

Board of County Commissioners of the County of Gunnison, State of Colorado

October 30, 2023

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Submitted electronically via the project webpage:
http://www.fs.usda.gov/goto/gmug/forestplan_objections

**Notice of Objection to the Revised Land Management Plan
for the Grand Mesa, Uncompahgre and Gunnison National Forests**

OBJECTOR CONTACT INFORMATION

Pursuant to 36 C.F.R. § 219.54 (c)(3), the Board of County Commissioners of the County of Gunnison, State of Colorado (“Gunnison County” or “County”) is designated as the objector.

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NOTICE OF OBJECTION

Gunnison County files this objection to the Final Land Management Plan (“LMP”) for Grand Mesa, Uncompahgre, and Gunnison National Forests (“GMUG”) under the process identified in 36 C.F.R. § 219 Subpart B. Notice of availability of the Record of Decision (“ROD”), Final Environmental Impact Statement (“FEIS”), and the Final Land Management Plan (“LMP”, “Forest Plan” or “Plan”) was published in a newspaper of record on August 30, 2023. Accordingly, this objection is timely.

ELIGIBILITY TO OBJECT

Gunnison County has participated in the planning process for the FEIS and LMP since their inception. The County submitted comments to the United States Forest Service regarding the draft LMP on December 8, 2017, September 5, 2018, July 29, 2019, August 6, 2019, November 3, 2021, July 16, 2021, November 25, 2021¹ and August 25, 2023. Further, USFS entered into Memorandum of Understanding 22-MU-11020400-058 on September 20, 2022, designating Gunnison County as a Cooperating Agency for the planning process. *See* MOU (Ex. A). The issues raised in this Objection were either raised in the aforementioned comments or were unavailable at the Draft Environmental Impact Statement (“DEIS”) stage.

STATEMENT OF REASONS FOR OBJECTION

As a commenter and designated Cooperating Agency throughout the LMP process, Gunnison County has repeatedly advocated for USFS’s adoption of the Gunnison Public Lands Initiative (“GPLI”), a proposed management plan created by a coalition of stakeholders for management of the Gunnison National Forest that balances wilderness, recreation, wildlife, socioeconomic, cultural, scientific and scenic values. *See, e.g.*, Dec. 8, 2017 Cmt. Ltr. at 1-2. The FEIS and ROD reject most of the material aspects of GPLI in favor of a plan that unnecessarily and improperly elevates timber harvesting over the balanced resource values

¹ The July 16 and November 25, 2021 comments were submitted jointly with Hinsdale, San Miguel and Ouray counties.

proposed in GPLI. Gunnison County contends that the law does not require USFS to select GPLI, its decision to reject it in favor of the Preferred Alternative is legally improper.

To be clear, Gunnison County is not against active vegetation management or motorized recreation – two of the aspects of the FEIS and ROD called into question by these Objections. Yet, the increases in these activities contained in the Preferred Alternative without the proper and complete analysis required by NEPA, NFMA and potentially other laws is one of the main reasons why Gunnison County objects to the FEIS and ROD. The others, as explained below, are USFS’s mistreatment of GPLI and its improper rejections of wilderness designations.

As USFS is aware, “NEPA [the National Environmental Policy Act] declares a broad national commitment to protecting and promoting environmental quality.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). NEPA “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Id.* Accordingly, “[t]he purpose of NEPA is to require agencies to pause before committing resources to a project to consider the likely environmental consequences of a decision, as well as of reasonable alternatives to it.” *See Colorado Env’tl. Coal. v. Salazar*, 875 F. Supp. 2d 1233, 1245 (D. Colo. 2012) (internal citation and quotations omitted). “In essence, NEPA requires an agency to take two separate steps: (i) consider reasonable alternatives to the proposed action; and (ii) take a ‘hard look’ at the environmental consequences of the decision.” *See id.* (internal citation and quotations omitted). Both of these steps, and particularly the “hard look” requirement, “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.” *See Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 712 (10th Cir. 2010), *accord*, *Wyoming v. U.S. Dep’t of Agric.*, 661 F.3d 1209, 1263–64 (10th Cir. 2011).

Relatedly, the National Forest Management Act (“NFMA”) requires USFS, in the development of land management plans for the National Forests, to “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.” *See* 16 U.S.C. § 1604(b). It also requires USFS to “identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible[.]” *See id.* at § 1604(k). A USFS decision under NFMA can be overturned if it is arbitrary and capricious. *See, e.g., Forest Guardians v. U.S. Forest Serv.*, 579 F.3d 1114, 1118 (10th Cir. 2009), *opinion withdrawn and superseded on reh’g in part*, 641 F.3d 423 (10th Cir. 2011). And, “[n]ormally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Gunnison County objects to the ROD, the FEIS and the LMP as violative of both NEPA and NFMA because USFS failed to engage in the robust, objective, fair and good faith analysis of impacts required by these laws. Specifically, Gunnison County tenders the following four objections to the ROD, FEIS and LMP:

I. The FEIS and ROD Improperly Analyze the Impacts of Increased Timber Harvesting.²

The ROD selects a modified version of “Alternative B”, now labeled the “Preferred Alternative”, which dramatically increases designation of areas in the GMUG suitable for timber production, without the robust, objective and good faith analysis required by NEPA. As the FEIS reveals, the Preferred Alternative designates 772,000 acres as suitable for timber production, which, as the ROD confesses, is a “significant 66% increase (300,000 acres)” compared to the 1983 plan. *See* ROD at 20; FEIS Vol. 1 at 77, Table 7, 143, Table 28 (projecting close to double projected timber sales over 1983).

USFS acknowledges throughout the FEIS that its selection of the Preferred Alternative will have discernable, harmful effects on the environment. *See, e.g.*, FEIS Vol. 1 at 158 (acknowledging significant timber harvest impacts on aquatic and riparian resources under Preferred Alternative); 424 (recognizing timber harvest impacts on “erosion, displacement, compaction, and soil changes”); 441, 444 (same as to watershed and stream health). Although NEPA does not necessarily require USFS to forego increased timber designations due to these negative environmental impacts, it does require USFS to properly and faithfully analyze these and other consequences. The agency plainly has not done so.

In analyzing and selecting the Preferred Alternative, USFS commits at least four errors under NEPA and NFMA.

A. The FEIS Oversimplifies and Overstates the Purported Economic Benefits of Increased Timber Harvesting as Compared to Recreation.

In selecting the timber-friendly Preferred Alternative, the ROD makes much over the “150 more jobs and \$7.6 to \$8.4 million more in labor income annually from the projected production and harvest of timber and other forest products.” *See* ROD at 35. Yet, in this same section of the ROD, USFS hints at its failure to properly account for the much larger economic benefits other uses of the Forest generate, particularly recreation. As the ROD and FEIS all but concede, the 150 jobs and \$7.6-\$8.4 million from timber harvesting pales in comparison to the \$90 million

² This objection was preserved by Gunnison County’s comments of December 8, 2017, July 16, 2021, November 23, 2021, November 25, 2021 and August 25, 2023, or was otherwise unavailable during the DEIS stage. *See* Dec. 8, 2017 Cmt. Ltr. at 2-6; July 16, 2021 Cmt. Ltr. at 2-6; Nov. 23, 2021 Cmt. Ltr. at 2-3, 6-8; Nov. 25, 2021 Cmt. Ltr. at 1-3; Aug. 25, 2023 Cmt. Ltr. at 1-5.

and 2,940 jobs created by recreation, livestock grazing and other uses of GMUG.³ *See* ROD at 35; FEIS Vol. 1 at 468. Further, the FEIS acknowledges, as it must, that because the GMUG has “received nearly 2.6 million annual visits and ranked eighteenth in the nation for total recreation visits[,]” *see* FEIS Vol. 1 at 536, timber harvest activity in these Forests pales in comparison to recreational uses. *See id.* at 559 (noting decline in timber harvest volume from the GMUG since 1980); FEIS Vol. 2 at 8-3; *see also* ROD at 2 (showcasing recreational opportunities within GMUG); LMP at 9 (“Recreation is the GMUG’s largest economic contributor”).

Yet the selection of the Preferred Alternative favoring timber production over recreation and ecological sustainability not only glosses over these differences but also fails to take into account the non-timber based non-timber-based economies of the counties within the GMUG and the recreation economic benefits of wilderness. This violates NEPA.

An agency fails to comply with NEPA when it overinflates the economic benefits of a plan, or when it relies on incomplete or misleading market data. *See Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811-12 (9th Cir. 2005) (internal citations omitted). As one court has explained:

Misleading economic assumptions can defeat the first function of an EIS by impairing the agency’s consideration of the adverse environmental effects of a proposed project. NEPA requires agencies to balance a project’s economic benefits against its adverse environmental effects. The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public’s evaluation of a project. Because of the potential for misleading economic assumptions to defeat the functions of an EIS, we will engage in a narrowly focused review of the economic assumptions underlying a project to determine whether the economic assumptions were so distorted as to impair fair consideration of the project’s adverse environmental effects.

Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 446 (4th Cir. 1996) (internal citations and quotations omitted). Here, USFS has employed misleading assumptions regarding the economic benefits of increased timber harvesting notwithstanding potential adverse environmental effects.

Relying upon the USFS-developed Economic Profile System-Human Dimensions Toolkit, USFS claims that “timber harvest . . . will continue to play an important economic and social role” in the counties constituting the GMUG, ignoring the fact that USFS’s **own data**

³ After all, “the GMUG received nearly 2.6 million annual visits and ranked eighteenth in the nation for total recreation visits.” *See* FEIS Vol. 1 at 536, *citing* 2014 National Visitor Use Monitoring (NVUM) data (USDA Forest Service 2015b).

demonstrates that **none** of the counties in the GMUG count timber extraction as a significant economic driver. *See* FEIS Vol. 1 at 465-66, 471-482. For example, although “Delta County has the largest share of timber-related employment relative to other counties” in the GMUG, its timber sector is only 0.4 percent of the county’s economy. *See* FEIS Vol. I at 472. By comparison, travel and tourism, in terms of percentage of employment in Delta County, is over 10 times that amount. *See* Headwaters Economics, *National Forest Socioeconomic Indicators Rpt.*, comparison bet. Gunn. Cnty. and Delta Cnty, (run Sept. 20, 2023) (Ex. B) at 6. Certainly, timber is not the economic driver that the ROD and the FEIS falsely inflate it to be. Indeed, in Gunnison County, **zero percent** of the labor sector works in the timber industry, and close to 30 percent work in travel and tourism.⁴ *See id.*

Rather than conclude that the Preferred Alternative’s timber-based economic benefit is minimal, the FEIS and ROD promote this phantom benefit as one of the main reasons for selection of the Preferred Alternative. *See* ROD at 19-20, 35, 42; EIS Vol. 1 at 483; LMP at 10. USFS then commits further error by 1) failing to robustly analyze potential negative effects of increased timber harvesting on the recreation uses, *see, e.g.*, FEIS Vol. 1 at 471, and 2) falsely assuming that wilderness designations preventing timber suitability designation constitutes a net negative for recreation economics.

Acknowledging that “desired conditions for social, economic, and ecological sustainability are achieved through varying degrees of more active conservation management or more restrictive preservation[.]” *see* FEIS Vol. 1 at 45, the Preferred Alternative downgrades priorities for active recreation management in favor of focusing on timber and fuels-related activities, to the detriment of the GMUG and the economics of affected communities. By way of example, the FEIS anticipates that Preferred Alternative’s timber emphasis will result in 250,000 acres of fuels treatment in the next 20 years, compared to 90,500 acres under the No Action Alternative and 50,000 acres under Alternative D. *See* FEIS Vol. 1 at 81. By contrast, the Preferred Alternative intends to:

- delay actions to minimize the harmful effects from off-road travel on at-risk plants – five years instead of one year as compared to Alternative D;
- reduce by half the number of alpine acres restored through recreation management plans and road and trail decommissioning as compared to Alternative D (100 versus 200 acres);
- downgrade the elimination of unauthorized travel routes from 4 to one per year as compared to Alternative D;
- de-emphasize actions to minimize harms to at-risk plants from off-road travel to a five-year rather than a one-year action horizon; and

⁴ During the planning process, Gunnison County, whom USFS has acknowledged is an expert with regard to Forest planning, *see* MOU (Ex. A) at 2, urged USFS to take into account the substantial economic benefits recreation afforded Gunnison County due to recreational use of the GMUG. *See* Dec. 8, 2017 Cmt. Ltr. at 5. “A reviewing court may properly be skeptical as to whether an EIS’s conclusions have a substantial basis in fact if the responsible agency has apparently ignored the conflicting views of other agencies having pertinent expertise.” *Davis v. Mineta*, 302 F.3d 1104, 1123 (10th Cir. 2002).

- decrease by half USFS actions to improve degraded day and overnight dispersed use areas as compared to Alternative D.

See FEIS Vol. 1 at 81-82, 144. This is notwithstanding the fact that the FEIS concludes that active **recreation** management is critical to protect against human-caused wildfires and negative impacts to native plant species and wildlife from unmanaged or mismanaged recreation uses. See *id.* at 316-318. Merely prioritizing active **vegetation** management, as the LMP does, would likely not prove sufficient.⁵

Moreover, Gunnison County can uncover **no** robust analysis on the potential negative effects that increased timber operations could have on recreational users, and in turn the recreation-based economy central to the many counties comprising the GMUG. In particular, Gunnison County cannot find a detailed analysis in the FEIS regarding the Preferred Alternative’s de-emphasis of active recreation management in favor of timber industry promotion, which may sour outdoor recreation visitors to the Forests by creating negative backcountry experiences in the form of illegal off-road uses, damaged natural areas and unsanitary or unsightly day and overnight dispersed use areas, which, in turn, damages the GMUG counties’ recreation-based economies.

Instead, the FEIS makes the poorly supported and misleading assumption that “economic contributions from the GMUG are a very small portion of total jobs in the analysis area; while local impacts may be greater, the overall impact of changes to the economy from the plan direction are minimal.” See FEIS Vol. I at 483. The data plainly urges a contrary conclusion. The National Forest Socioeconomic Indicators Report demonstrates that close to 40 percent of private employment in Gunnison County directly relates to Forest use sectors, with a full 28.6 percent in travel and tourism. See Headwaters Economics, *National Forest Socioeconomic Indicators Rpt.*, comparison bet. Gunn. Cnty. and Delta Cnty. (run Sept. 20, 2023) (Ex. B) at 6. This, of course, does not take into account the **indirect** benefits of Forest use for the local economy. For example, according to United States Department of Agriculture (“USDA”) National Visitor Use Monitoring Data relied upon by the FEIS, see FEIS Vol. 1 at 536, over 35 percent of GMUG visitors stayed overnight in hotels or short-term rentals when using the Forest, an obviously positive impact to the local economies where these lodging nights occurred. See USDA Forest Service Region 2, *Visitor Use Rpt. Grand Mesa, Uncompahgre and Gunnison NF* (June 26, 2023) (Ex. C) at 26. Undoubtedly, those visitors also dined at local restaurants, hired

⁵ Indeed, the LMP could plan could properly achieve the ecological, fire and economic benefits claimed by the Preferred Alternative without identifying so many lands as suitable for timber production. 36 CFR § 219.11(c) and (d) provide that timber harvest may be used “as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values” even on lands not identified as suitable for timber production. See *id.*; see also 36 CFR § 219.19 (defining “timber harvest” as “[t]he purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.” Accordingly, areas need not be identified in the plan as suitable for timber production in order to carry out timber harvest to achieve wildlife habitat improvement and other multiple-use goals.

local guides and outfitters, and shopped for supplies at local stores – data which USFS apparently took no time to collect and analyze as part of their obligations under NEPA.

USFS also appears to base its “no impact on recreation” conclusion on the misleading assumption that economically beneficial recreation visits to GMUG wilderness and wildlife areas are minimal compared to the supposed benefits of increased timber harvesting, and because the Preferred Alternative de-emphasizes wilderness and wildlife management designations as compared to Alternative D, the Preferred Alternative will promote local economies to a greater degree. *See* FEIS Vol. 1 at 470. USFS bases this assumption that wildlife-related activities are the primary uses of wilderness, wildlife and special management areas. *See id.* Indeed, USFS goes so far as to conclude that “[c]ounties with tourism-driven economies may experience the greatest benefit from the preferred alternative because it proposes a balance between wildlife-related recreation and trail-based recreation.” *See* FEIS Vol. 1 at 476. Had USFS taken the time to review and digest its own data, it would have learned that out of the top 5 Forest activity types GMUG visitors identified to USDA, three such activities – viewing natural features, hiking, and relaxing -- are not only permitted in wilderness areas but are also unrelated to wildlife and therefore properly classified as “trail-based recreation”. *See Visitor Use Rpt.* (Ex. C) at 21. To conclude, as USFS does, that Alternative D’s special management area emphasis is somehow more harmful to Western Slope economies than the Preferred Alternative is wrong and contrary to NEPA.

B. The FEIS’s Conclusions Regarding Technological Feasibility of Timber Harvesting on Steep Slopes is Misleading.

The ROD makes clear that USFS made the “deliberate decision” to allocate significantly more areas as suitable for timber production than the No-Action Alternative, including production on steep slopes that could have negative impacts on soil and wetland resources. *See* ROD at 20. The dramatic inclusion of steep-slope timber harvesting relies heavily on USFS’s misguided assumptions about the feasibility of steep-slope harvesting technology in violation of NEPA and NFMA.

An agency cannot rely on unsupported assumptions about future technologies and remain in compliance with NEPA or NFMA. *See, e.g., High Country Conservation Advocates v. United States Forest Serv.*, 52 F. Supp. 3d 1174, 1197 (D. Colo. 2014). Yet the LMP, FEIS and ROD do precisely that. The FEIS discloses that under the Preferred Alternative, a full 14 percent of areas identified as suitable for timber production are on slopes of 40 percent grade or higher, constituting 112,000 acres of the GMUG. *See* FEIS Vol. 1 at 56; FEIS Vol. 2 at 8-10. The FEIS justifies this decision on the grounds that, supposedly, “[n]ew technology and approaches could make timber harvest in areas with steep slopes (greater than 40 percent) economically feasible.” *See* FEIS Vol. 2 at 8-12; *see also* LMP at 8-8. The only evidence that Gunnison County could locate in the FEIS that purports to support this statement, however, relates to a pilot steep slope logging operation conducted by USFS around Monarch Pass. *See* FEIS Vol. 1 at 566, 570. Absent from the discussion of this project is the fact that **USFS is paying a contractor to perform this work** for wildfire mitigation purposes; it is not, as the FEIS implies, a free-market

commercial logging operation. See Jason Blevins, “Monarch Pass Could Serve As A New Model For Wildfire Mitigation in Treacherous Areas,” *The Colorado Sun* (October 6, 2020 (Ex. D) at 5. This is, therefore, inadequate evidence of economically feasible steep slope timber operations, and, in turn, improper under NEPA and NFMA.

C. The FEIS Fails to Robustly Analyze the Climate Impacts of Increased Timber Harvesting.

As the FEIS appears to concede, “[C]limate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.” See *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). Despite this, the FEIS improperly analyzes the full climate effects of increased timber production in the GMUG, in violation of NEPA and potentially other laws.⁶

The FEIS acknowledges the increased carbon emissions, decreased carbon stock, and dust that will be caused by the increased timber harvest operations under the Preferred Alternative as compared to the No-Action Alternative. See FEIS Vol I at 50, 351-356 (revealing that Preferred Alternative estimated emissions almost two times the amounts generated under No-Action Alternative and Alternative D); 360-61; 375; 392; ROD at 3; see also LMP at 10 (describing size and importance of GMUG’s carbon storage). It further admits that, “[t]he greenhouse gas effects of projected vegetation management activities would be highest in the Preferred Alternative, followed by Alternative C, the No-Action, and least from Alternative D.” See *id.* at 395. However, the FEIS characterizes the Preferred Alternative’s impacts as “minor”, theorizes that such operations “may reduce overall emissions from unplanned wildfires”, and then claims that total emissions is an “unknown” and therefore unworthy of robust analysis. See FEIS Vol. I at 358, 363, 393. And, while arguing that increased wilderness allocations in alternatives other than the Preferred Alternative could reduce vegetation management that in turn would serve to reduce emission-producing wildfires, the FEIS admits that “[l]ong-term, net greenhouse gas effects of the recommended wilderness allocation is uncertain and would be contingent upon contemporary environmental conditions and site-specific factors.” See *id.* at 393; see also *id.* at 395. (“The long-term net effect of implementation of the revised forest plan alternatives is therefore difficult to quantify.”).

The law is clear that “[r]easonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as ‘crystal ball inquiry.’” See *High Country Conservation Advocates*, 52 F. Supp. 3d 1174, 1196 (internal citations and quotations omitted); see also *New York v. Nuclear Regulatory Comm’n*, 681 F.3d 471, 482 (D.C. Cir. 2012)

⁶ For example, President Biden has issued Executive Order 14072. See 87 Fed Reg 24851 (April 27, 2022). This Order directs agencies, including USFS to “develop policies, with robust opportunity for public comment, to institutionalize climate-smart management and conservation strategies that address threats to mature and old-growth forests on Federal lands.” See *id.* at sec. 2(c)(iii). Even though this Order is acknowledged, see ROD at 52-53, the President’s direction does not appear to be reflected in the LMP. See, e.g., LMP at 5-7.

(agency conducting NEPA analysis “generally must examine both the probability of a given harm occurring and the consequences of that harm if it does occur. Only if the harm in question is so ‘remote and speculative’ as to reduce the effective probability of its occurrence to zero may the agency dispense with the consequences portion of the analysis.”). Here, USFS appears to bypass a robust examination of climate impacts associated with increased timber harvesting by labeling such impacts “too difficult to quantify.” This is inconsistent with its obligations under NEPA.

D. The FEIS Fails to Robustly Analyze the Invasive Plant Impacts of Increased Timber Harvesting.

Similar to its handling of climate impacts, the FEIS attempts to gloss over the analysis of proper mitigation efforts to address the harmful impacts of invasive plant species associated with increased timber harvesting.⁷ The FEIS acknowledges that the Preferred Alternative’s bias toward increased timber harvesting could result in non-native plant species and weeds becoming more of a problem, but then summarily concludes that such potential harms are appropriately mitigated merely by contractor equipment monitoring. *See* FEIS Vol. 1 at 415, 420. This is not the robust examination required by NEPA; it therefore fails to comply with the law.

II. The EIS and ROD Do Not Provide the Proper or Complete Basis with Regard to “Corrections” for Motorized Use in the Preferred Alternative.⁸

In what purportedly are “corrections”, the selected Preferred Alternative increases summer motorized recreation opportunity spectrum (ROS) acres – from 13 to 30 percent of the GMUG as compared to the No-Action Alternative. *See* ROS at 36, 78. Although Gunnison County does not oppose continuation of existing motorized recreation opportunities in the final LMP, it does question how these “corrections” were made and therefore objects that the FEIS fails to properly and fully disclose USFS’s “corrections” process in violation of NEPA.

The FEIS acknowledges, as it must, the potentially harmful impacts of increased motorized use on vegetation, watersheds, riparian and ecosystems⁹, threatened species and wildlife¹⁰,

⁷ This includes but is not limited to the fact that invasive plants themselves increase fire risk.

⁸ This objection was preserved by Gunnison County’s comments of December 8, 2017, July 29, 2019, November 23, 2021 and August 25, 2023, or was otherwise unavailable during the DEIS stage. *See* Dec. 8, 2017 Cmt. Ltr. at 7-8; Nov. 23, 2021 Cmt. Ltr. at 3-4; Nov. 25, 2021 Cmt. Ltr. at 1, 3; Aug. 25, 2023 Cmt. Ltr. at 2-4.

⁹ The FEIS lacks robustness in failing to discriminate between the impacts of mechanized and motorized recreation on water quality. *See, e.g.*, FEIS Vol. I at 170, 446. Relevant literature indicates that motorized recreation likely has a greater impact on wetlands because, unlike mechanized recreation, motor vehicles discharge oil and other chemicals that have adverse effects on water quality. *See* Douglas S. Ouren *et al.*, *Environmental Effects of Off-Highway Vehicles on Bureau of Land Management Lands*, Open File Rpt. 2007-1353 (Ex. E) at 25. Gunnison County could find nowhere in the FEIS a detailed analysis on this issue. Thus, USFS’s failure to analyze these differing effects violates NEPA.

¹⁰ The FEIS artificially limits its analysis to the impacts of illegal off-road motorized use. *See* FEIS Vol I at 204, 546. This ignores the fact that even legal motorized use has significant adverse effects on habitat connectivity,

carbon emissions and dust¹¹, greenhouse gas emissions¹², the spread of invasive plants, recreation spending by non-motorized users, and scenery¹³. See FEIS Vol. 1 at 134, 170-71, 204, 311, 336-37, 357-58, 418, 446, 473, 524, and 546. Further, the FEIS all but concedes such issues will worsen as population increases will likely lead to more motorized use of the GMUG in the coming years, regardless of whether a selected alternative increases or decreases motorized use designations in the implicated Forests. See *id.* at 336. See also *id.* at 539 (“Recreation use is increasing, and changes in technology are creating new ways to recreate, leading to more competition and demand for the use of public lands, and more conflicts among visitors.”).

The ROD nevertheless concludes that its approach to motorized recreation is “balanced” and sustainable for the “long term.” See ROD at 23. While Gunnison County might eventually come to agree with this conclusion, it objects to how the ROD and FEIS reach it.

Both the ROD and FEIS that the increase in motorized settings was due to “corrections” contained in comments received during the planning process. See *id.*; see also FEIS at 36. Yet, Gunnison County has yet to uncover where, if anywhere¹⁴, in the FEIS that these “corrections” are spelled out in detail, including who provided the “correction”, where the “correction” is located, how the planning team verified the “correction”, and whether any “corrections” served to eliminate or restrict motorized uses in the GMUG such that at least some of the motorized use increased was balanced by corresponding decreases.¹⁵

wildlife mortality and related impacts. See Ouren *et al.* (Ex. E) at 16-24. Such short shrift is contrary to the “hard look” requirements of NEPA.

¹¹ The FEIS claims that “The forest plan revision does not affect the amount of vehicle use on paved or unpaved roads and trails[.]” despite the Preferred Alternative’s net increase of motorized use designations over the No-Action Alternative. See FEIS Vol. I at 357; see also Ouren *et al.* (Ex. E) at 29 (noting “significant effects” of fugitive dust caused by off-highway vehicle traffic). This statement is inconsistent with NEPA’s mandate for a robust inquiry.

¹² The FEIS arguably engages in an appropriate quantitative analysis of timber-harvest related emissions in the Preferred Alternative but declines to do so with regard to motorized recreation emissions, summarily concluding that such emissions would be “minor” and “no change” from current levels, or would otherwise be addressed in travel management planning. See FEIS Vol. I at 358, 360, 362, 393; see also ROD at 35. This sidestep ignores science to the contrary. See Ouren *et al.* (Ex. E) at 29-32 (explaining “significant” air quality problems caused by off-highway vehicle motors). Such short shrift of the climate impacts of increased motorized use of the GMUG falls far short of USFS’s NEPA obligations. See, e.g., *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 715 (10th Cir. 2009) (upholding decision that “BLM acted arbitrarily by concluding without apparent evidentiary support that impacts on the Aquifer would be minimal.”)

¹³ The FEIS bypasses any quantitative or qualitative analysis on the negative scenery impacts of increased motorized use of the GMUG, instead assuming that the Preferred Alternative’s choice to increase motorized use would somehow “move scenery toward desired conditions.” See FEIS Vol. I at 535. Unless USFS’s objective is to decrease the scenery resources of the GMUG in favor of increased motorized use, this is not a proper analysis under NEPA. See Ouren *et al.* (Ex. E) at 33 (noting off-highway vehicle activities’ “increasing stress” on “natural resources.”).

¹⁴ The FEIS’s Response to Comments provides some insight into these “corrections”, see FEIS Vol. 3 at 107, 208 (as to Alternative C), but nowhere near the comprehensive explanation Gunnison County contends is required under NEPA.

¹⁵ It appears to the County that no “correction” resulted in less motorized use. See FEIS Vol. I at 557. (“No existing motorized routes would be zoned as non-motorized ROS in the preferred alternative, whether for summer or winter.”); ROD at 23. Neither the FEIS nor the ROD attempt to explain or justify this result.

Gunnison County therefore objects that these “corrections” were made without the attendant robust analysis required by NEPA. Should USFS properly and robustly explain and analyze these “corrections” in a revised FEIS, this would likely resolve Gunnison County’s objection on this topic.

III. The EIS and ROD Improperly Burden Alternative D with Little to No Active Vegetation Management Opportunities in Order to Further Justify the Preferred Alternative.¹⁶

In Gunnison County’s view, the most concerning NEPA violation surrounds the way USFS handled the GPLI proposal. As USFS may recall, GPLI is a local coalition of public land use organizations, users and stakeholders formed by Gunnison County and others to protect public lands, enhance and sustain the local economy that relies upon public lands, and to support historic and sustainable public land use. In January 2019, and with support of Gunnison County, GPLI published a detailed, 112-page proposal for land use and management for public lands, including sections on resource values and management area recommendations. *See generally* Revised GPLI Proposal (January 2019) (Ex. F). Its working group included organizations representing hunting, fishing, mountain biking, ranching, winter and summer motorized recreation, environmental interests, and water quality and quantity. *See id.* at 9.

Rather than addressing GPLI on its own merits by examining it as a standalone alternative, the FEIS and the ROD shoved it into an amalgamation of every citizen-initiated proposal, regardless of whether other such proposals were as encompassing, complex, detailed, inclusive, based on sound science and as multi-faceted as GPLI. *See* ROD at 48; FEIS Vol. I at 38. In instances where GPLI overlapped with a more restrictive proposal, USFS arbitrarily “applied the more restrictive/preservation-oriented prescription and allocation to a given area.” *See* FEIS Vol. 1 at 38; ROD at 48. Gunnison County could find no sensible explanation for these decisions.

To top it off, the FEIS and ROD sabotage GPLI by incorrectly assuming that GPLI opposes all active vegetation management and salvage timber harvesting; thus, the FEIS and ROD remove salvage timber operations from Alternative D. *See* ROD at 52; FEIS Vol. 1 at 60, 70, 77, 410, 569. This is despite the FEIS’s acknowledgment that “[a]ll counties [including Gunnison County, one of the primary architects of GPLI] supported strategic fuels reduction to mitigate wildfire risk to communities and infrastructure.” *See* FEIS at 24. And it is also despite the fact that GPLI promotes the use of “allowable vegetation management activities” within its proposed Special Management Areas. *See* GPLI Proposal (Ex. F) at 45; *see also* GORP Act FAQs, *available at* <https://www.gorpact.org/faqs> (“The special designation areas were tailored to

¹⁶ This objection was preserved by Gunnison County’s comments of December 8, 2017, July 29, 2019, November 23, 2021 and August 25, 2023, or was otherwise unavailable during the DEIS stage. *See* Dec. 8, 2017 Cmt. Ltr. at 6; July 29, 2019 Cmt. Ltr. at 2; Nov. 23, 2021 Cmt. Ltr. at 2-4; Aug. 25, 2023 Cmt. Ltr. at 2-5.

account for wildfire risk, and the legislation includes provisions encouraging hazardous fuels reduction to be focused in areas near communities, while focusing on forest health in the backcountry.”).

Imposing these artificial constraints on GPLI appears to have purposefully rendered it infeasible and unacceptable as a preferred alternative by reducing active forest management opportunities to protect riparian and wetland ecosystems and mitigate wildfire risks. *See* FEIS Vol. 1 at 174, 350, 310, 430. As the ROD explains, there are “potential long-term trade-offs from strict restrictions on active vegetation management[.]” *See* ROD at 52. The FEIS and ROD appear to go out of their way to ensure there were no reasonable “trade-offs” in Alternative D, or GPLI, so that they could put their thumb on the scale for their obviously pre-determined, timber-friendly Preferred Alternative.

This plainly violates NEPA. “NEPA requires that the Agencies ‘[r]igorously explore and **objectively evaluate** all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.’” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1166 (10th Cir. 2002), *as modified on reh’g*, 319 F.3d 1207 (10th Cir. 2003), *quoting* 40 C.F.R. § 1502.14(a) (emphasis added). Thus, “[t]he purposes of NEPA are frustrated when consideration of alternatives and collateral effects is unreasonably constricted.” *See Greene Cnty. Planning Bd. v. Fed. Power Comm’n*, 559 F.2d 1227, 1232 (2d Cir. 1976). And, “if the record shows that the agency prejudged the issues, then deference to the agency’s decision is diminished.” *See Colorado Envtl. Coal. v. Salazar*, 875 F. Supp. 2d 1233, 1245 (D. Colo. 2012). By improperly saddling GPLI with other initiatives and removing any needed forest management tool from the proposal, USFS has clearly prejudged GPLI and seeks to extinguish any possibility of its selection as a preferred alternative.¹⁷ This is clearly **not** the good faith effort that NEPA requires.

IV. The FEIS and ROD Improperly Decline Inclusion of Recommended Wilderness Areas.¹⁸

The NEPA errors outlined above compound the problems with the selected alternative by failing to include lands within the GMUG that should have properly been included as recommended wilderness. As Gunnison County has repeatedly made clear throughout years of

¹⁷ USFS’s handling of GPLI also violates NFMA. That Act provides that “[a]s a part of the Program provided for by section 1602 of this title, the Secretary shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.” *See* 16 USC § 1604(a); *see also* 36 CFR § 219.4 (a)(1) (encouraging reliance on collaborative processes in land management planning); 36 CFR § 219.4 (b)(1) (“The responsible official shall coordinate land management planning with the equivalent and related planning efforts of . . . local governments.”); 36 CFR § 219.4 (b)(2). Because of Gunnison County’s involvement in the creation, development and issuance of GPLI, it clearly constitutes a local government planning process that USFS cannot so readily disregard, as it has in the FEIS and the ROD.

¹⁸ This objection was preserved by Gunnison County’s comments of December 8, 2017, July 29, 2019, or was otherwise unavailable during the DEIS stage. *See* Dec. 8, 2017 at 10-11; July 29, 2019 Cmt. Ltr. at 2.

comments, it supports GPLI and its suggestions for recommended wilderness designations. *See* Revised GPLI Proposal (January 2019) (Ex. F) at 49-96. USFS chose to place GPLI’s recommendations almost wholly in Alternative D, and then extract only a “modest” amount of these recommendations for placement within the Preferred Alternative. *See* FEIS Vol. I at 610.

Thus, and probably because of the timber industry bias of the Preferred Alternative, this results in the USFS recommending only 46,200 acres of wilderness in the GMUG, as compared to the 324,000 acres proposed by GPLI and captured in Alternative D.¹⁹ *See* FEIS Vol. I at 609. Much of this appears to be justified by “planned uses” of the GMUG, such as increased timber harvesting associated with the dramatic increases in designating land as suitable for timber production. *See* FEIS Vol. I at 631. This is supported by the ROD’s declaration that many of USFS’s rejections for recommended wilderness were purportedly in “high priority” areas for “fuel treatments” or proximate to populated areas, *see* ROD at 18, while at the same time confessing to an exception to this consideration due to “public support.” *See id.* at 19. Gunnison County asserts that this smacks of arbitrary and capricious decision-making. *See, e.g., Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

Specific instances of less-than-robust or otherwise arbitrary analysis of wilderness recommendations include:

- In at least four instances – Stueben Creek and Steuben-Beaver (G2a, G2b), East Beaver (N12a), and Lamborn (P7a) – the FEIS and ROD recommend **no** wilderness acreage even though the FEIS concludes that wilderness characteristics are high in these areas. *See* FEIS Vol. I at 642-44, 654, 660-61.
- In at least four other instances – East Elk-Dillon Mesa and East Elk Creek (G1a, G1b), Pass Creek-Castle (G4a) and Soap Creek (GP1b) – the FEIS finds high wilderness characteristics and public interest for their recommendations, yet the FEIS and ROD inexplicably refuse to accept all of the acreage for recommended wilderness in the preferred alternative, leaving the full acreage assigned only to rejected Alternative D. *See* FEIS Vol. I at 613-17, 637-38.
- In at least five other instances – Castle (G3a), Brush Creek-Deer Creek and Star Peak (G9a, G9b) and Spring Creek-East Cement and Matchless (G10a, G10b) -- the FEIS acknowledges as least moderate wilderness values, and in many cases public interest, but the ROD decides to accept little, if any, of these into the recommended wilderness category. *See* FEIS Vol. I at 632-34, 646-48.

¹⁹ Even for such wilderness, the LMP is ambiguous as to what uses will continue regardless of land designation. In particular, MA-STND-RECWLD-02 provides that “pre-existing authorized, non-conforming uses may continue” in “[r]ecommended wilderness[.]” *See* LMP at 114. In order to comply with NEPA, the LMP should define “pre-existing authorized, non-conforming uses.”

Because such selections appear arbitrary and capricious, and the agency has failed to fully or rationally explain its rationale, Gunnison County objects to them.

CONCLUSION

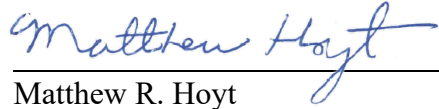
Where, as here, the FEIS reveals an agency to have prejudged the merits in an incomplete and misleading fashion such that “the decisionmaker and the public could not make an informed comparison of the alternatives, revision of an EIS may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA.” *See Nat. Res. Def. Council*, 421 F.3d 797, 811 (internal citations and quotations omitted).

Accordingly, in order to cure the deficiencies set forth in the foregoing objections of Gunnison County, USFS should, at a minimum:

1. Revise the FEIS to take a proper hard look at increased timber harvesting, taking into account the *de minimis* socio-economic benefits of the timber industry on the GMUG and the negative impacts of increased timber extraction on the climate, native vegetation, tourism and recreation, and other forest resources;
2. Remove all steep slopes (those greater than 40 degrees) from timber-suitable designations;
3. Fully and accurately disclose all “corrections” that led to increased motorized use;
4. Place GPLI in its own alternative without the improper constraints of Alternative D, and either select that alternative or more robustly examine why GPLI is not included in the preferred alternative;
5. Re-examine recommended wilderness designations and bring the full panoply of recommended wilderness from GPLI into the selected alternative; and
6. Remove timber-suitable designations from all GPLI-recommended wilderness areas and special management areas, even if such areas are not recommended for wilderness or special management in the final plan.

We look forward to hearing from you about your plans for discussing the foregoing proposed resolutions to these objections.

Respectfully submitted this 30th day of October, 2023.

A handwritten signature in blue ink that reads "Matthew Hoyt". The signature is written in a cursive style with a horizontal line underneath it.

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