



September 15, 2023

Steve Brown, Stevensville District Ranger  
Bitterroot National Forest  
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Stevensville, MT  
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Submitted via <https://cara.fs2c.usda.gov/Public/CommentInput?Project=57341>.

Dear District Ranger Brown,

Please accept these comments on behalf of Wild Montana (formerly Montana Wilderness Association) and our members in response to the public comment period on the Bitterroot Front Project.

### **I. Organizational Background**

Since 1958, Wild Montana has been uniting and mobilizing people across Montana, creating and growing a conservation movement around a shared love of wild public lands and waters. We work at the local level, building trust, fostering collaboration, and forging agreements for protecting the wild, enhancing public land access, and helping communities thrive. Wild Montana routinely engages in public land-use planning processes, as well as local projects such as habitat restoration and timber harvest proposals, recreational infrastructure planning, oil and gas lease sales, and land acquisitions. Wild Montana and our more than 3,500 members are invested in the ecological integrity and quiet recreation opportunities on public lands across Montana, as well as the impact of climate change on Montana's wild places.

The Bitterroot Front Project area, abutting the Selway-Bitterroot Wilderness, includes inventoried roadless areas (IRAs), research natural areas (RNAs), and recommended wilderness (RW). The project area offers critical wildlife security zones and unique recreational opportunities and represents an increasingly rare, unfragmented landscape type. While we agree that reducing wildfire risk to our communities is critical, and acknowledge that wildfire risk to Bitterroot Valley communities is currently unacceptably high and must be addressed, we submit these comments to highlight areas and methods of the proposed Bitterroot Front Project that could jeopardize the future of our wild places and should be improved before project implementation.



## **II. Traditional National Environmental Policy Act Principles Should Govern Subsequent Environmental Analysis.**

This project will be authorized using condition-based National Environmental Policy Act (NEPA) analysis. This decision-making approach postpones identifying or disclosing site-specific information and instead purports to identify conditions that will characterize the areas where the agency plans to act at some point during the life of the project. Project details such as precise locations, specific management treatments, and associated design criteria will be determined after the final authorization of the project instead of a traditional site-specific analysis before implementation. This process limits sufficient environmental review and deprives the public of crucial opportunities to understand and provide feedback on a project. We strongly urge the Forest Service to use traditional NEPA practices.

### **a. Condition-based NEPA Goes Against the Purpose of the Statute.**

NEPA is said to have “twin aims.” First, the statute commands agencies to consider environmental impacts of proposed actions. Second, NEPA ensures that “the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision.”<sup>1</sup> Condition-based analysis circumvents both “aims” and the NEPA review framework. Site-specific NEPA analysis is critical to ensuring informed public participation, formulating and evaluating alternatives, understanding project benefits, and avoiding or mitigating adverse project impacts. NEPA comments regarding site-specific effects often result in project modifications to prevent potential impacts on resources such as old-growth forests, water quality, species, soil quality, and habitat. Without providing this site-specific analysis for the Bitterroot Front Project, the public is unable to provide valuable feedback.

Condition-based NEPA differs from an adaptive management approach where conditions are unknown at the time of decision making. Under condition-based NEPA, specifics are not unknown at a project’s outset, but the necessary site-specific decisions are delayed until project implementation. Further, an adaptive management approach ensures the disclosure of a management strategy and monitoring thresholds. Condition-based NEPA does not include such monitoring requirements.

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<sup>1</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).



NEPA requires that the agency must take a “hard look at the environmental consequences.”<sup>2</sup> By providing limited project details, there cannot be a “hard look” at all project's direct, indirect, and cumulative effects. Additionally, by not fully disclosing the details and environmental consequences, the NEPA analysis cannot provide any meaningful comparison of alternatives or a complete inquiry into effects on endangered or sensitive species. The lack of information provided makes it difficult to determine whether an action “may affect” or is “likely to jeopardize” a listed species under the Endangered Species Act.<sup>3</sup>

Because of these concerns, questions remain about the legality of condition-based NEPA.<sup>4</sup> Region Eight of the Environmental Protection Agency (EPA) has recently submitted comments on multiple other proposed projects in Montana using condition-based NEPA questioning the use and validity of this type of analysis. For one project on the Custer Gallatin National Forest, EPA said “[t]his lack of site-specificity hampers informed decision-making as part of the NEPA process, and therefore meaningful public participation on the individual treatment projects, both important for understanding the potential for significant impacts and determining mechanisms for avoiding them.”<sup>5</sup>

#### **b. The Bitterroot Front Project Requires More Detailed Analysis.**

Nationally, the Bitterroot is recognized as a particularly high-risk fireshed, so the importance of this project's goals is not disputed.<sup>6</sup> That urgency, however, should not be used as an excuse to shortchange rigorous environmental analysis. If anything, it speaks to the necessity of place-based analysis to address the critical needs in specific locations across this wide-ranging landscape to best protect communities.

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<sup>2</sup> *Id.* at 348.

<sup>3</sup> 16 U.S.C. § 1536.

<sup>4</sup> See, e.g., Andrew Cliburn et al., *The U.S. Forest Service's Expanding Use of Condition-Based Management: Functional and Legal Problems from Short Circuiting the Project-Planning and Environmental Impact Statement Process*, The American Bar Association (May 10 2021), [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/fr/20210510-the-us-forest-services-expanding-use-of-condition-based-management/](https://www.americanbar.org/groups/environment_energy_resources/publications/fr/20210510-the-us-forest-services-expanding-use-of-condition-based-management/).

<sup>5</sup> Melissa McCoy, U.S. EPA Region 8, *South Plateau Area Landscape Treatment Project Comments*, Nov. 4 2022, <https://cara.fs2c.usda.gov/Public/Letter/3878489?project=57353>.

<sup>6</sup> *Confronting the Wildfire Crisis: A Strategy for Protecting Communities and Improving Resilience in America's Forests*, Forest Service (Jan. 2022), <https://www.fs.usda.gov/sites/default/files/Confronting-Wildfire-Crisis.pdf> (showing high-risk firesheds in the Bitterroot).



This project and the public will be best served by the Forest Service using traditional NEPA processes.. Without traditional NEPA analysis, the public will not know where or how specific actions will occur on this landscape throughout the several decade lifespan of the project. Public meetings held in recent years in the Bitterroot have demonstrated that the Forest Service would benefit significantly from proposing and implementing actions in a way that maximizes the potential to build public trust and transparency. The proposed use of condition-based NEPA will instead undermine trust by severely limiting transparency. This is likely to adversely impact the Bitterroot’s subsequent project proposals, as well as the upcoming forest planning process. In addition, as discussed above, site-specific analysis is essential to informed review, creation of alternatives, and avoiding or mitigating adverse impacts.

**III. The Use of an Emergency Authorization Declaration for this Project is Inappropriate.**

This project received Emergency Authorization Declaration (EAD) approval from the Secretary of Agriculture under the Infrastructure Investment and Jobs Act (Section 40807) of Public Law 117-58. While we don’t disagree that concerning conditions requiring immediate attention exist in the Bitterroot Valley, we have serious concerns about approving conditional NEPA analysis via an EAD.

The simplest explanation of EADs are to “strategically and thoughtfully” use “the right tools in the right places” accelerate on-the-ground project work to “take emergency actions to protect public health and safety, critical infrastructure and natural resources on National Forest System lands.”<sup>7</sup> EADs, therefore, are intended to be specific decisions regarding particularized threats in identified areas. EADs are better suited to get boots on the ground to address a particular emergency with targeted solutions. Here, a sweeping two decade-plus project over 144,000 acres with vague project details and sparse analysis of those details is simply not an example of using the right tools in the right places.

What’s more, EADs must “be in full compliance with NEPA and other applicable laws.” The use of EADs in conjunction with legally questionable conditional NEPA analysis, regardless of the size of the project, violates the spirit and intent of this important tool.

The Bitterroot Forest mustn’t look far to see a good example of EAD approval for targeted action to protect particularized critical infrastructure. The Basin Creek-Butte Watershed Project in the

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<sup>7</sup> Letter from Chief Randy Moore to Regional Foresters, Station Directors, Deputy Chiefs, and WO Directors (February 10, 2023), *Using emergency authorities to support the wildfire crisis strategy*.



Beaverhead Deerlodge National Forest recently received an EAD to treat less than 2,500 acres immediately around the municipal reservoir that provides 60% of Butte's water supply.<sup>8</sup> The Environmental Assessment provides detailed project details, including locations of specific treatments and actions that will be carried out. This project is tailored to the specific threat of high intensity wildfire compromising the filtering capability of the reservoir, which is an identified piece of critical infrastructure. What's more, the Beaverhead Deerlodge National Forest did not use condition-based NEPA in its analysis. It was able to provide a full, detailed account of the impacts of its targeted, specific, and identified treatments. Basin Creek is the kind of project the Forest Service should be approving with the expedited EAD process, not vaguely analyzed sweeping projects covering a wide swath of public lands.

#### **IV. The Bitterroot Front Project Warrants Completion of an Environmental Impact Statement (EIS).**

NEPA analysis involves the examination of environmental effects either through an environmental impact statement (EIS) or an environmental assessment (EA). An EIS is required for "major Federal actions significantly affecting the quality of the human environment."<sup>9</sup> The scoping documents for this project state that the Forest Service is contemplating completing an EA for this analysis. A project of this scope – a 144,000 acre project area with 27,477 acres of commercial timber harvest occurring over at least a decade – is a major federal action that will very likely affect the environment in significant ways. The Forest Service can only rely on an EA if it makes an affirmative finding that environmental impacts will not be significant. If there are "substantial questions" about whether an action may significantly have an effect on the environment, an EIS is required.<sup>10</sup>

Under current NEPA regulations, the Forest Service should consider the potentially affected environment, including the area and its resources, short and long term effects, beneficial and adverse effects, and effects of public health and safety.<sup>11</sup> A project of this magnitude undoubtedly has significant effects across the 144,000 acre project area. Therefore, a full EIS is necessary. While the April 25, 2022 Chief's letter urged expediency for fuel management

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<sup>8</sup> Basin Creek- Butte Watershed Project Final EA and Decision Notice (July 19, 2023).

<sup>9</sup> 42 U.S.C. § 4332(2)(c).

<sup>10</sup> *WildEarth Guardians v. Zinke*, No. CV 17-80-BLG-SPW-TJC, 2019 Dist. LEXIS 30357, at \*38 (D. Mont. Feb. 11, 2019) ("[A] plaintiff need not show that significant effects will in fact occur, but raising substantial questions whether a project may have a significant effect is sufficient.").

<sup>11</sup> 40 C.F.R. § 1501.3 (2022).



projects, this does not provide a basis for a project of this scope circumventing a robust NEPA analysis.<sup>12</sup>

As an alternative to a stand-alone EIS, the Forest Service could prepare a “programmatic” EIS document broadly analyzing the cumulative effects of the project, to which the subsequent site-specific analysis would tier. While condition-based NEPA is similar on its face to programmatic analysis, it omits commitments to future tiered, site-specific NEPA analysis. These site-specific analyses are critical to the overall success of the Bitterroot Front Project’s stated goals and to the integrity of the public process in agency decision making.

What’s more, the Forest Service is actively pursuing at least two other related fuels projects in this same area of the forest. On August 31, the Forest announced 14 day comment periods for both the Sula Fuels Break Project and the Sleeping Child Fuels Break Project. Both of these projects have been constrained in size and scope to fit within a Categorical Exclusion authorization. We have two concerns here. First, there are now three related projects in the same fireshed that the public has little opportunity to meaningfully review and engage with. Second, the Forest’s actions raise serious concerns of sidestepping its NEPA-required cumulative impacts analysis by segmenting related projects and reducing the amount of analysis in each project. If the Forest pursued a programmatic EIS covering this entire area, it could tier site-specific analysis for each individual project to that robust planning document. Instead, it appears the Forest is attempting to treat as many acres as possible with the minimum amount of analysis and public input.

Another issue of cumulative effects and generally thorough analysis is the Forest’s inclusion of an amendment to the Forest Plan on winter range thermal cover, elk habitat, old growth, snags, and coarse woody debris.<sup>13</sup> Shortly before the end of the public comment period on this project, the Forest announced its approval of separate planning process on a forest plan amendment on those same standards.<sup>14</sup> The Bitterroot Front documents, however, make no reference to that amendment process, instead discussing effects and impacts of amending those various standards in the Bitterroot Front Project’s approval. The public, therefore, lacks a clear picture as to whether the Forest considers the separate amendment just approved properly analyzed in

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<sup>12</sup> Letter from Chief Randy Moore to Regional Foresters, Station Directors, Deputy Chiefs, and WO Directors (April 25, 2022), *Use of New and Existing National Policy (NEPA) Authorities to Confront the Wildfire Crisis*. See also note 6.

<sup>13</sup> EA pg 22 and Appendix D.

<sup>14</sup> Programmatic Amendment for Elk Habitat, Old Growth, Snags and Coarse Woody Debris Objectives Decision Notice (Sept. 1, 2023).



this document, if this project's analysis is for a new and distinct amendment to these same standards different from what was recently approved, or something altogether different.

Overall, the Forest is undertaking numerous actions at the same time, and these should all be discussed in relation to each other with a full analysis of the potential cumulative impacts.

**V. The Project Should Protect the Wilderness Character of Recommended Wilderness, Inventoried Roadless Areas, and Eligible Wild and Scenic River Segments.**

The Bitterroot Front Project area includes 30,737 acres of RW and 11,970 priority treatment areas inside IRAs. The project area directly abuts designated Wilderness and provides intact habitat for many species such as lynx, grizzly bear, wolverine, bull trout, mountain goats, and fisher. Wild Montana's modeling of species intactness on the IRAs impacted by this project have returned values in the 96th through 99th percentiles, some of the highest possible values.<sup>15</sup> These values are critical to protect as habitat intactness continues to decline across our region and climate change impacts sensitive species including, but not limited to, bull trout, wolverine, and mountain goats. The project area also includes the Bitterroot Grizzly Bear Experimental Population Area where grizzly bears may be present.

Wild Montana appreciates the Forest's clarifications from scoping regarding the use of prescribed fire in RW as the best method of mimicking low and moderate intensity fire that is necessary for forest health that, will in turn, mitigate the risks of intense fire.

Similarly, we appreciate the Forest's commitment to not building any roads, including temporary roads, in IRAs. We appreciate the level of detail provided in Appendix C's maps, but request additional clarity when it comes to IRA treatments. All of the maps show areas of commercial intermediate harvest within IRAs, but a lack of site-specific detail that allows such activity. While roads are depicted, private property boundaries in relation to IRAs are not. We would like to "zoom in" on these areas to confirm that commercial harvest would properly take place ¼ of a mile from a road or private property boundary. We strongly encourage the Forest Service to use commercial thinning as a last resort in IRAs, and make use of the other available treatments that are better suited to maintain the character of IRAs.

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<sup>15</sup> See, e.g., R. Travis Belote et al., *Identifying Corridors among Large Protected Areas in the United States*, PLOS One (April 22, 2016); R. Travis Belote et al., *Wild, connected, and diverse: building a resilient system of protected areas*, Ecological Applications (June 2017).



Additionally, the project area contains 22 miles of stream segments that were determined to be eligible for Wild and Scenic River designation in the 1987 Forest Plan and the Bitterroot will soon begin the Forest Planning process analyzing other potentially eligible segments. Many of the streams in the project area originate within the Selway-Bitterroot Wilderness and flow through the project area to the Bitterroot river. They provide critical habitat for bull trout and wetslope cutthroat trout and the Forest Service's climate shield research has identified some of these streams as protecting key coldwater habitat for temperature sensitive species in 2040.<sup>16</sup> Any activities taking place in this project should not unreasonably diminish the outstanding remarkable values that make these stream segments important.

## **VI. Other Project Components are Needed.**

Best available science increasingly demonstrates that timber harvest alone cannot be used to effectively reduce wildfire risk in WUI areas. Therefore, only focusing on timber harvest will not achieve the stated project purpose on the Bitterroot Front. Restoration, prescribed fire, recreation, and wildlife habitat improvements should be important components of this project plan, and implemented in conjunction with timber harvest.<sup>17</sup> The project should also include funding for restoration components, ongoing maintenance, monitoring, and recreation surveys and planning. The scoping documents state that "[r]egeneration harvests remove most trees from the stand and require monitoring for successful regrowth and possibly planting to ensure the stand remains forested in the future." The project should ensure this monitoring occurs and has benchmarks in place for "successful regrowth."

We support having a robust monitoring protocols for this project and request that the monitoring reports be easily available to the public. We do have concerns regarding how the monitoring protocols will be used to inform project implementation. For example, Phase 1 of the project is proposed to begin in 2024 with Phase 2 following quickly afterwards in 2025. It is unlikely that the Forest Service will be able to implement Phase 1 and properly monitor potential impacts before beginning the following phase.

## **VII. Project Implementation Timeline Should Be Clarified.**

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<sup>16</sup> Isaak, Daniel J.; Young, Michael K.; Nagel, David E.; Horan, Dona L.; Groce, Matthew C. (2015). The cold-water climate shield: Delineating refugia for preserving salmonid fishes through the 21st century. *Global Change Biology*. 21: 25402553.

[https://www.fs.usda.gov/rm/pubs\\_journals/2015/rmrs\\_2015\\_isaak\\_d001.pdf](https://www.fs.usda.gov/rm/pubs_journals/2015/rmrs_2015_isaak_d001.pdf).

<sup>17</sup> Susan Prichard et al., *Adapting western North American forests to climate change and wildfires: 10 common questions*, *Ecological Applications* (Aug. 2 2021), pg. 10, <https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/eap.2433>.





While the Forest's analysis and disclosed details in the EA are limited because of its use of conditional NEPA, several elements of the Forest's plans should be disclosed to the public at this stage, especially considering there is no opportunity for further public comment.

We appreciate the Forest's outline of the four implementation phases for the various project areas, starting in 2023 through 2027. However, the analysis fails to provide additional information about project activities over the life of this project. While we know the last phase will be implemented in 2027, we do not know when, where, and how often the Forest plans on carrying out additional treatments. Furthermore, the Forest Service states that all the proposed treatment activities will be completed in 20 years, 16 years after the set 2027 Phase. It is unclear what additional activities will occur after 2027. The Forest should clarify what intervals it expects to revisit an area for prescribed burning over the next 20 years. While the Forest's use of conditional NEPA seeks to give the agency maximum flexibility to meet changing conditions over the next 20 years, it is important for the public to understand how those next 20 years will be structured.

We support the proposed use of prescribed fire in the project area. Many scientists and land managers agree that prescribed fire is the single most important tool we have to reducing the risk of severe fire by bringing low and moderate intensity fire back to these fire-dependent landscapes. Prescribed fire will more closely mimic a natural disturbance than mechanical treatments. The future analysis, however, should include additional information about the extent of any mechanical fuel treatment for burn preparation. The EA should also include more information regarding the prescribed burn treatment schedule after initial burns and the treatment mix with other non-commercial vegetation treatments being used.

Wild Montana applauds the Forest for using this opportunity to decommission nonsystem roads in the project area. However, the Forest should be more forthcoming regarding its plans for roads associated with this project, including the decommission process. The project proposes a maximum of 27 miles of temporary road construction. Page 20 of the EA states: "Temporary roads for one harvest area could be in use for up to 5 years. The duration of temporary roads on the landscape would depend on the duration of the timber sale contract of which the roads are a part. Historically, temporary roads in the Bitterroot National Forest are typically present on the landscape for less than 2 years." Later in the document, the Forest states that temporary roads will be decommissioned all at once at the end of the entire project, rather than by project area. Furthermore, Appendix A states that temporary roads would be "decommissioned no later than 3 years after the date the project would be completed."



First, Wild Montana urges the Forest to commit to decommissioning temporary roads as soon as possible and practicable throughout the life of the project, rather than waiting a decade or more down the road. Specifically, we suggest the Forest commit to decommissioning temporary roads within two years of completion of the project component they were created to facilitate, and clearly committing that temporary roads will not be used for more than five years. This will ensure the road impact of the project is as minimal as possible, mitigating unnecessary runoff, erosion, and unauthorized public use.

Second, Wild Montana urges the Forest to disclose its expected timeline for decommissioning and obliterating the system roads it has committed to removing from the landscape. As currently written, there is no plan or timeline for when those roads will be addressed. The Forest should expedite this effort as soon as practicable. At the very least, the Forest should clearly state that it will decommission these system roads either while creating or decommissioning temporary roads built within a particular distance of these new roads. This would streamline the process while also ensuring that such decommissioning actually gets done and isn't simply a promise on paper.

#### **VIII. The Project Should Include Climate Change Analysis.**

The Forest Service should include climate change and changing conditions in the environmental analysis. As climate research shows dryer and hotter summers in the west, this can lead to wildfires increasing in frequency, intensity, and duration. Forests provide critical carbon sinks for our planet. When forests burn or are logged, carbon is released into the atmosphere and contributes to the greenhouse effect. The environmental analysis should address climate change by looking at the loss of carbon sequestration opportunities from logging and the carbon costs of large scale wildfires. Additionally, climate change is also affecting landscapes' resiliency after fires, including natural succession of flora and fauna into burn areas. The Forest Service must take the long-view of its intended actions into account.

Site-specific NEPA analysis is also critical to understanding climate change impacts. While a project may appear to have minor impacts on climate storage or habitats, site-specific choices may add up to additional impacts. Further, even where past management practices have been considered routine, the forests are facing unprecedented stressors and may no longer be as resilient.



**IX. Lack of State WUI Codes Have Fueled The Emergency This Project Seeks to Address.**

While subdivision development is neither within the Forest’s jurisdiction nor within the scope of this project, we must note from the onset that the reason this is such a high risk fireshed is not necessarily because of risk to or the forest itself. Rather, the high-risk status of this fireshed is directly dependent on the proximity of homes and other human infrastructure to a historic forest conditions from a lack of natural fire and climate change. The Bitterroot Valley has seen a steady population growth over the last decade, but in recent years, that has increased with a more dramatic boom. Dozens of new homes and buildings were built in the valley in the last few years, an area that has always lived with fire risk. The state of Montana lacks clear, enforceable building codes to prevent new development in high-risk areas and to make sure that new development is done with the fire reality of the West in mind. This lack of state regulation has created this emergency, unnecessarily allowing risky development that puts communities and responders in harm’s way, that the federal government now must deal with through this project. The state must do better by our federal land managers, fire responders, and communities.

**X. Conclusion**

We support reducing the fire risk to communities in the Bitterroot and restoring necessary, healthy fire conditions to these ecosystems. The Bitterroot National Forest, however, must uphold critical standards for public participation and robust environmental analysis. Thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

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