

October 25, 2021

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

**RE: WildEarth Guardians and the Center for Biological Diversity OBJECTION to
Mid-Swan Landscape Restoration and Wildland Urban Interface Project**

To the Objection Reviewing Officer,

WildEarth Guardians and the Center for Biological Diversity respectfully submit this objection to the U.S. Forest Service concerning the Mid-Swan Landscape Restoration and Wildland Urban Interface Project (Mid-Swan Project) proposed for the Swan Lake Ranger District on the Flathead National Forest, including the Final Environmental Impact Statement (FEIS) under the National Environmental Policy Act (NEPA) and draft Record of Decision (DROD). The responsible official for this project is Kurt Steele, Forest Supervisor of the Flathead National Forest. As required by 36 C.F.R. § 218.8(d), the following is the objector's contact information:

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WildEarth Guardians is a nonprofit conservation organization with offices in Montana and five other states. We have more than 194,000 members and supporters across the United States and the world. Guardians' mission is to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians has organizational interests in the proper and lawful management of the forest road system and its associated impacts on the Flathead National Forest's wildlife and wild places.

The Center for Biological Diversity is a non-profit environmental organization with over 1.7 million members and online activists who value wilderness, biodiversity, old growth forests, and the threatened and endangered species which occur on America's spectacular public lands and waters. Center members and supporters use and enjoy the Flathead National Forest for recreation, photography, nature study, and spiritual renewal.

WildEarth Guardians submitted timely scoping comments with several conservation organizations on December 19, 2018 that raised significant concerns about the Mid-Swan Project proposal. Guardians and the Center for Biological Diversity also submitted timely comments on the Draft Environmental Impact Statement (DEIS) on October 12, 2020. Those comments identified numerous concerns with the project, its supporting environmental analysis, and the likely harm it will have on at-risk species. We hereby incorporate by reference those prior comments, which should already be part of the administrative record for this project. In addition, we hereby support and incorporate by reference the objection submitted by Keith Hammer on behalf of Swan View Coalition.

The Forest Service states that it reduced the scale and scope of the Mid-Swan Project by selecting an action that reflects a portion of the full Alternative B action analyzed in the FEIS, with additional modifications. *See* DROD at 1 (describing the selected alternative as “reduced” and “based on alternative B”, and noting some “actions that have been evaluated in the FEIS but not included in this record of decision”). The selected action includes 17,858 acres of commercial harvest, 3,446 acres of other mechanized fuel treatments, 16.7 miles of road construction (6 miles of which are temporary roads), implementing best management practices (BMPs) along 225 miles of road, decommissioning 23.5 miles of road, and hydrologically disconnecting 132 road/stream crossings, among other actions. DROD at 1-2, Table 1. At the same time, the agency suggests the remaining actions under Alternative B described in the FEIS could be authorized under a separate, future decision. *Id.* at 1, (“If appropriate, a second record of decision and associated objection and USFWS consultation process will be made to implement actions that have been evaluated in the FEIS but not included in this record of decision.”). Despite these changes--and indeed in part because of these changes--Guardians and the Center for Biological Diversity have concerns about the impact of the project on wild places and wildlife of the Flathead National Forest, and the Forest Service’s flawed analysis of those impacts under various federal laws, as set forth below.

OBJECTION POINTS

I. The Forest Service’s analysis fails to provide for informed decision making and meaningful public comment.

Crucial flaws in the Forest Service’s analysis fail to provide for informed agency decision making or meaningful public comment, in violation of NEPA. Some of these concerns were raised in our prior comments; other concerns are based on information that arose after the close of the previous comment period.

First and foremost, the Forest Service fails to disclose or acknowledge the federal district court ruling in *WildEarth Guardians v. Steele*, Case No. 9:19-cv-00056 (D. Mont. June 24, 2021) (attached as Exhibit 2). The court stated:

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 baseline conditions, and adopted a flawed surrogate in its take statement concerning grizzly bears.

Ex. 2 at 11.

As a result, the Forest Service must consult with the FWS on a project-by-project basis where, like here, the agency proposes to increase the motorized route density and decrease habitat security for grizzly bears. Specifically, the Court wrote,

But at oral argument, Federal Defendants emphasized that, in the event of remand without vacatur, any project under the Revised Plan would have to be examined individually; if the project impacted roads, grizzly bears, or bull trout, the project would require a site-specific consultation and a biological assessment with the Fish and Wildlife Service.

Ex. 2 at 63-64. As a result, the court opined that the Forest Service's explanation "demonstrates that remand without vacatur in this instance would disrupt the very projects Plaintiffs are concerned about, but allow other projects unrelated to Plaintiffs' concerns to proceed." *Id.* at 64. The Mid-Swan Project, with both its permanent and temporary road construction within grizzly bear habitat, is a project related to Plaintiffs' concerns brought before the Court.

Based on the information available to us, the Forest Service has yet to remedy the legal flaws identified by the court. *See, e.g.*, Exhibit 3 (attached). The Forest Service must first demonstrate the 2017 biological opinion complies with the ESA before relying on that biological opinion, its incidental take statement, or plan components from the 2018 Revised Plan. However, the Forest Service released the DROD for the Mid Swan Project based on unlawful provisions of the 2018 Revised Plan without any mention of the court decision. We were unable to find any mention of the court's ruling in the administrative record for the Mid Swan Project. Failure to mention or disclose the court's ruling, much less explain how the Forest Service is addressing the ruling for this particular project, fails to provide for informed decision making and meaningful public comment, and it violates NEPA and the ESA.

As explained throughout this objection, limited information about the selected action for the Mid Swan Project also prevents meaningful public comment. Based on the information available, it appears the Mid Swan Project is inconsistent with the June 24, 2021 court ruling. Specifically, the Forest Service shows maximum allowable departures from 2011 baseline conditions that will increase OMRD in six BMUs, increase TMRD for 3 BMUs and a decrease in secure core for 4 BMUs. DROD at 18, Table 5. Since the selected alternative departs so much from the preferred Alt.

B in the FEIS it is difficult to identify which parts of the analysis still apply, but it appears the "maximum departure" in the DROD follows FW-STD-IFS-03 according to the agency's response to comments:

The proposed implementation schedule complies with Revised Plan standard FS-STD-IFS-03 by ensuring that temporary increases in road density or decreases in secure core associated with project activities will occur in no more than three adjacent subunits at any time (see FEIS section 3.9).

FEIS Appendix C at C-34. In addition, the Forest Service also explains that the "project activities would be scheduled to accommodate both Flathead Revised Plan Guideline FW-GDL-IFS-01 and the USFWS Biological Opinion for the Flathead Revised Plan." FEIS at 269. Per the court's ruling, the referenced standard, guideline and biological opinion are legally flawed. The Forest Service fails to address this. The agency's decision to authorize road building and other actions that may adversely affect grizzly bears and bull trout is even more concerning given the Flathead National Forest's apparent maneuver to proceed with other projects that together would, in total, construct 69.8 miles of roads. By not discussing the June 2021 order, much less addressing the implications for the Mid Swan or other projects, the Forest Service ignores a relevant and important aspect of its decision for this project.

Second, the DROD authorizes an agency action that was not analyzed in the FEIS. The responsible official authorized a subset of actions analyzed in the FEIS's preferred Alternative B, making it impossible to determine what the actual environmental consequences will be from the selected alternative. DROD at 1-2, Table 1. For example, the responsible official selected an action that would implement best management practices (BMPs) on 225.1 miles instead of 448.9 miles considered in the final analysis. DROD at 5-6, Table 3, FEIS at 88, Table 34. This is in addition to constructing 6 miles of temporary roads instead of 9.5 miles, and 10.7 miles of permanent roads instead of 37.9. *Id.* These are only estimates due to the agency's reliance on condition-based management (CBM) and Appendix A to defer disclosure of specific information about the action until post-decision. The agency explains the changes from Alternative B stem from its plans to issue a separate decision for second entries in a number of subwatersheds and implementing the proposed actions for the Porcupine-Woodward, Cold Jim and Swan Lake subwatersheds.

The Forest Service appears to assume that simply because the number of acres and miles of road in the selected action are less than the acres for harvest and miles of road analyzed in Alternative B, the analysis of Alternative B must be sufficient. This over-simplification assumes too much. It ignores key differences between the selected action and Alternative B that was analyzed under NEPA, subject to public review and comment.

The following examples highlight just some of those key differences. First, the analysis assessed the effects of removing 285 culverts (out of 732 existing crossings, FEIS at 76), whereas the selected action will remove only 132 culverts. *See* DROD at 1. The agency notes that 236 of the 285 culverts

are over intermittent streams. DROD at 2, Table 1, note 2. There is no information regarding whether the 132 culverts selected in the DROD involve streams versus minor intermittent or ephemeral streams. This distinction matters to evaluate the effects of the selected action, as compared to the action analyzed in the FEIS. The agency fails to disclose or assess the lesser beneficial effects that will result from the selected action (that will remove only 137 culverts), as compared to Alternative B analyzed in the FEIS that would have removed 285 culverts. By failing to disclose or analyze the different effects of the selected action, the Forest Service fails to ensure informed agency decision making, and precludes meaningful public comment.

As a second example, the analysis assessed the effects of decommissioning 44.9 miles of road, whereas the selected action will decommission only 23.5 miles of road. The DROD states this decision will positively affect aquatic biodiversity by reducing human-caused inputs of fine-grained sediment in the aquatic ecosystem, and that this is expected to lead to higher quality fish habitat and increase in native fish population over time. DROD at 10. Yet there is no assessment or recognition that the selected action will provide less benefit to water quality and fish due to the reduced number of culvert removals and reduced number of miles for road decommissioning. There is no assessment of how these changes will result in fewer beneficial impacts for bull trout and grizzly bears. Basically, the Forest Service failed to consider the effects of the selected action. The failure to account for these key differences precludes informed decision making and meaningful public comment.

In light of these differences and apparent reduced beneficial impacts of the selected action, it is unclear how the Forest Service could identify the selected action as the environmentally preferred alternative. *See* DROD at 11. It is unclear whether the discussion in the DROD refers to impacts from Alternative B or the selected action, as compared to Alternative C. While acknowledging the selected action will treat more acres than Alternative C, the agency fails to address the lesser beneficial impacts of the selected action in terms of culvert removals and road decommissioning, and thus its reasoning for identifying the selected action as environmentally preferred is without justification, arbitrary and capricious.

Further, the selected action would implement BMPs on more road miles than what was considered in the FEIS, specifically 2.3 more miles in the South Fork Lost Soup subwatershed and 6.5 more miles in the Hemlock-Elk subwatershed. *Id.* This may be due to increases in the miles of roads the selected alternative would authorize for log hauling, but the analysis and the DROD fail to disclose this information. Further, the reduction in BMPs on 223.8 miles of road and increases in the South Fork Lost Soup and Hemlock-Elk subwatersheds are not reflected in the agency's estimate of sedimentation during the 15-yr project timeframe. FEIS at 192, Table 102. Moreover, it is unclear how these changes affect stream sedimentation. While the Forest Service may assert that its analysis is sufficient since the selected action in the DROD represents a subset of actions analyzed in the preferred Alternative B, the fact remains that it is beyond difficult to separate the potential impacts between the two, which further precludes the opportunity for meaningful public involvement.

Finally, our comments explained that the Forest Service failed to articulate the proposed action with sufficient detail or information to allow for meaningful, informed public comment. We also explained that promises for future public involvement under Appendix A do not comply with NEPA's requirements, and that providing for informal public feedback periods for individual treatment proposals only after the ROD is approved runs contrary to NEPA's requirements for informed agency decision making and meaningful public comment. Ultimately, the agency's CBM approach and lack of site-specific information precludes opportunity for meaningful public review in violation of NEPA. The Forest Service disagrees in its response to our concern related to CBM. Yet, as explained throughout this objection, the response fails to adequately address our concerns.

Suggested Resolution: Prepare a supplemental EIS (SEIS) that: (1) discloses the June 24, 2021 court decision and addresses its implications; (2) analyzes the selected action separately from Alternative B in the FEIS; and (3) provides sufficient site-specific information about the selected action instead of relying on CBM to allow for meaningful public comment regarding the potential environmental consequences of the selected action in the DROD. Reconsider the selected action in light of that analysis in a revised DROD.

II. The Forest Service fails to support claimed needs, ignores its own science, and fails to provide sufficient information.

Our comments raised serious concerns about the agency's rationale and underlying support for landscape-scale mechanical treatments due to its overreliance on historical reference conditions and use of commercial harvest as a tool for ecological restoration. In response, the Forest Service reasserts its position that such actions are not only effective, but necessary to meet the project's purpose and need: "[t]he purpose and need of the Mid-Swan project focus solely on ecological restoration and maintenance of biodiversity and reducing fire behavior in the WUI region and in areas that have influence on fire behavior within the WUI." FEIS at 7. Specifically, the agency explains "[t]he Mid-Swan proposed actions are based on a detailed assessment of current, ecologically appropriate reference, and potential future conditions using an accepted and widely cited evaluation process (Hessburg et al. 1999a, Hessburg et al. 1999b, Hessburg et al. 2000)." Further, the response to our comments states the following:

Evaluating available scientific evidence regarding the efficacy of restoration treatments, Prichard et al. (2021, p. 4) conclude that "a range of proactive management options are justified and necessary to keep pace with changing climatic and wildfire regimes and declining forest successional heterogeneity after severe wildfire." There is broad consensus in the scientific literature that thinning in combination with prescribed fire reduces the potential for high severity wildfire across many forest types and conditions in the western North America. Treatments can provide ecological benefits to ecosystem resilience beyond the reduction of wildfire severity (Prichard et al. 2021, and references therein).

FEIS at Appendix C-80. Each statement fails to adequately respond to our comments. First, the FEIS does not disclose how the analysis methods incorporated future reference conditions, and in fact omits any explanation of how the agency determined those conditions or how they informed specific treatments in the 14 watersheds expected to be drier and warmer by mid-century. FEIS at 6. Yet, the analysis claims that historical reference conditions identified and quantified ecological needs. *Id.* While Prichard et al. 2021 does support active management to reduce wildfire intensity and frequency, it also raises several other factors that the Forest Service fails to adequately address in the FEIS. For example, the researchers explain:

Fuel reduction treatments are not appropriate for all conditions or forest types (DellaSala et al. 2004, Reinhardt et al. 2008, Naficy et al. 2016). In some mesic forests, for instance, mechanical treatments may increase the risk of fire by increasing sunlight exposure to the forest floor, drying surface fuels, promoting understory growth, and increasing wind speeds that leave residual trees vulnerable to wind throw (Zald and Dunn 2018, Hanan et al. 2020).

Such conclusions indicate that treatments within riparian management zones may not be appropriate, in particular the 6,977 acres of commercial harvest proposed under Alternative B. FEIS at 48, Table 15.

In addition, Prichard et al, 2021 explains the following:

In other forest types such as subalpine, subboreal, and boreal forests, low crown base heights, thin bark, and heavy duff and litter loads make trees vulnerable to fire at any intensity (Agee 1996, Stevens et al 2020). Fire regimes in these forests, along with lodgepole pine, are dominated by moderate- and high-severity fires, and applications of forest thinning and prescribed underburning are generally inappropriate.

The Forest Service cherry picks from the Prichard analysis and fails to address aspects within the same paper that undercut the Forest Service's assertions in support of its statement of purpose and need. Ultimately, what the agency proposes is a long-term active management regime that will require repeated tree cutting and burning since nowhere does the Forest Service state that any plans to allow unmanaged wildfire to play a natural ecological role. As we explained in our comments, perpetual management with logging and prescribed burning is hardly ecological restoration, and the Forest Service's misguided efforts to mimic natural disturbance patterns fail to allow natural processes to function.

Suggested Resolution: Produce an SEIS that accurately discloses and incorporates future reference conditions as a means to identify potential ecological outcomes of each alternative and to demonstrate the appropriateness of the proposed actions within riparian areas and forest types dominated by moderate and high severity fires. Reconsider the selected action in light of that analysis in a revised DROD.

III. The Forest Service fails to demonstrate compliance with Subpart A of the Travel Management Rule.

Our comments explain at length the need for the Forest Service to identify a minimum road system for the project area since the agency has yet to fully meet its duties under the Travel Management Rule subpart A. Specifically, we explained travel analysis reports are not decision documents and in order to comply with its own Travel Management Rule, the agency must include the minimum road system determination in its decision. In response the Forest Service repeats its assertion from the Draft EIS that, “36 CFR 21.5(b) applies to the unit level of the NFS, not to individual projects.” FEIS at 99. If that is the case, then the Flathead has yet to comply with the Travel Management Rule by identifying the minimum road system through a decision document on a forest-wide scale. Given the Forest Service codified Subpart A of the Travel Management Rule in 2000, the Flathead has unreasonably delayed compliance with its own rule. The Forest Service also explains that “[a] comprehensive road by road analysis was completed for all Forest Service managed roads within and near the project area. This analysis followed Forest Service national direction for assessing roads using the Travel Analysis Planning process.” FEIS Appendix C at C-59. These responses fail to explain why meeting the TMR subpart A direction is not appropriate at the project level or why the agency did not include the minimum road system in its draft decision as part of the selected alternative. The fact that the Forest Service produced a project-level travel analysis report demonstrates compliance with 36 CFR 21.5(b) is indeed appropriate at the project level. Yet the Forest Service failed to make a determination identifying the minimum road system for this project area. The Flathead National Forest has had 20 years to fulfill these regulatory duties at the unit level and has yet to produce a decision that does so across the entire forest.

Suggested Resolution: Produce an SEIS that demonstrates compliance with the TMR subpart A requirements, and include identification of the minimum road system in the final project decision. Alternatively, produce a scoping document initiating travel management planning across the entire unit that will comply with the TMR subpart A requirements by identifying the minimum road system. Reconsider the selected action in light of that analysis in a revised DROD.

IV. The Forest Service fails to provide a reasonable range of alternatives or adequately explain why certain alternatives were eliminated from consideration.

Our comments urged the Forest Service to consider a reasonable range of alternatives and explain why certain alternatives were eliminated from consideration. We urged the agency to consider an action alternative with no new road construction (system or temporary), an action alternative with no new road construction within Riparian Management Zones (RMZs), and an action alternative that does not include any new roads within eligible wild and scenic river corridors. Further, we detail below how the agency failed to consider an alternative that implements the previous Forest Plan standard established under Amendment 19.

The Forest Service considered three alternatives: (1) Alternative A (no action); (2) Alternative B (active vegetation treatment on 97,855 acres and 41.3 miles of road building); and (3) Alternative C (active vegetation treatment on 48,434 acres and 7 miles of road building). *See* FEIS at v-viii. None of the action alternatives considered vegetation treatment without building new roads. The Forest Service's explanation for eliminating the proposed alternatives is wholly inadequate. For example, for the alternative without any new roads, the agency claims that it *did* consider such an option under Alternative C--even though Alternative C includes 7 miles of new roads. *See* FEIS at 99. This is arbitrary and capricious and fails to demonstrate reasoned decision making under NEPA. At bottom, the Forest Service failed to consider a reasonable range of alternatives.

Suggested Resolution: Prepare an SEIS that analyzes a reasonable range of alternatives, and reconsider the chosen alternative in light of that analysis in a revised DROD.

V. Improper reliance on condition-based management as a way to forgo disclosure of information necessary to allow for meaningful public comment.

Our previous comments explain that the agency's reliance on condition based management (CBM) specified in the Implementation Guide on Restoration (IGOR) under Appendix A does not satisfy the requirements for site-specific analysis and meaningful public comment that NEPA requires. In response, the Forest Service states:

The actions are described in detail with corresponding maps that display where the actions are being implemented. This level of detail combined with the estimated implementation schedule provides the public with sufficient information to inform the responsible official of any environmental issues and concerns with the actions being planned. The very detailed site-specific comments received on the Draft Environmental Impact Statement reflect the site-specific nature of the Mid-Swan environmental analysis.

FEIS Appendix C at C-1. First, the detailed comments we provide do not demonstrate the Forest Service provided sufficient analysis; rather, they follow regulations the agency established requiring "[s]pecific written comments as defined in § 218.2 regarding the proposed project or activity, along with supporting reasons." 36 C.F.R. 218.25(a)(3)(iii). To cite our compliance with the rules as a rationale for dismissing our concerns undermines NEPA's entire purpose of directing federal agencies to provide opportunities for meaningful public engagement. Our comments explain the need for further information and analysis to actually demonstrate that the project will achieve its intended purpose of ecological restoration and maintenance of biodiversity in the planning area.

Next, we recognize that the agency's analysis displayed areas where specific treatments *may* occur along with related road actions, yet these particular locations still appear to be hypothetical and individual harvest units typically shown on maps and listed in EISs are missing. The response does not address this shortcoming and agency explains the requisite information necessary to satisfy NEPA's requirements will be forthcoming after the final decision:

Vegetation treatments require silvicultural prescriptions, which provide detailed descriptions of treatments to achieve site specific objectives and meet desired conditions. The silviculturist will validate existing conditions that were used to develop the proposed action. The data collected in support of a silvicultural diagnosis include current stand conditions, such as insect and disease activity, stand composition, tree size, and structural information. The examination can be a walk-through or can follow common stand exam (CSE) protocols. It is also expected that the data collected would be sufficient to determine if a proposed area of treatment meets old growth criteria or if additional surveys are needed to make that determination.

FEIS Appendix A at A-4. This direction would be completed during the project initialization phase, and while the agency characterizes this step as routine field verification, the fact that data supporting the silvicultural diagnosis comes after the final decision and is not specified in the FEIS shows that the Forest Service plans to make its decision first, and analyze the details later, in violation of NEPA.

Suggested Resolution: Prepare an SEIS that specifies treatment units, necessary roads, and culvert and decommissioning included under the selected action that explains how these actions will achieve ecological restoration and maintain biodiversity. Reconsider the selected action in light of that analysis in a revised DROD.

VI. The analysis improperly relies on unsupported assumptions and runs contrary to best science.

Our comments explained that under CEQ's NEPA regulations the Forest Service has a duty to use high quality information and accurate scientific analysis. 40 C.F.R. § 1500.1(b). The Forest Service has a duty to "insure the professional integrity, including scientific integrity, of the discussions and analyses" in an EIS, "identify any methodologies used," and "make explicit reference by footnote to the scientific and other sources relied upon for conclusions" in an EIS. 40 C.F.R. § 1502.24. We provided the agency with numerous articles and studies demonstrating that its proposed actions are essentially gambling with crucial fish and wildlife habitat in exchange for theoretical reduced wildfire risk that may or may not actually be effective.

For example, we explained that results from Rhodes and Baker 2008 indicate that "even if fuel treatments were very effective when encountering fire of any severity, treatments will rarely encounter fire, and thus are unlikely to substantially reduce effects of high-severity fire." The Forest Service doesn't respond to this particular study or acknowledge the risk that wildfires may not actually occur in treated areas during the time such treatments may actually affect fire behavior, rather the agency cites studies, including Prichard et al. 2021 to assert that there is "[t]here is broad consensus in the scientific literature that thinning in combination with prescribed fire reduces the potential for high severity wildfire across many forest types and conditions in the western North

America.” FEIS Appendix C at C-80. Such responses indicate the Forest Service arbitrarily dismisses scientific studies that question the certainty of its position, since the numerous articles we cite in our comments demonstrate that a “broad consensus” is a vast exaggeration.

Looking at the issue of timing and treatment effectiveness, Prichard et al., 2021 acknowledges the following:

Therefore, there is some concern that treatments are ineffective because under current prescription levels, wildfires may not actually encounter treated areas during the duration of their potential effectiveness (Odion and Hanson 2006, Rhodes and Baker 2008). While this is factually accurate at the current pace and scale of treatment in wNA, the question is not whether every wildfire can be impacted by fuels treatments, but whether treatments can be strategically used to multiply their benefits and promote greater opportunities for applying wildland fire across landscapes.

The authors’ acknowledgement that our cited study is factually correct demonstrates that the agency does not disagree with our concern, but rather implies that its selected action would be strategically located to multiply their benefits, (i.e. reduced wildfire intensity), which brings us back to the fact that activities in the selected action are highly uncertain as Rhodes and Baker 2008 conclude. In essence, the Forest Service has not responded to our comment.

Further, the response is instructive because it suggests that the Forest Service will utilize wildland fire in the future, even though the DROD and FEIS fail to say it will allow unmanaged wildfires to play their crucial ecological role in treated areas by allowing them to burn, instead it asserts “[t]he action alternatives as proposed significantly increase the amount of fire on the landscape in the Mid-Swan project area.” FEIS at 162. To be clear, the agency refers only to managed fire, not the use of wildland fire. Nowhere does the Forest Service state it will change its suppression response post project completion. In fact, it is likely that the agency will not be increasing the amount of fire on the landscape since Forest Service Chief Moore issued direction on Aug. 2, 2021 directing that:

managing fires for resource benefit is a strategy we will not use. In addition, until further notice, ignited prescribed fire operations will be considered only in geographic areas at or below PL 2 and only with the approval of the Regional Forester after consulting with the Chief’s Office.

See attached Exhibit 1. Such direction contradicts the assertions in the DROD that the selected alternative will in fact meet the project’s purpose and need. Further, the FEIS fails to explain how the Chief’s direction would affect project implementation.

Suggested Resolution: Produce an SEIS that reflects the absence of scientific consensus the agency asserts in its response to our comments, and that incorporates Chief Moore’s direction. Reconsider the chosen alternative in light of that analysis in a revised DROD.

VII. Failure to assess and disclose impacts, including detailed, site-specific information.

Our comments explain that federal agencies must discuss the direct, indirect, and cumulative effects of their actions and reasonable alternatives in the EIS. 40 C.F.R. §§ 1502.16, 1508.8. An EIS must analyze the direct, indirect, and cumulative impacts of “past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7; see also §§ 1508.8 (including ecological, aesthetic, historical, cultural, economic, social and health impacts) and 1508.25(a)(2), (c). Cumulative effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions.” 40 C.F.R. § 1508.7 (1978). Forest Service regulations define reasonably foreseeable future actions as “[t]hose Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals.” 36 C.F.R. § 220.3.

The Forest Service may not ignore topics if the information is uncertain or unknown. Where information is lacking or uncertain, the Forest Service must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches.

Further, site-specific analysis is crucial to NEPA’s goal of ensuring informed and science-based decision-making. The Forest Service must provide sufficient information for the public to understand the scope of the proposed activities. In order to fully comply with NEPA, the Forest Service must adequately assess and disclose numerous impacts, including impacts from forest roads and motorized use, logging, climate change, and impacts to wildlife. The Forest Service must also assess and disclose the cumulative impacts of forest roads, access and fire; and forest roads and climate change.

The Forest Service fails to meet these requirements due to its reliance on CBM, lack of opportunity to provide for meaningful public engagement, and its continued reliance on unsupported assumptions contrary to the best available scientific information as we detail above. In particular, the agency analysis remains insufficient due to its lack of disclosure regarding the location of timber sales proposed for authorization in the DROD, site-specific impacts to grizzly bear, Canada lynx, lynx critical habitat, bull trout and its designated critical habitat, wolverine, and water quality. Without this site-specific information, the Forest Service is unable to take the required “hard look” at the impacts of its proposal and the public is unable to provide meaningful and informed public comment. Listing potential design criteria, BMPs, or thresholds in the IGOR under Appendix A remains insufficient.

A. Failure to use the appropriate baseline of roads in the No Action Alternative.

Our comments explained the need for the agency to differentiate between the existing condition in its No Action Alternative and the legal baseline of system roads and trails. The baseline should only include system roads and be separate from the no action that retains the existing condition. Such an approach is necessary in order to fully disclose the environmental consequences of the no action alternative. By failing to include a baseline of only system roads and trails in its analysis, the Forest Service failed to properly disclose the effects of the no-action alternative, which then skews the analysis for the action alternatives. In response, the Forest Service explains that “[a] comprehensive road by road analysis was completed for all Forest Service managed roads within and near the project area. This analysis followed Forest Service national direction for assessing roads using the Travel Analysis Planning process.” FEIS Appendix C at C-61.

Looking at the travel analysis report’s methods, the agency states that the analysis includes only National Forest System roads and that the “[s]cope of analysis will be limited to roads identified for aquatic restoration needs, grizzly bear compliance with 2011 baseline, and those required for project implementation.” Project file R-001 at 2. Because the travel analysis process clearly explains that non-system roads were not included, the Forest Service fails to respond to our comments and therefore our original comments stand unaddressed. The Forest Service also fails to explain its continued reliance on the 2011 baseline numbers despite the June 24, 2021 federal court ruling, or which roads would need to be closed to meet Amendment 19 under a no-action alternative.

B. Failure to properly analyze aquatic resources.

In response to our comments regarding potential sedimentation from road-related action the agency states that “[a] specific assessment of the increases and reductions associated with each road management action was completed to determine net changes in road-associated sediment delivery over the life of the project, and into future decades.” FEIS Appendix C at C-51. Further, in response to our concern about CBM the agency explained “[t]he final environmental impact statement includes detailed discussion of the site-specific effects (including for example, sediment delivery from log hauling and demonstrating compliance with forest plan direction for grizzly bears when commercial timber sales are being implemented).” *Id.* at C-2.

We address grizzly bears and forest plan compliance further below in our objection. Turning to the additional sedimentation analysis in the FEIS, it still falls short of NEPA compliance, in particular regarding the use of existing roads for log haul operations. The Forest Service explains, “[t]o access treatment areas, both alternatives include using existing open and closed National Forest System roads, including the reconstruction/improvement of existing open and closed roads.” FEIS at 75. The analysis then provides a calculation of natural sedimentation, increases from existing system roads, the number of road/stream crossings and the miles of road within the riparian management zone. FEIS at 178, Table 94. There are several flaws with this approach.

First, the agency failed to disclose the amount of sedimentation that will occur from log hauling operations on existing system roads. Instead, it provides a series of tables that include a number of road-related actions such as new construction and use of stored roads, but the analysis fails to include use of open roads. FEIS at 189-192, Tables 100-102. At the same time, the agency acknowledges that “[t]he use of log-truck associated with vegetation treatments has the potential to increase the sediment delivery rate to streams,” and discloses there will be 34,100 log truck loads under Alt. B. *Id.* at 194-195, Table 105. Rather than perform the requisite analysis, the agency asserts that “[p]lan and IGOR (appendix A) direction related to road management objectives is expected to minimize effects on aquatic resources that might result from this motorized activity,” even while acknowledging BMPs may minimize sedimentation “but site-specific, short-term minor effects are expected to occur.” *Id.* It is arbitrary and capricious for the agency to characterize sedimentation from log-hauling as short-term and minor with no analysis quantifying those amounts or defining what it considers to be “short-term.”¹ The proposed use of BMPs does not alleviate the agency from its responsibility to take a hard look at potential sedimentation from the use of system roads, not just those in storage, especially since the agency erroneously assumes those BMPs will be implemented correctly 100 percent of the time and be 100 percent effective, as we explained in our comments.

The failure to include sedimentation from log hauling on open system roads is particularly concerning for the water quality impaired segments of Goat Creek where the Forest Service manages 6,122 acres within the watershed. FEIS at 196. The agency discloses the fact that the 303(d) ranking is due to “roads, and historic timber harvest.” *Id.* Yet, the agency proposes to increase both without considering the sedimentation from log-hauling along open system roads such as Goat Creek Canyon Rd. #9530. It is likely this road is a major contributor to the impairment listing, and the omission invalidates the sedimentation calculations included in the analysis. *Id.*, Table 106.

Further, the agency’s road sediment calculations may also be inaccurate since it includes a reduction of 16,155 kilograms from the removal of stream crossings without clarifying these are project requirements, meaning the net sedimentation increase could be 25,797 kilos. The uncertainty stems from the agency’s explanation that “[i]mplementation of restoration actions, under either action alternative, would be subject to available funding at the time of implementation and do not guarantee full deployment of proposed activities unless specified as necessary mitigation or design criteria. *Id.* at 54. Even if the agency clarifies the stream crossing removal is a necessary mitigation, the increase in sedimentation is likely higher than the 9,642 kilos shown in the analysis since it did not include use of open system roads. *Id.* at 196, Table 106. Overall, the agency mischaracterizes the long-term benefits of road decommissioning and culvert removal since they are dependent on additional funding. In its response to comments, the Forest Service states:

¹ Our ability to determine the analysis failure here does not equate to the agency providing sufficient information to comply with NEPA as it contends in its response to comments: “The very detailed site-specific comments received on the Draft Environmental Impact Statement reflect the site-specific nature of the Mid-Swan environmental analysis.” FEIS Appendix C at C-1.

Funding for implementing Forest Service actions is primarily dependent on Congressional budget allocations and priorities. The Mid-Swan project decision will authorize the road restoration activities described in the ROD and analyzed in the FEIS, with the intent to implement the work as described. It is appropriate to consider the beneficial effects of implementing this work.”

FEIS Appendix C at C-63. While it is appropriate to consider the beneficial effects from road decommissioning and culvert removal, it is not appropriate to characterize the actions as certain, which was done in the sedimentation analysis.

For example, it is unclear if the long term benefits from removed road/stream crossings displayed in Table 101 reflect required mitigation measures or those that will need additional funding. *Id.* at 191. As another example, the selected action includes far fewer culvert removals and road miles for decommissioning, and thus the analysis of Alternative B does not accurately reflect the impacts of the selected action. At a minimum, the agency should have compared those beneficial actions that it will require under the selected action with those that need additional funding. Absent this necessary disclosure, any claims of improved water quality or benefits to fish populations are arbitrary and capricious, and not in compliance with NEPA’s hard look mandate.

In addition, the agency attempts to dismiss these concerns by stating the following:

None of the proposed work in the FEIS is fully funded. The referenced statement was intended to inform the public that the proposed actions associated with road restoration may require obtaining funding from multiple sources to accomplish all the objectives.

Id. at C-53.

To the extent the Forest Service relies on culvert removals and road decommissioning as a mitigation measure, under NEPA these measures must be implemented. Mitigation and other conditions established in the EIS and committed as part of the decision must be implemented. Instead of conditioning these mitigation measures on funding, the Forest Service must condition the other actions (road building, logging) on implementation of these measures. The Forest Service’s response omits the fact that the proposed logging, especially commercial logging, is likely to proceed absent any funding shortfalls for other project activities, and the road mitigations associated with logging activities will most likely occur as part of those activities. At the same time, road decommissioning not required as essential mitigation is what will be most affected by funding shortfalls, a fact omitted in the agency’s analysis.

Second, as noted above the selected action does not include all of the same culvert removals or road decommissioning that was analyzed for Alternative B in the FEIS. Thus, even assuming the analysis in the FEIS was sufficient, it fails to illustrate the anticipated effects for the chosen action. The

public is left to wonder what rates of sedimentation are anticipated based on the limited actions selected in the DROD.

Further, our comments explained that the Forest Service has yet to demonstrate the need for and the efficacy of forestry practices, particularly timber harvesting and mechanical treatments, in restoring ecological processes within the RMZ, particularly given their mesic conditions where fuel treatments can increase fire risk as discussed above (citing Prichard et al. 2021). Our comments explained that the entire need for logging within the RMZ rests upon the assumption that a theoretical wildfire will cause more harm to riparian conditions than the resulting sedimentation, soil compaction and altered habitat resulting from the selected alternative. The agency responds as follows:

The existing condition of the RMZs is likely not contributing to the decline in native fish populations in the project area. Planned RMZ vegetation treatment is not intended as a direct restoration action, rather treatment is designed to emulate natural disturbance patterns, in both intensity and extent, and serves as a long-term risk reduction practice to offset potentially higher severity effects associated with a large wildfire.

Id. at C-55. The response shows that the agency is trading dubious, theoretical wildfire risk reduction for actual, but inadequately quantified, environmental consequences that will harm critical bull trout habitat and westslope cutthroat trout in the affected stream segments. The unquantified impacts include increased sedimentation from log haul operations we detail above, in addition to arbitrary assumptions about watershed improvements resulting from unfunded road/stream restoration that may or may not occur. This in addition to erroneously assuming 100 percent efficacy of best management practices, which we discuss below.

In fact, the agency acknowledges the harm that will result from the selected action:

While the implementation of the Mid-Swan project is expected to result in a short-term negative effect to the function of some of the Primary Constituent Elements in designated bull trout critical habitat (minor changes in stream substrate including spawning areas), these effects are not anticipated to reduce the conservation value within the critical habitat as a whole for the Swan River Critical Habitat Unit, and therefore are not expected to adversely modify critical habitat on a bull trout range-wide basis.

FEIS Appendix C at C-55. Here the Forest Service suggests that a project must reduce the conservation value for an entire Critical Habitat Unit and adversely modify critical habitat across an entire range before there is a determination that the selected alternative would adversely affect bull trout or bull trout critical habitat. Such a standard is not supported by the analysis. Overall, the agency analysis still lacks adequate analysis of the selected alternative's effects to Westslope cutthroat

trout, bull trout and its critical habitat, especially in regards to the failure to disclose road-related sedimentation from log haul use, unsupported assumptions about watershed improvements meant to offset impacts, and inappropriate reliance on IGOR in Appendix A, among other failings we detailed in our comments.

C. Inappropriate reliance on resource protection measures and implementation guide for mitigation.

Our comments raised specific concerns regarding the agency's reliance on IGOR and BMPs in Appendix A to address harmful road-related environmental consequences. The Forest Service analysis and response to comments fail to adequately address this concern, which we illustrated above. Instead, the agency repeats its assertions that its mitigation measures effectively address sedimentation, which assumes 100% proper implementation and effectiveness. The agency continues to rely on Ziesak 2015 as support for its reliance on BMPs, while failing to acknowledge or address our comments that detail findings in Carlson et al, 2015 and Edwards et al., 2016.

As we explained in our comments, an EIS must include a discussion of possible mitigation measures to avoid adverse environmental impacts. *See* 42 U.S.C. § 4332(2)(C)(ii); 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.14, 1508.25(b)(3). *Id.* at § 1508.20 (defining “mitigation” to include “[a]voiding the impact altogether,” “[m]inimizing the impacts by limiting the degree or magnitude of the action,” “[r]ectifying the impact by repairing, rehabilitating, or restoring the affected environment”). The discussion must be “reasonably complete” to “properly evaluate the severity of the adverse effects” of a proposed project prior to making a final decision. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989) (holding sufficient an EIS that described specific mitigation that could be taken, even without assurances those measures would be taken). Yet, the Forest Service failed to discuss and disclose the effectiveness of mitigation, including impacts that may not be avoided even with the proposed mitigation. Again, because the selected action does not include all of the actions from Alternative B, reliance on resource protection measures and implementation guide for mitigation is even further off-base. Without some explanation for why the existing analysis is a sufficient substitute for analyzing mitigation despite the elimination of many of the beneficial actions under Alternative B, the Forest Service's DROD is arbitrary and capricious.

D. Failure to adequately analyze impacts to grizzly bears, lynx, or wolverine.

Our comments explained how the Forest Service failed to analyze direct, indirect, and cumulative impacts to grizzly bears, Canada lynx and its critical habitat, and wolverine. The Forest Service failed to adequately address our comments or provide sufficient analysis in the FEIS, as such our concerns remain unresolved. As we explained, the proposed actions lacked sufficient detail to understand precisely when, where, and how the Forest Service will carry out the selected alternative actions. This includes insufficient information regarding the road storage, closure, and decommissioning work the agency relies on to mitigate or “offset” impacts to wildlife and habitat. In particular, the Forest Service still asserts that adhering to its 2018 Revised Plan will not harm grizzly bear

populations even though it allows the selected alternative to increase motorized route densities or reduce secure core habitat within six bear management units. DROD at 18, Table 5. The Forest Service acknowledges the unresolved lack of specificity due to its continued reliance on CBM and then dismisses the harm grizzly bears will experience from being displaced by the selected alternative:

Specific amounts of disturbance to grizzly bears is difficult to predict from vegetation management activities, as motorized use and human activity may occur intermittently localized in one activity area, then relaxed as activity and disturbance shift to a different part of the implementation unit. The Mid-Swan implementation schedule is designed to ensure that any displacement remains below the threshold of tolerance define[d] by the Flathead Revised Plan and the NCDE Conservation Strategy.

FEIS at 276.

Missing from the agency's analysis is supporting evidence that demonstrates the agency's continued reliance on the NCDE Conservation Strategy and 2018 Revised Plan will in fact provide for grizzly bear recovery given its management direction replaces actual roads decommissioning with a more nebulous impassable road definition in its total motorized route density (TMRD) calculation. Further, the agency contends that temporary increases in TMRD will not harm grizzly bears, asserting they can simply go somewhere else to find secure habitat conditions. All this even after comments provided studies showing grizzly bears have adverse responses to road presence even after it becomes supposedly "impassable." As was explained, the agency's attempt to redefine total motorized route density is a clear attempt to forgo Amendment 19 standards and replace them with less protective measures.² Rather than consider an alternative that implements the more protective standards, the agency dismisses this request asserting (without justification) that such an alternative was not "feasible." FEIS Appendix C at C-33. Considering the legal challenges to the Revised Plan at the time of the project's analysis, the agency should have analyzed an Amendment 19-based alternative, and its failure to do so violates NEPA's direction to consider a reasonable range of alternatives.

Further, our comments explained that even assuming the Revised Plan direction was sufficient to protect grizzly bears, the Forest Service's reliance on Appendix A is insufficient to demonstrate compliance with those Revised Plan components. In response the agency explains that the "FEIS has been updated to provide greater detail on compliance with Revised Plan standards regarding the impacts of project activities on grizzly bear. The implementation schedule has been modified to reduce the need for multiple entries into an individual subunit, and to increase the rest period in subunits where multiple entries are necessary." *Id.* at C-34. We acknowledge the additional details and changes to the implementation schedule, but Appendix A still does not specify which design

² See Swan View's comments on the NCDE Grizzly Bear Conservation Strategy and Habitat-Based Recovery Criteria (Scoping DVD Folders 21 and 22) and in Swan View's Objection to the revised Revised Plan (Scoping DVD Folder 00), each incorporated into our Mid-Swan DEIS comments.

criteria will apply to which particular timber projects precisely because identification of harvest units will only occur after the agency issues its final decision and begins implementation. For example, in regards to areas of wildlife connectivity, Appendix A directs that “[v]egetation management activities in the priority connectivity corridors (figure 18 from FEIS) identified in the Mid-Swan EIS analysis will be designed to maintain sufficient tree density, canopy cover and structure to provide opportunities for wildlife travel.” FEIS Appendix A at A-51. Yet, the agency does not specify what tree densities, canopy cover or structures it will maintain for each vegetation treatment unit, or demonstrate in the analysis that such nebulous direction will in fact provide for connectivity, not only for grizzly bears, but other at risk species, including Canada lynx.

Regarding the latter, the agency explains “[t]he Mid-Swan project does acknowledge the reality that while working in multistory forest will reduce lynx habitat connectivity, these impacts are small compared to the benefits of increased habitat heterogeneity and landscape resiliency.” FEIS Appendix C at C-22. Yet, the agency also explains “[i]f the post-project early stand initiation habitat matures into stand initiation habitat over 10-20 years following project implementation, and assuming that existing multistory availability and connectivity is maintained, the availability of reproductive core habitat within the project area will rise to over 9,600 acres within 20 years.” However, the agency’s response shows that connectivity will in fact decrease and the analysis fails to demonstrate how these impacts are “small” or show how the project will achieve the supposed benefits of increased landscape resiliency from its logging activities as we explain above and in our comments.

In addition, the agency provides another inadequate design criteria that directs “...for the following species, if any of the following are found within or close to any authorized activity, operations within that immediate area will cease until a Forest Service wildlife biologist is notified and, if necessary, activities are modified: • Active denning sites used by bears, lynx, fishers, or wolverines;” *Id.* at A-50. Such direction leaves it up to someone else besides a wildlife biologist, presumably the timber purchaser, to decide if a den site may or may not be active. The design criteria does not specify what modifications would be made or how the agency would decide if they are indeed necessary. The failure to disclose such necessary information makes any conclusion as to the efficacy of this design criteria completely arbitrary and in violation of NEPA.

E. Failure to properly analyze the road network.

Our comments explained at length the analysis deficiencies pertaining to roads within the project area and we provided several factors to analyze within a dedicated roads chapter of the FEIS. These include the history of the existing road system, the presence of unauthorized roads and road templates that continue to persist in the project area, the agency’s history of road maintenance, the number of roads not currently meeting road management objectives and the capacity for future road and road-related BMP maintenance, among other factors. The Forest Service did not include such a dedicated analysis in its FEIS, and in response to our comments the agency refers back to the project-level Travel Analysis Report: “[t]his analysis followed Forest Service national direction for

assessing roads using the Travel Analysis Planning [TAP] process. This process is described in section 1.5 and 2.5 of the FEIS.” FEIS Appendix C at C-59. The national direction for the TAP process allows forest units wide discretion for setting up and conducting the analysis.

Our comments detail numerous flaws within the Mid-Swan TAP that the agency failed to address in its response or in the FEIS. For example, we explained that the TAP’s risk assessment failed to include a category that considered increased human wildfire ignitions facilitated by road access. Here the agency did respond that a majority, 61% of wildfires between 1986 and 2018 were lighting caused, meaning 39% were human-caused. The agency describes this figure as a “minority,” and asserts that none of those fire starts were correlated with road access. It is important to note here that 39% is quite different than say 5%, and it is clear human-ignitions are a significant factor that the agency cannot dismiss by characterizing the amount as a “minority.” Further, the agency fails to disclose how it determined there were no correlations between roads and human-ignited fires in its analysis.

Additionally, our comments raised significant concerns about unauthorized use of closed and stored roads, and the agency’s assertion that 95% of closure devices, including gates and berms, are effective. In response, the Forest Service cites past monitoring reports summarized in Project File H-10, which simply repeats what was in the draft EIS. *Id.* at C-35. The response fails to address our comments since the project file provides no discussion or evidence to support its findings, and that it lacks any details of monitoring efforts since 2015. Had the agency included a dedicated roads section in its analysis, then it would have been able to better explain the validity of its past monitoring and provide more recent results, however, the FEIS lacks such details.

Our comments also explained the Forest Service failed to adequately analyze potential effects from temporary roads such as increases in road densities and wildlife habitat fragmentation, or consider measures to ensure temporary roads do not become unauthorized roads. In fact, given the proposed use of unauthorized roads, it is reasonable to ask the agency to keep track of their location and method of removal, especially where the road prism or other road components may be left on the ground. As we explain in our comments, temporary roads may persist on the landscape for up to 10 years, and the agency’s analysis fails to fully account for the potential environmental impacts during this time. In response, the Forest Service states:

Temporary roads constructed for accessing timber sale units would be gated closed to public use during the life of the timber sale contract. All temporary roads would be rehabilitated following project activities. Rehabilitated temporary roads will be left in a manner that meets the forest plan definition of impassable. Typically, this is accomplished by treating the first 50 to 300 feet to make it inaccessible to wheeled motorized vehicles.

Id. at C-60. The agency’s response does not refute the increase in road densities or habitat fragmentation, but it still fails to properly analyze those impacts. Rather it asserts the roads will be impassible, while omitting how long they may remain in place since the analysis still fails to disclose

the length of individual timber sales, or how long temporary roads may actually remain following project activities. The agency also fails to demonstrate the closure devices and treating only 50 to 300 feet will effectively prevent unauthorized use.

- F. Failure to consider how this project will amplify the reality of the existing climate crisis, instead relying on unsupported and false assumptions that logging is the only option.

Our comments urged the Forest Service to disclose and address the impacts of climate change, and how the proposed activities will further exacerbate the impacts of climate change. Yet the Forest Service fails to consider how this project will amplify the climate crisis, relying on unsupported and false assumptions that cutting the trees will save the forest. The agency claims to make this decision “in consideration of the increasing effects from a changing climate,” DROD at 9, yet maintains the false assumptions that heavy active management of the forests will somehow alleviate or help the forest adapt to the changing climate. The Forest Service ignores the existing climate crisis, the impacts of which we are witnessing today. It is no longer sufficient to point to some future hypothetical climate effect.

We do not simply advocate for less active management due to the uncertainties of future effects of climate change. Indeed, Guardians and the Center for Biological Diversity advocate for less logging and road building because of the real, current, and ongoing effects of climate change that we are seeing today. Conserving mature and old-growth forests and trees on federal public lands is one of the most straightforward, impactful and most cost-effective climate solutions that is within the Forest Service’s authority as the agency in charge of managing the nation’s national forests. Failure to even consider this approach as an alternative to achieving a more resilient forest landscape ignores crucial and relevant factors.

Preserving the forest instead of logging it will help mitigate and adapt to the current and future impacts of climate change, and conserve habitat to counter the biodiversity crisis. This approach is in line with the Executive Order on Tackling the Climate Crisis at Home and Abroad and efforts to protect 30 percent of lands and waters by 2030. Preserving older forests is important because they store vast amounts of carbon accumulated over decades to centuries. Cutting those forests down emits the majority of that carbon back to the atmosphere. Plus, older forests sequester vast amounts of carbon from the atmosphere—a critical tool as emissions reductions alone are an insufficient strategy for countering the worsening climate crisis. And older forests are essential biodiversity reservoirs. The Forest Service notes that Canada lynx face threats from climate change, yet fails to consider preserving the forest as a method for addressing that threat as opposed to more logging and road building.

Indeed, the Forest Service states that it “believes less active management to be irresponsible given the existing and expected future conditions for this landscape.” DROD at 9. It assumes, with broad references to “scientific resources” but without any actual support cited, that “taking an active role

in guiding landscape change” will somehow “improve the resilience of forests to disturbance from fire, drought, insects and disease.” DROD at 9. We agree that “failure to act will most likely result” in the continued decline of Canada lynx, bull trout, and whitebark pine. DROD at 9. We strongly disagree that logging is the answer, much less the only alternative.

Drought and heavy winds are the key factors affecting wildfire risk. The Forest Service fails to acknowledge this in its analysis of this project. By narrowly focusing on vegetation management - namely, logging and building forest roads - the Forest Service ignores best available science showing these actions may in fact *not* reduce the area’s susceptibility to uncharacteristic wildfire. Instead, the Forest Service should focus on ensuring the private properties it seeks to protect are fire resistant. This is the best use of resources. This adaptive approach also acknowledges the reality that the effects of the climate crisis are real and happening now. In the very least, the Forest Service must consider the effects of an alternative that does not log the forest in light of the impacts from climate change and how such an alternative will help contribute to mitigating climate change.

Suggested Resolution: Produce an SEIS that differentiates between the existing road condition in its No Action Alternative and the legal baseline of system roads and trails; provides specific analysis of the selected alternative; fully accounts for potential sedimentation and impacts to Westslope cutthroat trout, bull trout and its critical habitat; does not assume 100 percent efficacy of BMPs and design criteria in Appendix A; explains differences in effects and mitigation anticipated under the selected action compared to Alternative B; demonstrates the selected alternative will contribute to the recovery of at-risk species; fully analyzes roads; and addresses climate change. Reconsider the selected action in light of the revised analysis in a new DROD.

VIII. Failure to demonstrate compliance with the National Forest Management Act.

A. Failure to demonstrate compliance with the 2012 Planning Rule.

The plan components and definitions in the 2018 Flathead Revised Plan fail to comply with the 2012 NFMA Planning Rule as we described in our comments. Specifically, we explained NFMA and its regulations impose both procedural and substantive requirements for Revised Plans. 16 U.S.C. § 1604g(3)(B); 36 C.F.R. §§ 219.19; 219.20; 219.26.

For example, the Revised Plan lacks adequate components to provide the ecological conditions necessary to recover species listed under the federal ESA and to conserve species proposed for listing, including grizzly bears, Canada lynx and its critical habitat, bull trout and its critical habitat. The 2012 planning rules require a Revised Plan to “provide for the diversity of plant and animal communities.” 36 C.F.R. § 219.9. The Revised Plan must include plan components “including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.” *Id.* § 219.9(a)(1). Best available science shows

that forest roads have numerous negative impacts on grizzly bears, bull trout, and Canada lynx, and can adversely impact water quality (see *infra*).

Yet the selected alternative in the DROD still proposes to add 10.7 miles of permanent roads and 6.0 miles of temporary roads to the project area's 567-mile existing road system, while only decommissioning only 23.5 miles if there is adequate funding available. DROD at 1-2, Table 1. The selected alternative would commercially log 3,630 acres within the Riparian Management Zone, and it is unclear how many miles of road construction would occur in support of this action. The selected action would also increase road densities and/or reduce secure core in 6 BMUs. *Id.* at 18, Table 5.

Should the Forest Service proceed with these actions, it would be applying the fundamentally flawed 2018 Revised Revised Plan standards in order to allow for the construction of new forest roads within grizzly bear secure core habitat. This is a major change from the previous Revised Plan, under which objectives and standards from Amendment 19 had proven beneficial to wildlife including grizzly bears. By eliminating Amendment 19 objectives and standards in the 2018 Revised Revised Plan, the Forest Service rescinded its earlier commitment to decommission 518 miles of roads. The 2018 Revised Plan proposes to decommission only 30-60 miles of roads over the life of the plan, an abysmal reduction. And, based on this Mid-Swan Project, it is clear the Revised Plan allows new forest road construction within crucial grizzly bear habitat, demonstrating that the Revised Plan lacks standards and guidelines to maintain or restore the ecological integrity of terrestrial ecosystems on the forest, including plan components that maintain or restore structure, function, composition, and connectivity to contribute to the recovery of grizzly bears in violation of the 2012 planning rules. The Revised Plan also lacks standards or guidelines to provide for connectivity of grizzly populations, especially between the NCDE and Greater Yellowstone Ecosystem to the South of the Flathead.

In addition, Guideline FW-GDL-IFS-04—which does not require removal of culverts from forest roads even when decommissioned, attempting to make them impassable, or storing them—combined with the weaker culvert monitoring program that reduces requirements to once every six years as opposed to annually under the Flathead's Revised Plan puts water quality and bull trout and bull trout critical habitat at risk in violation of the 2012 planning rules. By allowing the addition of new forest roads within RMZs, the Revised Plan demonstrates its lack of sufficient standards and guidelines to maintain or restore the ecological integrity of terrestrial ecosystems on the forest, including plan components that maintain or restore structure, function, composition, and connectivity to contribute to the recovery of bull trout in violation of the 2012 planning rules.

Further, our comments explained that the monitoring provisions under the 2018 Revised Plan are inadequate to ensure adherence to those standards and guidelines. We explained that a forest plan must include a monitoring program that enables the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. *Id.* § 219.12(a)(1). The monitoring program must include monitoring questions and

associated indicators “designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan’s desired conditions or objectives.” *Id.* § 219.12(a)(2). The monitoring program must contain one or more monitoring questions and associated indicators addressing, inter alia, the “status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern.” *Id.* § 219.12(a)(4)(iv). Here, the Revised Plan’s monitoring program lacks questions and associated indicators to test relevant assumptions, track relevant changes, or measure management effectiveness and progress toward achieving or maintaining the ecological conditions required under § 219.9 to contribute to the recovery of the grizzly bear as we explained in our comments.

The agency’s response to comments fails to address these issues, further demonstrating the flaws in authorizing the selected alternative described in the DROD.

B. Failure to demonstrate compliance with the Flathead’s 2018 Revised Plan.

At the outset, the Revised Plan’s components relating to grizzly bears, bull trout, and roads are legally unsound as explained above. Because portions of the FWS’s 2017 biological opinion supporting the Revised Plan are invalid, the corresponding components and definitions are therefore also legally unsound, specifically:

- Standard FW-STD-IFS-01 to -04
- Guideline FW-GDL-IFS-01 and -02
- Guideline FW-GDL-CWN-01
- and associated glossary definitions of:
 - baseline
 - decommissioned road
 - impassable road
 - intermittent stored service/intermittent service road, closed to traffic
 - temporary road
 - secure core/grizzly bear
 - total motorized route density

As such, the Forest Service cannot rely on the Revised Plan to demonstrate compliance with NMFA or the ESA - especially not without mentioning and explaining the impact of the June 24, 2021 federal court ruling. The Mid Swan Project relies on legally unsound Revised Plan components, including but not limited to components that depart from Amendment 19’s road density and reclamation standards and reliance on the 2011 baseline conditions as a reference for NFMA and ESA compliance. As mentioned below, the public has not been given the opportunity to review the

Forest Service's biological assessment for the Mid Swan Project, so we are unable to comment on whether the project also relies on the flawed surrogate from the 2017 biological opinion's incidental take statement concerning grizzly bears. The Forest Service's continued reliance on these plan components without any mention of the June 24, 2021 federal district court ruling is unreasonable and fails to disclose relevant information to the public, thus precluding meaningful and informed comment.

Even so, this project is not consistent with those legally flawed components. Our comments explained that under NFMA, specific projects like this must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15. A project or activity must be consistent with all applicable plan components, including the desired conditions, standards, and guidelines. See *All. for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1110 (9th Cir. 2018).

Here, the Forest Service selected an alternative without adequately demonstrating how the authorized actions would be consistent with the 2018 Revised Plan. Specifically, the Forest Service failed to show how the selected alternative will meet the grizzly bear road management standards, including road density calculations, partly due to the fact that the FEIS did not disclose the environmental consequences from the selected action. The details are obscured by the analysis of the larger preferred alternative as we object to above, and major key differences between the actions considered under Alternative B and the actions authorized in the DROD. Further, the agency fails to properly demonstrate how the selected action will maintain or restore the structure, function, composition, and connectivity to contribute to the recovery of the NCDE grizzly bear population and Canada lynx. In particular, the agency's analysis failed to explain how the selected action, including the plans to build new system roads, construct temporary roads, reopen or reconstruct roads, and authorize log hauling on numerous forest roads, will contribute to the recovery of grizzly bear, Canada lynx, and bull trout. The Forest Service failed to explain how the selected alternative will conserve wolverine as well.

Grizzly Bear Components

Many of the deficiencies we object to stem from the agency's reliance on IGOR provided in the FEIS, Appendix A, which we explained in our comments are inadequate to ensure treatments are properly dispersed in space and time consistently with the Revised Plan standards and guidelines. In response, the Forest Service provides a revised schedule for actions in the selected alternative. DROD at 3-4, Table 2. However, the Forest Service's reliance on Appendix A is insufficient to demonstrate compliance with several Revised Plan components. Appendix A does not explain which design criteria will apply to which particular timber projects. It does not identify when specific treatments will occur within the revised schedule, precluding the public from understanding how treatment units might relate in space and time. Because that information will be determined at some future point during implementation, it is not available during this NEPA process. Without this information, it is impossible to determine how the Forest Service will ensure compliance with the Revised Plan.

For example, FW-STD-IFS-02 requires no net decrease to baseline for secure core and no net increase to baseline for OMRD or TMRD on forest system lands during the non-denning season. *See* 2018 Flathead Revised Plan at 65. It is impossible for the Forest Service to demonstrate compliance with this standard based on the information in the FEIS because it still lacks detailed information about the timing and location of unit implementation and the new road construction proposed to facilitate activities. Specifically, the Forest Service claims it will comply with secure core requirements because “new road construction is offset by road closures and decommissioning” such that the percentage of secure core in nine GBSUs increases, and in the remaining six the percentage remains constant. FEIS at 270. Here, the Forest Service ignores the timing of road construction, decommissioning, and closure, as well as the location of these activities. Without such details, the information provided in the analysis fails to provide any support for the agency’s conclusory statements that its actions will comply with the plan components. As we explained in our comments, even assuming the Forest Service provides such details, the agency’s reliance on “offsets” is unfounded. Compounding everything, the information in the FEIS is not accurate because the selected action does not include all actions under Alternative B. At bottom, the Forest Service fails to demonstrate compliance with the 2018 Forest Plan.

Riparian Management Zone Components

Our comments questioned the validity of the agency’s assertion that vegetation conditions, flood prone area, and design criteria (i.e., PLT02, AQ06, AQ13, AQ14) will provide sideboards for treatments in riparian management zones (both inner and outer). The agency repeats those assertions in its latest analysis. FEIS at 198-199. Yet, the analysis still fails to delineate when, where, and how the Forest Service will comply with these requirements, which precludes the agency from demonstrating compliance with the Revised Plan. Further, the Forest Services relies too heavily on BMPs to meet its Revised Plan requirements explaining:

Vegetation management activities such as skid trail use, timber harvest, site preparation and stand regeneration treatments, and prescribed burning have the potential to affect watershed processes that could result in increased soil erosion and nutrient delivery to streams and reducing a source of potential instream woody material.

However, long-term monitoring of these activities when best management practices are properly implemented, have found that the adverse effects of forestry activities on hydrologic response, sediment delivery, stream temperature, dissolved oxygen, and concentrations of nutrients and pesticides can be minimized and water quality and associated aquatic resources can be protected.

Id. at 199. The agency cites Ziesak 2015 as evidence of BMP effectiveness, yet the Forest Service failed to respond to our comments showing that it is erroneous to assume those BMPs will be implemented properly 100 percent of the time and be 100 percent effective.

Old Growth Components

Our comments raised serious concerns regarding the agency's proposal to cut old growth in order to save it from stand replacing wildfires. Setting aside the flawed assumptions and ill-advised nature of this approach that we detail in our comments and object to above in Section I, we also raised the issue that the agency fails to provide an inventory of old growth stands. In response, the Forest Service again shows the deficiencies of relying on condition-based management, deferring old-growth stand identification until after it signs the final decision, responding "[f]ield surveys to verify potential old growth status of late seral forests are best done closer to the time of implementation." FEIS Appendix C at C-5. As such, the Forest Service fails to demonstrate compliance with NFMA by deferring the details about how it will comply with Revised Plan standards and guidelines until after its decision is made.

C. Improper project-level plan amendments.

The Forest Service proposes two project-specific amendments to the 2018 Revised Plan for lynx habitat that would allow it to increase forest management in lynx habitat outside of the WUI. Our comments stated they are inappropriate as project-specific amendments since the Forest Service claims the change is needed to account for more recent science. We explained nothing about the justification is specific to this project, but rather based on new science related to lynx and lynx habitat needs. That type of information justifies a forest-wide amendment. The Forest Service should account for new science via an amendment to the NRLMD itself. In response the agency states "[t]he use of a project-specific Revised Plan amendment is appropriate as it [is] only for this specific project area and specific to the conditions found in the Mid-Swan landscape." *Id.* at C-33. The response does not comport with the agency's rationale for the plan amendments:

In 2018, the Flathead National Forest finalized a Revised Plan that incorporated many of the key elements from the LCAS and NRLMD, as modified by a Biological Opinion from the USFWS.

Since the release of these documents, new science has been published clarifying the relationship between lynx habitat use, reproduction, and both the composition and configuration of forest structural stages, as well as the relationship between lynx ecology and disturbance regimes.

FEIS at 226. The Forest Service contends that the new science referenced in its analysis is only applicable to the Mid-Swan project area, suggesting that the conditions found therein are unique to the Lynx Analysis Units (LAU) within the project area and the science would not be applicable in any LAU outside the Mid-Swan area. Yet, in support for the project-specific amendments the Forest Service explains:

due to large scale forest homogenization, existing mature lynx and snowshoe hare habitat in the region is at high risk of large, stand-replacing fire (e.g., Crazy Horse Fire - 2003, Rice Ridge Fire - 2017), which can result in the loss of large swaths of suitable habitat and large-scale habitat homogenization. Restoring natural levels of forest heterogeneity, through a diverse array of vegetation management and prescribed fire, will help promote habitat resilience without the risk of large-scale habitat loss.

FEIS at 10. Nothing in this statement explains unique aspects of the Mid Swan Project area compared to the rest of the forest. The Forest Service does not claim that the supposed large-scale forest homogenization does not exist outside of the Mid-Swan project area. The FEIS fails to demonstrate that the need for the Revised Plan amendments is unique to the Mid-Swan project area.

Further, our comments explained that the Forest Service's proposed amendment creates an enormous amount of discretion for the agency, essentially nullifying the original standard (requiring new information be peer reviewed and accepted by the Forest Service's regional office), without adequate justification. We explained that the Forest Service erroneously assumed that its actions have the potential to improve lynx habitat functionality but failed to provide adequate support for that assumption, much less demonstrating the new science is the best available science. Thus, the amendment lacks any basis other than the Forest Service does not wish to comply with the NRLMD standard that is grounded in best available science, and which has been vetted through ESA consultation. In response, the Forest Service asserts that "best" science is a subjective term, suggesting that it may not be "good" science. FEIS Appendix C at C-27. It appears the Flathead National Forest is setting aside the best available scientific information, that which is based on peer reviewed science and accepted by the Forest Service Regional Office, for its own definition of "good" science. Such assertions are a clear violation of the 2012 Planning Rule that directs

The responsible official shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered.

36 C.F.R. 219.3. The rule also requires the responsible official to provide documentation to "[i]dentify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered." The Forest Service analysis supporting the amendments to the Revised Plan fails to adequately demonstrate that the "good" science it relies on is in fact more accurate, reliable and relevant than the best available science used in the Revised Plan.

Ultimately, neither of the proposed amendments are appropriate as project-level amendments, and the Forest Service fails to provide sufficient justification for the proposed amendments.

Suggested Resolution: Revise the analysis to demonstrate how the selected action complies with the 2012 planning rule and 2018 forest plan, and revise the analysis to justify project-specific plan amendments instead of a forest-wide amendment. Reconsider the DROD's selected action in light of this revised analysis.

IX. The Forest Service fails to demonstrate compliance with the ESA.

The Forest Service has an independent duty to demonstrate this project complies with the ESA by ensuring the project will not jeopardize the continued existence of listed species. This determination must be based on the best scientific and commercially available data. The Forest Service fails to make that demonstration here. It states that the agency is preparing a biological assessment for all federally listed and proposed species. DROD at 17. This is woefully inadequate at this stage in the project, especially in light of the federal district court ruling invalidating aspects of the 2017 forest plan biological opinion and incidental take statement that implicate forest roads, grizzly bears, and bull trout, issues that are very much relevant to this project. *See* Ex. 2. The Forest Service also does not disclose its biological assessment, preventing meaningful public comment.

Grizzly Bear

Our comments stated the agency's analysis fails to consider impacts to the grizzly bear population as a whole, not just the NCDE subpopulation. We also explained that to the extent the Forest Service relies on the Conservation Strategy for the NCDE to supplement or support its analysis here, that reliance is misplaced because the Conservation Strategy never went through a NEPA process or ESA consultation. The Forest Service acknowledges our comment but then fails to respond, instead focusing on the data and science used to dismiss Amendment 19 standards. FEIS Appendix C at C-35. The federal district court order soundly rejected such arguments. *See* Ex. 2 at 34-35 ("The mere fact that the population was increasing from 2004-2011 does not justify moving away from the existing management requirements of Amendment 19").

As another baffling example of how the Forest Service's DROD appears to ignore the recent court decision, the analysis appears to continue reliance on the 2011 baseline numbers of road density and secure core that the district court found to be flawed. *Compare* DROD at 18, Table 5 (comparing route density and secure core to "baseline") *with* Ex. 2 at 35 ("The Fish and Wildlife Service violated the ESA by arbitrarily adopting the 2011 access conditions as a target for protecting grizzly bears").

Bull Trout

The Forest Service acknowledges that "[i]t is likely that bull trout would be adversely affected by the implementation of either alternative B and C." FEIS at 212. As we explained in our comments, the Forest Service must demonstrate compliance with the ESA for the selected action. This is especially important given the court's ruling "that departing from Amendment 19's culvert removal requirements violated the ESA as it relates to bull trout." Ex. 2 at 11-12. The Forest Service fails to

resolve this violation in its analysis and decision to allow the retention of up to 10 culverts when placing roads in long-term storage. FEIS Appendix C at C-63.

Canada Lynx

In addition, we explained the Forest Service failed to adequately demonstrate how the project contributes to Canada lynx recovery and complies with the NRLMD, including in the context of climate change, proposed logging, road construction, and resulting habitat fragmentation. Because the project lacks site-specific information about the location, nature, and timing of the proposed actions, the Forest Service fails to demonstrate compliance with the ESA. The agency did not provide this level of specificity in its analysis or respond to our concerns regarding this failure due its continued reliance on condition-based management.

Suggested Resolution: Refrain from issuing any decision until Section 7 consultation with the Fish and Wildlife Service that addresses the June 24, 2021 district court ruling is complete. Revise the selected action to ensure compliance with the ESA. Publicly disclose the biological assessment, biological opinion, and any other consultation documents on the project website.

X. Failure to demonstrate compliance with the Clean Water Act.

Our comments explained the CWA requires all federal agencies to comply with water quality standards, including a state's anti-degradation policy. 33 U.S.C. § 1323(a). The Forest Service must demonstrate that all activities in this proposal comply with the CWA. In particular, it must ensure its proposal for logging, and the associated road construction, maintenance, and ongoing log hauling and other uses of these roads, will not cause or contribute to a violation of Montana's water quality standards.

Perhaps the most blatant omission in assessing water quality impacts is the fact that the selected action does not reflect the Alternative B that was analyzed in the FEIS. To demonstrate compliance with the CWA, the Forest Service points to its analysis in the FEIS. This is wholly inadequate, given that the selected action does not include the same amount of road decommissioning, culvert removal, and other environmentally beneficial actions as analyzed in Alternative. As such, the Forest Service fails to demonstrate compliance with the CWA.

Focusing on the analysis of Alternative B, the agency failed to adequately analyze sedimentation from log haul activities or demonstrate Best Management Practices (BMPs) meant to ensure CWA compliance will actually be as effective as the agency characterizes. In addition, BMPs and project design features are insufficient to fully mitigate the impacts to water quality and water quantity that will result from this project, without more site-specific detail as to where, when, and how the logging treatments and associated forest roads (and necessary equipment and log hauling) will occur. Further, the Forest Service expects that even assuming 100 percent proper BMP implementation and effectiveness, the project will increase sedimentation within water quality limited segments of

Goat Creek by 9,642 kilograms, a figure that is likely higher given the agency's inadequate analysis. The Forest Service's analysis fails to demonstrate how the activities under Alternative B will benefit water quality in the project area, much less avoid causing or contributing to a violation of water quality standards.

Suggested Resolution: Provide an SEIS to demonstrate how the selected action complies with the CWA despite omitting many aspects of the full Alternative B that would have been beneficial to water quality and aquatic life. Reconsider the selected action in the DROD in light of that new analysis.

XI. Failure to ensure compliance with the Roadless Rule and NEPA, and otherwise avoid unroaded areas.

Our comments explained at length the importance of unroaded areas and the need to fully comply with the Roadless Rule. Yet, despite the institutional command that the Forest Service safeguard and conserve these areas, the Mid-Swan Project attempts to squeeze through the Roadless Rule's narrow exceptions logging across over 10,000 acres, as well as heavy equipment use, in roadless areas. The Mid-Swan Project does so without the site-specific analysis the Forest Service required and expected when it adopted the Roadless Rule. Further, what analysis the FEIS contains does not demonstrate that the selected action (not analyzed in the FEIS) will meet any of the requirements of the Roadless Rule exceptions. The Forest Service's proposal and analysis of roadless area logging violates the Roadless Rule.

A. The Mid-Swan Action Alternatives Propose Tree Removal in Inventoried Roadless Areas.

The Final EIS contemplates tree removal in two "management emphasis groups" (MEGs) involving inventoried roadless areas: the "inventoried roadless" MEG, and the "recommended wilderness" MEG, which is also comprised almost entirely of inventoried roadless areas.

The Final EIS proposes at least three types of logging treatments within the "inventoried roadless" MEG. First, Alternative B, the selected alternative, proposes "[m]echanized treatments for non-commercial objectives" in roadless areas. The Final EIS states:

Treatments in this category are only proposed for inventoried roadless areas and immediately adjacent small areas, for a total of 1,697 acres for Alternative B [about half that initially proposed for Alternative B in the Draft EIS]

Treatments have various objectives including decreasing stand densities to increase vigor of large and desirable trees, reduce unnatural fuel loadings, improve wildlife habitat, and promote western white pine or whitebark pine on suitable sites.

Treatments may create openings to regenerate western white pine and whitebark pine by planting rust-resistant seedlings....

All treatments in inventory roadless areas would be non-commercial and no new roads are proposed. Where necessary, fuel treatments such as piling and burning, yarding, slashing and lop and scattering, jackpot burning, or broadcast burning would take place.

Final EIS at 63. *See also id.* at 359 (“These treatments would reduce stand densities and create openings in Inventoried Roadless Areas.”).

Second, both action alternatives propose “[m]echanized young stand thinning (also called pre-commercial thinning)” to “adjust tree density and species composition” in the inventoried roadless MEG. Final EIS at 63. “This tool would primarily be used in young stands to reduce the density of saplings and small poles up to a maximum diameter of 6” at breast height. Treatments would increase the growing space and tree health in young forest stands and select for preferred species such as ponderosa pine, western larch, Douglas-fir and western white pine.” Final EIS at 63-64. The Forest Service proposes 49 acres of mechanized young stand thinning under Alternative B, about one-fourth the acreage proposed in the Draft EIS for Alternative B. *See* Final EIS at 62 (Table 23).

Third, 10,419 acres of inventoried roadless areas could be treated with “hand treatments” under Alternative B in the inventoried roadless MEG, more than 300 acres more than proposed in the Draft EIS. Final EIS at 65 (Table 25). “Hand treatments include activities such as hand thinning, pruning, girdling, hand piling and burning, prescribed fire, tree planting and direct seeding. Activities may include potential helicopter support in remote areas, including recommended wilderness areas, without road access. Treatments address fuel reduction needs to reintroduce fire in stands historically characterized by frequent low-severity fire.” Final EIS at 66.

In total, Alternative B would involve tree removal on 12,162 acres of 17,198 acres (71%) of the inventoried roadless MEG in the project area. Final EIS at 70 (Table 70).

The Final EIS also contemplates significant tree removal inside recommended wilderness areas, which the Forest Service identifies as a separate “management emphasis group,” despite the fact that the vast majority of land within recommended wilderness also constitute inventoried roadless areas protected by the Roadless Rule. Under Alternative B, 7,788 acres of recommended wilderness areas could be subject to hand treatments, including thinning, about 12,000 acres less than proposed in the Draft EIS. Final EIS at (Table 27); *see also* Draft EIS at 62-64 (Tables 26, 27).

The Final EIS affirms that “[a]ll treatments in inventor[ied] roadless areas would be non-commercial and no new roads are proposed.” Final EIS at 63. However, the analysis also admits that under Alternative B, “heavy equipment (for example, excavators and masticators) could be operated in some of the areas (1,743 acres) within the boundaries of inventoried roadless areas.” Final EIS at vii, 98.

B. The Action Alternatives Violate the Roadless Rule Because the Forest Service Fails to Ensure Logging in Roadless Areas Will Be “Infrequent.”

The Mid-Swan action alternatives fail to ensure that the “cutting, sale, or removal of timber” will be “infrequent” as the Roadless Rule requires. 36 C.F.R. § 294.13(b). The removal of timber will occur over a vast portion of the roadless landscape – well over half of the inventoried roadless MEGs under Alternative B. Further, timber removal may occur over a 15-year period, from 2023-2037, with impacts lasting up to seven years longer than that. Final EIS at 340 (“Project implementation would likely occur for up to 15 years post-decision.”); *see also id.* at v, 54, 103, 154 (time period); *id.* at 388 (“Both action alternatives would result in varying levels of unavoidable short-term adverse effects (5-7 years post implementation) on inventoried roadless areas ... [and] recommended wilderness”).

“Infrequent” is defined as “seldom happening or occurring” and “rare.” *See* Merriam-Webster online dictionary, available at <https://www.merriam-webster.com/dictionary/infrequent> (last viewed Oct. 25, 2021). There is no reasonable construction of the term under which tree removal over this large landscape, and this significant portion of all roadless areas within the project area, over this time scale, could be considered “infrequent.” The Final EIS does not address this requirement in the context of the Roadless Rule. Unless and until the Forest Service ensures that tree removal will be “infrequent” and “rare,” it cannot approve Alternative B.

The Forest Service may attempt to address concerns regarding this provision of the Roadless Rule in a single sentence in its response to comments, in which the agency argues: “Implementation would occur over 15 years, however, would be staggered across the landscape so that impacts would be limited to smaller areas at a time.” Final EIS, Appx. C, Response to Comments at C-74. However, staggering the impacts over time will only ensure that tree removal will be constantly ongoing over the Forest’s roadless areas for the entire 15 years of the project, ensuring that such treatments will be frequent and ongoing, the precise opposite of the Roadless Rule’s requirements.

- C. Alternative B and the selected action violate the Roadless Rule and NEPA by failing to identify an exception authorizing tree removal and by failing to undertake a site-specific analysis of small diameter timber.

While the Forest Service proposes tens of thousands of acres of tree removal in inventoried roadless areas where the Roadless Rule applies, the Final EIS fails to identify or invoke a specific exception or exceptions in 36 C.F.R. § 294.13(b) that would permit the agency to undertake proposed logging under either action alternative B or C, or the selected action. This failure violates both the Roadless Rule and the agency’s duty to disclose environmental impacts pursuant to NEPA. The Forest Service’s failure to disclose which exception applies renders it impossible for the public to be able to understand or comment effectively on whether the proposed actions meet the Roadless Rule’s mandates.

[The] FEIS indicate[s] that treatments within the inventoried roadless areas consist of thinning and prescribed fire to increase vigor of large and desirable trees, reduce unnatural fuel loadings, improve wildlife habitat and promote western white pine or whitebark pine on suitable sites. Final EIS, Appendix C, Response to Comments, at C-73 – C-74.

It thus appears that the Forest Service intended to invoke two separate exceptions to the Roadless Rule: 36 C.F.R. § 294.13(b)(1)(i), under which the agency may authorize logging in inventoried roadless areas to “improve threatened, endangered, proposed, or sensitive species habitat;” and 36 C.F.R. § 294.13(b)(1)(ii), under which the agency may authorize logging in inventoried roadless areas “[t]o maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period.”³

The Final EIS does not assert that the proposed logging is “is incidental to the implementation of a management activity not otherwise prohibited;” that logging is “needed and appropriate for personal or administrative use;” or that the logging will take place in the “substantially altered” portion of any of the roadless areas at issue. 36 C.F.R. § 294.13(b)(2), (b)(3), (b)(4).

Assuming the Forest Service intends to invoke one or both of the exceptions discussed above, however, it has failed to demonstrate that the agency can take advantage of either of them. First, the Final EIS does not explain which exception applies to which treatments. While some treatments may be meant to benefit whitebark pine, the agency does not explain which treatments in roadless areas may do so, and which may have other purposes.

Second, the exception concerning maintenance or restoration of ecosystem characteristics requires the Forest Service to ensure that tree removal will be limited to “generally small diameter timber.” 36 C.F.R. § 294.13(b)(1). Of the three types of logging proposed in roadless areas, the Final EIS identifies size guidelines for only one: “[m]echanized young stand thinning,” which would “*primarily* be used in young stands to reduce the density of saplings and small poles up to a maximum diameter of 6” at breast height.” Final EIS at 63 (emphasis added). Use of the equivocating term “primarily” makes it unclear whether the “maximum” diameter limit will place any practical limits on the size of trees logged, however.

For the other two categories of tree removal (“mechanized treatments for non-commercial objectives” and “hand treatments”) – which constitute more than 90% of the acreage where trees will be removed from areas governed by the Roadless Rule – the Final EIS contains no discussion that we could find limiting or even addressing the size of trees that can be removed. Because mechanized treatments for non-commercial objectives “would reduce stand densities and create openings in Inventoried Roadless Areas,” Final EIS at 359, it seems that the agency contemplates removing larger diameter trees, perhaps many of them. The Forest Service’s only response on this issue is the unsupported conclusion that logging in roadless areas “include[s] cutting of generally small sized trees.” Final EIS, Appendix C, at C-74. Because the Forest Service fails to demonstrate and explain how it will comply with the Roadless Rule’s requirement that tree removal under the exception should generally involve only small diameter timber, the agency violates the Roadless Rule.

³ The Draft Record of Decision, for the first time, invokes these two exceptions. Draft ROD at 25. But the Final EIS provides no basis for doing so.

In addition, in crafting the Roadless Rule, the Forest Service stated that the agency would undertake a site-specific – and stand-specific – review to identify whether and where such tree removal would be appropriate. The Roadless Rule’s preamble directs that “[t]he cutting, sale, or removal of trees pursuant to 294.13(b)(1) must be clearly shown through *project level analysis to contribute to the ecological objectives described*.” 66 Fed. Reg. at 3258 (emphasis added). The Roadless Rule preamble anticipated that the Forest Service would “consider how the cutting or removal of various size classes of trees would affect the potential for future development of the *stand*,” and would consider “[s]ite productivity due to factors such as moisture and elevational gradients, site aspect, and soil types ... as well as how such cutting or removal of various size classes of standing or down timber would mimic the role and legacies of natural disturbance regimes in providing the habitat patches, connectivity, and structural diversity critical to maintaining biological diversity.” 66 Fed. Reg. at 3257 (emphasis added).

The Final EIS does not demonstrate that the Forest Service has undertaken this necessary evaluation. While the Final EIS contains some information about where logging will occur within areas protected by the Roadless Rule, that data does not permit either the public or the decision-maker to understand the values of each specific roadless area, how logging will impact those areas, why logging on the specific acreage identified may meet the requirements of specific exemptions, or why logging a certain diameter of tree may be appropriate.

For example, while the Final EIS contains maps displaying where certain types of treatments may occur in roadless areas and recommended wilderness, see Final EIS Appendix B at Figures 69 & 71, the Final EIS provides no explanation for why an alternative proposes any of the three types of logging treatments in a specific area, not to mention a specific stand, or why and how the alternatives differ. The Final EIS’s 5.33 page analysis focusing on roadless areas presents no stand-specific data for roadless areas, nor does it address the size of trees to be logged.

The Final EIS also fails to demonstrate that logging within inventoried roadless areas will “maintain or improve one or more of the roadless area characteristics as defined in [36 C.F.R.] § 294.11,” as 36 C.F.R. § 294.13(b)(1) requires. The Final EIS’s analysis of impacts to roadless characteristics is cursory and relies largely on “design criteria” which are “expected to minimize adverse effects,” without saying which design criteria will do so, or on what basis the Forest Service’s “expectation” is based. Final EIS at 344 (emphasis added). For example, the analysis of impacts to scenic values of tens of thousands of acres of logging across diverse ecosystems and distinct roadless areas is one sentence with no supporting analysis: “Both alternatives are not expected to negatively affect the natural appearance of the landscapes in the long term.” Final EIS at 344.

The “analysis” of potential impacts to another roadless area characteristic is similarly summary: “Both alternatives will continue to provide for the diversity of plant and animal communities. Both action alternatives include similar design criteria to minimize effects to habitat.” Final EIS at 344. Again, this is not analysis; it is conclusion. Nowhere does the Final EIS specifically assert that, or address how, the nine roadless area characteristics will be “maintained” or “improved.”⁴ Further,

⁴ The Draft ROD (at 25) makes this representation, but without support, evidence, or analysis.

Appendix A, containing the design criteria, does not include the word “roadless,” nor does it evaluate or otherwise assess the effectiveness of the design criteria.

The less-than-one-page analysis of impacts to roadless areas from the action alternatives also fails to differentiate between the effects of those two alternatives, despite the fact that Alternative B proposes logging on thousands of more acres of roadless forest, or nearly twice the acreage, than Alternative C does. *See* Final EIS at 62-66. If the alternatives have exactly the same impacts on roadless areas, this undermines any contention that the agency has considered a *range* of reasonable alternatives, and it should consider at least one action alternative that has fewer impacts on lands protected by the Roadless Rule than Alternatives B and C.

The cursory analysis concluding that neither action alternative will impact a variety of roadless area characteristics is also at odd with another section of the Final EIS which acknowledges:

Both action alternatives would result in varying levels of unavoidable short-term adverse effects (5-7 years post implementation) on inventoried roadless areas, wilderness, recommended wilderness, eligible wild and scenic rivers, water quality, weed introduction and spread, Canada Lynx habitat, wolverine habitat, elk, and mule deer habitat. Some of the effects could be considered more than short term but every attempt to minimize long term adverse effects ha[s] been included in both alternatives.

Final EIS at 388. It is unclear how the Forest Service can square the potential for long term adverse impacts with the assertions of no negative effects elsewhere in the document, or with the Roadless Rule’s mandate that actions in roadless areas must *maintain or improve* many of the very characteristics the Final EIS admits may suffer long-term damage.

The Forest Service’s only response to the fact that it has failed to disclose a stand-specific analysis of the project’s impacts to roadless areas is to assert that the analysis is in the Final EIS somewhere if one looks hard enough: “Analysis of roadless area characteristics ad associated design criteria are included throughout the FEIS where they overlap with other resources (such as Aquatics, Vegetation, Wildlife, and Scenery) or designations such as recommended wilderness and Wild and Scenic Rivers.” Final EIS, Appendix C, at C-74. This answer makes a mockery of the agency’s duties under both NEPA and the Roadless Rule. If the Forest Service cannot explain why it must log roadless areas on a stand-specific basis, as the Rule requires, it cannot undertake that logging.

D. The Forest Service Must Identify How Heavy Equipment Will Be Transported and Used in Roadless Areas.

The Final EIS does not contain a section addressing the nature of the transportation network that the agency intends to use to access the project area to undertake the proposed logging and other treatments. The analysis acknowledges that logging within roadless areas will require the use of heavy machinery requiring road access. “[H]eavy equipment (for example, excavators and masticators) could be operated in some of the areas (1,743 acres) within the boundaries of

inventoried roadless areas.” Final EIS at vii, 98. The Final EIS fails to disclose or map the location of these 1,743 acres, nor does it explain why this number of acres and not more (or less) may require the use of this machinery. The use of excavators, masticators and other similar equipment could harm soils and create de facto roads, an impact the Final EIS fails to address, contradicting NEPA’s “hard look” mandate.

The Forest Service’s only response is that the Roadless Rule does not prohibit the use of heavy machinery. Final EIS, Appendix C, at C-74. While true, this response misses the point that heavy machinery generally requires road access, degrade soils, spread weeds, and cause noise for the 15 years the project is ongoing. The Final EIS fails to specifically address these impacts, violating NEPA, and potentially violating the Roadless Rule.

The failure to disclose the transportation network also implicates Roadless Rule compliance. We note that a U.S. District Court recently set aside a Forest Service restoration project in Montana because the agency failed to properly identify the transportation system that would be used to access treatments within inventoried roadless areas. *See Helena & Anglers Ass’n v. Marten*, 470 F. Supp. 3d 1151, 1170-72 (D. Mont. 2020). To comply with NEPA and the Roadless Rule, the Forest Service must disclose where and how it intends to move heavy equipment into roadless areas. Because it failed to do so, it violated both laws.

Suggested Resolution: Prepare an SEIS to explain why and how the selected action complies with the Roadless Area Conservation Rule, and that analysis should explain the need for individual treatments at the stand level.

CONCLUSION

WildEarth Guardians and the Center for Biological Diversity appreciate your consideration of the information and concerns raised in our comments and highlighted in this objection to the Mid-Swan Landscape Restoration and Wildland Urban Interface Project. Without addressing the suggested resolutions in this objection, the Mid Swan Project DROD and FEIS are unlawful.

Cordially,



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Exhibits

1. Chief Moore's August 2, 2021 Wildland Fire Direction
2. *WildEarth Guardians v. Steele*, (D. Mont. June 24, 2021)
3. Motion to amend the judgment Court's June 24, 2021 judgment in Case No. CV 19-56-M-DWM, in consolidated Case No. CV 19-60-M-DWM, and memorandum in support of the motion to amend.