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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KETTLE RANGE CONSERVATION
GROUP,

Plaintiff,

v.

U.S. FOREST SERVICE, GLENN
CASAMASSA, Pacific Northwest
Regional Forester, U.S. Forest Service,
RODNEY SMOLDON, Forest
Supervisor, Colville National Forest,
TRAVIS FLETCHER, District Ranger,
Republic Ranger District, U.S. Forest
Service.

Defendants.

Case No. 2:21-cv-161

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

National Forest Management Act,
National Environmental Policy Act,
Administrative Procedure Act, and
Endangered Species Act

I. INTRODUCTION

1. Plaintiff Kettle Range Conservation Group (“KRCG” or “Plaintiff”) challenges the final decision by the United States Forest Service (“Forest Service”) to proceed with the Sanpoil Project (“the Project”), because of its failure to perform a meaningful analysis of the environmental impacts of allowing timber harvests, controlled burns, and road work within 47,956 acres (the “Project Area”) of the Colville National Forest (“Colville Forest” or “Forest”), and because the Forest Service did not fairly or adequately assess the Project’s likely adverse impacts on the threatened Canada lynx. KRCG also challenges the Forest Service’s final decision approving the 2019 Colville National Forest Land Management Plan (“2019 Forest Plan”), because it fails to protect old-growth trees from logging by projects such as the Sanpoil Project.

2. The Project Area lies in the heart of the majestic Kettle River Range, a remote landscape that features mountain peaks rising to more than 7,000 feet, towering forests of old-growth ponderosa pine, open sagebrush meadows, and countless lakes, rivers, creeks, streams, and wetlands. The Project Area features spectacular hiking trails and sections of remote wilderness, including three Inventoried Roadless Areas (“Roadless Areas”) and a large portion of the Bald Snow Recommended Wilderness Area.

1 3. The Project Area is also home to a wide variety of plants and animals,
2 including many species categorized as sensitive, threatened, or endangered by either
3 the federal government or the state of Washington. Cameras have captured images
4 of Canada lynx within the Project Area, while packs of gray wolves roam through
5 the area, and it also provides valuable habitat for grizzly bear and wolverine.
6 Whitebark pine trees cling to the mountains at the harshest elevations, old-growth
7 forests provide nesting habitat for the northern goshawk and sensitive species of
8 woodpecker, and lowland riparian areas support sensitive species of bat, frog, and
9 trout.



A whitetail buck pauses in a Sanpoil Project Area meadow. Photo courtesy of KRCG.

10 4. The Sanpoil Project would allow timber harvests in 8,410 acres of the
11 Project Area and prescribed burns in another 19,129 acres, which would open 10,585

1 acres for increased cattle grazing, and require the construction of 4 miles of
2 temporary roads and improvements to 8 miles of crude “non-system” roads. This
3 activity would significantly impact Forest ecosystems—transforming complex
4 forests into clear-cut wastelands, damaging stands of old-growth trees, spreading
5 invasive species, degrading riparian areas, compromising unique habitats, severing
6 vital wildlife corridors, despoiling pristine wilderness and prime recreational areas,
7 and displacing sensitive, threatened, and endangered species.

8 5. The National Environmental Policy Act (“NEPA”) requires the Forest
9 Service to take a “hard look” at such potential environmental impacts before
10 approving a project. The Forest Service did not do so here. It failed to describe or
11 analyze how the Project would affect specific areas, habitats or features within the
12 Project Area, skimmed over its potential direct impacts to sensitive, threatened, and
13 endangered species, and disregarded the potentially grave cumulative impact the
14 Project might have on the Forest ecosystem when combined with several other recent
15 and planned timber projects in the immediate area. In addition, the Forest Service
16 violated the Endangered Species Act (“ESA”), by issuing a Biological Assessment
17 that summarily discounted the known adverse impacts the Project will have on lynx
18 and valuable lynx habitat, disregarded facts regarding the presence of lynx likely to
19 be affected by the Project, and ignored best available science regarding the extent of
20 those impacts.

1 6. In designing the Project, the Forest Service also disregarded its own
2 objectives for preserving scenic quality and the integrity of existing Forest
3 structures—objectives set just a year earlier in the 2019 Forest Plan. The Project also
4 puts old-growth forests at risk, because the 2019 Forest Plan removed protections
5 for old-growth trees without proper analysis under NEPA and the National Forest
6 Management Act (“NFMA”).

7 7. The Forest Service refused to consider viable alternatives for the
8 Project that would have minimized environmental impact and preserved valuable
9 wilderness areas, because it was impermissibly focused on maximizing timber
10 revenue. It also avoided doing a full analysis of the environmental impacts of the
11 Project through an Environmental Impact Statement (“EIS”), despite the Project’s
12 broad scope, controversial nature, impact to sensitive wildlife species, and alteration
13 of unique geological and recreational areas.

14 8. Plaintiff thus challenges the Forest Service’s decision to proceed with
15 the Sanpoil Project, and its final Record of Decision (“2019 Plan ROD”) for the 2019
16 Forest Plan, due to violations of NFMA, NEPA, the ESA, and the Administrative
17 Procedure Act (“APA”).

18 **II. JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-
20 706 (APA), 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), 2412

1 (costs and fees) and 1346 (United States as defendant). This cause of action arises
2 under the laws of the United States, including the APA, 5 U.S.C. §§ 701-706; NEPA,
3 42 U.S.C. §§ 4321-4370m-12; NFMA, 16 U.S.C. §§ 1600-1614; the ESA, 16 U.S.C.
4 §§ 1536 and 1540; and those statutes' implementing regulations.

5 10. The actions challenged are final agency actions, properly subject to
6 judicial review under the APA. An actual, justiciable controversy exists between the
7 parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and
8 5 U.S.C. §§ 701-06.

9 11. Plaintiff has exhausted all available administrative remedies.

10 12. Venue is proper in this Court under 28 U.S.C. § 1391, because a
11 substantial part of the events or omissions giving rise to the claims herein occurred
12 within this judicial district.

13 13. The federal government has waived sovereign immunity in this action
14 pursuant to 5 U.S.C. § 702.

15 **III. PARTIES**

16 14. Plaintiff KETTLE RANGE CONSERVATION GROUP is a rural,
17 grassroots, non-profit environmental charity formed in 1976 in Republic,
18 Washington, with a membership of about 500 people. KRCG's mission is to defend
19 wilderness, protect biodiversity, and restore ecosystems of the upper Columbia River
20 Basin. KRCG's work includes oversight of federal management of the Okanogan

1 and Colville National Forests; promotion of dry and damaged forest restoration;
2 environmental education for citizens, business, and community groups; preservation
3 of wilderness; and protection of fish and wildlife.

4 15. KRCG is a founding board member of the Northeast Washington Forest
5 Coalition (“NEWFC”), a collaborative organization created in 2002 by groups
6 representing the interests of the timber industry, such as Vaagen Brothers Lumber,
7 and recreational and conservation interests, such as Conservation Northwest and the
8 Lands Council. NEWFC’s purpose is to work with the Forest Service on projects in
9 the Colville Forest that promote ecological forest restoration, aquatic restoration,
10 wildland protection, recreation, and economic stability in the surrounding area.
11 NEWFC has cooperated with the Forest Service on a number of projects, and in
12 2009, it helped the Forest Service develop a project called Northeast Washington
13 Forest Vision 2020 (“Vision 2020”), which received funding through the
14 Collaborative Forest Landscape Recreation Act (“CFLRA”). Because NEWFC
15 operates by consensus, all board members, including KRCG, must approve any
16 comments and objections submitted to the Forest Service. The Sanpoil Project
17 marked the first time NEWFC had ever filed an objection to a Forest Service project.

18 16. KRCG brings this action on its own behalf and on behalf of its members
19 and supporters, many of whom live near the Project Area, and who visit it for
20 recreational and professional pursuits. Plaintiff’s members, supporters, and staff

1 enjoy using the Project Area for recreation, including hiking, skiing, camping,
2 backpacking, boating, fishing, and wildlife viewing. Plaintiff's members,
3 supporters, and staff have engaged in these activities in the past and intend to do so
4 again in the near future. They gain aesthetic enjoyment from the beauty of the Project
5 Area, including the old-growth forests, subalpine meadows, and diverse riparian
6 areas that would be impacted by commercial logging, road construction, burning,
7 and increased grazing. Plaintiff's members also enjoy observing, attempting to
8 observe, hearing, seeing evidence of, and studying many species of fish and wildlife
9 that live in the Project Area, including the many sensitive, threatened, and
10 endangered species that the Project may displace. The opportunity to enjoy the
11 beauty of the Project Area and its wildlife is of significant interest and value to
12 Plaintiff's members, supporters, and staff, and they are dedicated to ensuring the
13 long-term health of the Forest as a whole. The legal violations alleged in this
14 Complaint therefore cause direct injury to the aesthetic, conservation, recreational,
15 scientific, educational, inspirational, and wildlife preservation interests of KRCG
16 and its members, supporters, and staff.

17 17. KRCG's members, supporters, and staff have an interest in ensuring
18 that the Forest Service fulfills its obligation to manage the Forest as a whole, and the
19 Project Area specifically, in a manner that does not impair the diversity, viability, or
20 resiliency of the landscape and native wildlife. KRCG's members, supporters, and

1 staff also have an interest in ensuring that the Forest Service complies with all
2 applicable federal statutes and regulations while authorizing forest management
3 projects, and that the Forest Service fulfills its obligation to manage the Forest in a
4 manner that does not impair the diversity, viability, or resiliency of either the
5 ecological values of the forest, or the native wildlife that live there. The interests of
6 KRCG and its members, supporters, and staff have been, and are being, adversely
7 and irreparably injured by Defendants' failure to comply with federal law, and this
8 injury would continue until and unless the relief requested in this Complaint is
9 granted. These are actual, concrete injuries, traceable to Defendants' conduct, that
10 would be redressed by the requested relief.

11 18. On its own and through its membership in NEWFC, KRCG participated
12 in the comment and objection phases during the development of the Sanpoil Project
13 and the 2019 Forest Plan, submitting comments and objections on behalf of its
14 members, supporters, and staff. On May 17, 2021, KRCG sent the Forest Service a
15 60-day notice of its intent to sue under the ESA, unless the Forest Service took action
16 to correct violations of the ESA related to the Sanpoil Project. To date, the Forest
17 Service has not responded to that notice.

18 19. Defendant U.S. FOREST SERVICE is an agency of the United States
19 within the Department of Agriculture and is charged with managing the public lands

1 and wildlife of the Colville National Forest, in accordance and compliance with
2 NEPA, NFMA, the APA, and their implementing regulations.

3 20. Defendant GLENN CASAMASSA is the Pacific Northwest Regional
4 Forester for the Forest Service. He is sued in his official capacity as the
5 decisionmaker who signed the final Record of Decision for the 2019 Forest Plan
6 challenged herein.

7 21. Defendant RODNEY SMOLDON is the Forest Supervisor for the
8 Colville National Forest, responsible for its management in compliance with NEPA,
9 NFMA, the ESA, and the APA. Defendant Smoldon is sued in his official capacity.

10 22. Defendant TRAVIS FLETCHER is the District Ranger for the
11 Republic Ranger District, named as the responsible official for the Sanpoil Project.
12 Defendant Fletcher is sued in his official capacity.

13 **IV. LEGAL FRAMEWORK**

14 **A. National Forest Management Act**

15 23. NFMA is the primary statute governing the administration of national
16 forests. 16 U.S.C. §§ 1600-1614. NFMA and its implementing regulations provide
17 for forest planning and management by the Forest Service on both the forest level
18 and the individual project level.

19 24. At the forest level, NFMA requires the Forest Service to develop,
20 maintain, and revise a forest plan for each national forest. 16 U.S.C. § 1604(a).

1 Forest plans consist “of broad, long-term plans and objectives for the entire forest.”
2 *All. for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir.
3 2018). They are “designed to manage forest resources by balancing the consideration
4 of environmental and economic factors.” *Native Ecosystems Council v. Weldon*, 697
5 F.3d 1043, 1056 (9th Cir. 2012).

6 25. A forest plan must establish natural resource management practices
7 forest-wide, and provide for sustained yields and multiple uses, including the
8 coordination of outdoor recreation, livestock grazing, timber harvest, and soil
9 conservation, as well as the protection of watersheds, riparian areas, wilderness, and
10 fish and wildlife species habitat and diversity. 16 U.S.C. § 1604(e), (g). The Forest
11 Service must provide for and foster public participation in the development, review,
12 and revision of forest plans. *Id.* § 1604(d).

13 26. NFMA also requires the Forest Service to adopt additional regulations
14 for its forest plans. *Id.* § 1604(g)(3). These guidelines must ensure that forest plans
15 “provide for diversity of plant and animal communities” and “for steps to be taken
16 to preserve the diversity of tree species.” 16 U.S.C. § 1604(g)(3)(B).

17 27. The Forest Service adopted forest planning regulations in 1982. 47 Fed.
18 Reg. 43,026-43,052 (Sept. 30, 1982) (“1982 Rules”).¹ The Forest Service revised

¹ Also available at <https://www.fs.fed.us/emc/nfma/includes/nfmareg.html>. In this Complaint, citations to the 1982 Rules will be in the form “1982 Rules § 219.xx.”

1 these regulations in 2012, but included transitional provisions allowing it to elect to
2 apply the 1982 Rules to the development or revision of forest plans initiated prior to
3 2012. 36 C.F.R. § 219.17(b)(3). The Forest Service elected to apply the 1982 Rules
4 to the development of the 2019 Forest Plan, which it began in 2003.²

5 28. The 1982 Rules define “diversity” as the “distribution and abundance
6 of different plant and animal communities and species within the area covered by a
7 land and resource management plan.” 1982 Rules § 219.3. The Rules further specify
8 that “diversity shall be considered throughout the planning process” and “inventories
9 shall include quantitative data making possible the evaluation of diversity in terms
10 of its prior and present condition.” 1982 Rules § 219.26.

11 29. The 1982 Rules also require that “wildlife habitat shall be managed to
12 maintain viable populations of existing native and desired non-native vertebrate
13 species in the planning area.” 1982 Rules § 219.19. To meet this requirement, the
14 Forest Service must ensure that sufficient habitat is “well distributed” throughout a
15 forest planning area. *Id.*

16 30. The 1982 Rules require a forest plan to designate certain “management
17 indicator species,” whose “population changes are believed to indicate the effects of

² However, the Forest Service explicitly developed the Forest Plan’s monitoring requirements in accordance with 36 C.F.R. § 219.12 of the 2012 planning rules, and also incorporated language from the 2012 rules in discussing the requirement that all projects finalized after the 2019 Plan ROD must be consistent with the Plan.

1 management activities,” including those activities that affect “vegetation type [and]
2 timber age classes[.]” 1982 Rules § 219.19(a)(1). Planning alternatives are to be
3 evaluated in terms of “both amount and quality of habitat and of animal population
4 trends of the management indicator species.” 1982 Rules § 219.19(a)(2).

5 31. Under NFMA, all projects and activities authorized by the Forest
6 Service must be consistent with the governing forest plan. 16 U.S.C. § 1604(i); *see*
7 1982 Rules § 219.15 (“vegetation management practices...shall be defined in the
8 forest plan with applicable standards and guidelines and the reasons for the
9 choices”). The 2019 Forest Plan adopts the more explicit requirements of the 2012
10 planning rules, which specify that any Forest Service project or activity must
11 conform to *all* components of the applicable forest plan, including its standards,
12 guidelines, and desired conditions. *See* 36 C.F.R. § 219.15; *All. for the Wild Rockies*,
13 907 F.3d at 1110; 2019 Forest Plan at 12-16.

14 32. When undertaking projects that involve “vegetative manipulation of
15 tree cover,” the Forest Service must choose alternatives that are “best suited to the
16 multiple-use goals established for the area with potential environmental, biological,
17 cultural resource, aesthetic, engineering, and economic impacts,” as stated in the
18 applicable forest plan, and not select alternatives “primarily because they will give
19 the greatest dollar return or the greatest output of timber[.]” 1982 Rules
20 § 219.27(b)(3).

1 **B. National Environmental Policy Act**

2 33. NEPA is the “basic national charter for protection of the environment.”
 3 40 C.F.R. § 1500.1(a). NEPA has two fundamental purposes: (1) to guarantee that
 4 agencies take a “hard look” at the consequences before taking an action, by ensuring
 5 that “the agency, in reaching its decision, will have available, and will carefully
 6 consider, detailed information concerning significant environmental impacts”; and
 7 (2) to ensure that “the relevant information will be made available to the larger
 8 audience that may also play a role in both the decision making process and the
 9 implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490
 10 U.S. 332, 349-350 (1989).

11 34. To that end, NEPA requires federal agencies to prepare a detailed EIS
 12 for all major federal actions that may significantly affect the quality of the human
 13 environment. *See* 42 U.S.C. § 4332(C). An agency may first prepare an
 14 Environmental Assessment (“EA”) to determine whether it needs to prepare an EIS.
 15 40 C.F.R. §§ 1501.4(b); 1508.9.³ An EA is a concise public document that briefly

³ The Council on Environmental Quality (“CEQ”) promulgates regulations implementing NEPA that are binding on all federal agencies. 40 C.F.R. §§ 1500-1518.4. In 2020, CEQ adopted new NEPA regulations with an effective date of September 14, 2020. *See* 85 Fed. Reg. 43304-43376. The prior regulations were still in place when the 2019 Forest Plan was adopted, and the Forest Service chose to apply those regulations to the Sanpoil Project, which was nearly final when the 2020 regulations became effective. *See, e.g.,* Draft Decision Notice and Finding of No

1 describes the proposal, examines alternatives, considers environmental impacts, and
2 provides a list of individuals and agencies consulted. 40 C.F.R. § 1508.9. If the
3 agency concludes there is no significant impact associated with the proposed project
4 or activity, it may issue a Finding of No Significant Impact (“FONSI”) in lieu of
5 preparing an EIS. 40 C.F.R. § 1501.4(e).

6 35. NEPA analyses must consider a range of reasonable alternative actions
7 and thoroughly assess direct, indirect, and cumulative environmental effects of the
8 proposed alternatives. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502 and 1508.
9 Cumulative effects are “the impact on the environment which results from the
10 incremental impact of the action when added to other past, present, and reasonably
11 foreseeable future actions regardless of what agency (Federal or non-Federal) or
12 person undertakes such other actions.” 40 C.F.R. § 1508.7. To take the required
13 “hard look,” agencies must consider all past, present, and “reasonably foreseeable”
14 future impacts, even when preparing an EA. *Idaho Sporting Congress, Inc. v.*
15 *Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).

16 36. When an agency proposes a project that would be implemented without
17 further, site-specific NEPA review, it must disclose the details of its proposed action

Significant Impact (“Draft Sanpoil FONSI”) at 7 (evaluating finding of no significant impact based on the standards of pre-2020 regulations). All citations to NEPA regulations thus refer to the pre-2020 regulations.

1 at a site-specific level and perform a detailed environmental analysis of the
2 reasonably foreseeable impact of those site-specific actions. *See Se. Alaska*
3 *Conservation Council v. United States Forest Serv.*, 443 F. Supp. 3d 995, 1006,
4 1011-12 (D. Alaska 2020).

5 37. Agencies are required to evaluate both the context and intensity of an
6 action to determine the significance of its impact on the environment. 40 C.F.R. §
7 1508.27. Context refers to the significance of the action with regard to society as a
8 whole, the affected region, the affected interests, and the locality. *Id.* § 1508.27(a).
9 Both short- and long-term effects are relevant to the action's context. *Id.*

10 38. In evaluating intensity, an agency must consider ten "significance"
11 factors, including: (1) impacts that may be both beneficial and adverse; (2) any
12 effects on public health or safety; (3) unique characteristics of the geographic area,
13 such as proximity to ecologically critical areas; (4) the level of controversy about
14 potential environmental effects; (5) the degree of uncertainty, or existence of unique
15 or unknown risks; (6) if it sets possible precedent for future actions; (7) the
16 cumulative impacts of the action and other related actions; (8) any effect on
17 scientific, cultural, or historical resources; (9) any effect on an endangered or
18 threatened species or its habitat; and (10) if the action might violate federal, state, or
19 local requirements imposed to protect the environment. 40 C.F.R. § 1508.27(b).

1 39. The presence of any of these factors is sufficient to indicate the project
2 may have a significant impact to the environment, necessitating the preparation of
3 an EIS. *Ctr. for Biological Diversity v. Nat'l Hwy. Traffic Safety Admin.*, 538 F.3d
4 1172, 1220 (9th Cir. 2008). Indeed, an agency must prepare an EIS if any substantial
5 questions exist regarding whether an action may have a significant effect on the
6 environment, including if it may have a cumulatively significant effect when
7 considered along with other past, present, and reasonably foreseeable actions. *Blue*
8 *Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

9 40. Once it determines that an action may have a significant effect on the
10 environment, an agency must develop and publish a draft EIS, and then solicit
11 comments from the public. 40 C.F.R. §§ 1502.9 and 1503. An agency must respond
12 to those public comments in its final EIS, including addressing any scientific
13 evidence cited in those comments that contradicts its conclusions. 40 C.F.R. §§
14 1502.9(b), 1503.4; *see Ctr. for Biological Diversity v. United States Forest Serv.*,
15 349 F.3d 1157, 1167-68 (9th Cir. 2003). Agencies “must respond explicitly and
16 directly to conflicting views in order to satisfy NEPA’s procedural requirements.”
17 *Earth Island Institute v. Forest Service*, 442 F.3d 1147, 1172 (9th Cir. 2006).

18 41. The Forest Service uses the NEPA process at both broad, programmatic
19 levels, including the development of forest plans, and at the individual project or
20 “site-specific” level, including the development of logging projects.

1 **C. Endangered Species Act**

2 42. The purpose of the ESA is to conserve ecosystems upon which
3 threatened and endangered species depend, and to recover these listed species to the
4 point where they no longer need ESA protections. 16 U.S.C. §§ 1531(b). The ESA
5 and its regulations also prohibit the “take” of any species listed as threatened or
6 endangered, which includes harassing, harming, wounding, or killing any member
7 of the species. 16 U.S.C. §§1538; 1533(d); 1532(19).

8 43. Section 7 is acknowledged as “the heart of the Endangered Species
9 Act,” and requires federal agencies to ensure that any action they authorize, fund, or
10 carry out is “not likely to jeopardize the continued existence of any endangered [or
11 threatened] species.” 16 U.S.C. § 1536(a)(2). To ensure compliance with this
12 substantive mandate, the ESA and its implementing regulations impose specific
13 procedural duties, which require an agency to engage in consultation with the U.S.
14 Fish and Wildlife Service (“USFWS”) before taking any action that “may affect” a
15 listed species or its designated critical habitat. *Id.*; 50 C.F.R. § 402.14(a).

16 44. This process begins with an informal consultation with USFWS, which
17 requires the action agency to prepare a “Biological Assessment.” *See* 50 C.F.R. §§
18 402.02, 402.12. A Biological Assessment must evaluate the potential effects of the
19 proposed agency action and determine if any listed species are “likely to be adversely
20 affected by the action.” *Id.* § 402.12(a), (c).

1 45. If the action agency concludes on the basis of its Biological Assessment
2 that the proposed activity is not likely to adversely affect a listed species or adversely
3 modify critical habitat, and the USFWS concurs with that conclusion in a “Letter of
4 Concurrence,” then the consultation is complete. 50 C.F.R. §§402.12, 402.14(b).

5 46. The conclusion that an action “is not likely to adversely affect” a
6 species is appropriate only “when effects on listed species are expected to be
7 discountable, or insignificant, or completely beneficial.” *See* U.S. Fish and Wildlife
8 and National Marine Fisheries Service, *Endangered Species Consultation Handbook*
9 (1998) (“ESA Handbook”) at 3-12. Discountable effects are those “extremely
10 unlikely” to occur, while insignificant effects cannot be “meaningfully measure[d],
11 detect[ed], or evaluate[d],” and should “never reach the scale where take occurs.”
12 *Id.* In assessing potential effects on listed species, agencies must “use the best
13 scientific and commercial data available.” 16 U.S.C. § 1536(a)(2).

14 47. However, if the action agency or USFWS determines that an activity is
15 likely to adversely affect a listed species, USFWS must complete a “Biological
16 Opinion” to determine whether the activity will jeopardize the species or result in
17 destruction or adverse modification of critical habitat. *Id.* §402.14. Under the ESA,
18 an activity will “jeopardize the continued existence of” a species if it is reasonably
19 expected “directly or indirectly, to reduce appreciably the likelihood of both the

1 survival and recovery of a listed species in the wild by reducing the reproduction,
2 numbers, or distribution of that species.” 50 C.F.R. § 402.02.

3 48. Once the consultation process is complete, the action agency has a duty
4 to ensure it remains valid and must reinitiate consultation with USFWS if “new
5 information reveals effects of the action that may affect listed species or critical
6 habitat in a manner or to an extent not previously considered.” 50 C.F.R. § 402.16.

7 **D. Administrative Procedure Act**

8 49. Final agency actions taken pursuant to NFMA, NEPA, and the ESA are
9 reviewable under the APA, which provides a right of judicial review to persons
10 “adversely affected or aggrieved by agency action within the meaning of a relevant
11 statute[.]” 5 U.S.C. § 702.

12 50. Under the standards of the APA, an agency action is unlawful if it is
13 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
14 law.” 5 U.S.C. § 706(2). Under this standard, an agency must “examine the relevant
15 data and articulate a satisfactory explanation for its action including a ‘rational
16 connection between the facts found and the choice made.’” *Motor Vehicle Mfrs.*
17 *Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). A rule
18 or decision is arbitrary and capricious if “the agency has relied on factors which
19 Congress has not intended it to consider, entirely failed to consider an important
20 aspect of the problem, offered an explanation for its decision that runs counter to the

1 evidence before the agency, or is so implausible that it could not be ascribed to a
2 difference in view or the product of agency expertise.” *Id.*

3 V. FACTS

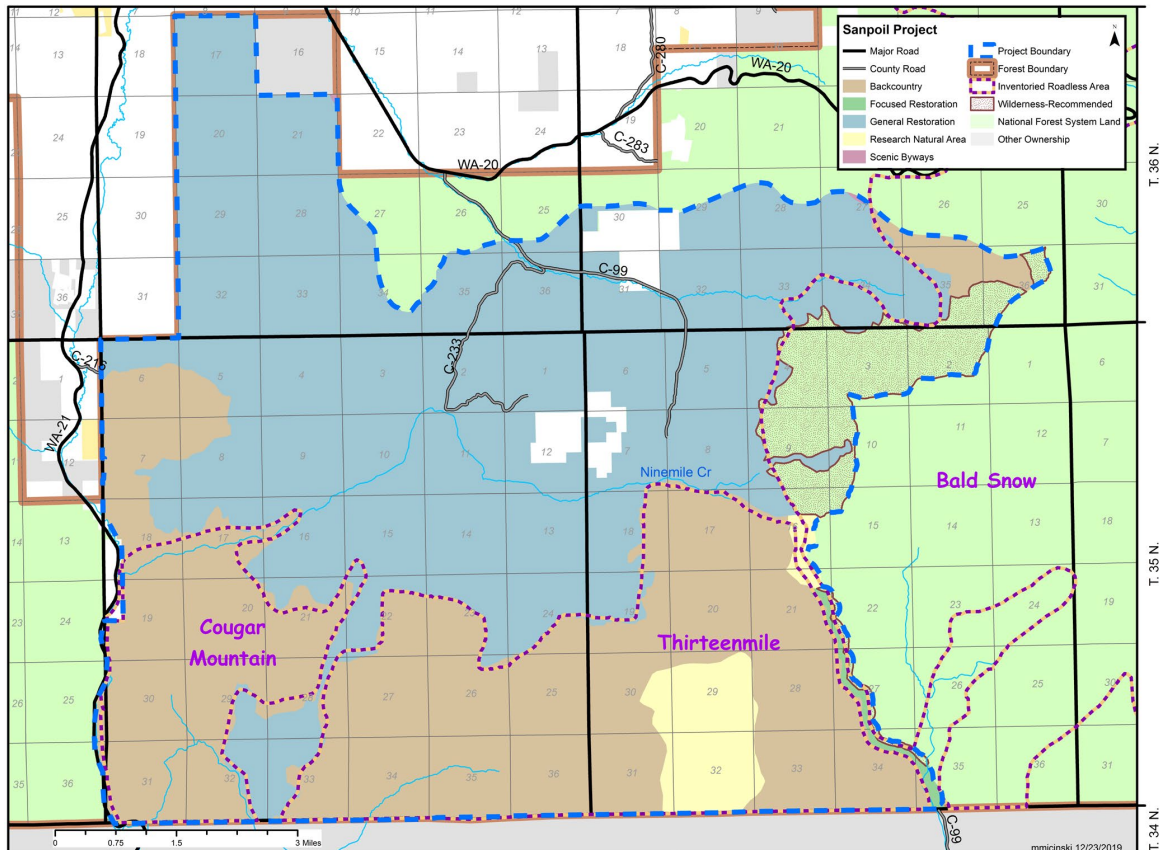
4 A. Project Area Includes Diverse Landscapes and Wilderness Areas

5 51. The Project encompasses 47,956 acres within the Republic Ranger
6 District of the Colville Forest. The Project Area lies in the heart of the Kettle River
7 Range—2,700 square miles of rugged mountains and diverse landscapes, ranging
8 from old-growth forests to subalpine meadows to riparian habitats, with wetlands,
9 springs, rivers, and lakes. The Project Area contains a mix of forest types: stands of
10 Douglas-fir and old-growth ponderosa pine are interspersed with mesic spruce,
11 while subalpine fir predominates around riparian ecosystems.

12 52. The Project Area offers myriad recreational opportunities, including
13 hiking, camping, mountain biking, horseback riding, Nordic skiing, snowshoeing,
14 hunting, fishing, and seasonal berry picking. Hikers enjoy the spectacular vistas the
15 area has to offer on sections of the Pacific Northwest National Scenic Trail, Kettle
16 Crest National Recreation Trail, Edds Mountain Trail, Thirteenmile Trail and the
17 Snow Peak Trail.

18 53. The Project Area encompasses two Roadless Areas, Cougar Mountain
19 and Thirteenmile, and contains a portion of a third, the Bald Snow Roadless Area.
20 Roadless Areas are specific parcels of land with wilderness characteristics that the

Forest Service has designated for special protection, and in which road construction is prohibited and timber cutting, sale or removal is limited. 36 C.F.R. §§ 294.12 and 294.13.



Map from Sanpoil EA, displaying the large portion of the Project Area covered by Cougar Mountain, Thirteenmile, and Bald Snow Roadless Areas, and the Bald Snow Recommended Wilderness Area.

54. The Project Area also overlaps a portion of the Bald Snow Recommended Wilderness Area. If the Forest Service’s recommendation is approved by Congress, this area would be preserved through the National Wilderness Preservation System, and thus recognized as “an area where the earth and its community of life are untrammelled by man[.]” 16 U.S.C. § 1131(c).



View of Thirteenmile Roadless Area within the Project Area. Photo courtesy of KRCG.

B. Project Area Contains Sensitive, Threatened, and Endangered Species

55. The Project Area is home to a rich diversity of species, ranging from deer, elk, and moose, to cougar, bobcat, and black bear. Its forests host numerous bird species, including owls, hawks, and woodpeckers, while its riparian habitats are home to several varieties of frogs, salamanders, and trout.

56. Numerous species in the Project Area have been designated as sensitive, threatened, or endangered—either nationwide or within the state of Washington. Whitebark pine, a candidate for the federal endangered species list, inhabits the harshest subalpine locations, and serves vital ecological functions such as preventing soil erosion, retaining snowpack, and sustaining birds and bears.

1 Meanwhile, old-growth forests within the Project Area provide unique habitat for
2 many species, including populations of northern goshawks, which are a sensitive
3 species for Forest Service Region 6, the region that includes the Colville Forest, as
4 well as candidates for the state endangered species list. Logging is the largest threat
5 to the survival of northern goshawks in Washington.

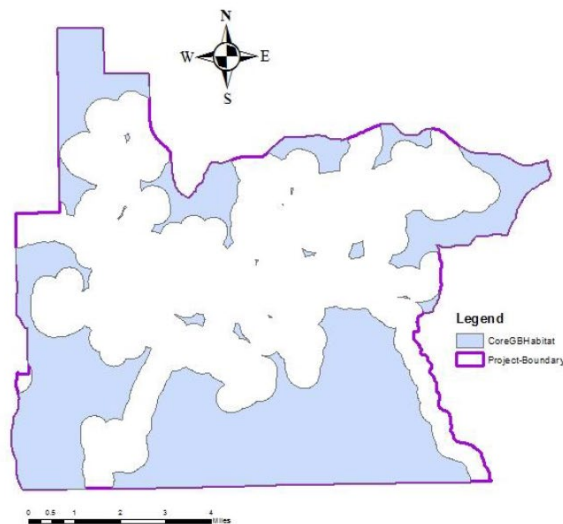
6 57. These primeval forests are also inhabited by the pileated woodpecker,
7 another candidate for the state endangered species list, and provide habitat for white-
8 headed woodpecker, a Region 6 sensitive species and state candidate species, and
9 the great gray owl, a Region 6 sensitive species.

10 58. The Western bumblebee, a Region 6 sensitive species that is in rapid
11 decline throughout the West, inhabits the meadows in the Project Area. Meanwhile,
12 riparian areas are home to the little brown bat, another Region 6 sensitive species,
13 and the Townsend's big-eared bat, a Region 6 sensitive species and state candidate
14 species, which is threatened by human disturbance and destruction of its roost sites.
15 The area's cold streams contain populations of interior Redband trout, a Region 6
16 sensitive species, while the Columbia spotted frog, a state candidate species, is
17 suspected to live in its shallow ponds and backwaters.

18 59. The Project Area is also a vital habitat corridor and prime habitat for
19 the gray wolf, grizzly bear and wolverine.

60. The Forest Service indicates that two packs of gray wolves, the Strawberry and Nc'icn Packs, have territories that include portions of the Project Area, while the Washington Department of Fish and Wildlife ("WDFW") reports that a newer pack, the Kettle Range Pack, has settled into territory just to the north of the area. Gray wolves are a Forest Service Region 6 sensitive species, and a state-listed endangered species.⁴

Seclusion/core habitat for grizzly bears in the Sanpoil project area



61. One of the two recovery areas for grizzly bear in Washington, the Selkirk Mountains Grizzly Bear Recovery Area, crosses into the northern portion of the Forest near the Canada border, and is thought to have a population of at least 50

³ Washington law defines "endangered" as any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state. WAC 232-12-297.

1 to 60 grizzly bears. Although grizzly bears have not been documented in the Project
2 Area, WDFW has previously captured images of grizzly bears on its remote cameras
3 elsewhere in the Kettle Range. The Forest Service has designated those parts of the
4 Project Area that are at least 500 meters away from roads and motorized trails as
5 core habitat for grizzly bear, a species that requires large expanses of undisturbed
6 wilderness. Grizzly bears are listed as endangered in Washington and threatened
7 across the nation, and their survival is jeopardized by increased habitat
8 fragmentation caused by human activity.

9 62. Only about 20 wolverines are estimated to live in Washington, and the
10 species is a candidate for state protection. No wolverines have been spotted in the
11 Project Area, but wolverines are known to live in low densities across large home
12 ranges, and there have been confirmed sightings of the infamously elusive species
13 elsewhere within the Kettle Range. Although the Forest Service disputes that the
14 Project Area provides suitable denning habitat for wolverines, it concedes that it
15 contains potential foraging habitat and vital travel corridors for the species.
16 Wolverine are under increasing threat as climate change causes their habitat,
17 characterized by deep snow and high altitudes, to become increasingly fragmented.

18 **C. Project Area is Home to Lynx and Contains Core Lynx Habitat**

19 63. The Kettle River Range provides the second-largest block of potential
20 habitat in Washington for the Canada lynx, a federally listed threatened species and

a Washington state-listed endangered species. The eastern side of the Project Area overlaps with two Lynx Analysis Units (“LAUs”), the West Sherman LAU and the Hall Creek LAU. LAUs contain core habitat components required to support lynx populations. The Forest Service’s Biological Assessment for the Sanpoil Project (“Sanpoil BA”) predicted the Project will impact 874 acres of lynx denning habitat, 502 acres of primary foraging habitat, and 1,124 acres of alternative prey habitat.

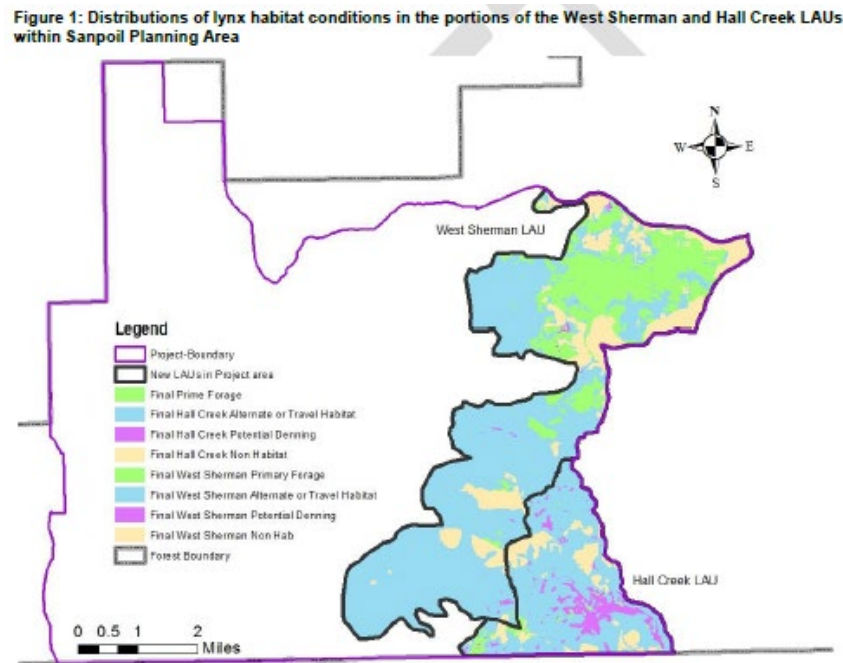


Figure 1 from the Sanpoil Project BE shows habitat potential within two Lynx Analysis Units.

64. Lynx prefer boreal forests that contain subalpine fir and lodgepole pine forest cover and require healthy populations of snowshoe hare. Lynx are highly dependent on mixed-structure forests with diverse foliage—they hunt in younger forests with thick ground cover, but den in older forests with full canopies.

1 65. The Forest Service’s historic mismanagement of this complex habitat
2 is a significant threat to the survival of lynx. In fact, the federal listing of lynx
3 indicates that the single greatest factor threatening lynx is “the inadequacy of
4 existing regulatory mechanisms” to preserve lynx habitat in national forests.

5 66. Washington has listed lynx as a state endangered species because of its
6 “small and restricted population, and an increase in the number and severity of
7 threats” to the species. Lynx habitat in Washington has been eroded by a number of
8 factors, including timber harvest.

9 67. Trapping nearly extirpated lynx from the Colville Forest over 30 years
10 ago, and lynx remain a rare sight in the area. However, a camera trap survey
11 performed in 2016 and 2017 captured three photos of lynx in and just outside the
12 Project Area.

13 68. A March 2020 article in The Journal of Wildlife Management
14 documents these camera traps, which caught four pictures of lynx in the entire Kettle
15 Range area. *See* King et al., *Will Lynx Lose Their Edge? Canada Lynx Occupancy*
16 *in Washington*, 84 The Journal of Wildlife Management 705, at 8 (May 2020) (“2020
17 Lynx Study”). Researchers could not determine if the photographs showed transient
18 individual lynx or evidence of a “persistent small remnant population” of lynx. *Id.*
19 at 13. However, the 2020 Lynx Study notes that the Kettle Range was once a

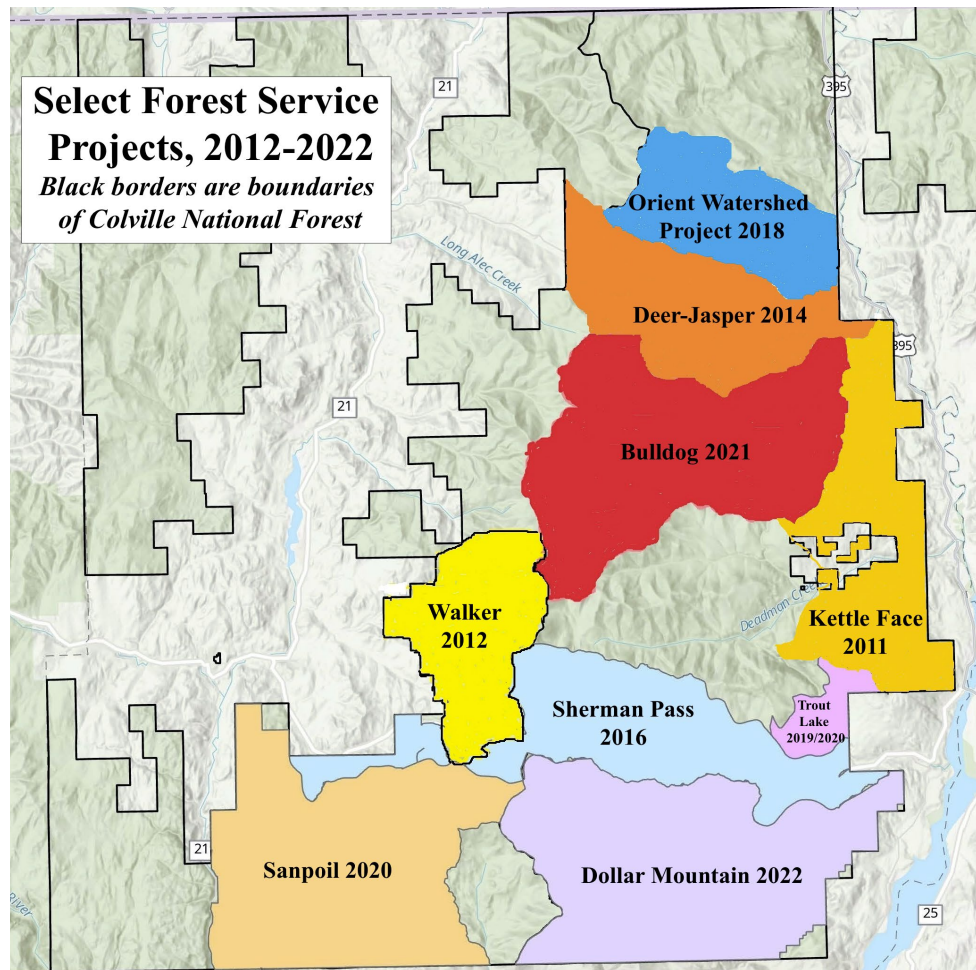
1 stronghold for lynx, and still provides the second largest block of potential habitat
2 for lynx in the state. *Id.* at 3.

3 69. The 2020 Lynx Study discusses the “precarious status of lynx in
4 Washington today and in the future,” and emphasizes that as the climate warms,
5 preserving the species within the state will probably require “maintaining the
6 greatest quantities of lynx habitat at high elevation as possible refugia...where
7 favorable snow conditions may persist for some time.” *Id.* at 14. The study’s data
8 supports other recent studies indicating it may take 35-40 years for lynx habitat in
9 Washington to regenerate after it is damaged by fire or certain forest treatments. *Id.*
10 at 12; *see also* Holbrook et al., *Spatio-temporal responses of Canada lynx (Lynx*
11 *canadensis) to silviculture treatments in the Northern Rockies*, 422 U.S. Forest
12 Ecology and Management 114, 114-124 (2018).

13 **D. Forest Service Has Approved Several Timber Projects in Same Area**

14 70. Within the last decade, the Forest Service has approved at least 11
15 timber harvest projects within the Colville Forest, which have impacted at least
16 179,331 acres. The Forest Service implemented seven of these projects in areas that
17 are either adjacent or in close proximity to the Sanpoil Project.⁵ The Forest Service
18 plans to start two more projects in this same area over the next two years.

⁵ Six of these projects are depicted in the KRCG map, above. The West Zone Project is not shown because it was implemented in scattered pockets around the Forest.



Map of Forest Service projects in the vicinity of the Sanpoil Project. Courtesy of KRCG.

71. In 2011, the Forest Service approved the **Kettle Face Fuel Reduction Project (“Kettle Face Project”)** following a FONSI, authorizing 16,203 acres of ongoing treatments, including various forms of logging, such as “commercial thinning” and “precommercial treatments,” and prescribed burns, which the Forest Service calls “fuels treatments.” The Forest Service evaluated the “cumulative effects area” for lynx for this project as all of the “LAUs on the Kettle Crest, which cover a total of about 199,000 acres.” Kettle Face EA, Chapter 3 at 161.

1 72. In 2012, the Forest Service approved the 6,555-acre **Walker Fuels**
2 **Reduction Project (“Walker Project”)** following a FONSI, authorizing
3 “commercial thinning,” “precommercial treatments,” and “fuels treatments.”

4 73. In 2013, the Forest Service approved the **West Zone Project** subject to
5 a categorical exclusion to NEPA, and as a result, it did not evaluate the project’s
6 potential environmental impacts. This project applied “precommercial thinning” to
7 2,099 acres scattered across different portions of the Colville Forest.

8 74. The Forest Service approved the **Deer Jasper Restoration Project**
9 **(“Deer Jasper Project”)** in 2014, again following a FONSI, allowing timber
10 treatments over 25,128 acres, including “commercial thinning,” “shelterwood
11 removal,” and “underburning.”

12 75. In 2016, the Forest Service authorized the **Sherman Pass Project**,
13 authorizing timber harvests and burns over 34,043 acres directly adjacent to the
14 Sanpoil Project Area. *See* Environmental Assessment for the Sherman Pass Project
15 (“Sherman EA”) at 6. The Sherman Pass Project involves 7,998 acres of “mechanical
16 thinning,” 7,366 acres of “mechanical ladder fuels reductions,” and 7,322 acres of
17 “non-mechanical thinning,” along with 4,475 acres of “underburning” and 3,984
18 acres of “mechanical piling and pile burning.” *Id.* at 23-25. The project authorized
19 the construction of 20 miles of temporary road, along with repairs and reconstruction
20 of another 90 miles of existing road. *Id.* at 27-30.

1 76. The Forest Service acknowledged the Sherman Pass Project would
2 affect threatened, sensitive, and endangered species, and evaluated its cumulative
3 effects along with past and anticipated future projects in nearby areas, including the
4 Sanpoil Project. The Forest Service noted that “at least four wolf packs travel the
5 cumulative effects area,” and that the Sherman Pass Project, along with the “Orient,
6 Deer-Jasper, [and] Sanpoil” may reduce habitat suitability for gray wolves by
7 reopening roads and allowing increased access for poachers. *Id.* at 113-14.

8 77. The Forest Service indicated the project would include “harvest in high-
9 quality foraging habitat” for Canada lynx, which “could adversely affect” the
10 species. Sherman Pass TES Report at 61. It estimated the project would impact 1,020
11 acres of lynx denning habitat, including portions of the West Sherman LAU. *Id.* at
12 60; *see also id.* at 55. The Forest Service recognized it had already “harvested timber
13 in several Lynx Analysis Units within the cumulative effects analysis area,”
14 including in the Walker Project immediately to the north. Sherman EA at 116. It
15 predicted that cumulative impacts from its projects could decrease the quality of the
16 lynx habitat corridor, while an associated increase in road density might reduce
17 foraging habitat for snowshoe hare, primary lynx prey. *Id.*

18 78. The Forest Service predicted the Sherman Pass and Sanpoil projects
19 would increase grazing range and “produce changes in livestock management,
20 habituation of livestock on the landscape, changes in natural barriers, and changes

1 to the available forage base.” *Id.* at 94. It acknowledged that “implementation of the
2 Walker, Deer Jasper, and Sanpoil projects may reduce access to the Kettle Crest
3 National Recreation Trail.” Sherman EA at 91. Taken together, these projects would
4 “result in a cumulative decline in the level of natural and undeveloped environment,
5 outstanding opportunities for solitude, and primitive and unconfined recreation”
6 associated with proposed wilderness areas, including Bald Snow. *Id.* at 90.

7 79. The Forest Service indicated the Sherman Pass Project would provide
8 more “open” views into the Forest, and maintain “mosaic stand conditions,” by
9 leaving tree clumps, canopy gaps, and complex patches of vegetation. *Id.* at 145.
10 Overall, the project was purportedly designed to create “[l]andscape character
11 changes [that] would be seen as thinned stands of trees and a more open forested
12 canopy character.” *Id.* at 146.

13 80. Following implementation, however, KRCG and NEWFC members
14 complained the Forest Service had provided incomplete and misleading information
15 about how treatments in the Sherman Pass Project would be applied and allowed
16 “heavy-handed shelterwood logging” and “clearcuts” in sensitive and scenic areas.



At left, a photograph from a parking area adjacent to the Sherman Pass following project “treatments.” At right, untreated forest area roughly 100 yards away. Photos courtesy of KRCG.

81. In 2018, the Forest Service approved the **Orient Watershed Project** (“Orient Project”) following a FONSI. This project allowed timber harvests over 9,670 acres of the Colville and prescribed burns over 6,570 acres. The Forest Service described the scope for analyzing cumulative impacts to lynx as consisting of “the LAUs on the Kettle Crest, which cover a total of about 199,000 acres.” Orient Project BE at 24. In its cumulative effects analysis, the Forest Service thus considered several large projects planned for that area, including the Sanpoil Project. *Id.* at 24.

82. In 2019, the Forest Service approved the **Trout Lake Insect and Disease Restoration Project** (“Trout Lake Project”) based on a NEPA categorical exclusion, allowing 2,973 acres of commercial thinning, large-scale “regeneration” cuts, and fuel reduction treatments. Most of the Trout Lake Project Area was marked

1 for “commercial thinning” with “regeneration,” although the Forest Service
 2 indicated it would retain clumps of larger trees, and only allow clearcuts in very
 3 limited circumstances. In all areas, the Forest Service indicated it would leave large,
 4 downed logs, woody debris, and “snags.”⁶ As the photos below demonstrate, the
 5 Forest Service did not follow through on these commitments during implementation
 6 of the Trout Lake Project.



Unit 7 of the Trout Lake before “treatment,” showing a mix of Douglas-fir, ponderosa pine, and western larch, including both healthy trees and snags. Photo courtesy of KRCG.

⁶ “Snags” are dead or dying trees that are still standing and left to decompose naturally. Birds, small mammals, and other wildlife, including owls and woodpeckers, use snags for nests, nurseries, storage areas, foraging, roosting, and perching.



Unit 7 of the Trout Lake Project after “treatment,” showing a large clearcut area with no snags or downed logs. Photo courtesy of KRCG.

83. The Forest Service plans to start the **Bulldog Project** as early as the summer of 2021. The Bulldog Project will encompass 44,000 acres to the northeast of the Sanpoil Project, implementing prescribed burns and timber harvests over 15,405 acres. Among other effects, the Bulldog Project will impact the U.S. and Indian LAUs (where lynx footprints were found in 2020), as well as three known territories of the Northern goshawk, the territory of one known wolf pack, and potential habitats for grizzly bear and wolverine. The project’s timber harvests are expected to result in increased stream temperature and sedimentation.

1 84. Meanwhile, the Forest Service is also planning the **Dollar Mountain**
2 **Project** for 2022, which will encompass 50,784 acres directly east and adjoining the
3 Sanpoil Project, and which will likely involve commercial timber harvests, thinning,
4 and prescribed burns. This Dollar Mountain Project will overlap with 9,300 acres of
5 the Bald Snow Roadless Area.

6 **E. 2019 Forest Plan Sets New Guidelines for Forest Conditions**

7 85. In 2019, the Forest Service issued the 2019 Plan ROD, adopting a
8 Revised Colville Forest Plan to replace the Colville National Forest Land and
9 Resource Management Plan approved in 1988 (“1988 Forest Plan”).

10 86. In the 1988 Forest Plan, the Forest Service identifies the pileated
11 woodpecker and American marten as management indicator species to help monitor
12 the health of habitats with large, old-growth trees. *See* Environmental Impact
13 Statement for 1988 Forest Plan at III-35, Table III-4. However, the Forest Service
14 abruptly stopped monitoring these species less than a decade later—the last time
15 either species was mentioned in a Forest Service monitoring report was in 1997.

16 87. In 1995, the Forest Service amended the 1988 Forest Plan to include
17 the Revised Interim Standards for Timber Sales on Eastside Forests (“Eastside
18 Screens Standard”), which prohibits the harvest of trees greater than 21 inches in
19 diameter. *See* Final Programmatic Environmental Impact Statement for the 2019
20 Plan (“2019 Plan FEIS”) at 47. The Forest Service generated the Eastside Screens

1 Standard based on recommendations from a panel of experts assembled from several
2 prominent scientific organizations, following a collaborative study on the necessity
3 of protecting old-growth forests that was requested by Congress.

4 88. The 2019 Forest Plan eliminates the Eastside Screens Standard and its
5 prohibition on harvesting trees greater than 21 inches. 2019 Plan ROD at 8. Instead,
6 it outlines multiple instances where the Forest Service would allow removal of trees
7 with diameters over 20 inches, including to protect public health or safety, limit the
8 spread of infestation or disease, facilitate management of emergency situations,
9 “meet, promote, or maintain desired conditions for structural stages,” “promote
10 special plant habitats,” and when “strategically critical to reinforce, facilitate, or
11 improve effectiveness of fuel reduction in wildland-urban interfaces.” 2019 Forest
12 Plan at 42 (“FW-GDL-VEG-03. Large Tree Management”).

13 89. While the 2019 Forest Plan sets desired conditions for the percentages
14 of different tree species that should be present in forests with late forest structure, it
15 does not set a minimum amount of old-growth habitat to be preserved in the Forest.⁷

16 90. There is scientific disagreement about whether old growth habitats are
17 more likely to flourish when agencies are prohibited from removing any large, old

⁷ The 2019 Forest Plan does not use the term “old-growth” to describe vegetation conditions, nor does it explain its switch to the use of late forest structure as a proxy for old-growth habitat.

1 trees, or if they will benefit if agencies remove some large, old trees, to try to increase
2 the viability of those that are retained. Rather than acknowledge or address this
3 controversy, the 2019 Plan FEIS assumes it away: “A key assumption of the
4 landscape restoration approach that is represented in two of the alternatives
5 (Proposed Action and P/Preferred) is that by strategically locating restoration
6 treatments, landscape fire movement can be altered, and the risk to adjacent late-
7 successional and old forest habitat is reduced.” 2019 Plan FEIS at 460.

8 91. The only analysis in the 2019 Plan FEIS of the amount of old growth
9 provided by the alternatives shows that the no-action alternative would protect more
10 old growth than the preferred alternative ultimately selected by the Forest Service.
11 Nevertheless, 2019 Plan FEIS maintains, based wholly on its “key assumption,” that
12 the preferred alternative would have fewer impacts on old-growth forest species.

13 92. The documents supporting the 2019 Forest Plan also do not provide a
14 qualitative assessment of the current health of old-growth stands—nor do they
15 indicate how or whether the Forest Service continued to monitor the health of these
16 stands after it stopped tracking the old-growth management indicator species nearly
17 20 years beforehand.

18 93. In place of management indicator species, the 2019 Forest Plan focuses
19 on “surrogate species” intended to “represent ecological conditions that generate
20 sustainable ecosystems.” 2019 Plan FEIS at 892. To judge the health of “late and old

1 forest structures,” the 2019 Forest Plan focused on the viability of the northern
2 goshawk, pileated woodpecker, American marten, and white-headed woodpecker.
3 Wildlife Report, 2019 Plan FEIS, at 13, Table 6. But the Wildlife Report draws only
4 cursory conclusions about the status of these species: For the “Current Viability
5 Outcome” based on the departure from historic conditions, the Wildlife Report gives
6 the American marten a “B-C,” the northern goshawk an “A/B,” the pileated
7 woodpecker a “C,” and the white-headed woodpecker a “D/E,” without further
8 discussion of either species. *Id.* at 6, Table 2.

9 94. The 2019 Forest Plan sets up Scenic Integrity Objectives for each
10 management area and mandates that project-level activities should be designed to
11 meet those objectives. 2019 Forest Plan at 88 (“FW-OBJ-SCE-01”). An area
12 categorized with a “high” Scenic Integrity Objective, for example, should be left in
13 a state that “appears unaltered,” so that “management activities are unnoticed and
14 the landscape character *appears* unaltered.” *Id.* at 194 (emphasis in original).

15 95. The 2019 Forest Plan also lists “desired conditions” for different
16 elements of the Forest, and mandates that site-specific projects “describe any short-
17 term, or negligible long-term, adverse effects the project may have on the
18 maintenance or attainment of any desired condition.” *Id.* at 170. One of the Plan’s
19 “desired conditions” is to move certain types of forest structure towards their
20 “historical range of variability.” *Id.* at 34 (“FW-DC-VEG-03”). Another desired

1 condition indicates habitat conditions should be kept “consistent with the historical
2 range of variability...and contribute to the viability of surrogate species and
3 associated species.” *Id.* at 59 (“FW-DC-WL-03”).

4 96. The 2019 Plan FEIS includes conclusions about the effects on species
5 viability of the various plan alternatives, including the components that affect old-
6 growth forest. With regard to the preferred alternative (which was ultimately
7 selected by the 2019 Plan ROD), the Forest Service concludes that it “would make
8 a relatively high contribution to the viability of [Late Successional Old Forest] -
9 dependent surrogate wildlife species.” 2019 Plan FEIS at 536. On the other hand, the
10 2019 Plan FEIS concludes that the no-action alternative, which contains the Eastside
11 Screens Standard, “would not improve the viability outcomes” in the short-term or
12 long-term, and “may not maintain viable populations of [Late Successional Old
13 Forest] surrogate wildlife species.” *Id.* at 471, 472. However, the 2019 Plan FEIS
14 does not contain any analysis to support these conclusions, nor does it consider any
15 alternative that it unequivocally concludes would provide sufficient habitat to
16 maintain viable levels of surrogate wildlife species dependent on old-growth forests.

17 97. The Wildlife Report provides a viability score for each surrogate
18 species for both the short and long-term under each alternative. For many species,
19 the Wildlife Report shows that projected future viability will not reach historic levels
20 under any alternative. Wildlife Report, Appendix B. The Wildlife Report also

1 includes the results of model projections of the amount of habitat for surrogate
2 species, which show that historic conditions will not be achieved in some cases,
3 including for the preferred alternative.

4 **F. Plaintiff Submitted Comments on 2019 Forest Plan Revision**

5 98. In comments on the Draft EIS for the 2019 Forest Plan, KRCG noted
6 that the 2019 Forest Plan's approach to managing old-growth habitats is ambiguous
7 and would not improve ecological resilience. Relying on multiple scientific studies,
8 KRCG recommended the Forest Service preserve the Eastside Screens Standard.
9 NEWFC submitted a similar comment, criticizing the Forest Service for abandoning
10 the Eastside Screens Standard and the scientific consensus supporting it.

11 99. In its response in the FEIS, the Forest Service claims that the "effects
12 analysis described in the FEIS shows that maintaining a 21" diameter limit reduces
13 the ability to attain the desired future condition of having a majority of most
14 vegetation types in late structure." 2019 Plan FEIS at 1025. Beyond repeating this
15 conclusion, however, the FEIS provides no such analysis, or any scientific support
16 for this conclusion.

17 100. NEWFC objected again to the new standards for old-growth harvest in
18 its comments to the 2019 Plan FEIS. Noting the high ecological value of old-growth
19 stands, NEWFC challenged the departure from the Eastside Screens Standard in
20 favor of more liberalized treatment of old-growth trees, citing to a scientific

1 consensus that old-growth trees need additional protection. NEWFC also criticized
2 the Forest Service for its monitoring failures, which led to a lack of reliable, baseline
3 information about the health and prevalence of old-growth habitats.

4 101. The Forest Service responded that the new standard provides “the
5 Forest with more flexible strategies to allow forest managers to better integrate old
6 forest conservation goals with other land management objectives.” 2019 Forest Plan
7 —Old Growth Final Issue Paper at 3-4. The issue paper asserts that “a broad body
8 of science now supports a more ecologically-based approach,” but does not
9 specifically identify or cite to any of this science. *Id.* at 3. The Forest Service did not
10 address the objections regarding its failure to monitor and gather baseline data.

11 **G. KRCG and NEWFC Comment on Initial Sanpoil Project Plans**

12 102. The Forest Service published a scoping letter for the Sanpoil Project on
13 December 14, 2016, and opened a comment period.

14 103. NEWFC commented that the Forest Service could not adequately
15 promote forest health and resiliency without taking larger, landscape-level
16 restoration into account, such as the type of planning described in the Vision 2020
17 program. NEWFC also expressed concern about Forest Service’s plans to create
18 shaded fuel breaks, asking for more details about the activity, including proposed
19 treatment areas and their proximity to riparian areas, Roadless Areas, and proposed

1 wilderness. NEWFC also requested that the Forest Service consider restoration to
2 preserve the area's old-growth habitats.

3 104. The Forest Service released a draft EA for the Project on February 6,
4 2019, and opened another comment period.

5 105. NEWFC submitted comments on the draft EA, indicating it would not
6 support any activities that would remove areas from potential consideration as
7 recommended wilderness. It also questioned how the Forest Service could have
8 completed an environmental assessment without understanding the status of the 67
9 miles of "existing non-system road templates" that it planned to restore.

10 106. Three NEWFC board members, representing KRCG, Conservation
11 Northwest, and the Lands Council, submitted an addendum raising additional
12 concerns. The NEWFC board members asked the Forest Service to provide site-
13 specific prescriptions, such as more detailed maps with numbered roads and
14 geolocation data, to give the public critical information necessary to understand and
15 make informed judgments about the Project's specific environmental impacts. They
16 noted that the coarse scale of the maps provided, coupled with a lack of specificity
17 about the proposed treatments, "makes it extremely difficult to do field survey[s]
18 and understand what you are proposing to do." NEWFC Comment Addendum at 2.

19 107. The NEWFC board members also challenged the Forest Service for
20 failing to evaluate the cumulative effects of the Project along with the adjoining

1 Sherman Pass Project and expressed concern about the Project’s potential impact on
2 certain sensitive species, including the Canada lynx, grizzly bear, and wolverine.
3 Because of these potential impacts, the uncertainty over the Project’s specifics, and
4 the potential for significant cumulative impacts, the board members called for the
5 Forest Service to complete an EIS.

6 108. The NEWFC board members expressed a deep concern that the Forest
7 Service would allow “heavy-handed shelterwood logging” and “clearcuts,” similar
8 to what they had seen with the Sherman Pass Project. *Id.* They indicated that
9 allowing such treatments in the upper Sanpoil watershed would ruin the views from
10 “some of the most valuable scenic trails and high peaks in the Kettle Range” for
11 decades to come and urged the Forest Service to give weight to these social
12 considerations. *Id.* at 3.

13 109. Finally, the board member addendum again questioned the use of
14 shaded fuel breaks, noting they are controversial, and that science has not confirmed
15 their efficacy at promoting forest resiliency. In particular, the board members
16 challenged the Project’s plan to place fuel breaks near Roadless Areas, which are
17 “one of the most important biologically diverse wildland complexes” in the Forest,
18 asserting that it was “unconscionable to suggest” that these treatments would not
19 “significantly degrade wildlife habitat suitability.” *Id.* at 1.

H. Forest Service Releases Biological Assessment

110. In September 2018, the Forest Service completed the Sanpoil BA and sent it to USFWS. The Sanpoil BA acknowledges that the Forest Service does not have accurate estimates of wildlife within the Project Area, claiming they would be “difficult if not unfeasible to obtain.” Sanpoil BA at 16. In particular, the Sanpoil BA notes that it is “unlikely that all activity centers such as dens or nests have been found.” *Id.* Lacking complete information, the Sanpoil BA indicates that the Forest Service assumes the Project Area is potentially occupied by listed species.

111. The Sanpoil BA indicates that planned actions would occur in 3,638 acres of the West Sherman and Hall Creek LAUs, including 2,587 acres of lynx habitat. *Id.* at 21. Yet the Sanpoil BA concludes the Project would have no adverse impact to lynx, based largely on the assumption that any negatively impacted habitat would quickly regenerate. For example, the Forest Service assumes that the impacted acres of primary prey habitat would return to prime quality “within 15-20 years.” *Id.* at 22. Likewise, the Forest Service assumes that any impact to lynx denning habitat would be negated after about “15 years,” and that alternate prey habitat would be negatively impacted for only “up to 20 years.” *Id.* at 21022.

112. The Sanpoil BA does not provide a scientific basis for these regeneration predictions, nor does it address scientific research suggesting that it may take 35-40 years for lynx habitat in Washington to regenerate after it is damaged

1 by fire or certain forest treatments. It also does not examine the impact that even a
2 15-20-year disturbance of habitat would have on the fragile lynx population—
3 including how any resident or transient lynx could persist through a 15-year impact
4 to its denning habitat or how resident or transient lynx would be affected by a 15-
5 20-year impact to their prey habitat.

6 113. The Forest Service does not address the question of whether any lynx
7 will still be in the area by the time the habitat is theoretically restored. Nor does the
8 Forest Service address the impact of future planned projects on its regeneration
9 projections. For example, a recent Forest Service planning document indicates the
10 Forest Service expects to approve a new project in the Sanpoil area in 2040—
11 meaning that even if the Forest Service is correct that lynx habitat will regenerate in
12 15-20 years, that regenerated habitat may immediately be disturbed by another
13 project.

14 114. The Sanpoil BA dismisses recent photographs of lynx near and around
15 the Project Area as just “one recently documented individual,” although it does not
16 explain or support this conclusion. *Id.* at 23. It likewise does not explain or support
17 its conclusion that although this theoretical individual lynx may be “displaced,” such
18 displacement would not have a significant impact on this lynx. *Id.* The Sanpoil BA
19 does not address the possibility that the photographs are evidence of a resident

1 population of lynx in the Project Area, nor discuss the impact the Project would have
2 on such a population.

3 115. USFWS responded to the Sanpoil BA in December 2018 with a Letter
4 of Concurrence (“USFWS Concurrence”), agreeing with the Forest Service’s
5 finding that the Project “may affect, but is not likely to adversely affect lynx.” *See*
6 USFWS Concurrence at 6. The USFWS Concurrence largely parrots the
7 conclusions of the Sanpoil BA, including its assumption that key lynx habitat would
8 be restored within 15-20 years, and that the 2016-2017 camera trap survey captured
9 a photograph of only one lynx. *Id.* at 5-6. The USFWS Concurrence concludes that:

10 “lack of lynx dens in the project area indicate lynx would remain transient
11 through the project area, rather than residents. Disturbance during project
12 activities may cause any individuals to be displaced from the area but the
13 effects would be insignificant to transient individuals...Therefore the
14 proposed action may affect, but is not likely to adversely affect lynx.”

15
16 *Id.* at 6.

17 **I. Forest Service Releases Final EA and Draft FONSI Describing Action**

18 116. On May 27, 2020, the Forest Service published the final Environmental
19 Assessment (the “Sanpoil EA”) and draft Decision Notice and Finding of No
20 Significant Impact (“Draft Sanpoil FONSI”). The Sanpoil EA identifies three
21 purposes for the Project: (1) to “promote forest health and resiliency”; (2) increase
22 “water quality, watershed function, and aquatic habitat”; and (3) “[s]upport

1 infrastructure and jobs in the Tri-County area” through timber harvest. Sanpoil EA
2 at 4-5.

3 117. The Sanpoil EA indicates the Project is proceeding under the Vision
4 2020 proposal, developed in conjunction with NEWFC, and subject to CFLRA. *Id.*
5 at 8. The Forest Service indicates the Project will fulfill the “Vision 2020 CFLRA
6 landscape restoration strategy” to “increase ecosystem resistance and resilience to
7 disturbance, restore old-growth structure and function, and reduce wildfire risk and
8 fire management costs[.]” *Id.*

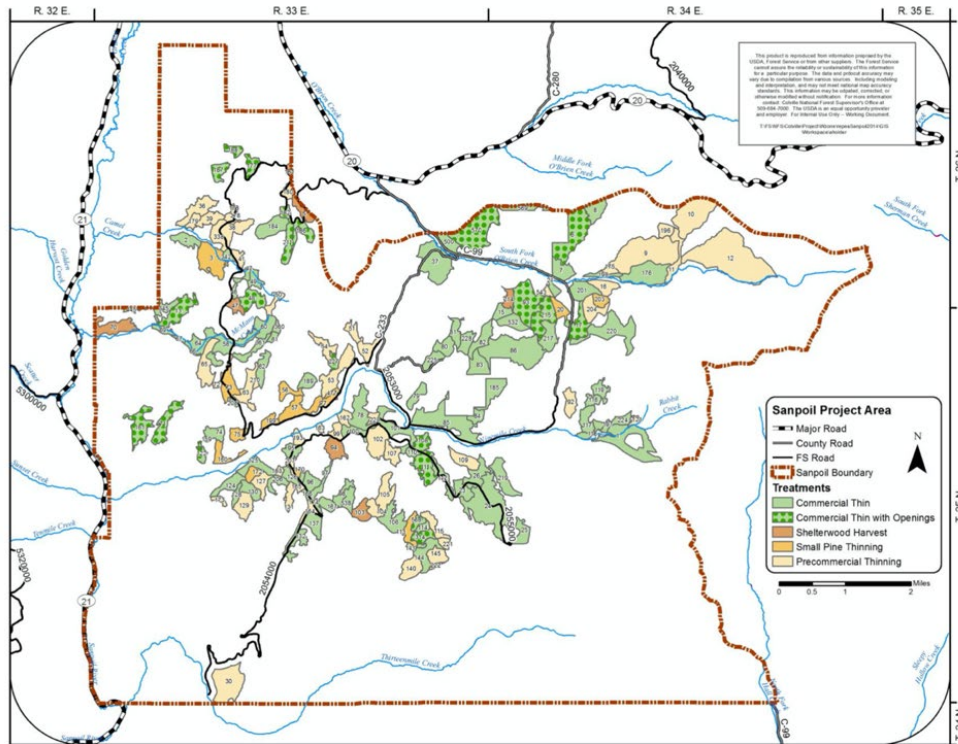
9 118. The Sanpoil EA discusses two alternative courses of action: the
10 “Proposed Action,” which includes timber harvests, burns, and road work, and a
11 “no-action” alternative. The Sanpoil EA mentions five alternatives the Forest
12 Service eliminated from detailed study, including a Project that involved no
13 temporary road construction. *Id.* at 14. The Forest Service dismissed this alternative,
14 in part, because “there would be a substantial reduction in the amount of wood
15 products and economic benefit in the Tri-county area.” *Id.* The Forest Service also
16 dismissed an alternative that would have eliminated treatments in the Roadless
17 Areas, claiming that large landscape burns in these areas would improve wildlife
18 habitat, and that roadside ladder fuel reductions were required to accomplish these
19 large burns. *Id.* at 15.

20 119. The Sanpoil EA describes three types of activities under the Proposed

1 Action: “silviculture treatments;” “fuels treatments;” and “roads.” *Id.* at 15-16.
 2 These treatments would be applied in “units”—polygons dividing the Project Area.

3 *1. Sanpoil EA Describes Massive Logging Project*

4 120. The Sanpoil EA describes various types of logging under the Proposed
 5 Action, including “variable density commercial thinning;” “commercial thinning
 6 with openings for insect and disease;” “small pine thinning;” “shelterwood
 7 treatments;” and “precommercial thin[s].” *Id.* at 16-17. The Forest Service described
 8 how those treatments would be applied across the Project Area through a single,
 9 small-scale map, without road numbers or geolocation data to allow those units and
 10 their boundaries to be identified. *Id.* at 21.



Map of proposed silviculture treatments from Figure 6 of the Sanpoil EA.

1 121. In a Silviculture Report dated May 26, 2020, the Forest Service
2 indicates how many acres of each type of logging would occur in each type of forest
3 structure. Silviculture Report at 19. For example, “late closed” structure, defined as
4 areas containing trees over 20 inches in diameter and canopy cover of over 40%,
5 would be subject to 509 acres of “commercial thin and machine pile burn,” 185 acres
6 of “commercial thin with openings,” and 526 acres of “precommercial thin[ning].”
7 *Id.* Overall, the Forest Service prescribes 3,200 acres of logging within late closed
8 structure forests, or 18% of the total Project treatments. *Id.* at 20.

9 122. The Forest Service describes each type of treatment in vague, general
10 terms. For example, “variable density commercial thinning” would target “less
11 vigorous trees” for harvest; “commercial thinning with openings for insect and
12 disease” treatments would leave “small group openings” in areas of “very poor
13 vigor;” and “precommercial thin[ning]” would “leave the largest, most vigorous
14 disease free trees for the residual stand.” Sanpoil EA at 16-17. The EA also lists
15 other activities these treatments “may” involve: replanting “may occur” in the
16 openings created via “commercial thinning with openings for insect and disease;”
17 during “small pine thinning,” openings of up to 30% of the stand “may occur;” after
18 which planting “may occur if needed to attain full stocking levels.” *Id.* Similarly, to
19 provide hiding cover for wildlife “[w]ithin ungulate winter range, where the

1 opportunity exists,” the Forest Service would “to the extent feasible,” “retain clumps
2 or patches of shrubs and trees to provide hiding cover.” *Id.* at 32.

3 123. Nowhere does the Sanpoil EA or any of its supporting documents
4 include vital, site-specific details, including how the units on the Project map would
5 look after harvest, what diameter of trees would be logged in each unit, how many
6 trees would be cut down or burned in each location, when different treatments would
7 occur relative to each other, what the spacing would be between the trees that remain,
8 or how these treatments would vary in across single units. As applied to many areas,
9 the descriptions are broad enough to encompass anything from a selective culling of
10 dead and diseased trees to large clearcuts of healthy forest.



Unit 14 of the Sherman Pass Project following “treatment.” Photo courtesy of KRCG.

1 124. The Sanpoil EA assumes that logging from the Project would generate
2 50 million board-feet of timber over a 10-year period. Sanpoil EA at 35. That many
3 board feet would fill an estimated 10,000 to 12,000 logging trucks.

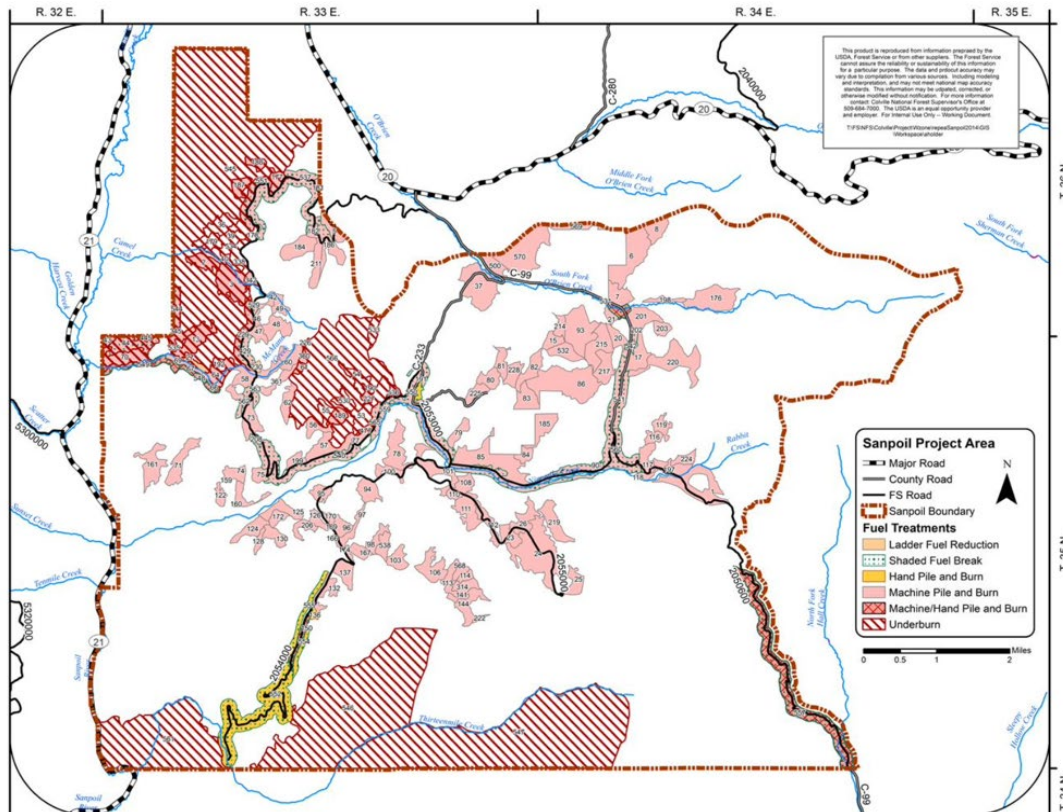
4 2. *Sanpoil Project Includes Burning Large Sections of Forest*

5 125. The Proposed Action includes six potential fuels treatments: “ladder
6 fuel reductions;” “shaded fuel breaks;” “underburning;” “hand piling;” “machine
7 piling;” and “fireline construction.” *Id.* at 17-19.

8 126. The Sanpoil EA provides some detail about “shaded fuel breaks,”
9 indicating they would result in trees thinned “to a spacing of 5-15 feet between the
10 crowns of individual trees,” with “larger trees with thicker bark, higher crowns,
11 and/or fuller, vigorous crowns” preferred for retention. *Id.* at 17. The other fuel
12 treatments are described in general, subjective terms. During underburning, “fuels”
13 would be ignited “at a measured pace” during “predetermined burning conditions.”
14 *Id.* at 18. Meanwhile, “ladder fuel reductions,” may involve “a variety of
15 methods...includ[ing] hand felling with chainsaws, removal of small diameter trees
16 with a feller-buncher or the mulching of understory trees with a boom mounted or
17 vertical shaft mastication head.” *Id.* at 17.

18 127. Fuels treatments “may be completed during the same entry as a
19 commercial harvest,” and proper “fireline construction...may range from a few
20 inches dug with a hand tool to a dozer line many feet wide[.]” *Id.* at 17, 19. The

Sanpoil EA provides a map of the Project Area, showing the vast amount of Forest to be treated. *Id.* at 22.



Map of proposed fuels treatments, from Figure 7 in the Sanpoil EA.

3. Sanpoil Project Allows Roadwork to Facilitate Logging and Burning

128. The Proposed Action would decommission 2.6 miles of road, construct or reopen 12 miles of temporary roads, construct 0.25 miles of new permanent road, make improvements necessary to use about 8 miles of crude “non-system” roads, and engage in the “restoration” of 67 miles of “existing non-system road templates.” *Id.* at 16, 23, 26-27. If the non-system roads are “reasonably accessible” and have

1 “resource concerns,” they would be restored through “full obliteration or hydrologic
2 stabilization,” while the rest would be allowed to recover naturally. *Id.* at 27.

3 129. The Sanpoil EA does not indicate where the raw material for the road
4 work would come from, and it is not mentioned in any of the supporting materials.
5 However, internal emails indicate the Forest Service would use a gravel pit located
6 in the northeastern portion of the Project Area, near the Gibraltar Trailhead, in an
7 area used as a dispersed camp site. The emails acknowledge that the pit has not been
8 included in any recent NEPA reviews and should be in the Sanpoil analysis.

9 130. While the Sanpoil EA includes two maps identifying the location of all
10 other proposed road activities, neither map shows the 67 miles of “existing non-
11 system road[s]” identified for restoration. *Id.* at 24-25, 27. The Forest Service
12 acknowledged that that when it issued the EA, the condition and status of these roads
13 had still “not been validated by field surveys.” *Id.* at 27.

14 **J. Sanpoil EA Describes Project’s Effects on Environment and Recreation**

15 131. In analyzing the Project’s effects on wildlife, the environment and
16 recreational interests, the Sanpoil EA purports to consider all the “relevant past,
17 present, and reasonably foreseeable future actions,” which it indicates are
18 represented in maps and tables in Appendix A. *Id.* at 34. Appendix A discusses past
19 fires and commercial harvests on nearby private land, as well as minor upcoming
20 projects such as campground restorations and highway maintenance, while making

1 a cursory reference to predicted effects of the neighboring Sherman Pass Project,
2 which authorizes timber harvests and burns on over 34,043 acres. *See id.* at 62 (Table
3 15) (noting that the Sherman Pass Project “treatments could also result in changes
4 to livestock management, habituation of livestock to the landscape, changes in
5 natural barriers, and changes to the available forage base”). The Sherman Pass
6 Project is not discussed elsewhere in either Appendix A or the rest of the Sanpoil
7 EA or supporting materials. Neither Appendix A nor any other part of the Sanpoil
8 EA or its supporting materials analyzes the effects of many other recent or
9 anticipated Forest Service projects, including Kettle Face, Walker, West Zone, Deer
10 Jasper, Trout Lake, Orient Watershed, Bulldog, and Dollar Mountain.

11 132. In Table 7, the Sanpoil EA quantifies how the Project would alter the
12 prevalence of different forest structure types within the Project Area. It indicates the
13 Project would move some forest structures away from the 2019 Forest Plan’s desired
14 conditions, including stands of mid-open Douglas-fir and subalpine fir/lodgepole
15 pine as well as late-open subalpine fir/lodgepole pine. *Id.* at 35.

16 133. Overall, the Forest Service is noncommittal about the effects the Project
17 will have on forest structure, indicating the Project might be “neutral” with regard
18 to progress toward desired plan conditions; might “maintain or make progress”
19 toward one or more desired conditions in the long term, but “adversely affect
20 progress toward or maintenance of one or more desired conditions in the short term;”

1 or might make progress toward one or more of the desired conditions in the long
2 term, while also “adversely affect[ing] progress toward other desired conditions in a
3 negligible way over the long term.” Silviculture Report at 30-31. The Sanpoil EA
4 does not show how the Project would impact forest structure on the landscape scale,
5 and also does not evaluate the Project against the historical forest structure that
6 Vision 2020 aims to replicate.

7 134. The Forest Service is equally vague about how the Project will affect
8 any particular portion of the Project Area, providing no more detail than included in
9 its small-scale maps. It indicates that the Project will not clear-cut any area larger
10 than 40 acres, but otherwise says only that “openings resulting from the project
11 would be commensurate with patch size and historical conditions for size and
12 distribution reflecting natural disturbance processes and desired conditions
13 described in the Forest Plan.” *Id.* at 31.

14 135. The Sanpoil EA suggests the Forest Service *cannot* determine the
15 environmental consequences of some aspects of the Project, because it has not
16 designed them yet. For example, the EA indicates that treatments “*would be*
17 *designed* and implemented to reduce stand density, canopy layering, and the
18 preponderance of Douglas-fir and subalpine fir,” and that silviculture prescriptions
19 “*would be designed* to move stand-level susceptibility from a “High” or “Moderate”
20 level to a “Moderate” or “Low” level *or be designed* to maintain a “Low” level of

1 susceptibility.” Sanpoil EA at 34 (emphasis added). The Sanpoil EA also indicates
2 the Project would enhance the “extent and vigor” of quaking aspen through conifer
3 felling, but that the “extent to which this would occur is estimated to be on the order
4 of 50-500 acres within the footprint of planned activities[.]” *Id.* Furthermore, “the
5 exact extent or location of each meadow and aspen stand affected is uncertain.” *Id.*

6 136. The Sanpoil EA concludes that the implementation of shaded fuel
7 breaks, ladder fuel reduction, and hand and machine pile burning would “likely
8 reduce the quality of the existing semi-primitive non-motorized classes of dispersed
9 recreation and the natural appearing landscapes” along the perimeter of the Roadless
10 Areas. *Id.* at 53. However, it fails to evaluate the impact of logging activities or road
11 work on recreational or scenic areas, including the use of the gravel pit near the
12 Gibraltar trailhead.

13 137. In the Sanpoil Recreation Report supporting the EA, the Forest Service
14 acknowledges that the “proposed fuel reduction and pile burning activities may
15 reduce the number of [Roadless Area] acres that may be considered as recommended
16 wilderness.” Sanpoil Recreation Report at 12.

17 138. The Sanpoil EA also fails to consider other projects that would have a
18 cumulative impact on recreation, including any meaningful analysis of the
19 cumulative impact of the Sherman Pass Project, and any analysis at all of any of the

1 projects excluded from Appendix A, including Kettle Face, Walker, West Zone,
2 Deer Jasper, Trout Lake, Orient Watershed, Bulldog, and Dollar Mountain. *Id.* at 54.
3 By contrast, the Sherman Pass EA had considered such impacts to some degree, and
4 concluded that the impact of the “Walker, Deer Jasper, and Sanpoil projects would
5 result in a cumulative decline in the level of natural and undeveloped environment,
6 outstanding opportunities for solitude, and primitive and unconfined recreation,” and
7 that they may reduce access to the Kettle Crest National Recreational Trail. Sherman
8 Pass EA at 90-91.

9 139. Evaluating the impact to aquatic habitats, the Forest Service concludes
10 that since treatments along rivers and streams “are designed to primarily remove
11 smaller trees and leave the largest trees the changes in canopy cover are expected to
12 be small and transient in nature.” Sanpoil EA at 39. The accuracy of this statement
13 cannot be evaluated, however, because the Forest Service does not provide specific
14 treatment prescriptions to indicate how many trees would be removed from riparian
15 areas and which types of trees would remain in and around aquatic habitats.

16 140. The Forest Service also claims that direct and cumulative effects to
17 “sediment delivery, stream temperature, large woody debris recruitment and
18 effective stream length and passage of both organisms and stream material are
19 minor, minimal, transient in nature, and short-term.” Sanpoil EA at 38. The Sanpoil
20 EA does not discuss other Forest Service projects impacting the same watersheds,

1 including, for example, the O’Brien Creek watershed. *Id.* at 37-38. In the Sanpoil
2 Hydrology Report published on May 22, 2020, the Forest Service acknowledges that
3 “two other Forest Service projects” are in progress within the effects area of the
4 O’Brien Creek watershed. Hydrology Report at 23. However, the Forest Service
5 does not identify these projects, or analyze their cumulative effects. By contrast, the
6 Sherman Pass EA had acknowledged that both it and the Walker Project may impact
7 the O’Brien Creek watershed by altering water yield and peak flows in relevant
8 rivers. Sherman Pass EA at 83.

9 141. In analyzing impacts to soils, the Forest Service makes specific
10 numerical determinations regarding detrimental soil conditions. While harvest
11 involving “grapple piling treatments” would approach 18% detrimental soil
12 conditions, the Forest Service claims that “[m]ost units of mechanical treatment
13 would remain under 15% detrimental soil condition[.]” Sanpoil EA at 50. However,
14 the Forest Service does not provide details on what kind of equipment will be used
15 in any particular area, or how “mechanical treatments” will vary across different
16 overlapping timber harvest types to maintain soil conditions under that specified
17 percentage.

18 142. The Sanpoil EA indicates the Proposed Action would open 10,585
19 “capable acres” within the Quartz Allotment for livestock grazing. *Id.* at 51. The
20 Quartz Allotment spans the entire Sanpoil Project Area, and neither the Sanpoil EA

1 nor its supporting documents indicate where these additional grazing acres will be
2 within the Project Area. In addition to being the source of conflicts with native
3 predators, which leads to the state-sanctioned killing of wolves, bears, and cougars,
4 the 2019 Plan FEIS acknowledges that grazing can dramatically alter native
5 ecological communities, harming both upland and riparian habitat by degrading
6 vegetation, soils, and streams, and potentially decreasing water quality and species
7 viability. Because the Forest Service does not disclose where additional grazing will
8 occur, it cannot—and does not—evaluate the impact this additional grazing would
9 have on sensitive habitats or the species that depend on them.

10 143. In the Sanpoil Biological Evaluation (“Sanpoil BE”), the Forest Service
11 admits that “approximately 77 acres of stands that currently provide potential [lynx]
12 denning habitat would be treated with fuels treatments.” Sanpoil BE at 18. The
13 Forest Service also acknowledges that “[h]abitat quality for tree squirrels,” which
14 serve as important prey for many species, including lynx and goshawk, “could be
15 reduced for up to 20 years[.]” *Id.* at 18. However, the Sanpoil EA concludes that the
16 Proposed Action “[m]ay affect” but is “not likely to adversely affect” Canada lynx,
17 because there are “no known lynx den sites” in the Colville Forest, and “[s]tands
18 with potential den sites would be protected by avoidance.” Sanpoil EA at 41 (Table
19 10). The Sanpoil EA does not explain how it will protect “potential den sites,” if, as
20 the Forest Service acknowledges in the Sanpoil BA, it does not know the location of

1 those potential sites. Nor does the Sanpoil EA provide specific unit prescriptions
2 within the lynx LAUs, which would allow for the impact on the LAUs to be
3 evaluated.

4 144. As for cumulative impacts to lynx, the Sanpoil EA indicates that the
5 cumulative effects should be evaluated within the West Sherman and Hall Creek
6 LAUs, and that the “effects from this project would be cumulative to those resulting
7 from the White Mountain fire which occurred in 1988.” *Id.* Although the North Star
8 Fire is listed in Appendix A, the Sanpoil EA does not indicate that this fire will have
9 any cumulative impact to lynx, even though it burned well over 200,000 acres just
10 adjacent to the Project in 2015. More significantly, it does not even mention any
11 other Forest Service Projects, even though the Sherman Pass and Walker Projects
12 also contain portions of the West Sherman LAU—and the Sherman Pass TES Report
13 acknowledged that the Sherman Pass Project would include “harvest in high-quality
14 foraging habitat” for lynx and would affect “1,020 acres of lynx denning habitat.”
15 Sherman Pass TES Report at 56, 60-61.

16 145. The Sanpoil EA concludes that the Project’s direct effect on grizzly
17 bears “would be an increase in disturbance and a small reduction of core habitat
18 during...implementation.” Sanpoil EA at 41 (Table 10). It indicates hiding cover
19 “would be degraded in the short term,” although it “would be maintained along open
20 roads when possible.” *Id.* As for cumulative impacts, the Sanpoil EA acknowledges

1 that “[t]he proposed project would create a decrease in hiding cover for
2 approximately 5 years, a decrease in seclusion habitat due to an increase in human
3 disturbance, and a potential increase in forage habitat.” *Id.* It notes that those effects
4 “would be cumulative to those resulting from other similar vegetation management
5 projects that are active or proposed,” but it does not name any of those projects,
6 much less discuss their effects. *Id.*

7 146. As for gray wolves, the Sanpoil EA concludes that the Proposed Action
8 “[m]ay impact individuals but is not likely to...trend towards federal listing or loss
9 of viability.” *Id.* at 43 (Table 11). The Sanpoil EA does not discuss any cumulative
10 impacts on gray wolves, but instead directs the public to “[r]efer to grizzly bear
11 cumulative effects to forage and seclusion for analysis as effects are the same.” *Id.*
12 It does not explain how the cumulative effects on such disparate species could be the
13 same, including how the “forage” analysis was the same for grizzly bears, which are
14 omnivores, as for wolves, which are carnivores. *See id.* at 41 (discussing berry
15 production and green forage production and palatability for grizzly bear).

16 147. The Sanpoil EA indicates that the area for a cumulative effects analysis
17 on wolverine is the “Kettle Range south of the Canadian border because wolverines
18 have such large home ranges and occur at such low densities.” *Id.* at 41. It
19 acknowledges that the cumulative impacts of other “USFS vegetation restoration
20 projects throughout the cumulative effects area” would result in “additional decrease

1 in hiding cover for approximately 5 years, a decrease in seclusion habitat due to an
2 increase in human disturbance, and a potential increase in forage habitat.” *Id.* The
3 analysis does not name any of the other Forest Service projects, much less discuss
4 their impact, although it does summarily conclude that “[i]n consideration of these
5 cumulative impacts,” the Forest Service is still meeting the 2019 Forest Plan’s
6 standards and guidelines for wolverine habitat. *Id.*

7 148. The Sanpoil EA acknowledges that the cumulative effects area for the
8 Northern goshawk is the entire Colville Forest and grants that other “USFS
9 vegetation restoration projects” will contribute to these effects. *Id.* at 42 (Table 11).
10 However, it then refers only to the projects contained in Appendix A, which excludes
11 significant actions such as the Walker, West Zone, Deer Jasper, Bulldog, and Dollar
12 Mountain projects. *Id.* The Sanpoil EA also fails to engage in any meaningful
13 analysis of cumulative effects to the goshawk, other than to say they will be the
14 “same as direct and indirect effects described for this proposed project.” *Id.* It
15 describes these effects as “reduction of foraging habitat and a potential increase in
16 availability of food resources for the next 5-10 years,” and a “potential abandonment
17 of territories,” which could reduce the “breeding population and could affect the
18 species viability.” *Id.* Although it does not aggregate these impacts for all the Forest
19 Service projects in the area, the Sanpoil EA nevertheless concludes that they “may

1 impact individuals but [are] not likely to lead in a trend towards federal listing or
2 loss of viability.” *Id.*

3 149. The Sanpoil EA engages in a similar analysis for the cumulative effects
4 to the great gray owl, acknowledging that the effects on the species should be
5 analyzed on a forest-wide scale, but limiting its analysis to only those projects listed
6 in Appendix A. Meanwhile, it defines the cumulative effects area for the white-
7 headed and Lewis woodpecker as the lower-elevation lands west of the Columbia
8 River, but fails to consider the cumulative impact of the other projects that took place
9 west of the Columbia River, including Kettle Face, Walker, Deer Jasper, Sherman
10 Pass, West Zone, Bulldog, and Dollar Mountain. *Id.* at 42-43.

11 150. As for all sensitive bat species, the Sanpoil EA claims that project
12 activities would be located away from bat roost sites or timed to avoid periods when
13 they are occupied, although it acknowledges that activities near “unknown locations
14 could cause loss of individuals.” *Id.* at 43. In a supporting report published on May
15 22, 2020, however, the Forest Service concedes it has very little information on
16 where some of these bats live. For example, it indicates it is unable to do a viability
17 assessment for either the Townsend’s big-eared bat or the pallid bat due to a “lack
18 of knowledge to adequately map habitat[.]” Additional Terrestrial Wildlife Analysis
19 Report (“Additional Wildlife Report”) at 8 (Table 1). The Sanpoil BE also notes that
20 the highest conservation priority for the Townsend’s bat is to “reduce human

1 disturbance and destruction of roost sites.” Sanpoil BE at 36. The Sanpoil EA does
2 not explain how it can minimize human disturbance or destruction of roost sites,
3 when it has conceded that it does not know where these bats live.

4 151. As for “[a]ll sensitive invertebrates,” the Sanpoil EA acknowledges that
5 “less mobile individuals could be killed,” “food plants could be damaged,” and that
6 “[t]he Proposed Action in addition to grazing would have an added negative
7 cumulative effect,” because “grazing has the potential to remove forage and host
8 plants and alter the integrity of meadows and riparian habitats[.]” Sanpoil EA at 43
9 (Table 11). Although not mentioned in the Sanpoil EA, sensitive invertebrates within
10 the Project Area include the Western bumblebee, a Region 6 sensitive species in
11 alarming decline throughout the West. Without looking at the cumulative effect of
12 any other Forest Service project, or analyzing specific effects to the bumblebee, or
13 any other species in particular, the Sanpoil EA collectively reaches the conclusion
14 that the direct and cumulative effects of the project “[m]ay impact individuals but is
15 not likely to lead in a trend toward federal listing or loss of viability.” *Id.*

16 152. The Sanpoil EA does not individually analyze effects on the pileated
17 woodpecker or the American marten, despite the former’s status as a candidate for
18 the state endangered species list, and the fact that both species are used by the 1988
19 Forest Plan as a Management Indicator Species for the health of old-growth forests.
20 However, the Additional Wildlife Report predicts that the Project “may affect

1 individuals” of both species but is “not likely to lead to loss of species viability.”
2 Additional Wildlife Report at 11 (Table 2). It concludes that current late-closed
3 habitat for these species is below desired conditions set by the 2019 Forest Plan, but
4 it does not address the admission in the Sanpoil EA that the Project would move this
5 category of habitat farther away from those conditions. The Additional Wildlife
6 Report also indicates there will be no risk to old-growth trees because of guidelines
7 directing the retention of trees over 20 inches in diameter but does not address the
8 impact of the many exceptions to that guideline.

9 **K. Plaintiff’s Objections to the Sanpoil EA and Forest Service Responses**

10 153. KRCG and NEWFC submitted detailed objections to the Sanpoil EA.
11 It marked the first time in its 18-year history that NEWFC has filed an objection to
12 a Forest Service Project.

13 154. KRCG objected that the descriptions of the Proposed Action’s
14 “silviculture” and “fuels treatments” were still vague to the point of prohibiting
15 informed public comment. KRCG noted the Forest Service had provided a small
16 number of sample unit prescriptions three days before it released the Sanpoil EA.
17 KRCG challenged the Forest Service’s failure to release draft prescriptions for the
18 entire Project.

19 155. For example, the Forest Service released a draft prescription for Unit
20 47, slated to receive shelterwood treatments, which detailed that the unit contains

1 550 trees per acre, with a basal area average of 260 square feet per acre. Harvesters
2 would have to leave “all trees over twenty-one inches diameter at breast height” and
3 “enough of [the] healthiest trees” to provide for 10 to 20 remaining trees per acre.
4 The Forest Service released planned shelterwood treatments for Unit 103, where the
5 basal area average is 200 square feet per acre, and harvesters would be directed to
6 “leave all trees” at and over twenty-one inches diameter at breast height and harvest
7 all smaller trees.

8 156. Both KRCG and NEWFC objected that the Forest Service refused to
9 provide specific prescriptions for proposed commercial harvests. They objected that
10 the maps provided were unreadable and unhelpful, such as the small-scale map of
11 commercial logging projects, which failed to include marked roadways or
12 geolocation data. KRCG told the Forest Service that “without disclosing what
13 prescriptions will be applied where, there is no way for the Forest Service to assert
14 it reasonably took a hard look at the environmental impacts of the Sanpoil project,
15 nor can the public meaningfully comment on the project.” KRCG Objection at 10.

16 157. Both KRCG and NEWFC objected that the Forest Service did not
17 evaluate the condition of the 67 miles of “existing non-system template roads” slated
18 for restoration, and therefore could not evaluate what the potential environmental
19 impacts of “restoration” of those roads would be.

1 158. KRCG and NEWFC also objected that the Forest Service failed to
2 indicate where grazing would increase across the Sanpoil Project Area, and therefore
3 did not adequately analyze the potential impacts to sensitive species.

4 159. KRCG also objected that the Sanpoil EA and its supporting reports
5 failed to adequately account for the potential direct and cumulative impacts to lynx,
6 wolves, wolverine, grizzly bear, and other wildlife.

7 160. KRCG continued its insistence that the Forest Service should prepare a
8 full EIS. because of the significant potential direct, indirect, and cumulative impacts
9 to the environment, especially considering the combined impact with the adjacent
10 Sherman Pass Project, and the upcoming Dollar Mountain project.

11 161. KRCG objected that the Forest Service only analyzed one alternative
12 for purportedly improving forest health—and that alternative was actually focused
13 on maximizing timber revenue. KRCG indicated “it is simplistic and lacking
14 investigation for the EA to limit action alternatives to one, timber-centric
15 alternative.” KRCG Objection at 14. KRCG objected that the Forest Service had
16 chosen not to analyze any alternative that included making improvements to the
17 section of the Pacific Northwest National Scenic Trail that crosses the Project Area.

18 162. NEWFC and KRCG both objected to the Forest Service’s refusal to
19 design the Project around the type of broader, landscape-level analysis described in
20 the Vision 2020 proposal, and envisioned by CFLRA, to achieve a “collaborative,

1 science-based ecosystem restoration of priority forest landscapes.” NEWFC
2 Objection at 4. The Forest Service thus failed to consider an alternative designed to
3 restore the Forest to its natural, historical structure, as the best way to create a
4 healthy, resilient Forest. Both groups supplied extensive scientific articles to support
5 the assertion that this approach is the best way to promote forest health and diversity,
6 and NEWFC offered its help in continuing to pursue this model through the Vision
7 2020 project. KRCG noted that the Draft EA included an explanation about a
8 landscape assessment and how it was applied to the Project, but that this assessment
9 was not updated in the final Sanpoil EA.

10 163. KRCG and NEWFC renewed their requests for the Forest Service to
11 eliminate shaded fuel break treatments along the Roadless Areas and along Hall
12 Creek Road, near the Bald Snow recommended wilderness. Both groups challenged
13 the Forest Service’s failure to seriously consider an alternative that would have
14 eliminated treatments in these areas and challenged the Forest Service’s conclusion
15 that these treatments would not affect the eligibility of recommended wilderness and
16 Roadless Areas.

17 164. Both KRCG and NEWFC also objected that the Sanpoil Project fails to
18 comply with scenic objectives and guidelines outlined in the 2019 Forest Plan, and
19 that as a result, it would decrease the quality of recreational areas, including valuable
20 scenic trails such as the Pacific Northwest National Scenic Trail and the Kettle Crest

1 National Recreational Trail. KRCG noted that one draft unit prescription the Forest
2 Service provided would drastically change the scenic quality of an area and would
3 be “visually unacceptable.” KRCG Objection at 11. KRCG also objected that the
4 Forest Service failed to analyze the cumulative effect of the Project on recreation,
5 when combined with the effects of other, nearby projects.

6 165. In September 2020, the Forest Service issued individual responses to
7 each objecting organization, as well as a group response (“Objection Response”).

8 166. The Forest Service indicated it could not provide more site-specific
9 prescriptions because “final prescriptions were not available because they are not
10 final until a decision is signed.” Cumulative Objection Response at 6.

11 167. As to its failure to specify the 67 miles of road for restoration, the Forest
12 Service indicated that it believed “one short segment of non-system road” may enter
13 the recommended wilderness area, but that there would be no significant impact to
14 the area. *Id.* at 9. Although the additional roads had not yet been surveyed or
15 identified, the Forest Service nevertheless assured objectors that the additional
16 surveys would not “reveal significant environmental effects or...change the project
17 proposal.” *Id.* at 12.

18 **L. Forest Service Issues Final Sanpoil EA and Decision Notice**

19 168. On December 11, 2020, the Forest Service published the Final Sanpoil
20 EA, and the Decision Notice and Finding of No Significant Impact for the Sanpoil

1 Project (“Sanpoil Decision Notice and FONSI”), approving the Proposed Action as
2 described in the Sanpoil EA.

3 VI. CLAIMS

4 **A. First Claim –The Forest Service Failed to Meet NEPA’s Requirements** 5 **in Analyzing and Disclosing the Impact of the Sanpoil Project**

6 169. Plaintiff realleges and incorporates by reference the preceding
7 paragraphs.

8 170. NEPA requires that agencies take a “hard look” at the consequences of
9 prospective actions by “carefully consider[ing] detailed information concerning
10 significant environmental impacts.” *Robertson*, 490 U.S. at 349.

11 171. When an agency proposes a project to be implemented without further,
12 site-specific NEPA review, it must disclose the details of its proposed action at a
13 site-specific level and perform a detailed environmental analysis of the reasonably
14 foreseeable impact of those site-specific actions. *Alaska Conservation Council*, 443
15 F. Supp. 3d at 1006.

16 172. When evaluating the impact of a project on the environment, an agency
17 must consider that action in conjunction with all other past, present, and reasonably
18 foreseeable future actions. *Idaho Sporting Congress*, 305 F.3d at 973. Cumulative
19 impacts must be discussed in enough detail to provide a thorough analysis of how
20 the projects will cumulatively affect the environment; a simple catalog of other

1 projects in the area is not sufficient. *Great Basin Mine Watch v. Hankins*, 456 F.3d
2 955, 971 (9th Cir. 2006).

3 173. The Forest Service failed to perform sufficient direct analysis of the
4 Project's impact on several state and federal endangered, threatened, or sensitive
5 wildlife species, including, but not limited to, the gray wolf, wolverine, grizzly bear
6 and Canada lynx.

7 174. The Forest Service failed to fully develop site-specific plans for its
8 silviculture treatments, fuels treatments, and road construction prior to completing
9 the Sanpoil EA, rendering its analysis not meaningful and not in accordance with 50
10 C.F.R. § 1508.23. To the extent that the Forest Service could not reasonably develop
11 such site-specific plans prior to finalizing the Sanpoil EA, the Forest Service failed
12 to disclose such incomplete or unavailable information, specify why it could not
13 reasonably be obtained, and evaluate its reasonably foreseeable adverse impacts, as
14 required by 50 C.F.R. § 1502.21. To the extent the Forest Service developed some
15 site-specific plans prior to completing the Sanpoil EA, it failed to provide that
16 information to the public, thus preventing the public from providing meaningful
17 comment on the impact of those plans.

18 175. The Forest Service failed to perform adequate cumulative analysis of
19 the Project's impact on the environment, including, but not limited to, its impact on
20 riparian areas, recreation, and several wildlife species, because it failed to take into

1 account several other large projects that the Forest Service has conducted in nearby
2 areas over the past 10 years, as well as reasonably foreseeable projects that the Forest
3 Service has planned for the next few years.

4 176. The Forest Service's decision to proceed with the Sanpoil Project is
5 therefore arbitrary and capricious, pursuant to the APA. 5 U.S.C. § 706(2).

6 **B. Second Claim - The Forest Service Failed to Consider a Reasonable**
7 **Range of Alternatives**

8 177. Plaintiff realleges and incorporates by reference the preceding
9 paragraphs.

10 178. NEPA requires an agency to develop and assess appropriate
11 alternatives in any proposal involving unresolved conflicts concerning the uses of
12 available resources. 42 U.S.C. § 4332(E); 40 C.F.R. §§ 1507.2(d), 1508.9(b). The
13 Ninth Circuit has found that agencies have improperly dismissed alternatives from
14 detailed analysis when a project's purpose and need are written too narrowly. *EPIC*
15 *v. USFS*, 234 Fed. Appx. 440, 443 (9th Cir. 2007). Alternatives may not be
16 eliminated from detailed study solely because they would make less progress
17 towards meeting of one of multiple purposes. *Western Watersheds Project v. Abbey*,
18 719 F.3d 1035, 1052 (9th Cir. 2013).

19 179. In evaluating the Sanpoil Project, the Forest Service failed to analyze a
20 range of meaningful alternatives, by looking only at a "no action" alternative and the
21 proposed action. For example, the Forest Service improperly precluded serious

1 consideration of alternatives that would avoid the construction of additional roads,
2 or that would avoid construction of fuel breaks in or near Roadless Areas or
3 recommended wilderness. The Forest Service also failed to properly consider an
4 alternative planned at a landscape-scale, to restore Forest ecology to its traditional
5 structure, and did not consider recommended alternatives that would have enhanced
6 recreational resources.

7 180. The Forest Service's decision to proceed with the Sanpoil Project is
8 therefore arbitrary, capricious, an abuse of discretion, and not in accordance with
9 law, and should be set aside pursuant to the APA, 5 U.S.C. § 706(2).

10 **C. Third Claim - The Forest Service Should Have Prepared an EIS to**
11 **Evaluate Significant Environmental Impacts of the Sanpoil Project**

12 181. Plaintiff realleges and incorporates by reference the preceding
13 paragraphs.

14 182. NEPA requires federal agencies to prepare an EIS for "major Federal
15 actions significantly affecting the quality of the human environment." 42 U.S.C. §
16 4332(C). In considering whether a project has a significant effect on the
17 environment, agencies must consider "[w]hether an action is related to other actions
18 with individually insignificant but cumulatively significant impacts." 40 C.F.R. §
19 1508.27(b)(7). Agencies are required to evaluate both the context and intensity of an
20 action to determine the significance of its impact on the environment. *Id.* § 1508.27.

1 183. Courts have found that the presence of any one of these factors, or a
2 combination of multiple, may be sufficient to indicate that the project may have a
3 significant impact to the environment, necessitating the preparation of an EIS. *Ctr.*
4 *for Biological Diversity v. Nat'l Hwy. Traffic Safety Admin.*, 538 F.3d 1172, 1220
5 (9th Cir. 2008).

6 184. Several factors indicate the Forest Service should have developed an
7 EIS for the Sanpoil Project, including, but not limited to, the fact that the Project:
8 (1) would have a significant environmental impact, especially when considered
9 along with the impact of other related projects the Forest Service omitted from its
10 analysis; (2) deals with issues of high controversy, such as impacts on wildlife,
11 including several threatened and endangered species; the most effective means to
12 promote the health of old-growth forests; the efficacy of shaded fuel breaks; the
13 preservation of valued recreational resources, roadless areas, and a recommended
14 wilderness area; and the Forest Service's failure to consider a landscape-based
15 approach to Forest resiliency; (3) contains elements of great uncertainty, including
16 unknown impacts on several wildlife species whose status the Forest Service was
17 unable to accurately assess—and, specifically, unknown impacts on threatened lynx,
18 which might have a persistent population in the Project Area; the uncertainty of the
19 impact of unspecified and/or undeveloped treatments on Forest structure and
20 recreation; and the unknown cumulative impacts on wildlife, recreation, and aquatic

1 habitats; (4) would have an impact on unique geographic areas, because it proposes
2 treatments next to and within Roadless Areas and a recommended wilderness area;
3 (5) would have adverse impacts on multiple state and federal sensitive, threatened,
4 or endangered species and their habitats; and (6) would set a precedent for the Forest
5 Service to approve additional planned Projects within the same area without an
6 adequate disclosure or analysis of their site-specific or cumulative impacts.

7 185. The Forest Service's failure to prepare an EIS for the Sanpoil Project
8 was therefore arbitrary, capricious, an abuse of discretion, and not in accordance
9 with law, and should be set aside pursuant to the APA, 5 U.S.C. § 706(2).

10 **D. Fourth Claim – The Sanpoil Project Does Not Adhere to the 2019 Colville**
11 **Forest Plan, in Violation of NFMA**

12 186. Plaintiff realleges and incorporates by reference the preceding
13 paragraphs.

14 187. NFMA requires that individual Forest Service projects be consistent
15 with their corresponding Land Management Plans. 16 U.S.C. § 1604(i).

16 188. The Sanpoil Project is not consistent with the 2019 Forest Plan, because
17 it fails to adhere to the Plan's Scenic Integrity Objectives, moves several Forest
18 structures and species habitats away from the desired conditions specified in the
19 Plan, and fails to meet the Plan's guidelines by diminishing the scenic quality of the
20 Forest and the wilderness characteristics of the Roadless Areas.

1 189. The Forest Service’s final decision to proceed with the Sanpoil Project
2 thus violates NFMA, and should be set aside pursuant to the APA, 5 U.S.C. § 706,
3 as it is not in accordance with law.

4 **E. Fifth Claim – The 2019 Colville Forest Plan, which Enables the Sanpoil**
5 **Project, Violates NFMA, NEPA, and the APA**

6 190. Plaintiff realleges and incorporates by reference the preceding
7 paragraphs.

8 191. NFMA requires that the Forest Service provide “for diversity of plant
9 and animal communities.” 16 U.S.C. 1604(g)(3)(B). Implementing this requirement,
10 the 1982 Rules require that “wildlife habitat shall be managed to maintain viable
11 populations of existing native and desired non-native vertebrate species in the
12 planning area.” 1982 Rules § 219.19. To effectuate this goal, the 1982 Rules also
13 require that the Forest Service identify management indicator species and evaluate
14 the effects of planning alternatives on the amount and quality of habitat and of
15 animal population trends, with an eye towards verifying the viability of those and
16 other species. *Id.*

17 192. The 1988 Forest Plan identifies pileated woodpeckers and American
18 marten as management indicator species for old-growth forests. The 1982 Rules
19 require that “[p]opulation trends of the management indicator species will be
20 monitored and relationships to habitat changes determined.” 219.19(a)(6). The
21 Forest Service stopped monitoring these species in 1997, and the 2019 Forest Plan

1 did not replace these species with a different method of monitoring the health of old-
2 growth forests.

3 193. The 2019 Forest Plan identifies northern goshawk, white-headed
4 woodpecker, pileated woodpeckers, and American marten to all be “surrogate
5 species” related to the health of “late and old forest structures,” one of the 2019
6 Plan’s proxies for old-growth forest. The 2019 Forest Plan purports to provide
7 habitat sufficient to maintain viable populations of each of these species. However,
8 the 2019 Forest Plan and its FEIS do not provide adequate analysis or rationale to
9 support this conclusion, nor do they address information contained in the Plan’s
10 specialist reports which undermines this conclusion.

11 194. The 2019 Forest Plan eliminates the Eastside Screens Standard to allow
12 wide exceptions to its prohibition on logging large, old trees. The Sanpoil Project
13 allows for 3,590 acres of timber harvest in areas containing old-growth trees,
14 including at least 600 acres of commercial harvest. The ROD states that the 2019
15 Forest Plan eliminated the Eastside Screens Standard, in part, to provide more
16 “management flexibility” to respond to “emerging resource issues.” However,
17 NFMA directs the Forest Service to develop forest plans that limit this flexibility,
18 precisely because in the past, such agency flexibility has led to actions that destroyed
19 ecosystems and failed to conserve species. The 2019 Forest Plan violates NFMA and
20 is arbitrary and capricious because it subordinates by subordinating NFMA’s

1 substantive requirements to ensure plant and animal diversity to the Forest Service's
2 undefined and discretionary objectives.

3 195. The only analysis in the 2019 Plan FEIS about the amount of old growth
4 protected under each alternative shows that the no-action alternative, which
5 preserves the Eastside Screens Standard, would preserve more old growth than the
6 alternative selected by the 2019 Forest Plan, which eliminates that protection. The
7 2019 Forest Plan and its EIS ignore these facts and the scientific controversy
8 surrounding the maintenance of the Eastside Screens standard. Instead of providing
9 facts, analysis, or scientific support for the chosen alternative, the Forest Service
10 simply makes the "key assumption" that it will provide better protection for old
11 growth. The use of such circular reasoning to supplant evidence and circumvent
12 science is arbitrary and capricious.

13 196. The sections of the 2019 Forest Plan, Plan FEIS, and Plan ROD dealing
14 with the standards for maintain old-growth trees are therefore arbitrary, capricious,
15 an abuse of discretion, and otherwise not in accordance with law, and should be set
16 aside pursuant to the APA, 5 U.S.C. § 706(2).

17 197. In adopting the new standard for logging old-growth trees, the Forest
18 Service also violated NEPA and the APA by failing to respond to substantial public
19 comments, including by failing to ensure that the 2019 Plan FEIS adequately
20 responded to opposing scientific views.

F. Sixth Claim – The Forest Service Prepared and Relied upon a Misleading and Inadequate Biological Assessment of the Project’s Impacts on the Canada Lynx, in Violation of the ESA and the APA

198. Plaintiff realleges and incorporates by reference the preceding paragraphs.

199. Under the ESA, the Forest Service was required to engage in consultation to ensure that the Sanpoil Project would not jeopardize any ESA-listed species. *See* 16 U.S.C. § 1536(a)(2). As part of this consultation, the ESA required the Forest Service to prepare a Biological Assessment to evaluate whether any ESA-listed species were “likely to be adversely affected” by the Sanpoil Project. 50 C.F.R. § 402.12(a), (c).

200. In assessing potential effects on listed species, agencies must “use the best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2). The conclusion that an action “is not likely to adversely affect” a species is appropriate only “when effects on listed species are expected to be discountable, or insignificant, or completely beneficial.” ESA Handbook at 3-12. Discountable effects are those “extremely unlikely” to occur, while insignificant effects cannot be “meaningfully measure[d], detect[ed], or evaluate[d],” and should “never reach the scale where take occurs.” *Id.*

201. Canada lynx is a threatened species under the ESA. The Sanpoil BA concluded the Project was not likely to adversely affect Canada lynx, and served as

1 the basis for a Letter of Concurrence from USFWS. As a result, USFWS did not
2 complete a Biological Opinion to assess whether the Project's adverse effects on
3 lynx would jeopardize the species. The Forest Service released the Sanpoil EA and
4 issued its Final Decision on the Project the basis of the Sanpoil BA and the Letter of
5 Concurrence that relied upon the Sanpoil BA.

6 202. Lynx are present in the Project Area, and the Forest Service
7 acknowledges that the Project will have adverse effects on lynx, including
8 displacement during Project operations and destruction of core denning habitat and
9 prey habitat.

10 203. Nevertheless, the Sanpoil BA concludes that the Project will have no
11 adverse impact to lynx, based on a selective view of the facts and science, and
12 assumptions it fails to support with facts, analysis, or science.

13 204. The Sanpoil BA assumes that any negatively impacted lynx habitat
14 would regenerate within 15-20 years. The Sanpoil BA does not provide a scientific
15 basis for these regeneration predictions, nor does it address scientific research
16 suggesting it may take 35-40 years for lynx habitat in Washington to regenerate after
17 it is damaged by forest treatments. It also does not examine the impact that even a
18 15–20-year disturbance of primary prey habitat would have on the fragile lynx
19 population, or whether the habitat would realistically be allowed to regenerate after

1 that time period, rather than being subjected other forest treatments already being
2 planned for the same area in 2040.

3 205. The Sanpoil BA summarily dismisses three recent photographs of lynx
4 near and around the Project Area as documentation of only one individual lynx, but
5 it does not provide support for this conclusion, nor does it address the alternate
6 possibility the Project Area is home to a small remnant lynx population, which could
7 be key to bringing the species back to the Kettle Range. The Sanpoil BA thus does
8 not provide any analysis of the effect of the Project on a potential resident lynx
9 population. Nor does it explain its conclusion that the displacement of an individual
10 lynx would not constitute a significant impact on that individual.

11 206. The Sanpoil BA does not address the effects of road construction and
12 maintenance or livestock grazing on lynx, including how grazing would affect the
13 rate of recovery of forested vegetation.

14 207. The Sanpoil BA is arbitrary and capricious, ignores the best scientific
15 information available, and fails to properly inform USFWS of the effects of the
16 Project on lynx habitat. The Forest Service also violated the ESA and the APA by
17 issuing the Sanpoil BA, and then issuing the Decision Notice in reliance on an
18 USFWS Concurrence that it knew was based on the Sanpoil BA's misleading and
19 incomplete analysis. As a result, the Forest Service failed to complete the

1 consultation process required by the EPA to ensure that its proposed action would
2 not have adverse effects on lynx that would jeopardize the species.

3 208. To the extent that the Forest Service did not know important
4 information about the existence of lynx in the Project Area, and the impact of the
5 Project on lynx and lynx habit, at the time that it issued the Sanpoil BA and received
6 the Concurrence Letter, the Forest Service violated the ESA by failing to prepare a
7 new Biological Assessment and reinitiate consultation on the Project.

8 **VII. REQUEST FOR RELIEF**

9 The Plaintiff therefore respectfully requests that this Court grant the following
10 relief:

- 11 A. Declare that the Sanpoil Decision Notice and FONSI and the Sanpoil EA and
12 BA are invalid pursuant to the APA, 5 U.S.C. § 706(2), because they are
13 arbitrary, capricious, an abuse of discretion, and unsupported by substantial
14 evidence in the record, and because they violate ESA, NEPA and/or NFMA,
15 and are therefore not in accordance with law;
- 16 B. Vacate the Sanpoil Decision Notice and FONSI and the Sanpoil EA and BA;
- 17 C. Remand the Sanpoil Decision Notice and FONSI and the Sanpoil EA to the
18 Forest Service with instructions to prepare an Environmental Impact
19 Statement in accordance with the agency's obligations under NEPA and the
20 APA;

- 1 D. Remand the Sanpoil BA to the Forest Service with instructions to formally
2 consult with USFWS in accordance with the requirements of the ESA;
- 3 E. Enjoin the Forest Service from allowing timber harvest, prescribed burns, or
4 roadwork within the Sanpoil Project Area until such time as the Forest Service
5 has performed the requisite analysis;
- 6 F. Hold that the 2019 Forest Plan, Plan FEIS, and Plan ROD are unlawful under
7 ESA, NEPA, NFMA, and the APA;
- 8 G. Vacate the portions of the 2019 Forest Plan, Plan FEIS, and Plan ROD that
9 are related to the new standards for logging of old-growth trees, and remand
10 to the Forest Service for new consideration in compliance with NEPA,
11 NFMA, and the APA;
- 12 H. Reinstate the provisions from the former Colville Forest Plan that were
13 intended to maintain habitat for viable populations of species requiring old-
14 growth forests, including the Eastside Screens Standard;
- 15 I. Retain jurisdiction over this case until the Forest Service complies with the
16 requirements of NEPA, NFMA, and the APA;
- 17 J. Award Plaintiff their reasonable costs, litigation expenses, and attorneys' fees
18 associated with this litigation pursuant to the Equal Access to Justice Act, 28
19 U.S.C. § 2412; and
- 20 K. Grant such further relief as the Court deems just and proper.

Respectfully submitted this 3rd day of August 2021.

ANIMAL & EARTH ADVOCATES, PLLC

By _____

Claire Loeb Davis
Attorney for Plaintiff

CERTIFICATE OF SERVICE

1 I hereby certify that on August 3, 2021, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/EMF system, which in turn
3 automatically generated a Notice of Electronic Filing to all parties in the case who
4 are registered users of the CM/ECF system.

/s/ Claire Loeb Davis
Claire Loeb Davis