



May 2, 2022

Scott Fitzwilliams, Forest Supervisor
White River National Forest
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Glenwood Springs, CO 81601

Sent by electronic mail and uploaded to the public reading room

RE: Wilderness Workshop's Scoping Comments on the Booth Creek Fuels Treatment Project

Dear Scott,

Wilderness Workshop (WW) hereby submits scoping comments on the proposed Booth Creek Fuels Treatment Project (Proposed Action or project) on the Eagle-Holy Cross Ranger District of the White River National Forest. As you know, WW is a non-profit, member-based organization dedicated to the protection and conservation of the wilderness and natural landscapes of the White River National Forest and adjacent public lands. Our staff and members live, work, recreate, and otherwise use and enjoy lands managed by the White River National Forest, including in the Vail Valley.

WW has been involved in the Proposed Action since its genesis several years ago. We have been engaged in this project to ensure that forest management decisions comply with federal law, such as the National Environmental Policy Act (NEPA), the Wilderness Act, and the Colorado Roadless Rule. Additionally, the majority of the Spraddle Creek Roadless Area is included in the Colorado Outdoor Recreation & Economy Act (CORE Act) both as a proposed addition to the Eagle's Nest Wilderness Area and as a several thousand-acre Wildlife Conservation Area. Wilderness Workshop, the Town of Vail, and thousands of members of the community in the Vail Valley all support these additional protections for this landscape. We attended field trips and remained in close communication with the Forest Service staff about the specifics of the project throughout its development. We commend the Forest Service for its outstanding communication with the conservation community while developing the Proposed Action. We further appreciate that Forest Service staff have taken the community's support for the CORE Act into account in the development of the project.

Overall, the Proposed Action and its approach to broadcast burning in wilderness and proposed wilderness demonstrates that the Forest Service can manage wilderness while also prioritizing the safety of communities. This will certainly not be the only time that the Forest Service intervenes to burn the area around Vail or perform mechanical treatments to reduce fuels. As such, the Forest Service should use this project as part of a broader effort to facilitate the eventual transition back to a more natural fire regime, where natural starts can burn and not

endanger private residences or other community values. With climate change altering the monsoon season and longer, hotter fire seasons, the Forest Service should plan proactively for how the project area – and the Vail Valley generally – can sustain a natural fire regime, especially in wilderness where the agency has an obligation to use burning for the purpose of returning to a natural fire cycle. The Proposed Action presents the Forest Service with a unique opportunity to instigate thoughtful, proactive planning for how the agency will manage fire adjacent to Vail and in the Eagles Nest Wilderness.

I. The Proposed Action Must Comply with the National Environmental Policy Act

A. The Forest Service Should Clarify Its Purpose and Need

Since the Forest Service first proposed fuels treatment for the Booth Creek area in 1998, the project has evolved from a hybrid wildlife habitat-fuels project to solely a fuels treatment project.¹ The Notice of Proposed Action (NOPA) states that the purpose and need is: “to reduce the wildfire hazard to private property, community infrastructure, fire fighter safety, and Forest Service resources within the TOV WUI. There is a need for the Proposed Action to reduce hazardous fuels which have accumulated over the last 100 years.” NOPA at 3. NEPA requires that the Forest Service “specify the underlying purpose and need for the proposed action.” 40 CFR § 1502.13; *see also Utah Env'tl. Cong. v. Bosworth*, No. 2:01-CV-00316PGC, 2003 U.S. Dist. LEXIS 25577, at *48 (D. Utah Mar. 27, 2003) (concluding that an agency cannot “frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish those goals and the project would collapse under the weight of the possibilities.”).

In its EA, the Forest Service should clarify that the purpose of this project is entirely related to meet fire management objectives. As you likely know, Forest Service guidance does not allow prescribed fire for the purposes of improving wildlife habitat in wilderness. Specifically, Forest Service Manual 2300 states that:

Do not use prescribed fire in wilderness to benefit wildlife, maintain vegetative types, improve forage production, or enhance other resource values. Although these additional effects may result from a decision to use prescribed fire, use fire in wilderness only to meet wilderness fire management objectives.

FSM 2320 at 7. Although this project began as a habitat improvement project for bighorn sheep, the Forest Service needs to make clear in its purpose and need statement that the treatments in wilderness are necessary to reduce unnatural buildup of fuels and specifically outline the reasons why lightning strike fires cannot achieve these goals set forth in FSM 2324.21.

Additionally, the agency should amend its ‘need’ statement to include the reason for needing to utilize mechanical treatments in the project area—which is to return it to a natural state where periodic natural fires can burn and not threaten the Town of Vail. *See* NOPA at 3

¹ Scott Miller, Vail Daily, Vail, Forest Service sign cost share agreement for forest health plan: work on 4,400-acre project will be expensive (Aug. 9, 2020), available at <https://www.vaildaily.com/news/vail-forest-service-sign-cost-share-agreement-for-forest-health-plan/> (last accessed March 15, 2022).

(stating: “There is a need for the Proposed Action to reduce hazardous fuels which have accumulated over the last 100 years.”). We encourage the Forest Service to supplement the need statement with language that demonstrates the commitment to returning the natural fire ecology to a state where the agency won’t need to manually burn the area on a regular basis, but rather can permit natural fire regimes to endure, particularly in designated wilderness.

B. The Forest Service Must Provide Meaningful Opportunity for Public Comment on the MRDG

The Forest Service should give the local community of Vail – and the public more broadly – the opportunity to review and comment on the Minimum Requirement Decision Guide (MRDG) to provide valuable, local, on-the-ground knowledge. The NOPA highlights that:

To identify, analyze, and recommend management actions that represent the minimum necessary federal agencies frequently use a tool called a Minimum Requirements Decision Guide (MRDG) which aids managers in determining first if action is necessary in wilderness and, if so, to identify the activities, methods or equipment that best preserve wilderness character.

NOPA at 11. However, the Forest Service makes clear that the public will not have the opportunity to comment on the Forest Service’s analysis of its management actions on designated wilderness. NOPA at 12 (“The MRDG will be finalized after the combined scoping and comment period and any additional findings will be incorporated into the Proposed Action that will be analyzed in the EA. Upon completion, the *final MRDG will also be made available for review by the public.*”) (emphasis added). Because of the chronology of the Forest Service’s NEPA process on the Proposed Action and the MRDG, the comments on the MRDG and the agency’s analysis of impacts to wilderness will not impact the project decision or analysis.

One of the purposes of NEPA is to inform the public of environmental impacts. Specifically, NEPA guarantees that relevant information is available to the public. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989) (stating that NEPA “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”) Federal courts give agencies wide discretion to decide whether to release a draft EA for public comment, but:

[T]hey do require that the public be given as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA. Depending on the circumstances, the agency could provide adequate information through public meetings or by a reasonably thorough scoping notice. The way in which the information is provided is less important than that a sufficient amount of environmental information -- as much as practicable -- be provided so that a member of the public can weigh in on the significant decisions that the agency will make in preparing the EA.... the agency must offer significant pre-decisional opportunities for informed public involvement in the environmental review process by releasing sufficient environmental information about the various topics that the

agency must address in the EA, such as cumulative impacts, before the EA is finalized.

Sierra Nev. Forest Prot. Campaign v. Weingardt, 376 F. Supp. 2d 984, 991 (E.D. Cal. 2005).

To ensure that the public understands the Proposed Action's impact on the Eagles Nest Wilderness, the Forest Service should provide the public an opportunity to comment on the EA's wilderness analysis once it is finalized and before the objection period. The community of Vail and the greater public will have comments specifically on the impacts of the tools the Forest Service plans to use and the treatments themselves on the project area immediately adjacent to the Town of Vail, especially in Eagles Nest Wilderness. Unfortunately, the proposed NEPA process does not allow the community to understand the impacts to wilderness as the "relevant information [was not] made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision." If the Forest Service's NEPA process afforded the public the opportunity to comment at scoping and the draft EA stage, the community of Vail would have all the information regarding impacts to the Eagles Nest Wilderness. This process would ensure that the public could comment on the alternatives considered and analyzed by the Forest Service, including the drafts of the MRDG analysis. Failure to provide a meaningful opportunity to review and comment on the MRDG undermines the goals of NEPA.

C. The Forest Service Needs to Take a Hard Look at Forest Resources

NEPA imposes "action-forcing procedures ... requir[ing] that agencies take a hard look at environmental consequences." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). The purpose of the "hard look" requirement is to ensure that the "agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious." *Baltimore Gas & Elec. v. NRDC*, 462 U.S. 87, 97 (1983). These "environmental consequences" may be direct, indirect, or cumulative. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8.

i. The EA must include comprehensive and quantitative climate analysis.

The Proposed Action will undeniably have impacts on climate change, including by removing vegetation that is currently storing carbon and prescribed burning that result in emissions. It is well established that federal agencies must analyze the climate impacts of proposed actions, and courts have invalidated agency decisions for failure to do so. *See e.g., Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). The White River National Forest has not analyzed the climate impacts of wildfire mitigation projects in the 2002 Forest Plan or any subsequent NEPA process; therefore, that climate analysis must be completed in the NEPA document for this project.

Accordingly, the NOPA indicates that the Forest Service plans to analyze impacts from the Proposed Action on climate change. Specifically, the NOPA includes the preliminary finding of climate impact that: "[p]rescribed burning treatments are anticipated to have direct, short-term

impacts on air quality and greenhouse gas emissions in the project area and surrounding airshed.” See NOPA at 15. To adequately analyze these impacts, the Forest Service must conduct a full carbon accounting of the project using the best available science. This should include the Proposed Action’s forecasted long-term and short-term impacts on climate change.

A full carbon accounting of the proposed activities would allow the Forest Service and the public to understand the climate impacts and tradeoffs associated with the Proposed Action and make informed decisions. According to the most current science, we are now operating on a 10-year horizon to make significant progress towards climate targets, so it may be the case that even a short-term emissions increase is unacceptable.² Quantitative analysis is necessary to understand the implications of this project on carbon stores and climate emissions. The agency also cannot assert that this project would not individually or cumulatively have a significant effect on the human environment without assessing carbon storage impacts or greenhouse gas emissions.

There is a wealth of scientific literature and data-driven tools available to the Forest Service to analyze and manage carbon, including methods to inform climate analysis and quantify greenhouse gas emissions. We highlight the following data sources which would enable the agency to assess the climate implications associated with the Proposed Action:

- [Forest Carbon Estimation](#). The Forest Service’s Forest Inventory and Analysis (FIA) program provides a wealth of information related to carbon accounting, sequestration assessments, greenhouse gas emission quantification, modeling, and trends.
- [Forest Inventory Data Online \(FIDO\) and EVALIDator](#). These applications use FIA data to produce carbon estimates for an area of interest and can be filtered based on forest attributes and other variables.
- [2015 Rocky Mountain Region Carbon Assessment](#). This report specific to R2 is intended to help forest managers and the public understand how much carbon is stored in forest ecosystems, and develop capacity to integrate carbon into planning and decision making.
- [U.S. Geological Survey Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005–14](#). In November 2018, the USGS released new estimates of ecosystem carbon emissions and sequestration on federal lands. This national dataset or a similar one is necessary for cumulative impact analysis, as the agency must analyze climate impacts of a specific project relative to regional and national climate impacts.

ii. The EA must analyze impacts to wildlife.

The Forest Service must take a hard look at the Proposed Action’s direct, indirect, and cumulative impacts on wildlife and their habitats. Analysis should address the temporal nature of the project, such as short-term dispersal during project implementation, but also include how the project could have longer term habitat impacts, like removing cover for snowshoe hare, the primary food source for Canada lynx. Analysis of potential impacts to wildlife should include,

² IPCC Special Report, Global Warming of 1.5°C. Online at <https://www.ipcc.ch/sr15/>. (In order to limit warming to 1.5°C with no or limited overshoot, net global CO2 emissions need to fall by about 45% from 2010 levels by 2030.)

but not be limited to, impacts to bighorn sheep, Canada lynx, American Marten, deer, elk, native trout, and nesting bird species. The EA should specifically address impacts to the species themselves, but also the impacts to their habitat and how the change in vegetation composition will alter those habitats. If the purpose of this project is to reestablish the natural fire cycles in this area, then the Forest Service should analyze the foreseeable recurring impacts of fire on the wildlife.

iii. The EA must analyze impacts to the greater watershed and water.

The Proposed Action takes place in the watersheds near the Town of Vail. Through careful study and mitigation, the Forest Service needs to ensure that the Proposed Action does not degrade water quality or quantity. The NOPA highlights that:

Ground disturbance associated with project activities would result in erosion, sedimentation, and impacts to stream health and riparian area conditions. Watershed impacts would primarily occur in the short term, immediately following project implantation; however, through the use of PDC and best management practices (BMPs), impacts would be minimized. Following treatment and project area restoration via natural processes and the implementation of PDC, watershed conditions would be restored.

NOPA at 17. The NOPA recognizes that there will certainly be short term impacts to the watershed; however, the Forest Service needs to analyze the long-term impacts from the project as well, especially because the mitigation of the impacts relies on restoration. This assumes the restoration will occur, but the agency must analyze the impacts to the watershed if for whatever reason restoration cannot occur. In addition to the analysis of long-term impacts, the Forest Service must describe how it will restore the lands adjacent to water resources so that sedimentation and erosion don't have a long-term impact.

II. The Proposed Action Must Comply with the Colorado Roadless Rule

The Proposed Action takes place in three different Colorado Roadless Areas (CRAs) – Spraddle Creek B, East Vail, and Corral Creek. NOPA at 2. As such, the Proposed Action must comply with the Colorado Roadless Rule, which prohibits cutting trees, with some exceptions. 36 CFR § 294.42 (“Trees may not be cut, sold, or removed in Colorado Roadless Areas, except as provided in paragraph (b) and (c) of this section.”). For non-upper tier CRAs, the federal regulations also require an exception to the general rule of no cutting in CRAs. *See generally* 36 CFR § 294.42(b)(1-6).

In its EA, the Forest Service must analyze the impacts to the three CRAs and their roadless characteristics from the Proposed Action. Similarly, the Forest Service should highlight for the public which of these exceptions to the Colorado Roadless Rule the agency plans to use in authorizing this project, as it does in the NOPA. The agency will then need to analyze how the Proposed Action will benefit roadless characteristics. In the same vein as the prohibition on tree cutting, the Forest Service should not build any new roads in the CRAs, as is required by the Colorado Roadless Rule. If the Forest Service plans to use an exception to the road building

prohibition, 36 CFR § 294.43(a-c), the agency needs to make clear to the public the exceptions it plans to rely on through a roadless consistency determination. This determination should include maps of the treatment areas where they overlap with CRAs, the community protection zone, and the community wildfire protection plan.

As with the MRDG, the Forest Service should make any roadless consistency determination available for public review and comment before making a final decision. *See* Section B *supra*.

III. The Proposed Action Must Comply with the Wilderness Act

Because the Proposed Action involves treatment in designated wilderness, the EA must comply with the Wilderness Act and applicable agency guidance. *See* 16 U.S.C. § 1131 *et seq*; *see also* 36 C.F.R. § 293.2 (stating that wilderness areas “shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character[]” and “[n]atural ecological succession will be allowed to operate freely to the extent feasible.”). Forest Service wilderness management guidance requires the agency to “[a]llow, wherever possible, the natural process of healing in handling disturbed communities. Consider structural or vegetative assistance only as a last resort.” FSM 2320—Wilderness Management at 2323.52. In addition to wilderness statutes, regulations, and guidance, the WRNF also has a Fire Management Plan. In this plan, the Forest Service implemented standards that requires the agency to “[p]repare wildland fire use plans to allow fire to function as nearly as possible in its natural ecological role.” 2011 WRNF Fire Management Plan at 7 (citing to WRNF Forest Plan at 2-38).

From the NOPA and conversations with the Forest Service, we appreciate that the Forest Service has opted to not use mechanical treatments within designated wilderness. While we appreciate the Forest Service’s care and concern for the potential visual impacts of the project, mechanical treatments can harm other wilderness values in the short and long term, like opportunities for solitude. Naturalness could also be harmed with the project pushing wildlife away from the project area and creating erosion in the process. We would like to see the Forest Service include in its final analysis:

- A fire plan for the Eagles Nest Wilderness Area to “allow fire to function as nearly as possible in its natural ecological role[]” while also implementing measures to protect private homes from the threats of wildfire;
- A thorough analysis of impacts to designated wilderness, including an analysis of impacts to each element of wilderness character from the proposed methods;
- Measures that will constrain the broadcast burning to the proposed boundaries within the wilderness and ensure that it won’t impact more wilderness than the current proposal;
- Metrics that will measure whether the treatments in wilderness are effective.

IV. The Forest Service Should Consider Impacts to Lands Proposed for Wilderness and Other Designations

As discussed above, WW has been involved in this project due to its potential impact on lands proposed for protection in the CORE Act, as well as impacts to Eagles Nest Wilderness, among other reasons. During the development of the project and the proposed action, Forest Service staff were responsive to requests from Wilderness Workshop, community members, and other organizations to design the project so that it would be compatible with a future wilderness designation for portions of the project area (specifically regarding the hand treatments proposed for Unit 108). While the current version of the CORE Act being considered by the Senate now proposes a Wildlife Conservation Area with greater management flexibility than designated wilderness for areas which overlap with the project, we appreciate the Forest Service's understanding of the importance to the local community of permanent protections for this area. We understand the Forest Service may not manage its lands in response to legislation that has not been signed into law, but the high level of community support and long-standing proposed legislation to protect lands in the project area with a wilderness designation make incorporating the proposed legislation appropriate for the agency.

Conclusion

The Forest Service's NEPA process for this project has been open and transparent; however, we want to ensure that the public is fully informed of the impacts from the Proposed Action. In complying with NEPA, the Forest Service must take a hard look at impacts to climate change, wildlife, and water resources, as well as clarify the project's purpose and need. The agency should release the draft MRDG as an addendum to the NOPA and provide a meaningful opportunity for public review and comment. The agency should do the same with roadless consistency determinations. This project creates an opportunity to better analyze and manage wilderness and other lands in a way that allows a natural fire regime to occur while also protecting homes and other community values. Lastly, we appreciate the consideration of congressionally proposed and community supported wilderness and other designations within the project area and the agency's willingness to design the project to be compatible with future congressional protections. This consideration plus the thoughtful design of the portions of the project within the existing Eagles Nest Wilderness demonstrates the feasibility of simultaneously managing and protecting wilderness while also protecting communities from the risk of wildfire.

If you have any questions or concerns, please feel free to contact us directly.

Sincerely,

/s/ Oliver Wood

Oliver Wood

Will Roush

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