on carbon storage.

Issue 9: Roadless Areas

Contention 9.1: Roadless Areas Conservation Rule “Substantially Altered Roadless Characteristics” and Timber Cutting Exception

Objectors claim the responsible official is in violation of the NEPA and the Roadless Area Conservation Rule (36 CFR 294.13(b)(4)) because the responsible official did not show how "substantially altered roadless characteristics" is defined and how 464 acres logging within the Garden Point IRA can be done given the narrow exception allowed for timber harvest (36 CFR 294.13 (b)(4)).

Objector(s): Native Ecosystem Council, Claudia Narcisco, WildEarth Guardians

Response:

The Roadless Area Conservation Rule (2001 Roadless Rule, 36 CFR 294) states that timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided for under 4 different situations listed in paragraph (b) of the Rule. The responsible official is applying exception 4 under 26 CFR 294.13 (b) which applies to inventoried roadless areas (IRA) whose 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."

The EA states "Approximately 4,216 (67 percent) acres of the Garden Point IRA have been developed due timber harvest and road construction" 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 EA contains a map (Figure 2, p. 124) that displays areas with previous and proposed timber harvest within the Garden Point IRA.

The analysis focuses on the 7 wilderness attributes from the Lolo National Forest Plan (EA, p. 122), and the Sawmill Petty Project Inventoried Roadless Area Report (IRA Report) provides a crosswalk between the wilderness attributes and the 9 roadless characteristics from the 2001 Roadless Rule. However, the effects are discussed in terms of the wilderness attributes (EA, pp. 121-128) and not the roadless characteristics which the responsible official says are substantially altered. Therefore, I am instructing the responsible official to describe, in terms of the nine roadless characteristics, the existing condition and the effects of the proposed action on the portion of the Garden Point IRA deemed to be substantially altered.

Contention 9.2: Road Activities within Roadless Areas

Objectors contend that the responsible official did not clearly demonstrate whether existing roads require reconstruction (under the guise of road maintenance), and if roads require reconstruction, then the Roadless Area Conservation Rule would be violated. See 36 C.F.R. 294.12(a) and 36 C.F.R. 294.11.

Objector(s): Native Ecosystem Council, WildEarth Guardians

Response:

Only use and maintenance of classified roads are proposed in the IRA. Maintenance of classified roads is permissible in IRAs (36 CFR Subpart B 294.12 (c)). Maintenance, as defined in the 2001 Roadless Rule, is the ongoing upkeep of a road necessary to retain or restore the road to the approved road management objective. 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 the roads in the IRA proposed for use in the proposed action 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 (EA, pp. 128).

I find the road maintenance activities proposed consistent with the 2001 Roadless Conservation Rule.

Contention 9.3: Logging and Roadwork within Previously Untreated Areas

Objectors contend that logging and roadwork should not occur within roadless areas because units getting logged have never been logged or had roadwork before. One objector suggests only prescribed fire be allowed within roadless areas while another objector suggests that units J11-J20 should be dropped as Alternative C proposed.

Objector(s): Claudia Narcisco, WildEarth Guardians

Response:

Logging and roadwork are allowed in an IRA when conducted in accordance with the provisions set forth in the Final Roadless Rule 66 Fed. Reg. 3243 (January 12, 2001) 36 CFR 294.12(b) and 36 CFR 294.13(b).

The EA clearly states, “Harvest would occur within the substantially altered roadless characteristics portion of the Garden Point IRA consistent with 36 CFR Subpart B 294.13 (4)” and “Maintenance of classified roads is permissible in IRAs (36 CFR Subpart B 294.12 (c)). Only classified roads will be used and maintained in the IRA per the proposed project description” (p. 128). See also response to Contention 10.1.

Contention 9.4: Roadless Expanse

An objector claims that the responsible official's analysis of the area of roadless expanse violates NEPA and degrades roadless and potential wilderness character because there is construction of 0.77 miles of road and 73 acres of logging within the 3,000 acres of roadless expanse. Further the objector claims the responsible official does not disclose why a road proposed for decommissioning, route (5547), is being replaced by another road.

Objector(s): WildEarth Guardians

Response:

The effects of the proposed action on unroaded lands contiguous to Roadless Areas (i.e. roadless expanse) is fully analyzed in a Specialist Report found in the project record. The report is titled Analysis for Unroaded Lands Contiguous to Roadless Areas (Roadless Expanse) by Laura Johnson Boudreaux (February 2020).

The Road Action Summary Table in the project level TAR (pp. 3-4) displays 58 miles of undetermined roads that would be added to the NFSR. The project record also contains the Transportation Analysis Resource Ratings Spreadsheet which displays the risk ratings for roads. The Transportation Report says “The Travel Analysis Process (TAP) analyzed all roads under Forest Service jurisdiction within the project analysis area, including NFSRs and undetermined roads. Transportation planners identified and mapped undetermined roads using field survey data, Google Earth©, aerial photographs, and GIS” (p. 7). However, it is unclear from the risk ratings spreadsheet what type of roads are listed, i.e. NFSR, Undetermined, etc., therefore it is also difficult to tell what the risk/benefit rankings are for those undetermined roads. The responsible official will clarify the information on roads by providing a clearer link from the EA to the support documents in the project file.

Issue 10: Economics

Contention 10.1: Economic Viability

An objector is concerned that prescribed burning will not be funded, and the proposed road decommissioning will result in uneconomical timber sales.

Objector(s): American Forest Resource Council

Response:

The timber sale and the required activities associated with the sale have a positive Present Net Value (PNV) of over $1.2 million, indicating that the sale is financially feasible, including all required activities. The timber sale is expected to sell because the predicted high bid is higher than the base rate and appraised stumpage rate, as indicated in Table 28 of the EA. The EA follows the relevant law, regulation, and policies for economic analysis laid out in Regulatory Environment section of the Economics Report in the project file.

The prescribed burning and road decommissioning activities mentioned by the objector would happen outside of the timber sale contract and may be paid for with congressionally appropriated funds or with a combination of appropriated funds and non-governmental funding sources as they become available.