BEFORE THE OFFICE OF THE REGIONAL FORESTER
REGION ONE – USDA FOREST SERVICE
Objection Reviewing Officer

FRIENDS OF THE WILD SWAN	)	
Objector	)	
	)	NOTICE OF
	)	OBJECTION
v.	)	PURSUANT TO
	)	36 CFR 218
KURTIS STEELE	)	
FLATHEAD NATIONAL FOREST SUPERVISOR	)	
Responsible Official	)	

OBJECTION DECISION:

Draft Record of Decision and Final Environmental Impact Statement for the Mid-Swan Landscape Restoration and Wildland Urban Interface Project dated September 2021. Kurtis Steele, Flathead National Forest Supervisor, responsible official.

OBJECTOR:

Arlene Montgomery
Lead Objector
Program Director
Friends of the Wild Swan
PO Box 103
Bigfork, MT 59911
406-886-2011

October 22, 2021

STANDING:

Members of Friends of the Wild Swan recreate and visit the project area. We participated in several meetings and field tours to the project area as various iterations of this project were being developed, we submitted scoping comments on December 21, 2018 and Draft Environmental Impact Statement comments on October 12, 2020.

We incorporate by reference the objections submitted by Swan View Coalition and Brian Peck, Independent Wildlife Consultant.

• The Mid Swan Project's Final Environmental Impact Statement fails to analyze the impacts to wildlife, fish, native plants and water quality in violation of the National Environmental Policy Act.

We raised this issue in our scoping and Draft Environmental Impact Statement comments.

A) The FEIS lacks the specificity to adequately analyze the impacts to wildlife, fish, native plants and water quality that is required by the National Environmental Policy Act. NEPA requires that agencies take a "hard look" at the impacts to ensure they are making informed decisions prior to acting and that the public has meaningful input based on the best available science and site-specific information.

The Mid-Swan project area covers 174,000 acres, FEIS Alternative B logs 201,641 mbf and will take at least 15 years to complete the logging. The FEIS does not disclose where units are and the Flathead has not even ground-truthed the project area -- that will be done when they are ready to log and the public has no opportunity to challenge the site-specific project elements.

The Flathead relies on photo interpretation and computer models, not on the ground inspection, to determine many important features on the landscape such as:

> • Riparian management zones are narrow linear features and their composition may not be accurately represented in the photo-interpreted data. (FEIS page 112)
>
> • Road length within RMZs and changes to aquatic network within the CWN are GIS calculated. (FEIS page 171)
>
> • We created a model of lynx habitat in the project area based on the same three-dimensional aerial photo interpretation data. (FEIS page 227)
>
> • Since the spatial extent of old growth is not currently known... (FEIS page 119)
>
> • Surveys at the time of implementation would determine whether these stands qualify as old growth... (FEIS page 120)
>
> • Photo interpreted data were also used to estimate old forest structure, a late seral stage in forest succession characterized by an abundance of larger and presumably older trees and one or multiple canopy strata (O'Hara et al. 1996). Mapped areas with old forest structure may qualify as old-growth forest following the minimum criteria in Green et al. (2011) **but we cannot determine exact stand age from aerial photography**. Verification of old growth status following Green et al. (2011) would happen during the implementation stage of this project. (FEIS page 9) [Emphasis added]
>
> • To move existing conditions towards desired conditions, we compared the photo-interpreted existing conditions with desired conditions derived from integrated objectives and themes and assigned an initial level-of-change (LOC) category. (FEIS page 27)
>
> • Forest structural stages were derived from photo interpreted data. (FEIS page 108)

• Vegetation characteristics available in the photo-interpreted polygon data were used to assign fuel models to the Mid Swan Project landscape. (FEIS page 151)

• Forest vegetation was classified into seven structural classes (O'Hara et al. 1996), using photo-interpreted data for tree sizes, canopy covers and number of canopy layers (strata). (FEIS page 108)

• Vegetation characteristics derived from high-resolution 3-dimensional aerial photo interpretation were used to estimate existing habitat conditions including snow intercept cover, hiding cover and forage areas in the project area for forest ungulates. (FEIS page 296)

This failure to provide accurate baseline data violates NEPA. The agency cannot analyze and disclose the effects nor can the public review and comment on the scope of the impacts and where those impacts may occur without site-specific information.

"The Mid-Swan Assessment was by necessity conducted at a spatial scale midway between the coarse scale planning of a Forest Plan and the typical fine-scale planning of a Forest Service project. The habitat mapping process used, based on aerial photo interpretation conducted at a minimum 10 ha scale, cannot account for key habitat elements that occur at smaller spatial scales, such as small pockets of old-growth habitat or coarse woody debris. To make sure these critical fine-scale habitat elements are not lost, the Mid-Swan Implementation Guide outlines project design criteria as well as an implementation process that will ensure detailed project surveys and appropriate retention of key elements." (FEIS page 253)

Location data is critical to the site-specific analysis NEPA requires. Merely disclosing the existence of particular geographic or biological features is inadequate—agencies must discuss their importance and substantiate their findings as to the impacts on wildlife, fish, water quality, wilderness, roadless areas, scenery and other public values. The Mid Swan FEIS is more like a programmatic document that projects should tier to with site specific effects analysis.

The Draft Record of Decision attempts to assuage the public's concern of not being able to challenge the individual timber sales that stem from this huge project by only approving a portion of Alternative B and deferring approval of some of the activity areas for an unknown amount of time. This does not pass legal muster. Issuing another decision at an undetermined time years in the future to implement the rest of Alternative B will result in tiering to an outdated environmental impact statement.

The Mid Swan project is to be implemented in smaller geographic areas than the entire project area with logging units identified at a later time, these are not analyzed in the EIS. The maps of proposed vegetation treatments identify large swaths of land that could be clearcut logged (i.e., regeneration logging). Yet the EIS does not disclose how large those clearcuts will be or what the impacts will be, it is all speculation.

The Implementation Guide on Restoration (IGOR) is not a substitute for site specific analysis, it is merely a series of general guidelines and flow charts. In fact, it admits that as individual projects are being refined they will evaluate whether the logging projects are consistent with law, regulation and policy and additional design criteria may be developed. NEPA requires this at the FEIS stage, not at some undefined future time.

The IGOR contains objectives and needed information to refine the project. However, that information should have been included to analyze the project's impacts. For example:

> "Evaluate if activity proposed in Outer RMZ will affect vegetation community and structure of Inner RMZ." (IGOR page A-5)
>
> "Confirm harvest method in Outer RMZ does not cause sedimentation or change hydrologic processes" (IGOR page A-5)
>
> "Conduct surveys or coordinate with applicable agencies for data for presence of key habitats occupied by wildlife species to ensure compliance with GDL-WL-DIV-01 through 06 (IGOR page A-7)"
>
> "Evaluate existing detrimental soil disturbance, soil suitability and slope stability in proposed activity areas (IGOR page A-6)
>
> "Write silvicultural diagnoses and prescriptions and make old growth determinations. (IGOR page A-6)

Public feedback when implementation areas are proposed are informal and will not allow the public to formally comment or object based on this new information so it is essentially meaningless. "A final set of Implementation Projects will be made available to the public and represent the actions being implemented for that year." (IGOR page A-24)

Public involvement is a cornerstone of NEPA, it is meant to not only provide the opportunity for comment but also to inform the agency of deficiencies in its analysis.

B) The aquatic condition indicators rely on GIS computer models and aerial photo derived road and stream locations. There is no reference in the FEIS as to whether the road locations, culverts, or stream crossings have been ground-truthed. Furthermore, the FEIS does not contain or utilize objective and measurable habitat criteria such as temperature, pool frequency and other parameters that gauge stream baseline condition because neither the Forest Plan nor the Bull Trout Recovery Plan contain these criteria. Yet this is essential to determining whether habitat conditions are improving or declining.

In the Flathead basin when the percentage of fine materials in spawning gravels in any given year is greater than 35% the stream is considered threatened as a bull trout spawning and/or rearing stream. When the percentage of fine materials in spawning gravels in any given year is greater than 40% the stream is considered impaired. In 2018 five bull trout spawning streams exceeded 35% fine sediment: Squeezer (40%), Lion (36.1%), Jim (39.1%), Soup (36.2%) and Woodward (40%).

The FEIS discloses that higher levels of fine-grained sediment are in managed stream reaches than within reference reaches. It pinpoints the extensive road network in most watersheds as the cause of this increased sediment. Yet, this project does little to reduce the 574 miles of Forest Service roads. Any potential improvements to road sediment delivery to streams is predicated on the long term; short term impacts are not analyzed. The EIS does not disclose what time frame is considered "long term" or how many individuals of a threatened species can be lost without extirpating a spawning population.

The EIS states: "Effects from the proposed actions are not expected to be discernible from existing conditions more than 300 meters into Swan Lake, as the large volume of water present would quickly mix any transported fine-grained sediment and rapidly dilute this effect to zero." Or in other words dilution is the solution to pollution.

Swan Lake is a WQLS and a Water Quality Protection Plan and TMDLs were prepared for the Swan Lake Watershed in 2004. Low dissolved oxygen (DO) concentrations in the deeper basins led to Swan Lake being placed on the state's 303(d) list in 1996. The 2004 Beneficial Use Determination is:

"Data indicate that beneficial uses are being supported, however there is a documented adverse pollution trend as evidenced by the Spencer (1991b) sediment-core study. This study clearly shows that the sedimentation in Swan Lake has increased >3 times its historic (late 1800s) rates, and that much of the increase occurred concurrently with large-scale timber harvest in the watershed since the 1960's. This increased sediment/nutrient/carbon load to the sediments *may* be responsible for the oxygen depletions noted in the deeper basins. A more recent work (Ellis et al, (1999a) has failed to make a clear connection between land use and water quality, but that study indicated that the complexities of this flood plain riverine system make such a correlation difficult. An increase in the noted oxygen depletions is to be avoided in order to maintain the lake in its current oligotrophic state."

The TMDL further states: "The remaining siltation listing is associated with increased accumulation of inorganic and organic material (specifically organic carbon) to the lake bottom/sediments... The increased organic material in lake sediments can lead to DO reductions and subsequent depletion (anoxic conditions). A reduction in DO can directly limit aquatic life and cold-water fish habitat, and can also lead to conditions where phosphorus is released from the bottom sediment layer. This phosphorus could then enter the water column, leading to additional negative impacts to aquatic life and cold-water fish due to nutrient enrichment conditions in Swan Lake, as well as increasing downstream nutrient loading to Flathead Lake."

The pollutants causing the dissolved oxygen deficiency in Swan Lake are coming through the river from logging, roading and human impacts in the Swan Valley. These are cumulative impacts that must be analyzed in the EIS.

Applicable Source Load Allocations for Swan Lake are:

- Road Erosion: Nutrient and particulate organic carbon loading associated with sediment delivery from road erosion.
Allocation: 40% total reduction in modeled sediment loading from road stream crossings based on FRS method.

- Riparian and Streambank Protection: Nutrient and POC loading associated with eroding banks, loss of woody debris and riparian vegetation impacts.
Allocation: 10% decrease in total loading throughout the Swan Lake Watershed. Canopy density is used as a surrogate to measure progress.

- Other Timber Harvest Impacts: Nutrient and POC loading from timber harvest (other than road erosion and riparian harvest covered above); this also includes road culvert failures.
Allocation: No loading increase.

The EIS disregards Swan Lake's threatened status and minimizes the impacts that cumulative sediment pollution has on the lake that is critical habitat for bull trout. The south deep basin is directly impacted by sediment transported to the lake from the river. That deep basin has been precariously close to 0 DO which would lead to negative impacts to fish, other aquatic life and water quality. The EIS does not quantify and analyze the impacts to Swan Lake resulting from the additional logging and road sediment over the next 15 years or more.

The EIS fails to disclose how this project will further compliance with the TMDL source load allocations for Swan Lake.

C) The Mid Swan Project area has not been surveyed for old growth forest habitat. The FEIS states that will be done at the time of implementing future individual timber sales.

The FEIS fails to disclose where old growth is located, how it will be connected and what the impacts are to old growth associated wildlife. It makes broad statements that are not supported by best available science.

Commercial harvest or other mechanized treatments under alternative B would not reduce the quantity of old growth. Proposed treatments may temporarily diminish some old growth attributes due to harvest operations and ground disturbance, while still meeting minimum requirements of Green et al. (2011) (FEIS page 119)

Commercial harvest is proposed in 14.2% of all old forest structure. Treatment options in old forest structure include even-aged regeneration harvest on up to 338 acres mostly within WUI, where a change of species composition is desired. (FEIS page 119)

New proposed roads in alternative B would cross three areas identified as old growth in the past from stand exams or completed NEPA analysis. Of these, 0.4 miles would be temporary roads and 0.2 miles would be permanent system roads impacting up to 220 acres of old growth habitat. It also would construct up to 3.3 miles of roads through stands classified as old forest structure. (FEIS page 120)

Regeneration opening adjacent to old growth could increase windthrow and stem breakage and further increase the amount of large wood on the ground. (FEIS page 119)

The FEIS doesn't acknowledge that old growth is more than just big trees, it is a host of attributes including snags, down woody material, multiple canopy layers, decadence, etc. that are essential for wildlife. The FEIS talks about retaining "desirable" tree species, but desirable to humans, not necessarily wildlife who need those other attributes for survival.

The map on page 30 of appendix B part 2 shows how fragmented old forest habitat (not old growth because it hasn't been surveyed) is in the project area. The Mid Swan Project doesn't address how old growth forest habitat will be connected as a result of this project especially when the proposed vegetation maps in appendix B part 1 show extensive areas that could be clearcut logged.

The Flathead has no plan for retaining old-growth forest habitat on the landscape and allowing stands to develop into old growth thereby protecting the diversity of plant and animal communities. Instead this project will fragment old growth, create abrupt edges from roads and cutting units adjacent to it, and degrade the habitat quality for old growth associated birds and wildlife.

The FEIS has no old growth inventory, no disclosure of habitat types, no connectivity, no blowdown assessment and no road impact assessment.

Furthermore, the FEIS doesn't even analyze impacts to old growth associated wildlife from clearcut logging and species conversion to human "desirable" tree species. These forests and wildlife evolved with fire and Forest Service "undesirable" tree species. The FEIS contains no fine filter analysis and no measure of the impacts of management activities on wildlife. This failure to evaluate impacts to old growth associated wildlife stems from the 2012 NFMA regulations that eliminated management indicator species that actually reflect habitat conditions.

By not analyzing the impacts to the wildlife who need these forest conditions the FEIS violates NEPA.

• The Mid Swan Project does not comply with the Forest Plan's Northern Rockies Lynx Management Direction.

We raised this issue in our scoping and draft environmental impact statement comments.

The Mid Swan EIS does not differentiate between young and mature/old multi story structure but instead lumps them altogether even though they have different functions for lynx habitat. The NRLMD Veg-S6 standard limits vegetation management projects that reduce snowshoe hare habitat in multi-story mature or late successional forests.

The NRLMD defines multi-story mature or late successional forest as similar to the old multistory structural stage. However, trees are generally not as old and decaying trees may be somewhat less abundant.

Old multistory structural stage is defined in the NRLMD as many age classes and vegetation layers mark the old forest, multistoried stage. It usually contains large old trees. Decaying fallen trees may be present that leave a discontinuous overstory canopy. On cold or moist sites without frequent fires or other disturbance, multi-layer stands with large trees in the uppermost layer develop.

The Mid Swan EIS does not differentiate between young and mature/old multi story structure but instead lumps them altogether even though they have different functions for lynx habitat. The document Modeling lynx habitat describes these types of multi story forest:

> Young forest multi-story: 3 or more tree layers become established following minor disturbances. Sparser understory may limit utility to snowshoe hares. May provide lynx denning habitat if sufficient forest floor coarse woody debris
>
> Old forest multi-story: complex multi story structure with variable tree age. Generally provides both snowshoe hare and lynx denning habitat if understory is dense enough.
>
> Multistory – forest structure types that included large tree, multi-layer canopy, and significant understory canopy cover components. This habitat type is often categorized as old-forest multi-story, but also includes more advanced stands of young forest multi-story and understory regeneration.

Neither the Mid Swan EIS nor map B-67 differentiate between young and mature/old multi story structure but instead lumps them altogether even though they have different functions for lynx habitat. The Flathead attempts to dismiss this issue as a difference in terminology between how researchers have characterized multi story forest structure. However, this is a key difference in how the Forest Plan defines mature multi story habitat in its standards and how it is defined and implemented in project assessments.

The FEIS discloses that 14,763 acres of lynx mature multistory habitat will be impacted in the project area. The FEIS does not disclose where this multi story habitat is located or the quality of the habitat ostensibly because the EIS relies on a model based on aerial photo interpretation. It assumes that all habitat is equal and lynx can be displaced.

Furthermore, the FEIS essentially ignores the large openings that will be created and where they will be located. There is no analysis of lynx avoiding these large openings, there is no analysis of roads running through or adjacent to old-growth forest habitat, there is no analysis of logging in or adjacent to late successional forest and there is no analysis of lynx being displaced from key habitat.

The FEIS proposes an amendment to standard VegS6 allowing vegetation management in mature multistory snowshoe hare habitat that includes thinning and thinning with regeneration openings. Deviating from the Forest Plan for 15 years based on aerial photo interpretation without ground surveys should not be considered or approved for a threatened species in its critical habitat.

• The Flathead National Forest's release of a draft Record of Decision for the Mid Swan Project prior to complying with Judge Molloy's Order regarding roads, grizzly bears and bull trout violates the Endangered Species Act and National Environmental Policy Act.

On June 24, 2021 Judge Molloy issued an Opinion and Order on Swan View Coalition/Friends of the Wild Swan and WildEarth Guardians lawsuit alleging Forest Plan inadequacies. The Court stated:

> "Specifically, Plaintiffs succeed on their ESA claims related to grizzly bears: that the Revised Plan is arbitrary and capricious to the extent it did not consider the impacts of its departure from Amendment 19's road density and reclamation standards, did not consider the impact on the entire grizzly population, did not adequately explain the adoption of the 2011 access conditions, and adopted a flawed surrogate in its take statement concerning grizzly bears. Plaintiffs also succeed on the narrow argument that departing from Amendment 19's culvert removal requirements violated the ESA as it relates to bull trout. Plaintiffs also succeed on their ESA claim that the Forest Service improperly relied on the flawed aspects of the 2017 BiOp."

Judge Molloy remanded provisions of the 2017 Biological Opinion that violate the Endangered Species Act.

Moving forward with a draft Record of Decision for the Mid Swan Project without complying with the court's order and without a valid Forest Plan biological opinion for grizzly bears and bull trout with an incidental take statement from the U.S. Fish and Wildlife Service is blatantly illegal.

The FEIS and IGOR claim compliance with the Forest Plan and Biological Opinion:
"This estimated implementation schedule was developed to ensure compliance with the Forest Plan and direction from the Forest Plan Biological Opinion." (IGOR pg A-3)

"Additionally, appendix A includes design criteria for grizzly bear protection, and the grizzly bear effects analysis in chapter 3 demonstrate compliance with Forest Plan direction to support continued grizzly bear recovery." (FEIS page 42)

However, there is not compliance with the Forest Plan and Biological Opinion because specific provisions of both of these documents have been deemed deficient by the court. In addition, the Flathead does not have a valid incidental take statement for grizzly bears and bull trout for the Forest Plan. The deficiencies cited by the court have real world consequences for grizzly bears and bull trout that have not been analyzed in the FEIS.

REMEDY
• Withdraw the Draft Record of Decision and correct the deficiencies raised in the objections on the Final Environmental Impact Statement.

• Withdraw the Draft Record of Decision and Final Environmental Impact Statement to comply with Judge Molloy's Order to correct the Forest Plan and Biological Opinion.

• Withdraw the Draft Record of Decision and Final Environmental Impact Statement so they do not rely on aerial photographs for the FEIS analysis -- ground truth the project area to provide a fine filter analysis that discloses the impacts to wildlife, fish, water quality, roadless areas, and wilderness.

• Withdraw the Draft Record of Decision and Final Environmental Impact Statement to allow the public to object to specific projects that may stem from this analysis.