



August 18, 2023

Chris Bachman  
Conservation Director  
Yaak Valley Forest  
Council

Chad Benson  
Forest Supervisor  
Kootenai National Forest  
31374 US 2, Libby, MT 59923

Dear Supervisor Benson,

**RE: Trojan Defense Vegetation and Fuels Management Project**

I am writing on behalf of the Yaak Valley Forest Council to offer comments on the Trojan Defense Vegetation and Fuels Management Project.

The Yaak Valley Forest Council, created in 1997, is a Montana based 501(c)3 nonprofit that implements conservation and restoration programs focused on protecting and preserving critical wildlife habitat for the sensitive, threatened, and endangered species inhabiting the wild Yaak Valley. Our Mission is to protect the last roadless areas in the Yaak Valley and the Kootenai National Forest; maintain and restore the ecological integrity of our geographical zone by conserving and improving habitat for native and sensitive species.

The Yaak Valley Forest Council supports fire safe communities and responsible forest management. We understand the concerns of the Troy community related to the risks of wildfire within the Wildland Urban Interface (WUI) and are aware of Troy's designation

as an at-risk community.<sup>1</sup> We support the Firewise Program of “hardening” residences and other buildings against wildfire.

However, the Trojan Defense Vegetation and Fuels Management Project must adhere to the Wildland Urban Interface definition of one and a half miles surrounding a community outlined in 16 U.S. Code § 6511.<sup>2</sup>

We understand the Trojan Defense Vegetation and Fuels Management Project planning is reliant on an authorized emergency action under the Sec. 40807 of the Infrastructure Investment and Jobs Act.

We would like to bring to your attention a recent court decision that will impact this project and potentially additional future projects. The May 16, 2023, Hannah Flats decision in the United States Court of Appeals for the Ninth Circuit<sup>3</sup> makes clear that even actions planned under categorical exclusions, and by extrapolation authorized emergency actions, must follow the Healthy Forests Restoration Act (HFRA) definition of wildland urban interface. The Hannah Flats decision states that actions taken on federal lands must adhere to Congressionally authorized statute. Federal actions on federal lands must adhere to federal statute.

The letter announcing the Trojan Defense Project sent out by the Three Rivers Ranger District on July 20, 2023, clearly states, “*The project area is entirely within the 2023 Lincoln County Community Wildfire Protection Plan WUI and the Kootenai Complex.*” This indicates the project is being designed and proceeding using the expanded wildland urban interface outlined in the Lincoln County Plan Wildfire Protection Plan.

The recent Hannah Flats decision clarifies that activities on federal land must adhere to the Congressionally authorized definition of the wildland urban interface as defined in the Healthy Forests Restoration Act and cannot be reliant on a wildland urban interface definition outside of Congressionally authorized statute.

The decision states:

*“Put simply, the Forest Service seeks to justify invoking the categorical exclusion solely because the Project fell within the wildland-urban interface designated by the Bonner County community plan. But the community plan’s definition of its wildland-urban*

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<sup>1</sup> *Urban wildland interface communities within the vicinity of federal lands that are at high risk from wildfire.* (2001, January 4). Federal Register. <https://www.federalregister.gov/documents/2001/01/04/01-52/urban-wildland-interface-communities-within-the-vicinity-of-federal-lands-that-are-at-high-risk-from>

<sup>2</sup> *U.S. code § 6511 - Definitions.* (n.d.). LII / Legal Information Institute. <https://www.law.cornell.edu/uscode/text/16/6511#1616>

<sup>3</sup> United States Court of Appeals for the Ninth Circuit. *ALLIANCE FOR THE WILD ROCKIES v. CARL PETRICK, his official capacity as Forest Supervisor for the Idaho Panhandle National Forests; UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture; UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the U.S. Department of Interior.* 16 May 2023

*interface—on its face— deviates from HFRA and likely results in a covered area beyond what Congress authorized. Thus, in this case, the Forest Service cannot properly rely on the Bonner County community plan—alone—to justify the categorical exclusion.”*

The decision goes on to state:

*“...reliance on a plainly overinclusive wildland-urban interface, without more, is the sort of “clear error of judgment” that arbitrary or capricious review is meant to prevent.”<sup>4</sup>*

The Hannah Flats decision emphasizes that the Bonner County community plan, just like the Lincoln County Community Wildfire Protection Plan, uses a definition for the wildland urban interface that is inconsistent with HFRA’s definition and concluded that the *“Project’s location within the Bonner County community plan’s asserted wildland-urban interface is not enough by itself to justify use of HFRA’s categorical exclusion.”<sup>5</sup>*

Furthermore, forest treatments that lie within the Congressionally designated WUI will lead to ecosystem fragmentation, increased exposure to invasive species, exposed soils leading to soil desiccation, water and air pollution, and loss of wildlife habitat. Protecting towns from wildfire requires more than cutting the surrounding forest, it requires using fire-savvy construction: ignition-resistant building materials, non-ember-trapping ventilation systems, and defensible space around structures.<sup>6</sup>

Outside of the WUI defined in 16 U.S. Code § 6511, the Forest Service should recognize fire as a natural process that operates as an integral part of the ecosystem in which it occurs. Wildfires are a part of nature and play a key role in shaping ecosystems by serving as an agent of renewal and change.<sup>7</sup>

To comply with Executive Order 14072, mature and old growth trees within the Trojan Defense Vegetation and Fuels Management Project WUI should be left standing. Large trees and forest ecosystems store massive amounts of carbon and are a major driver of carbon cycle dynamics in forests. Standing mature and old growth play a pivotal role in mitigating atmospheric carbon dioxide levels. Mature and old growth sequestration of carbon addresses the driving force behind increased uncharacteristic wildfire by addressing its root cause-Climate Change.

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<sup>4</sup> United States Court of Appeals for the Ninth Circuit. *ALLIANCE FOR THE WILD ROCKIES v. CARL PETRICK, his official capacity as Forest Supervisor for the Idaho Panhandle National Forests; UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture; UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the U.S. Department of Interior.* 16 May 2023. p 31.

<sup>5</sup> *Ibid* p 32.

<sup>6</sup> Mutch, R. W., Rogers, M. J., Stephens, S. L., & Gill, A. M. (2010). Protecting lives and property in the wildland-urban interface: Communities in Montana and Southern California adopt Australian paradigm. *Fire Technology*, 47(2), 357-377. <https://doi.org/10.1007/s10694-010-0171-z>

<sup>7</sup> *Fire effects on the environment | Pacific Northwest research station | PNW.* (n.d.). US Forest Service. <https://www.fs.usda.gov/pnw/page/fire-effects-environment>

Given the urgency of keeping additional carbon out of the atmosphere and continuing carbon bioaccumulation from the atmosphere to protect the climate system, we must continue protecting ecosystems with large trees for their carbon stores, biodiversity, proven resistance to drought and fire, and their microclimate buffering ability under future climate scenarios.<sup>8</sup> Our forests are our best large-scale, natural, low-cost carbon sequestering climate solution. Standing forests provide clean water, clean air, wildlife habitat, biodiversity and myriad recreation opportunities.

Warming due to climate change is harming wildlife and is especially difficult for birds, who need shade, cool water, and breezes to cool down. A new study suggests some bird species can get relief from climate change from old-growth forests and forests that have old-growth characteristics due to the forests being cooler during the breeding season and more biologically diverse, increasing food availability.<sup>9</sup> In the Pacific Northwest, plummeting bird population sizes are highest in species reliant on mature stands,<sup>10</sup> and population failures are compounded by the negative effect of clearcutting.<sup>11</sup> Impacts to these bird species must be evaluated.

To minimize impacts to soils, we request any cutting that proceeds take place over snow or on frozen ground to minimize impacts to soils including compaction, rutting, and displacement due to vehicle and heavy equipment traversing within proposed units including areas of skid trails, landings, and temporary roads. Every possible effort must be taken to retain soil organic matter during activities to limit long-term impacts to soils and the mycorrhizal network.

Specifically, we would like to see:

- An evaluation of timber harvest strategies proposed in the Trojan Defense Project to ensure that treatment proposals take into consideration all sensitive species present. This evaluation should consider Best Available Science and additions to use of RHCAs (Riparian Habitat Conservation Areas) in addressing movement corridors for aquatic-dependent terrestrial species.

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<sup>8</sup> Mildrexler, D. J., Berner, L. T., Law, B. E., Birdsey, R. A., & Moomaw, W. R. (2020). Large trees dominate carbon storage in forests east of the Cascade crest in the United States Pacific Northwest. *Frontiers in Forests and Global Change*, 3. <https://doi.org/10.3389/ffgc.2020.594274>

<sup>9</sup> Kim, H., McComb, B. C., Frey, S. J., Bell, D. M., & Betts, M. G. (2022). Forest microclimate and composition mediate long-term trends of breeding bird populations. *Global Change Biology*, 28(21), 6180-6193. <https://doi.org/10.1111/gcb.16353>

<sup>10</sup> Northrup, J. M., Rivers, J. W., Yang, Z., Betts, M. G., 2019. Synergistic Effects Of Climate And Land-use change influence broad-scale avian population declines. *Global change biology* 25, 1561-1575.

<sup>11</sup> Hagar, J. C., 2007. Wildlife species associated with non-coniferous vegetation in Pacific Northwest conifer forests: A review. *Forest Ecology and Management* 246, 108-122.

- An evaluation of timber harvest strategies proposed in the Trojan Defense Project to ensure retention of mature and old growth forest and trees.
- Adherence to the 2015 Forest Plan related to 40+ acre forest openings in the project area.
- Conducting an old growth forest inventory map and data set within the Trojan Defense Project boundary and exclusion of these units from any treatment plan that will not retain mature and old growth trees.
- Minimal use of Clearcut, Clearcut w/Reserves, and Shelterwood w/Reserves treatments.
- No Clearcuts, Clearcut w/Reserves, and Shelterwood w/Reserves treatments near open roads.
- Work with private landowners to co-manage private lands within the Congressionally defined WUI.
- Winter harvest, any cutting will take place over snow or on frozen ground to minimize impacts to soils including compaction, rutting, and displacement due to vehicle and heavy equipment traversing within proposed units including areas of skid trails, landings, and temporary roads.
- Retention of organic matter during activities to limit long-term impacts to soils and the mycorrhizal network.
- Intentional corridor connectivity between “skips” allowing free and concealed movement of both predator and prey species.
- Reforestation of all temporary access/staging/log-deck locations.
- Completion of a sediment and stability report for tributaries within the project area.
- Completion of a water yield analysis.
- Connect and construct the old highway two trail segments between Troy and Libby. This will create recreation opportunities between the two towns and will create a recreation corridor outside of Grizzly Core Habitat.
- Management of habitat to support grizzly bears and to promote foraging foods for bears.

We appreciate your consideration and the time you will take to adhere to your legal obligations as the land manager and abide by Congressionally authorized statute as this project moves forward.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Bachman", with a long horizontal flourish extending to the right.

Chris Bachman  
Conservation Director  
Yaak Valley Forest Council

Cc: Leann Martin; Sam Marten