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RE: EA Comments on the Strawberry Ridge Vegetation Management Project

Dear Mr. Jauregui and the Forest Service Staff:

Thank you for providing the opportunity to make public comments on the Strawberry Ridge Vegetation Management Project (“the Project”). I have concerns that the Proposed Action violates the National Environmental Policy Act (NEPA) by failing to analyze an alternative that would not impact roadless characteristics; by failing to take a hard look at impacts to roadless characteristics; failing to take a hard look at impacts of temporary roads; and by failing to take a hard look at grazing on project objectives, like restoring aspen health. Additionally, the Proposed Action violates the National Roadless Rule by allowing commercial harvesting and presumably roadbuilding with inventoried roadless areas (IRAs).

I. The Project Violates National Environmental Policy Act

A. The Project fails to consider a reasonable range of alternatives.

This project should analyze and consider an alternative that does not degrade or otherwise impact roadless characteristics. This would involve moving the harvest boundaries outside of IRAs and not building temporary roads in the IRAs. This alternative would allow the Forest Service to achieve its purpose and need while not impacting roadless character.

B. The Project fails to take a hard look at forest resources.

NEPA imposes “action-forcing procedures ... requir[ing] that agencies take a hard look at environmental consequences.”¹ The purpose of the “hard look” requirement is to ensure that the “agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious.”² These “environmental consequences” may be direct, indirect, or cumulative.³

Direct effects “are caused by the action and occur at the same time and place.”⁴ Indirect effects “are caused by the action and are later in time or farther removed in distance, but are still

¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

² *Baltimore Gas & Elec. v. NRDC*, 462 U.S. 87, 97 (1983).

³ 40 C.F.R. §§ 1502.16, 1508.7, 1508.8; *see also Hillsdale Env'tl. Loss Prevention v. U.S. Army Corps of Eng'rs*, 702 F.3d 1156, 1166 (10th Cir. 2012)

⁴ 40 C.F.R. § 1508.8(a).

reasonably foreseeable.”⁵ “Indirect effects may include ... effects on air and water and other natural systems, including ecosystems.”⁶ A cumulative impact is the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”⁷ Cumulative impacts have the potential to indicate a significant effect and mandate the preparation of an environmental impact statement to consider those impacts. An analysis under the National Environmental Policy Act of 1969, 42 U.S.C.S. § 4331 et seq., requires the consideration of cumulative impacts in an environmental assessment.⁸ Agencies determine whether direct, indirect, or cumulative impacts are significant by accounting for both the “context” and “intensity” of those impacts.⁹

An environmental effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”¹⁰ An agency’s hard look examination “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.”¹¹ “Looking to the standards set out by regulation and by statute, assessment of all ‘reasonably foreseeable’ impacts must occur at the earliest practicable point, and must take place before an ‘irretrievable commitment of resources’ is made.”¹²

NEPA’s hard look at environmental consequences must be based on “accurate scientific information” of “high quality.”¹³ The law “ensures that the agency, in reaching its decision, will have available and will carefully consider detailed information concerning significant environmental impacts.”¹⁴

The hard look mandate requires agencies to consider sensitive values and potential impacts to those values when contemplating new projects. Courts have remanded agency decisions that failed to adequately consider logging impacts to roadless lands, saying: “the decision to harvest timber on a previously undeveloped tract of land is ‘an irreversible and irretrievable decision’

⁵ *Id.* § 1508.8(b).

⁶ *Id.*

⁷ *Id.* § 1508.7; *see also id.* § 1508.25.

⁸ *Wyo. Outdoor Council v. United States Army Corps of Eng’rs*, 351 F. Supp. 2d 1232, 1237 (D. Wyo. 2005).

⁹ 40 C.F.R. § 1508.27.

¹⁰ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir.1992).

¹¹ *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 712 (10th Cir. 2010).

¹² *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009); *see also* 42 U.S.C. § 4332(2)(C)(v); 40 C.F.R. §§ 1501.2, 1502.22; *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (holding agencies are to perform hard look NEPA analysis “before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values.”).

¹³ 40 C.F.R. § 1500.1(b).

¹⁴ *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349.

which could have ‘serious environmental consequences.’”¹⁵ Federal courts have also held that “an area’s roadless character has . . . environmental significance,” and requires NEPA analysis.¹⁶

The hard look mandate also requires agencies to disclose and analyze any management tools or mitigation measures intended to reduce potential impacts in sufficient detail to ensure the environmental consequences have been fairly evaluated.¹⁷

i. The Project fails to take a hard look at the impacts to roadless characteristics from tree-cutting and roadbuilding within inventoried roadless areas.

The Draft EA commits to extensive commercial harvesting in inventoried roadless areas. Specifically, the Proposed Action will implement:

[T]ree cutting on approximately 1,119 acres of the Two Tom IRA, 39 acres of the Mapleton IRA, 1,236 acres of the Box Springs IRA, 1,410 acres of the Daniel’s IRA, 28 acres of the South Fork IRA, 194 acres of the Red Mountain IRA, 2,024 acres of the Wallsburg IRA, 897 acres of the Strawberry Ridge IRA, and 607 acres of the Pump Ridge IRA. No treatments would occur in the South Fork of the Provo River and Diamond Fork IRAs. These activities are consistent with the Roadless Area Conservation Rule under 36 CFR 294.13b (ii) “To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period[.]”

Draft EA at 18. Here, the Draft EA fails to analyze the direct, indirect, and cumulative impacts of tree-cutting in these roadless areas. Federal caselaw requires the USFS to analyze impacts to roadless character when proposing a project within a roadless area.¹⁸ The Draft EA does not analyze or even mention impacts to roadless character from the Proposed Action. Mere conclusions are not analysis, and therefore the Final EA must describe how the Proposed Action will positively or negatively impact the IRAs.

ii. The Project fails to take a hard look at the impacts from temporary roads on wildlife.

¹⁵ *Nat'l Audubon Soc'y v. U.S. Forest Serv.*, 46 F.3d 1437, 1448 (9th Cir. 1993) (quoting *California v. Block*, 690 F.2d 753, 763 (9th Cir. 1982)).

¹⁶ *Smith v. United States Forest Serv.*, 33 F.3d 1072, 1079 (9th Cir. 1994); see also *Or. Nat. Desert Ass'n v. BLM*, 531 F.3d 1114, 1138 (9th Cir. 2008) (confirming the BLM, like the Forest Service, must analyze impacts to roadless character in its NEPA analyses).

¹⁷ *Neighbors of Cuddy Mt. v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (citing *Carmel-By-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997), *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353, 104 L. Ed. 2d 351, 109 S. Ct. 1835 (1989) (“A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.”), *Northwest Indian Cemetery Protective Ass'n. v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1986), *rev'd on other grounds*, 485 U.S. 439, 99 L. Ed. 2d 534, 108 S. Ct. 1319 (1988)).

¹⁸ *Smith v. United States Forest Serv.*, 33 F.3d 1072, 1079 (9th Cir. 1994); see also *Or. Nat. Desert Ass'n v. BLM*, 531 F.3d 1114, 1138 (9th Cir. 2008) (confirming the BLM, like the Forest Service, must analyze impacts to roadless character in its NEPA analyses).

NEPA requires the USFS to analyze site-specific impacts. Currently, the Proposed Action does not specify the location of temporary roads. This violates NEPA because the public is unable to comment on the impacts from those temporary roads on wildlife before the action takes place. *See Native Ecosystems Council v. Krueger*, 946 F. Supp. 2d 1060 (D. Mont. 2013) (stating that in violation of NEPA: “[T]he EA did not provide a full and fair discussion of the impact that temporary roads will have on elk during the Project’s lifetime.”). The agency has not even provided total mileage of temporary roads, let alone discussed the impacts the temporary roads – and their locations—will have on wildlife.

iii. The Project fails to take a hard look at the impacts from grazing on project objectives.

The Forest Service also failed to take a hard look at the impacts grazing may have on achievement of the project’s goals. There is no question that livestock grazing presents a significant threat to healthy aspen regeneration.¹⁹ One goal of the Proposed Action is to: “Improve aspen vegetation types by creating stand diversity in single age class stands, remove conifer encroachment, and return fire to mimic historical fire regime.” Draft EA at 7. However, the USFS does not plan to, or even analyze, how existing grazing will support, contribute, or undermine project objectives. Instead, the Draft EA merely states that: “Based upon Vegetation Monitoring, Environmental Analysis, and Term Grazing Permits, livestock grazing, and management is appropriate for the allotments. The proposed treatments would allow livestock to graze areas where access is currently limited due to dead timber and would improve livestock distribution and forage availability in each of the allotments.” Draft EA at 31.

The Final EA must analyze how existing grazing on the allotments within the project area will allow the agency to achieve the project’s goals of creating multi-storied aspen forests. As described by the Forest Service in Utah, to properly restore aspen the Proposed Action must limit grazing access to the unit and implement other mitigation tools to limit browsing from domestic ungulates.²⁰

II. The Project Violates the National Roadless Rule

The 2001 Roadless Conservation Rule (“2001 Rule”) set specific management requirements for inventoried roadless areas. Specifically, the 2001 Rule generally prohibits road building and timber harvesting in inventoried roadless areas. *See generally* Forest Service, “Special Areas; Roadless Area Conservation,” 66 Federal Register 3244, January 12, 2001. Road

¹⁹ *See* S. Kitchen *et al.*, Guidelines for aspen restoration in Utah with applicability to the Intermountain West, Forest Service Gen. Tech. Rep. RMRS-GTR-390 (2019) at 24-25 (excessive browsing by wild or domestic ungulates is one of the few root causes for aspen decline in Utah), 26 (“Heavy browse pressure on regeneration after aspen canopy removal (i.e., fire or clearcut) can result in depletion of root reserves and permanent loss of aspen in a matter of a few years.”), 27 (overuse by livestock was likely to worsen as the climate heats up: “The extent and severity of this driver [that is, excessive browsing] of aspen instability are likely to expand in the future as average snowpack decreases (longer grazing season) and the frequency and severity of drought increase with changing climate.”) attached as Exhibit 2, available at https://www.fs.usda.gov/rm/pubs_series/rmrs/gtr/rmrs_gtr390.pdf (last viewed Sep. 14, 2022); *see also* J. Ratner, *et al.*, What’s Eating the Pando Clone? (June 2019) (Pando clone of aspen in Utah demonstrate that livestock threaten regeneration far more than wild ungulates.), attached as Exhibit 3.

²⁰ *Id.* at 25.

construction – even temporary road construction – can only be permitted in very specific circumstances, like constructing a road for fighting wildlife fires. Similarly, the Forest Service cannot cut timber in IRAs except in very specific instances for small diameter timber that will improve or maintain *roadless area characteristics*. In addition, this tree cutting must:

- Improve habitat for endangered, threatened, proposed, or sensitive species; or
- Restore ecosystem structure and function, such as reducing the likelihood of uncharacteristic wildfire.

In addition, “generally small diameter timber” may be cut, sold, or removed if doing so will improve or maintain roadless area characteristics and if the following conditions are met:

- On the date of the rule’s publication, roadless area characteristics already had been substantially altered due to the construction of a classified road and subsequent timber harvest. In these cases, timber can be harvested only in the altered area
- The timber harvest is incidental to other management activities that are not otherwise prohibited
- The timber harvest is “needed and appropriate” for personal or administrative use.

2001 Rule, Section 294.13.

Accordingly, the Proposed Action violates the Roadless Rule by allowing any kind of temporary road to be constructed in IRAs. If the Forest Service aims to harvest timber in the IRAs, it must specifically address how the Proposed Action will improve or maintain roadless characteristics.

Thank you for the opportunity to comment on this massive timber sale. As a property owner that owns land adjacent to the UWC National Forest, I am concerned about a project of this scale’s impacts to roadless areas.

Sincerely,

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