



Rockies and Plains Office
600 17th Street | Suite 450 North Tower | Denver, CO 80202 | 720-943-0453
www.defenders.org

April 1, 2022

Objection Reviewing Officer
Rio Grande National Forest
1803 W. Highway 160
Monte Vista, CO 81144

Submitted electronically

Re: OBJECTION - Trail Gulch Vegetation Management Project

Dear Rio Grande National Forest:

Defenders of Wildlife (“Defenders”) submits this letter regarding the Trail Gulch Vegetation Management Project, for which the Rio Grande National Forest (“Forest”) has recently released a draft Decision Notice, resource reports and Environmental Assessment/Finding of No Significant Impact (“EA/FONSI”).

I. The Forest’s Comment Process Inappropriately Limits Public Input

As a threshold matter, Defenders notes concerns with the process the Forest uses to seek public input on vegetation management projects such as Trail Gulch. For Trail Gulch, the Forest provided opportunity for public comment only at the scoping stage when little information was available. On June 9, 2021, the Forest called for scoping comments based on a four-page project description and map. The draft environmental review documents and resource reports were not available at that time. Comments were required by July 12, 2021, so commenters did not have access to full project information or environmental review documents. The next opportunity to submit comments came in February 2022, when the public was informed that draft decision documents, including the EA/FONSI, were being released for objections. According to the Legal Notice of Opportunity to Object, objections “will only be accepted from those who previously submitted specific written comments.” In addition, the information released in February 2022 reflected an accelerated implementation timeframe for this project; whereas the scoping comment letter referenced implementation “beginning in 2023,” the recent Schedule of Proposed



Actions now references possible implementation a year earlier, in 2022. *See SOPA, 1Q 2022, <https://www.fs.fed.us/sopa/components/reports/sopa-110209-2022-01.html>.*

This process inappropriately limits opportunities for review of, comment on, and objection to new projects. Under the process outlined above, the public must identify all issues for comment and objection at a very early scoping stage when little information is available, and when, indeed, project implementation may change significantly, as occurred here with the accelerated implementation date. Otherwise, opportunities for objection may be foreclosed. This process inappropriately limits public input.

I. Full ESA Consultation Is Required

The Trail Gulch project overlaps with mapped habitat for the Canada lynx. In fact, according to the Wildlife Report, there have been “multiple years of detections and evidence of reproduction in the project area.” (Wildlife Report and Biological Evaluation, Jan. 26, 2022 at 9.) The Canada lynx is listed as threatened under the U.S. Endangered Species Act (ESA). Given these factors, we trust the Forest Service will undertake full consultation with the U.S. Fish and Wildlife Service (FWS) under Section 7(a)(2) of the ESA. Such consultation will fulfill the previous commitment, in the biological opinion for the Rio Grande National Forest Land Management Plan that was revised in 2020, that “[p]roject-level activities that result from implementation of Forest Plan direction will undergo site-specific environmental review and section 7 ESA consultation, as appropriate.” (FWS, Revised Biological Opinion, Feb. 2, 2021, at 17.) We look forward to reviewing the Forest Service’s Biological Assessment and the FWS’s Biological Opinion for the project when these become available.

II. The Forest Must Resolve Contradictory Information Regarding Lynx Usage of the Project Area and Adequately Consider Evidence that the Project Area Contains Important Lynx Habitat

The Wildlife Report provides inconsistent descriptions of lynx usage of the project area. As noted, the report states that there have been multiple years of detections of lynx in the area



Rockies and Plains Office

600 17th Street | Suite 450 North Tower | Denver, CO 80202 | 720-943-0453

www.defenders.org

and evidence that lynx are reproducing there. (Wildlife Report and Biological Evaluation, Jan. 26, 2022 at 9.) The report also notes lynx caught on camera and lynx tracks found near the project area, pointing to a “likely” “north-south movement zone that may extend into the project area and New Mexico.” (*Id.* at 14.) Yet elsewhere the report states that although “Canada lynx have been documented within the project area to varying degrees during the reintroduction efforts,” . . . “recent survey efforts have not documented lynx using the project area, particularly the eastern portion currently surveyed annually through the CPW lynx monitoring program. It is presumed for the purposes of this analysis that lynx use of the project area is transitory in nature and there is unlikely to be consistent residential use of the project area.” (*Id.* at 14.)

The “presumption” that lynx presence is transitory is not supported by the inconsistent and contradictory evidence provided in the report. As noted, elsewhere the report notes evidence of possible denning in the area. (*Id.* at 9, 28.) In fact, a lynx study prepared for the 2020 Land Management Plan (Squires et al, *A Specialized Forest Carnivore Navigates Landscape-Level Disturbance: Canada Lynx in Spruce Beetle-Impacted Forests* (2020)) found that the southern portion of the Forest—near the project location at the southern tip of the Forest—represented the most highly used portion of the Forest. (See FWS, Revised Biological Opinion, Feb. 2, 2021, at 10 Fig. 2.). In addition, the Land Management Plan designated “high-use” habitat within both of the Lynx Analysis Units impacted by Trail Gulch (*see id.*, with 95% use area mapped within the Victoria-Chama and Rito-Archuleta LAUs). Moreover, the 2020 Squires study suggested that lynx continue to occupy areas that have been impacted by the spruce beetle, undermining the suggestion in the Wildlife Report that usage of the project area may have declined due to the level of mortality in the spruce-fire overstory. (Wildlife Report at 14.)

In the NEPA documents and ESA consultation documents, contradictory information regarding lynx usage of the project area should be discussed and resolved. Information



Rockies and Plains Office

600 17th Street | Suite 450 North Tower | Denver, CO 80202 | 720-943-0453

www.defenders.org

suggesting that the project area contains important lynx habitat, including denning areas, should be seriously considered.

III. The Forest Should Better Explain How Trail Gulch Meets SRLA VEG S2

Because the Trail Gulch project is occurring within mapped lynx habitat, standards from the Southern Rockies Lynx Amendment (“SRLA”), which are meant to protect lynx and their habitat, apply. These standards include VEG S1 and VEG S2. Under VEG S1, “If more than 30 percent of the lynx habitat in an LAU is currently in a stand initiation structural stage that does not yet provide winter snowshoe hare habitat, no additional habitat may be regenerated by vegetation management projects.” (Land Management Plan at 205.) Under VEG S2, “Timber management projects shall not regenerate more than 15 percent of lynx habitat on NFS lands within an LAU in a ten-year period.” (*Id.* at 206.) The 2020 Land Management Plan retains these standards within LAUs that contain some “high-use” habitat, including those impacted by this project. (See Land Management Plan at 29; FWS, Revised Biological Opinion, Feb. 2, 2021, at 19 & Fig. 3.)

Here, the Wildlife Report acknowledges that the project as proposed would cause the Rito-Archuleta LAU to exceed the VEG S1 30% cap, and provides supporting calculations (Wildlife Report at 34 *et seq* and Table 7). However, the Wildlife Report does not explain compliance with the VEG S2 15% cap, aside from stating that “[t]he project would not result in regenerating more than 15% of lynx habitat in either LAU.” (*Id.* at 40, Table 9.) This determination currently lacks support and explanation. There is nothing in the Wildlife Report and EA explaining the proportion of lynx habitat within the Victoria-Chama or Rito-Archuleta LAUs that has already been treated in the last ten years. Indeed, the Wildlife Report reflects that the Conejos Peak District Wide Salvage Project has recently occurred within these LAUs, Wildlife Report at 16, suggesting that it is important to understand how this and other past vegetation management projects may count towards the 15% cap. These calculations should be



Rockies and Plains Office

600 17th Street | Suite 450 North Tower | Denver, CO 80202 | 720-943-0453

www.defenders.org

completed and provided to the public with opportunities for input and comment. In addition, if the 15% cap may be exceeded, project changes are of course necessary.

IV. The Forest Must Support the Use of the SRLA WUI Exemption

The Forest also must provide additional support for its use of a limited exemption to VEG S1 and S2 for fuel treatment projects within the wildland urban interface (WUI).¹ Under the WUI exemption, “Fuel treatment projects within the WUI that do not meet Standards VEG S1, VEG S2, VEG S5, or VEG S6 shall occur on no more than 3 percent (cumulatively) of lynx habitat on each [Forest].” (Land Management Plan at 205; FWS, Biological Opinion for the Southern Rockies Lynx Amendment (2008) (“SRLA BiOp”), at 11.) Here, the Forest stated that, although the Trail Gulch project will cause the Rito-Archuleta LAU to hit the VEG S1 30% cap, logging may occur on approximately 1,082.4 acres additional acres within the LAU under the 3% WUI exemption. (Wildlife Report at 34.)

However, the Wildlife Report did not explain how the WUI was identified. Under SRLA, there are two methods of identifying whether an area is within the WUI. One method involves reviewing a community wildfire protection plan prepared under the Healthy Forests Restoration Act. (SRLA BiOp at 11.) If no wildfire protection plan is available for the area “the WUI is identified as: (1) “the area 0.5 miles from the boundary of an at-risk community; (2) “within 1.5 miles of the boundary of an at-risk community if the terrain is steep or there is a nearby road or ridge top that could be incorporated into a fuel break or the land is in condition class 3; or (3) “the area contains an emergency exit route that requires hazardous fuel reductions to provide safer evacuation from the at-risk community.” (*Id.*)

¹ The WUI “is the area where structures and other human development meet or intermingle with undeveloped wildland, and it is where wildfires have their greatest impacts on people.” Dep’t of Agric., The 2010 Wildland-Urban Interface of the Conterminous United States (2015), at PDF page 2, https://www.fs.fed.us/nrs/pubs/rmap/rmap_nrs8.pdf [hereinafter 2010 WUI Report].



Rockies and Plains Office

600 17th Street | Suite 450 North Tower | Denver, CO 80202 | 720-943-0453

www.defenders.org

Here, the EA estimates “that there are approximately 8,658 acres that are considered wildland urban interface in the project area” (EA at 6), but none of the project documents specifically identify the overlap or explain the location of the 1,082 acres of WUI that will be logged. This information should be provided and explained, along with an opportunity for public review and comment.

Defenders of Wildlife appreciates the opportunity to submit this letter. If you have questions, please do not hesitate to contact us.

Sincerely,

/s/ Lauren McCain

Lauren McCain
Senior Federal Lands Policy Analyst
Defenders of Wildlife