

Swan View Coalition

Nature and Human Nature on the Same Path



3165 Foothill Road, Kalispell, MT 59901

swanview.org & swanrange.org

ph/fax 406-755-1379

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Uploaded to <https://cara.fs2c.usda.gov/Public/CommentInput?Project=65359>

Sent via email to:

Charles.Carver@usda.gov

adam.ladell@usda.gov

james.yarbrough@usda.gov

michael.munoz@usda.gov

robert.davies@usda.gov

Christopher.Dowling@usda.gov

Re: Outfitter and Guide Special Use Permits in the Bob Marshall Wilderness Complex

Dear Rangers Carver, Ladell, Yarbrough, Munoz, Davies and Dowling;

We are sending this third letter of comments to each of you on this closing day of the public comment period in the above matter. Not a single one of you has responded to the questions we posed in our first two letters, even though you invited such questions in your scoping notice. We have therefore been denied the right to provide fully informed comments.

Should you proceed to reauthorize these SUPs using Categorical Exclusions, this public comment period constitutes the public's only opportunity to comment on these SUPs. Your use of a Categorical Exclusion would also preclude the right of the public to file formal Objections to your decision(s).

Therefore, this letter of comment may very well constitute our exhaustion of administrative remedies and leave the filing of a lawsuit in federal court as the only option to redress our grievances.

We sincerely hope you change the course you have set out upon, recognize that the individual and cumulative effects of the 62 SUPs you are considering may have significant effects to the human environment, and prepare a Draft EIS that includes the types of information and analyses that we and many others have asked for during this public comment period. You must also restart the Scoping process after providing enough information about the proposal so that the public can clearly convey to you, during an adequate public comment period, the issues that must be addressed in the DEIS.

In this regard, we incorporate by reference the 2/8/24 letter submitted by former Spotted Bear District Ranger Greg Warren in this matter. Mr. Warren demonstrates an

appreciable knowledge of how this process is supposed to work according to applicable laws and regulations. He calls for the preparation of an EIS and concludes “to allow for informed public participation additional information about the proposal needs to be made available.”

Secondly, please find as Attachment 1 yesterday’s Flathead Beacon article by Tristan Scott, which details the circumstances surrounding former Spotted Bear District Ranger Scott Snelson’s removal from his post for trying to enforce the conditions of an SUP issued to Richard McAtee/Montana Wilderness Lodge. Why did you not provide us these details when we asked for them? Why should we be left to gather facts from the news media rather than get them first-hand from the public agency tasked with keeping track of such facts?

The Beacon article documents levels of controversy that resulted in the reassignment of a District Ranger, contributed to his early retirement, and perhaps contributed to the reassignment of the Forest Supervisor as well. NEPA requires the preparation of an EIS for such controversy, not the use of a Categorical Exclusion to sweep it under the rug! Moreover, we find that 1,369 public comments have been submitted in this matter – a clear indication there is significant public interest in the management of these SUPs and the national treasure that is the Bob Marshall Wilderness Complex. That cannot be swept under the Categorical Exclusion rug either.

Thirdly, we took a look at the types of short-cut environmental analyses that were used to expand the operating area for Swan Mountain Outfitters in 2022 under a Categorical Exclusion. These short-cut assessments and the programmatic biological assessments that they and other such short-cuts tier to are absolutely inadequate at assessing and disclosing the environmental effects of the proposed activity. Attachments 2-9 include the following documents:

- 2 – Decision to expand the SMO outfitting area.
- 3 – Swan View’s request for assessment documents named in the SMO Decision.
- 4 – Flathead NF’s response to Swan View’s documents request.
- 5 – Short Form Biological Assessment – Botany
- 6 - Consultation Summary Sheet for Programmatic Assessment - Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species
- 7 - Biological Assessment for Bull Trout
- 8 – 2021 Summer O&G Heritage Memo
- 9 – Programmatic Agreement Regarding the Maintenance of Historic Properties

To begin with, the proposed SUP expansion is not consistently described in the various “assessments.” Attachment 6 says there will be no expansion in service days while Attachment 7 attempts, unsuccessfully, to be both a programmatic and project biological assessment. It simultaneously states it is “not specific to any particular outfitter and guide [and] would cover unlimited service days. The actual number would be decided later based on proposals.” It then goes on to describe, without naming, the SMO SUP project, but never discloses the number of service days.

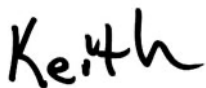
Largely, the various assessments simply assume there will be no impacts to resources, without firstly describing where those resources are, what types of potential impacts may occur, and then describing terms and conditions needed in the SUP to insure the impacts do not occur. For example, Attachment 5 concludes there will be no impact to threatened whitebark pine because of “the lack of impacts to whitebark pine individuals if there is habitat in the project area.” (Emphasis added). Are there whitebark pine in the project area? Most certainly because the SUP includes horse and llama use of the Alpine Trail #7 and the Lion Creek Trail at high elevations along the Swan Crest. We have many times seen such stock tied to trees that end up damaged or killed as the bark is rubbed and/or chewed off. But there is no mention of this potential harm to whitebark pine nor the fact that whitebark pine indeed exists in the project area

Similarly, the one-page Attachment 8 simply describes the SMO SUP as “An undertaking with no potential to effect cultural resources and therefore no inventory was completed.” Are not visitors to the National Forest, including clients of outfitters, curious when they happen upon cultural resources? Yes they are and they often damage those cultural resources either mistakenly or intentionally. But apparently that isn’t going to happen in the SMO operating area because there are no cultural resources. And there are no cultural resources because nobody inventoried them!

Lastly, Attachment 6 concludes the SMO activities are “not likely to adversely affect” threatened grizzly bear or Canada lynx, even though those activities are expected to cause “possible short-term disturbance from the immediate area” and alongside other activities are cumulatively “expected to continue to alter habitat used by grizzly bears, lynx, and their prey; to disturb and/or displace these species; and possibly to contribute to mortality.” Simply put, the use of Categorical Exclusions and their corresponding short-cut environmental analyses result in arbitrary, capricious and unlawful conclusions about the impacts to ESA listed and other species.

Your review of the BMWWC SUPs, on its current course, is a violation of the National Environmental Policy Act, the Endangered Species Act, the National Forest Management Act, and the Administrative Procedures Act, among others.

Sincerely,



Keith J. Hammer
Chair

Attachments: #1 2/15/24 Flathead Beacon News Article

#2-9 Swan Mountain Outfitter Decision and Assessment Documents

ATTACHMENT 1



COVER STORY

As Forest Administrators Seek to Renew Outfitter Permits in Bob Marshall Wilderness, Enforcement Lapses Come to Light

One longtime district ranger says he tried for years to suspend an outfitter's special-use permit in the Bob after repeat offenses. Instead, his efforts were undermined and he was reassigned to an administrative office.

BY TRISTAN SCOTT

FEBRUARY 15, 2024





The Chinese Wall from Cliff Mountain in the Bob Marshall Wilderness on Aug. 1, 2017. Beacon file photo

With a deadline looming to [reauthorize the permits](#) allowing 62 commercial outfitters and guides to lead floating and hunting trips on the Bob Marshall Wilderness Complex, which includes all three designated wilderness areas spanning 1.6 million acres, U.S. Forest Service administrators are hearing a common refrain: “To allow for informed public participation, additional information about the proposal needs to be available.”

That [comment was submitted by Greg Warren](#), a former Recreation Program Leader on the Flathead National Forest who also served as the Spotted Bear District Ranger from 1990 to 1994, a period during which he helped oversee the special use permits administered to outfitters and guides doing business in the heart of the Bob. It echoes a growing chorus of public land stakeholders calling on the U.S. Forest Service (USFS) to rebuild the public’s trust and be more transparent about how it approves special uses occurring in a wilderness setting, as well as how it monitors and enforces the rules.

[As appeals intensify](#) for the federal agency to conduct a full Environmental Impact Statement (EIS) on the permit reauthorization process, the USFS is prepared to reauthorize the special uses for another 10-year period under a Categorical Exclusion (CE) rule of the National Environmental Policy Act (NEPA), which is a less intensive category of analysis preceding agency action than an EIS. As an example of the agency’s lack of transparency surrounding reauthorization, some commenters noted that, in issuing its scoping notice on Jan. 1, the USFS omitted information about the assigned sites, the identity of the permit holders and the types of uses they offer to paying customers.

When members of the public expressed concerns about the scarcity of detail, land managers extended the scoping period by two weeks while providing some additional information. As of Feb. 15, the scoping had garnered more than 1,350 comments. For additional information about the reauthorization as well as to read or submit public comments before the Feb. 16 deadline expires, [visit this website](#).

“In addition to extending the comment period, we are also providing more information on relevant permit holders, assigned sites, and types of use,” said Rocky Mountain District Ranger Mike Muñoz in his letter soliciting public input. “We are interested in your feedback and thank you in advance for your investment in preserving the Wilderness character of the Bob Marshall Wilderness Complex.”

The Wilderness Act of Sept. 3, 1964 allows outfitting as a “special use,” which is also authorized by the management documents of the three national forests comprising the Bob Marshall Wilderness Complex. Each outfitter has a forest contract that ensures activities taking place on the public resource minimize impact to these remote areas and help convey stewardship ethics. If the current slate of permits is reauthorized, their term would extend from 2025 to 2035. A decision is expected in June 2024.

With the extended public comment period closing on Feb. 16, however, some former land managers and conservationists say the scoping notice is still insufficient.

“The proposed action description in the scoping notice is incomplete,” Warren said, adding that he is “primarily concerned about the effects of approving commercial activities that may substantially degrade Wilderness, Wild and Scenic River and National Trails qualities and values.

“The proposed action should clearly describe the full nature of activities authorized in the permits, including the use of system trails, base and spike camp locations and facilities, and the location of outfitter created routes that are routinely used,” according to Warren. “The proposed action should include discernible maps that show camp locations and the extent of the areas often used by the permittee.”



Bob Marshall Wilderness on Oct. 13, 2014. Greg Lindstrom | Flathead Beacon

[Another comment from the Swan View Coalition's Keith Hammer](#), a longtime environmental watchdog who has spent decades urging Forest officials to adhere to the terms and conditions required by a special use authorization on public land, said the agency has structured the scoping period in such a way that it “will bias comments in favor of clients that have been contacted by their outfitter with a request that they put in a good word for their performance and permit reauthorization.”

But Hammer spends even more time in his scoping submission articulating his concerns over issues of noncompliance with permitted outfitters, detailing instances in which outfitters’ performance “do not meet Forest Service specifications,” including citations against outfitters for numerous violations of state and federal regulations.

In questioning why the agency would reauthorize operations for a permittee in violation of its own regulations, especially using a Categorical Exclusion, Hammer’s comment underscores the remonstrances from another former district ranger at Spotted Bear, Scott Snelson, who until last year was tasked with enforcing the permits for outfitters and guides operating in that resource management zone. However, Snelson says his efforts to enforce the rules were rebuffed by supervisors and ultimately led to his reassignment to an administrative office, prompting an early retirement.

“My staff and I did everything we could to be fair, and hold all outfitters and guides working on the District accountable to their contracts with the American people through the special use permit system,” Snelson wrote in an emailed statement to

the Beacon. “When it came time to gain compliance from a particular politically connected outfitter, who had committed repeated and increasingly notorious violations of law and terms of his permit, the former Forest Supervisor and his superiors and Regional support staff consistently knee-capped our efforts over a several year period.”

The Beacon has corroborated the outfitter’s violations by reviewing court documents, public records, and by conducting interviews, including with forest employees who wished to remain anonymous out of fear of retaliation.

Muñoz, the Rocky Mountain District Ranger who oversees much of the eastern portion of the Bob Marshall Wilderness Complex, and helps administer the special-use permits as part of a team of specialists from the Flathead, Helena-Lewis and Clark and Lolo national forests, said the outfitter to whom Snelson is referring has had his permit administratively suspended.

Although Muñoz declined to elaborate on the reason for the permit suspension or its terms, he confirmed that the outfitter is among the 62 outfitters and guides whose permits the agency is poised to reauthorize for the next decade. However, Muñoz took care to draw a distinction between the permit reauthorization process, which evaluates the full roster of permittees operating on the landscape holistically, and the permit administration process, which includes monitoring and enforcement actions such as permit suspension or revocation, as well as performance evaluations.

“The reauthorization process looks at all the permits to help us determine whether those activities as a whole are suitable across all three designated wilderness areas,” Muñoz said. “But then we also monitor and assess each permit on an individual basis, and we conduct performance evaluations over the course of the 10-year authorization period. The reason we do that is because, if we get one bad apple out of the 62 permits, he could hold up the entire process, and we don’t want to punish the other outfitters and guides who are doing a good job.”



Bob Marshall Wilderness. Beacon file photo

The outfitter whose permit the agency suspended is Richard McAtee, whose outfitting and guiding business Montana Wilderness Lodge operates out of the Spotted Bear Ranger District. McAtee is among the 62 outfitters and guides whose permits the agency is poised to reauthorize for the next decade, and while he said there's more to the story than what's available in the public court docket, he declined to comment for this article as the administrative process is still underway.

According to records in U.S. District Court, McAtee, who purchased Montana Wilderness Lodge in 2017, has incurred and been found guilty of numerous petty offenses for violating the terms and conditions of his special use authorization dating back to 2019, including by storing equipment, personal property or supplies where he's not authorized to do so; packing clients into wilderness districts where he's not permitted or authorized to outfit or guide on; violating the 16-day stay limit by leaving a flatbed trailer on National Forest System lands; and for possessing more than 35 head of stock.

According to Hammer, the USFS reauthorization process should include those relevant details about the permit holder's track record, including performance evaluations, a "report card" and, especially, whether the permit is under suspension or being considered for revocation.

“Those are the kinds of details that the public needs to know,” Hammer said.

“Otherwise, what are they supposed to comment on? We should have access to a report card or evaluation of these outfitters and guides or else we’re totally in the dark.”

With six assigned resource areas and numerous jurisdictional boundaries straddling the Continental Divide as part of the Bob Marshall, Great Bear and Scapegoat wilderness areas, and with five ranger districts spanning the Flathead and Helena-Lewis and Clark national forests, Muñoz explained that the agency can’t conduct performance evaluations on every permit holder every year, which is part of why it’s seeking public comment.

“There are things that we can easily miss, so we look at how permit holders are treating other members of the public and how they are treating their own clients,” Muñoz said. “We had to cancel one permit because the outfitter was charging for services but was not performing those services. They were not taking people on the trips that they booked. So, what I want to point out is for a permit to come out on the other end of this reauthorization analysis, it has to be in good standing to be reauthorized again. And that is what the Flathead National Forest is dealing with as part of this process.”

For example, for a permit to be revoked or canceled, the agency must be able to document reoccurring problems. But even if a permittee under suspension gets reauthorized along with the block of 62 other outfitters and guides, Muñoz said the agency can still take administrative action.

“We can take action against a permit holder at any point during the life of the permit,” he said. “Reauthorizing a permit does not rule out our ability to administer the permit.”



A mule train descends the trail from Sperry Chalet in Glacier National Park on August 13, 2020. Hunter D'Antuono | Flathead Beacon

As demand for outdoor recreation continues to surge nationally and in western Montana, the Flathead National Forest in particular has been inundated with a flood of commercial requests for recreational activities, or special use permits (SUP), which are required for commercial outfitters operating on public land, with the number of approved SUPs more than doubling between 2010 and 2020. In 2022, the Flathead National Forest retained more than \$1.45 million in revenue generated from special-use permit fees, with nearly a half-million dollars coming from outfitter and guide services.

“As a part of our existing program of work, we administer numerous recreation special use permits including outfitting and guiding permits. We administer these permits based on a comprehensive set of terms and conditions,” according to a statement the Flathead National Forest leadership team provided to the Beacon. “We work in partnership with the permit holder using these Terms and Conditions to guide the public service the outfitter delivers to the visitor. The Flathead National Forest takes any and all violations of permit terms and conditions seriously and works through our permit administration process to reconcile those violations.”

According to Snelson, the Spotted Bear District Ranger since 2017 who was reassigned from his post last year, and retired soon after under what he calls professional duress, said his supervisors undercut his efforts to enforce those terms and conditions to gain compliance from the Montana Wilderness Lodge, and ultimately punished him.

“My unwillingness to condone this behavior by an outfitter and guide operating under a special use permit I administered, was followed by the beginning of professional retribution I began to experience. This persistent and purposeful retribution led to my decision to retire from a successful career in progressively more complex leadership roles over 25 years in four regions,” Snelson wrote in his statement to the Beacon. “The Wilderness Act is clear that no commercial activities shall take place in the Wilderness. Special use permits for outfitting in the Wilderness are granted at the express invitation of the American public to facilitate access to the Wilderness. The vast majority of Bob Marshall outfitters and guides take this privilege seriously and deliver terrific service to their clients, follow their permit requirements and deliver services completely compatible and complementary to the intent of the Act. We had great and mutually beneficial relationships with these folks.”

Specifically, Snelson says his enforcement efforts were undermined by former Flathead National Forest Supervisor Kurt Steele, who in June 2023 accepted [a new position at the USFS’ Northern Region headquarters in Missoula](#), ending his 3.5-year stint as the forest supervisor overseeing northwest Montana. Although his departure coincided with Snelson’s, Flathead National Forest officials have declined to say whether the administrative shake-up was related.

tscott@flatheadbeacon.com

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ATTACHMENT 2



DECISION MEMO
SWAN MOUNTAIN OUTFITTERS PERMIT AREA
(DEER AND ELK HUNTING, STOCK USE, LLAMA TREKS, AND DAY USE ACTIVITIES)
USDA FOREST SERVICE
FLATHEAD NATIONAL FOREST
SWAN LAKE RANGER DISTRICT
FLATHEAD AND LAKE COUNTIES, MONTANA

BACKGROUND

Swan Mountain Outfitters (SMO) is currently permitted to operate several different types of activities in an area comprising of several roads and trails throughout the Swan Lake Ranger District as well as an area south of the Swan River State Forest consisting primarily in the Lion Creek watershed. SMO operates horse and llama day and overnight trips; fall deer, elk, and bear hunting; and winter mountain lion hunting.

Areas previously permitted to SMO, mostly in the Swan River State Forest, are now unavailable due to a Forest Service land exchange with the State of Montana reducing the SMO permitted area. SMO current permitted deer and elk hunting area consist of the area generally east of highway 83 from Swan Peak on the north to Union Peak to the south. The permitted area is currently available to the general public for the same type of activities that is authorized under the SMO Special Use Permit (SUP) (See Figure 1).

Limiting an outfitter to a single operating area has resulted in concentrated use in the permitted area. This use distributed over a larger geographical area minimizes potential impacts (i.e., hunter conflicts, resource conflicts, increased use of trails/areas).

PROPOSAL

The Flathead National Forest, Swan Lake Ranger District (FS) is proposing to modify the SMO permitted area with no net increase in number of authorized service days. The trail additions and expanded deer and elk hunting permitted area will become part of the current authorized SMO outfitting and guide permit (SWA-310) and will allow greater flexibility, adjust for changing on the ground conditions, and allow for more effective operations.

Current permitted uses will continue in the SMO permit area including lion and bear hunting with and without stock, summer use with stock for groups with 20 people or less, and multiple non-hunting day use activities.

The proposal adds 8 permitted trails (7, 10, 21, 31, 78, 86, 101B, and 108) and expands the deer

and elk hunting authorized permit area to National Forest System Lands (NFS) generally east of highway 83 and west of the Spotted Bear/Swan Lake District boundary from Mount Orvis Evans on the north to Swan Peak to the south. The expanded permit area encompasses the following area:

- North boundary – Mount Orvis Evans
- East boundary – Spotted Bear/Swan Lake District Boundary
- South boundary – Swan Peak
- West boundary – Montana Highway 83

(See Figure 2 and 3).

The expanded area includes management areas: 1b (recommended wilderness area) 5b (backcountry motorized year-round); 5c (backcountry motorized over-snow vehicle use); 5d (backcountry motorized wheeled vehicle Apr 1-Nov 30); 6a (general forest low-intensity vegetation management); 6b (general forest medium-intensity vegetation management); 6c (general forest high-intensity vegetation management); and 7 (focused recreation area) designated by the Flathead National Forest –Forest Plan (2018).

DECISION

It is my decision to authorize the modification of the SMO deer and elk hunting permitted area and permitted trails for use with and without stock, summer use with stock for groups with 20 people or less, llama treks, and multiple non-hunting day use activities.

My decision incorporates the following design features or mitigations:

- Wildlife
 - Overnight camping at dispersed sites will be limited to 20 or less individuals for a maximum of 5 days per campsite.
 - Any food or equipment caching would be consistent with recommendations of the Interagency Grizzly Bear Committee for storing of attractants and Pursuant to 16 U.S.C. §551 and Title 36 C.F.R. §261.50(a) Northern Continental Divide Ecosystem Area Food/Wildlife Attractant Storage Order 36 C.F.R. § 261.58(cc) R1-2022-02 <https://www.fs.usda.gov/detail/flathead/recreation/?cid=stelprdb5347448> .
 - Limit one-way trips on each non-motorized trail to less than 20 trips per week.
 - Report bear conflicts (e.g., aggressive bear encounters, deployment of bear spray or firearm in self-defense or food rewards received by bears) to the Flathead National Forest in a timely manner so actions may be taken to avoid potential repeated conflicts.
 - All participants would be informed of procedures for safely recreating in country shared with grizzly bears, mountain lions, wolves, moose, and other wildlife. This would include recommendations for a) vigilant observation for

these species and their sign, b) carrying bear spray and to knowing how to use it, c) making noise, d) hiking in groups of three or more, e) avoiding travel when light is limited, and f) recommended actions to take if encountering wildlife. Educational resources can be found at <http://igbconline.org/bear-safety/>.

- During the fall, to avoid potential bear-human conflict and protect important foraging habitats, dispersed campsites would be selected to avoid important seasonal habitats and forage by selecting sites as least 500 feet from:
 - ridgelines (where bears do much of their cross-country travel),
 - avalanche slopes (where bears eat a variety of plants as well as animals killed by avalanches),
 - wet meadows, wetlands, lakes, streams, and other riparian habitats from April 1 to June 30 (where bears focus on a variety of plants),
 - concentrations of ripe huckleberries from June 15 to August 15 (where bears focus on eating berries) and talus slopes from June 15 to September 15 (where bears eat cutworm moths and ladybugs).
 - additional recommendations for locating a camp include where possible locating cooking and attractant storage areas a minimum of 100 yards from sleeping areas, away from trails, away from noisy streams, away from fresh or concentrated bear sign, and away from animal carcasses and smells of dead animals.
- Aquatics
 - Stock use not permitted on trails or in non-trail cross country areas within 300 feet (each side) of streams listed in Table 3 of the Aquatics Biological Assessment from September 1 to October 15. Stock use on open National Forest System roads is exempt from this restriction.
- Botany
 - Noxious weed and plant mitigation measures to avoid potential introduction and spread will include:
 - Cleaning and removal of all mud, dirt, dust, seed, and plant material from tools and equipment prior to mobilization into project area.
 - Equipment and tool cleaning must occur off National Forest System lands.
 - Regularly inspect, remove, and properly dispose of weed seed and plant material found on any clothing, boots/shoes, and equipment.

This action is categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). The applicable category of actions is identified in agency procedures as 36 CFR 220.6(d)(12) issuance of a new authorization or amendment of an

existing authorization for recreation special uses that occur on existing roads or trails, in existing facilities, in existing recreation sites, or in areas where such activities are allowed. This category of action(s) is applicable as proposed activity is issuance of a new authorization or amendment of an existing authorization for recreation special uses. Subject to the foregoing condition, examples include but are not limited to issuance of an outfitting and guiding permit.

Upon review and discussions with Forest and District resource specialists, I determined there are no resource conditions present which would result in a finding of extraordinary circumstances or causing the action to have significant effects.

I further determine this project meets criteria, as described, in the Forest Service National Policy Act Handbook 1909.15 Chapter 31.2 that the mere presence of one or more resource conditions (such as federally listed threatened or endangered species or designated habitat, flood plains, congressionally designated areas such as wilderness or wilderness study areas, etc.) does not preclude use of a categorical exclusion. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determine whether extraordinary circumstances exist. (36 CFR 220.6 (b)) No effects to resource conditions are present that lead to a finding of extraordinary circumstances that might cause the action to have significant adverse effects.

Therefore, the action is categorically excluded from documentation in an environmental impact statement or an environmental assessment. The list below and the project file support this conclusion.

- *Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service species of conservation concern.*
 - Wildlife: A Biological Assessment was completed by the Swan Lake Ranger District Wildlife Biologist and the findings are as follows: POSSIBLE SHORT-TERM DISTURBANCE FROM THE IMMEDIATE AREA, NOT LIKELY TO ADVERSELY AFFECT grizzly bears, POSSIBLE SHORT-TERM DISTURBANCE FROM THE IMMEDIATE AREA, NOT LIKELY TO ADVERSELY AFFECT Canada lynx and NO EFFECT to Canada lynx critical habitat (Programmatic Biological Assessment Grizzly and Lynx Swan Mountain Outfitter 12/09/2021).
 - Aquatics: The Fisheries Biologist determined NO EFFECT to Bull trout and NO EFFECT to Bull trout critical habitat. Due to the determination that this project has no effect, consultation with the U.S. Fish and Wildlife Service is not required (50 CFR 402.10) (Biological Assessment for Bull Trout 08/02/2021).
 - Botany: A Biological Assessment determined no effect on Spalding's catchfly (*Silene spaldingii*), whitebark pine (*Pinus albicaulis*), or their habitat or potential habitat for these species. Determination based on 1) the lack of known occurrences of Spalding's catchfly within proposed activity areas, 2) the lack of proposed ground disturbing activities, 3) the lack of impacts to whitebark pine individuals if there is habitat in the project area, 4) the use of roads and trails for

stock, and 5) the project area is already open for hunting (Biological Assessment – Botany 07/16/2021).

- *Flood plains, wetlands, or municipal watersheds* – Project activities are located on open designated roads and trails and are consistent with current approved public and other outfitter and guide uses and activities. No impact is anticipated to riparian areas or municipal watersheds or on any desired conditions, standards or guidelines for watersheds and riparian management zones.
- *Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas* - Congressionally designated areas including wilderness, wilderness study areas, or national recreation areas are not present within the geographical location of this project.
- *Research natural areas* – research natural areas are not present within the geographical location of this project.
- *American Indians and Alaska Native religious or cultural sites* –Native American consultation and concurrence by the Montana State Historic Preservation Office is necessary prior to project implementation. On April 27, 2021, a meeting and consultation with the Confederated Salish and Kootenai Tribes (CSKT) was conducted to satisfy the Forest's trust responsibilities and legal obligations for compliance with the National Environmental Policy Act (NEPA) and with the National Historic Preservation Act (NHPA; amended 1992) and it's implementing regulations in 36 CFR Part 800; Protection of Historic Properties. Flathead National Forest Archeologist met with CSKT Tribal Historic Preservation Office to discuss project. The THPO staff did not identify any tribal cultural concerns with the proposed undertaking and did not identify any traditional cultural property (TCP) in the project area. (Heritage Consultation Memo; 2021 Spring, Summer, Fall O&G Permits, R2021011001008 07/06/2021).
- *Archaeological sites, or historic properties or areas* – The Forest Archeologist determined project meets conditions of the Region 1 Programmatic Agreement (R1PA) with MT SHPO and the Flathead National Forest's Site Identification Strategy (SIS). Per the R1PA, this project is an undertaking with no potential to effect cultural resources and therefore no inventory was completed. (Heritage Consultation Memo: 2021 Spring, Summer, Fall O&G Permits R2021011001008 07/06/2021).

PUBLIC INVOLVEMENT

This action was originally listed as a proposal on the Flathead National Forest Schedule of Proposed Actions (SOPA) and updated periodically during the analysis. Interested and affected agencies, organizations, and persons were contacted including the Confederated Salish and Kootenai Tribes, USDI Fish and Wildlife Service, Montana State Historic Preservation Office, and numerous groups and individuals. Proposal was listed on the Flathead National Forest public webpage and social media site, emailed to key project contacts, and relayed through phone calls.

Comments received were considered in the development of the final project decision including a reduction in the size of the expanded permitted area as initial project proposal had proposed.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

My decision complies with all applicable laws and regulations. I have summarized some pertinent ones below.

Forest Plan Consistency (National Forest Management Act)

The National Forest Management Act requires that all resource projects are to be consistent with the Forest Plan (16 USC 1604(i)). This decision is consistent with the Flathead National Forest Land Management Plan (2018).

National Environmental Policy Act

This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with the act.

Wild and Scenic Rivers Act

This project does not affect any Wild and Scenic Rivers.

Clean Water/Air Acts

This project will not affect water quality or air.

Endangered Species Act (ESA)

According to Section 7 of ESA, each Federal agency must ensure that actions it authorizes, funds or carries out are not likely to jeopardize the continued existence of any threatened or endangered species. A Biological Assessment was completed by the district Wildlife Biologist for threatened or endangered species found within the project area (refer to project record). Refer to the Decision section of this decision memo for a summary of the findings.

National Historic Preservation Act, American Indian Religious Freedom Act, and Native American Graves Protection and Repatriation Act

There will be no anticipated adverse effects on those resources/people that are protected under these acts.

Environmental Justice (Executive Order 12898)

This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. I believe my decision is not expected to adversely impact minority or low-income populations.

ADMINISTRATIVE REVIEW OPPORTUNITIES

Decisions that are categorically excluded from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) are not subject to an administrative review process (Agriculture Act of 2014 [Pub. L. No. 113-79], Subtitle A, Sec. 8006).

IMPLEMENTATION DATE

Implementation of the project will be authorized per an amended Swan Mountain Outfitters special use permit (SWA-310). Completion of an amended special use permit is expected June 2022.

CONTACT

For additional information concerning this decision, contact: Chuck James, Recreation Management Specialist, Flathead National Forest, Swan Lake Ranger District, 200 Ranger Station Road, Bigfork MT 59911 (406) 837-7500 or Chris Dowling, District Ranger, Swan Lake Ranger District, 200 Ranger Station Rd Bigfork MT 59911 (406) 837-7501

CHRISTOPHER DOWLING

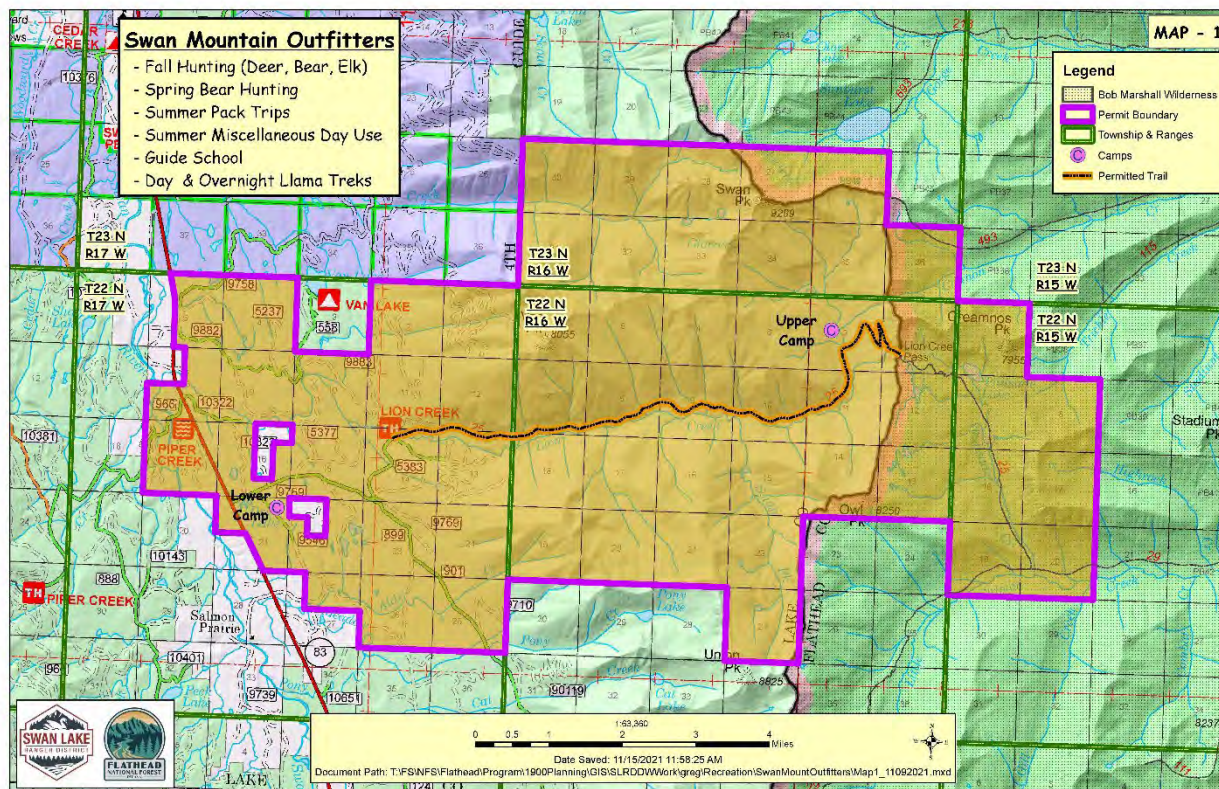
Date

Swan Lake District Ranger

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Expanded Swan Mountain Outfitters Deer and Elk Hunting Use Area Map

Figure 1: Existing Swan Mountain Outfitters Deer, Bear, Elk Hunting Use Area, Spring Bear Hunting, Summer Pack Trips, Summer Miscellaneous Day Use, Guide School, and Day and Overnight Llama Treks



USDA Forest Service, Flathead NF, Swan Lake RD 05/09/2022

Figure 2: Expanded Swan Mountain Outfitters Deer and Elk Hunting Use Area, Summer Pack Trips, and Summer Miscellaneous Day Use

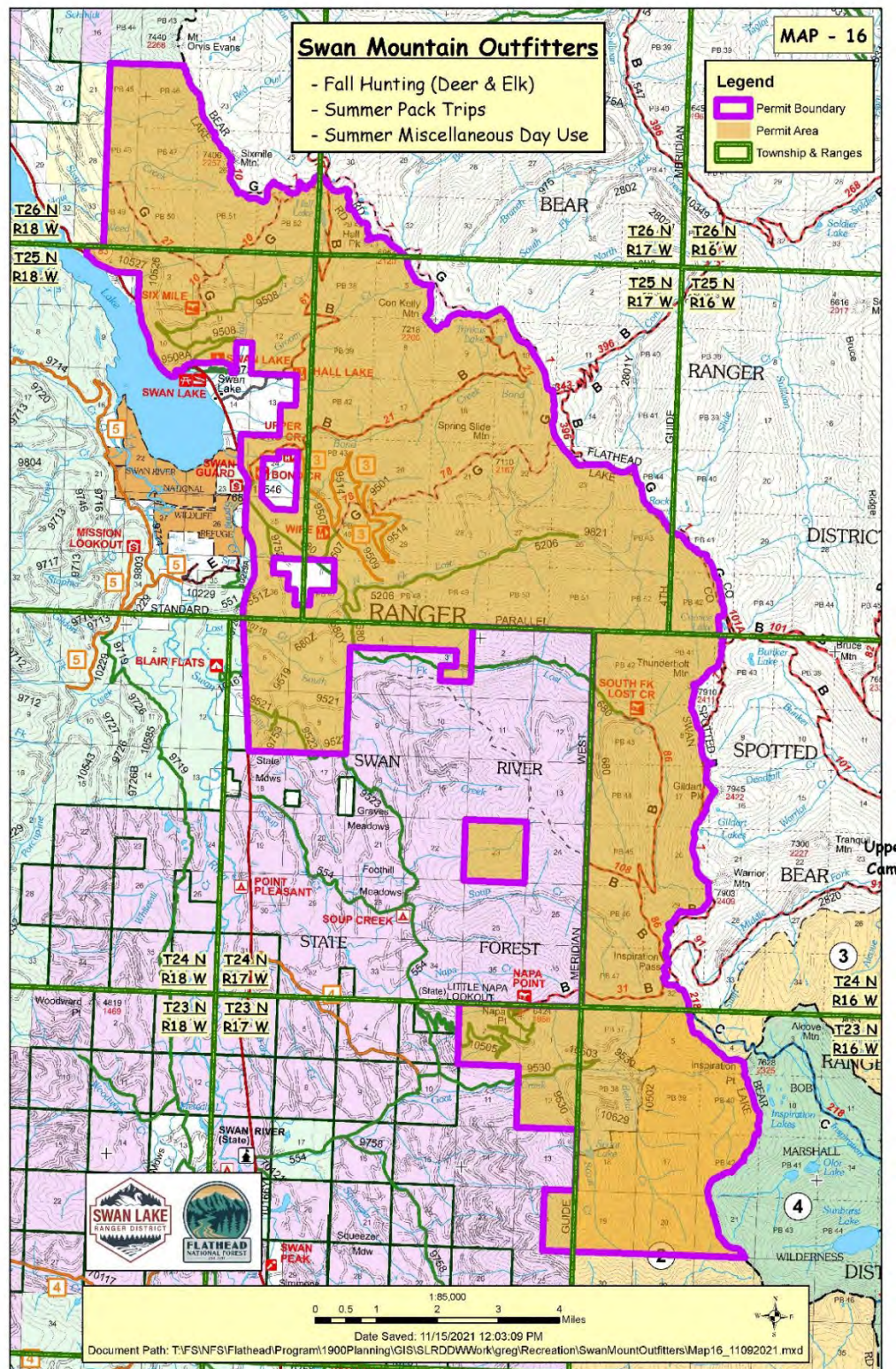
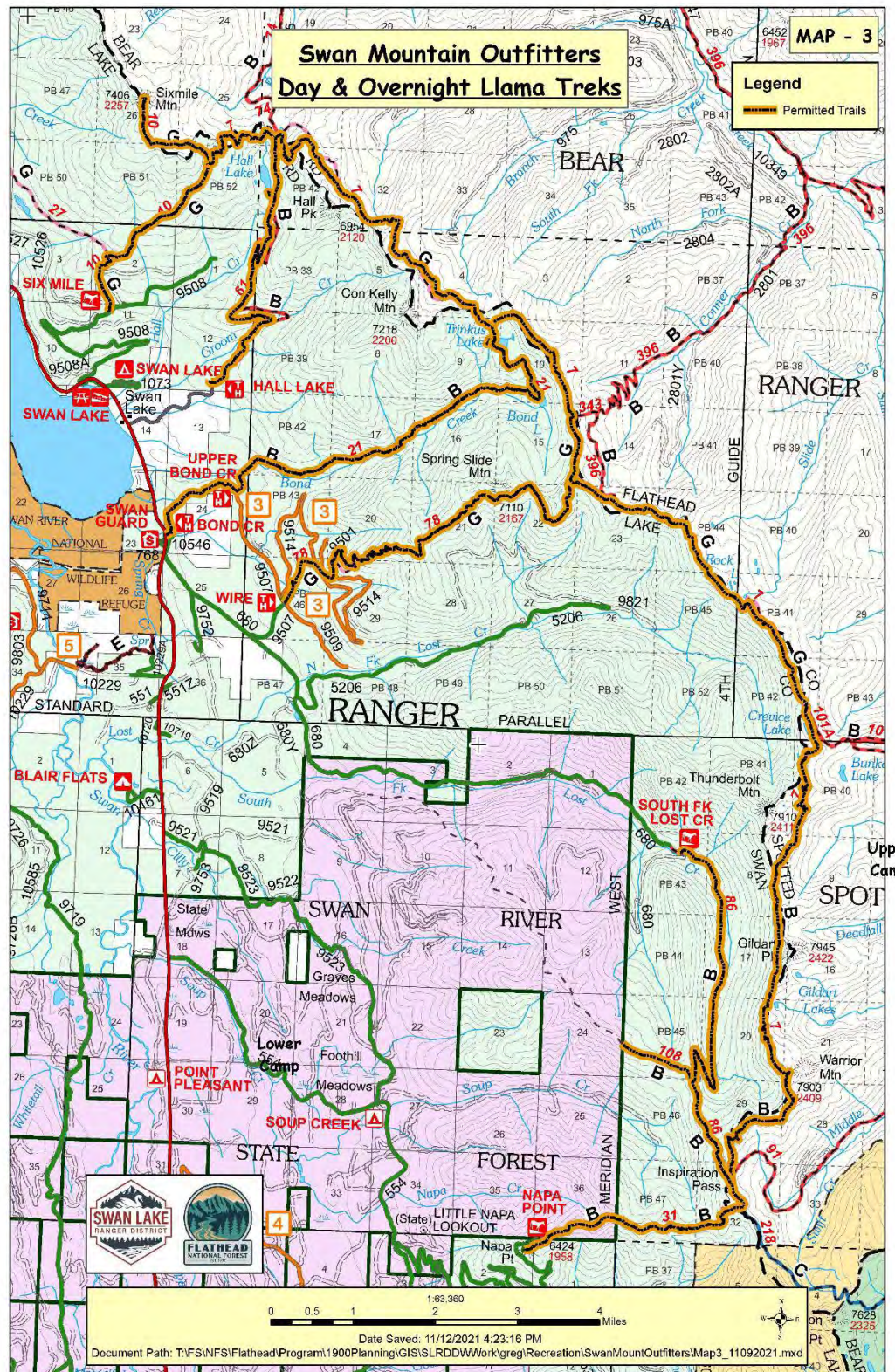



Figure 3: Expanded Swan Mountain Outfitters Llama Treks Trails



ATTACHMENT 3

From: Keith Hammer keith@swanview.org 
Subject: Re: [External Email]Thank You and Request

KH

Date: January 23, 2024 at 9:57 AM

To: Draggoo, Michele - FS, MT michele.draggoo@usda.gov

Cc: Anthony Botello anthony.botello@usda.gov, Mackenzie, Tamara - FS, MT tamara.mackenzie@usda.gov, Chris Prew Christopher.Prew@usda.gov, Bill Mulholland bmulholland@usda.gov, Rob Davies robert.davies@usda.gov, Adam Ladell adam.ladell@usda.gov, Joseph Alexander joseph.alexander@usda.gov, Gehling, Ivy - FS, MT ivy.gehling@usda.gov

Bcc: [REDACTED]
[REDACTED]
[REDACTED]

Dear Michele and others;

Thank you for confirming below that Swan View Coalition has the most current versions of the grizzly bear/lynx programmatic BA and its Letter of Concurrence for use in SUP reviews. We now understand, however, that there are apparently a number of other BAs, screens, and Letters of Concurrence we do not have and that were not discussed during our meeting.

Recently, we found the 5/12/22 Decision for the Swan Mountain Outfitters SUP expansion buried in the Flathead's Project Archives - in spite of the fact that the Flathead's 4th Quarter Schedule of Proposed Actions released 10/1/23 (and those before it) continued to list that SUP project as "In Progress!" The SMO SUP Decision was apparently not added to the Project web page until 12/18/23, then was soon moved to the Archives, or vice-versa!

Based on what we read in the SMO SUP Decision, we now wonder how many types of screens and consultation shortcut documents are used by the Flathead to streamline its reviews of its SUPs:

1. Page 2 suggests the review used the grizzly bear screens in the Programmatic BA, but there are no details about a review of impacts to lynx.
2. Page 4 says "A Biological Assessment was completed" to conclude "Not Likely to Adversely Affect" either grizzly bear or lynx and "No Effect" to lynx critical habitat. Was this a stand-alone BA that underwent separate consultation with FWS, or was it a typical screening "checklist/table" BA filled out to fall under the programmatic BA and Letter of Concurrence? Either way, please email us a copy of the project-level BA(s) for grizzly bear and lynx. If it was a stand-alone BA, please also email us the FWS letter of concurrence.
3. Page 3 mentions "streams listed in Table 3 of the Aquatics Biological Assessment" and page 4 references a "Biological Assessment for Bull Trout 08/02/2021" in finding No Effect to bull trout or bull trout critical habitat. Please email us the project-level Aquatics Biological Assessment, any programmatic Aquatics Biological Assessment used for SUP review, the project-level biological assessment for bull trout, any programmatic biological assessment for bull trout used for SUP review (apparently including the referenced 8/2/21 BA), and finally, any FWS Letters of Concurrence with any of the above BAs.
4. Page 4 says "A Biological Assessment determined no effect on Spalding's catchfly [] whitebark pine [] or their habitat or potential habitat for these species." Please email us the project-level BA, any programmatic BA used for review of impacts to these species by SUPs, and any Letters of Concurrence with any of the above.
5. Page 5 references "Heritage Consultation Memo; 2021 Spring, Summer, Fall O&G Permits R2021011001008 07/06/2021" regarding findings of impacts to American Indian religious or cultural sites, archaeological sites, or historic properties or areas. Please email us that Memo, any subsequent updates to it, any Letters of Concurrence from the Montana State Historic Preservation Office on the project and the Memo and any updates to the Memo.

What other programmatic or "batch" type BAs or Consultation Memos - and any corresponding Letters of Concurrence - currently apply to SUPs being reviewed by the Flathead NF, including the Bob Marshall Wilderness Complex O&G permits? Please email them to us ASAP.

It is important we receive all of the above requested documents as soon as possible so we are fully informed about the process being applied to the BMWC O&G permits before the close of the public comment period.

Thank you and please acknowledge via a reply email that you have received this message.

Keith

Keith Hammer - Chair
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901
406-755-1379 (office)
406-253-6536 (cell phone)
keith@swanview.org
<http://www.swanview.org>
<http://www.swanrange.org>
<http://www.facebook.com/SwanViewCoalition>
<http://www.youtube.com/user/swanviewcoalition>

<http://www.youtube.com/user/swanviewcaution>

"Nature and human nature on the same path."

On Jan 22, 2024, at 6:23 PM, Draggoo, Michele - FS, MT <michele.draggoo@usda.gov> wrote:

Hi Keith,

The most current programmatic BA used for some NLAA determinations for grizzly bears and lynx is dated December 1, 2020 (the letter of concurrence (LOC) from USFWS is dated December 11, 2020). This BA and LOC was sent to you by email on July 6, 2021. If a project fits the screens provided by the BA, we may use the programmatic consultation or if there is enough ambiguity about the activity we may elect to write a stand-alone BA.

Michele

Michele Draggoo
Resources and Planning Staff Officer
Forest Service
Flathead National Forest
p: 406-758-5269
c: 406-249-4067
Michele.Draggoo@usda.gov

650 Wolfpack Way
Kalispell, MT 59901
www.fs.usda.gov



Caring for the land and serving people

From: Keith Hammer <keith@swanview.org>

Sent: Saturday, January 13, 2024 11:11 AM

To: Botello, Anthony - FS, MT <anthony.botello@usda.gov>; Mackenzie, Tamara - FS, MT <tamara.mackenzie@usda.gov>; Draggoo, Michele - FS, MT <michele.draggoo@usda.gov>; Prew, Chris - FS, MT <Christopher.Prew@usda.gov>; Bill Mulholland <bmulholland@usda.gov>; Davies, Robert - FS, MT <robert.davies@usda.gov>; Ladell, Adam - FS, NM <adam.ladell@usda.gov>; Alexander, Joseph - FS, MT <joseph.alexander@usda.gov>; Gehling, Ivy - FS, MT <ivy.gehling@usda.gov>

Subject: [External Email]Thank You and Request

[External Email]

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Dear Folks;

Thank you very much for our meeting on Monday, the time and travel you invested in it, and for making it also available online so all could attend.

During the meeting you mention you use a programmatic BA for grizzly bear and lynx to screen the effects of various Special Use Permits. Is that BA confined for use on SUP projects only or other projects as well? Please send us a copy of the current referenced programmatic BA and any Biological Opinion or Letter of Concurrence you have received from Fish and Wildlife Service in response to it.

We want to make certain that any programmatic BA or LOC that we may have in our files is current and the one your referenced during our meeting.

Thank you.

Keith

Keith Hammer - Chair
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901
406-755-1379 (office)
406-253-6536 (cell phone)
keith@swanview.org
<http://www.swanview.org>
<http://www.swanrange.org>
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"Nature and human nature on the same path."

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ATTACHMENT 4



United States
Department of
Agriculture

Forest
Service

Flathead
National
Forest

650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5200
Fax (406) 758-5367

File Code: 6270

Date: February 8, 2024

Keith Hammer
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901

Dear Mr. Hammer,

This letter is in response to your Freedom of Information Act (FOIA) email/letter of January 23, 2024. In this email/letter you requested the following:

- 2) "...please email us a copy of the [5/12/22 Decision for the Swan Mountain Outfitters SUP] project-level BA(s) for grizzly bear and lynx. If it was a stand-alone BA, please also email us the FWS letter of concurrence;"
- 3) "Please email us the [above] project-level Aquatics Biological Assessment, any programmatic Aquatics Biological Assessment used for SUP review, the project-level biological assessment for bull trout, any programmatic biological assessment for bull trout used for SUP review (apparently including the referenced 8/2/21 BA), and finally, any FWS Letters of Concurrence with any of the above BAs";
- 4) "Please email us the [above] project-level BA [Spalding's catchfly, whitebark pine], any programmatic BA used for review of impacts to these species by SUPs, and any Letters of Concurrence with any of the above;"
- 5) "Please email us that Memo [Heritage Consultation Memo], any subsequent updates to it, any Letters of Concurrence from the Montana State Historic Preservation Office" on the project and the Memo and any updates to the Memo.

And provide "other programmatic or "batch" type BAs or Consultation Memos - and any corresponding Letters of Concurrence - currently apply to SUPs being reviewed by the Flathead NF, including the Bob Marshall Wilderness Complex O&G permits."

In response to this FOIA request, I have provided 5 records responsive to your above requests.

Your request is identified by the following identification number # 2024-FS-R1-02123-F. If you have questions on this FOIA response, please contact Michele Draggoo at 406-249-4067 or 406-758-5269.

The FOIA provides you the right to appeal this response. Any appeal must be made in writing, within 90 days from the date of this letter, to the Chief, USDA Forest Service: 1) by email to SM.FS.WOFOIA@usda.gov; 2) by regular mail to 1400 Independence Avenue SW, Mail Stop 1143, Washington, DC 20250-1143; or 3) by FedEx or UPS to 201 14th Street SW, Washington, DC 20250-1143; telephone (202) 205-1542. The term "FOIA APPEAL" should be placed in capital letters on the subject line of the email or on the front of the envelope. To facilitate the processing of your appeal, please include a copy of this letter and/or the FOIA case number assigned to your request.



If you need any further assistance or would like to discuss any aspect of your request please do not hesitate to contact the FOIA Public Liaison at (202) 205-1542. Additionally, you may contact the Office of Government Information Services, National Archives and Records Administration, to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.”

Sincerely,

ANTHONY B. BOTELLO
Forest Supervisor

Enclosure

ATTACHMENT 5

| | |
|----------------------|--|
| Project Name: | Spring/Summer/Fall - Outfitter and Guide Project |
|----------------------|--|

SHORT FORM BIOLOGICAL ASSESSMENT – BOTANY

Swan Lake RD, Flathead National Forest

This document serves as the Biological Assessment for the project listed above. It is included in the project documentation and is prepared to comply with the legal requirements set forth under the policies and standards set forth in the Forest Service Manual (FSM) 2670.

For Threatened and Proposed species, the biological assessment process (FMS 2672.43) is intended to conduct and document activities necessary to ensure proposed management actions will not jeopardize the continued existence of, or cause adverse modification of habitat for species that are listed or proposed to be listed as Endangered or Threatened by the US Fish and Wildlife Service.

A botanist has reviewed this project using available information on species distributions and habitat, one or more of the following: topographic maps, aerial photos, field reconnaissance, previous surveys. A botanist has subsequently assessed the potential for impacts for federally listed plant species. If the project was determined to have no effect or no impact, this determination was based on one or more of these criteria:

1. habitat for the species is not present in the project area
2. habitat for the species is present but the species does not occur in this area
3. habitat for the species is present, the species occurs or may occur in the project area, but the project would not have any direct, indirect, or cumulative effects to these species

Proposed Action: Description of Analysis for North and South Areas Described Below:

- Hunting Deer and Elk WITH stock –Day Use
- Hunting Deer and Elk WITHOUT stock –Day Use
- Hunting Deer and Elk WITH stock OVERNIGHT
- Hunting Deer and Elk WITHOUT stock OVERNIGHT
- Non hunting WITH stock overnight (progressive Travel) – horse, mule and llama. – Overnight must be equal to or less than 20 people in group for equal to or less than 5 days and four nights to fit into the FWS Programmatic.
- Non hunting WITHOUT stock overnight (progressive Travel) – horse, mule and llama. – Overnight must be equal to or less than 20 people in group for equal to or less than 5 days and four nights.
- Non hunting - Misc Day Use – Full Day (4 hours or more), Misc Day Use – Half day (more than 2 hours, less than 4 hours), Misc Day Use – Quarter Day (2 hours or less) – With Stock
 - Miscellaneous day use additionally includes: dog walking, hiking, education classes, sightseeing, picnics, wagon rides, mountain biking, etc.

Description of North Area: Crane Mountain along all boundaries with state forest and private. North Boundary on the East side is the 48° North line just North of the Six Mile Trail Head. Include Forest Service land located within the state forest. Include all trails, including Bear Dance and Alpine 7.

Description of South Area: State Forest South. Both side of HWY 83 to District Boundary. NOT including Wilderness. To the Flathead National Forest boundary with the Lolo National Forest.

Lion Management Unit 140 on the Hungry Horse Ranger District Side of the Swan Range. Authorization already exists for LMU 140. Outfitters are wanting to go up and over the mountain in pursuit of mountain lions.

Description of area: Swan Lake Ranger District Boundary East to Hungry Horse Reservoir. NOT including Jewel Basin. Hunting Deer and Elk WITH stock –Day Use

Description for Analysis:

- Hunting Mountain Lion WITHOUT stock –Day Use
- Hunting Mountain Lion WITH stock -Day Use
- Hunting Mountain Lion WITHOUT stock -OVERNIGHT
- Hunting Mountain Lion WITH stock -OVERNIGHT

Federally listed plant species

The proposed project will have ***no effect*** on Spalding's catchfly (*Silene spaldingii*), whitebark pine (*Pinus albicaulis*), or their habitat or potential habitat for these species. This determination is based on 1) the lack of known occurrences of Spalding's catchfly within proposed activity areas, 2) the lack of proposed ground disturbing activities, 3) the lack of impacts to whitebark pine individuals if there is habitat in the project area, 4) the use of roads and trails for stock, and 5) the project area is already open for hunting.

NOTE: Any determination of *may impact* or *will impact individuals with a consequence that the action may cause a loss of viability to the population or species* would trigger a significant action in NEPA; a more detailed Biological Assessment would be needed to analyze the effects.

SURVEYS: There have been several surveys in the area over several years. There are no concerns for threatened or proposed plant species.

Prepared by:

Date: 07/16/2021

Chantelle DeLay
Forest Botanist

ATTACHMENT 6

Consultation Summary Sheet for Programmatic Assessment

Swan Mountain Outfitters Special Uses and Permit Expansion 2021

Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species

| Forest: <u>Flathead</u> Wildlife Biologist: <u>Mark Ruby</u> Date: <u>11/12/21</u> District: <u>SLRD</u> Reviewed by Forest Biologist: <u>/s/ Amy Jacobs</u> Date: <u>12/9/21</u> | | | | | |
|--|--------------|--|--|--|--------------------------------|
| Project Location, Timing, and Description | Species | Effects of Action | Cumulative Effects (Reasonably foreseeable state and private actions) | How does the project meet screening criteria? (Use footnotes to refer to screening criteria used below) | Determination of Effects |
| See Below | Grizzly Bear | Possible short-term disturbance from the immediate area. | Reasonably expected state and private actions include timber harvest and other vegetation management; residential development; road and trail construction, maintenance, and use; maintenance and use of utilities; and recreational activities such as hunting, hiking, mountain biking, camping, snowmobiling, downhill skiing, cross-country skiing, snowshoeing, horseback riding, driving, motorcycle and ATV riding; and firewood and other miscellaneous forest product gathering. These activities are expected to continue to alter habitat used by grizzly bears, lynx, and their prey; to disturb and/or displace these species; and possibly to contribute to mortality. | Non-denning season motorized access associated with the project is located on or within 300 feet of motorized routes open to the public, attractant storage rule is in effect, and there would be no seeding or planting of palatable forage ¹ . Would not lead to potential disturbance of bears from high-quality seasonal forage resources or Core/Secure habitat, linear activities would only occur on existing roads and trails, would not result in an increase of more than 20 parties/week on restricted roads or nonmotorized trails, permit includes "bear country safety" education message, food/equipment caching would not lead to potential attraction, does not include any actions with potential to chase or pursue grizzly bears ^{2,3} . Backcountry dispersed camping would occur only outside of spring habitat and would avoid high quality fall forage resources. ^{2,3} If camping at dispersed sites, ≤ 20 individuals for 5 days/campsite. ² | Not Likely to Adversely Affect |
| | Canada Lynx | Possible short-term disturbance from the immediate area. | | Portions of the roads, trails or NFS lands are in pass through areas mapped as potential lynx habitat in Lynx Analysis Units ⁴ . The proposal would have no impact on snowshoe hare habitat ⁴ . Project does not involve actions that have the potential for Canada lynx to be chased or pursued ⁵ . In addition, project meets all applicable standards and guidelines in Northern Rockies Lynx | Not Likely to Adversely Affect |

| | | | | | |
|--|-------------------------------------|-------------------------|--|--|-----------|
| | | | | Management Direction, Appendix A of the Flathead 2018 LMP. | |
| | Canada Lynx Critical Habitat | No effects on any PCEs. | | Project is in designated lynx critical habitat but would not reduce PCE la snowshoe hare habitat. ⁶ | No Effect |

Screening Criteria Used:

¹ Grizzly Bear Screening Process, Part 1 Flow Chart

² Grizzly Bear Screening Process, Part 2 Table, #1 Camping

³ Grizzly Bear Screening Process, Part 2 Table, #14 Special Uses (Recreation – Outfitter and Guide Permits and Events), Non-denning season recreation special uses activity component

⁴ Canada Lynx Screening Process, Part 1 Flow Chart

⁵ Canada Lynx Screening Process, Table B1, #3 Recreation Management, Recreation Special Uses activity component

⁶ Canada Lynx Critical Habitat Screening Process, Part 1 Flow Chart

Additional Information:

This analysis applied the decision screens in USFS Region One’s December 2020 “Programmatic Biological Assessment for Activities that are Not Likely to Adversely Affect Listed Terrestrial Species”. Life history information and relevant habitat and population diversity concerns at the Flathead National Forest and larger scales can be found for these species in the 2018 Final EIS for the Flathead National Forest (FNF) Land Management Plan.

USDA Forest Service. 2018. Final Environmental Impact Statement for the Flathead National Forest Land Management Plan. Kalispell, Montana: USDA Forest Service, Flathead National Forest. Retrieved from: <https://www.fs.usda.gov/detailfull/flathead/landmanagement/planning/?cid=stelprdb5422786&width=full>

USDA Forest Service. 2018. Flathead National Forest Land Management Plan. Kalispell, Montana: USDA Forest Service, Flathead National Forest. Retrieved from: <https://www.fs.usda.gov/detailfull/flathead/landmanagement/planning/?cid=stelprdb5422786&width=full>.

USDA Forest Service. 2020. Programmatic Biological Assessment for Activities that are Not Likely to Adversely Affect Canada Lynx, Grizzly Bear, and Designated Canada Lynx Critical Habitat. USDA Forest Service, Northern Region. December 1, 2020.

USDI Fish and Wildlife Service. 2020. Concurrence on the Programmatic Biological Assessment for Activities that are Not Likely to Adversely Affect Canada Lynx, Grizzly Bear, and Designated Canada Lynx Critical Habitat. Helena, Montana. December 11, 2020.

Project Description:

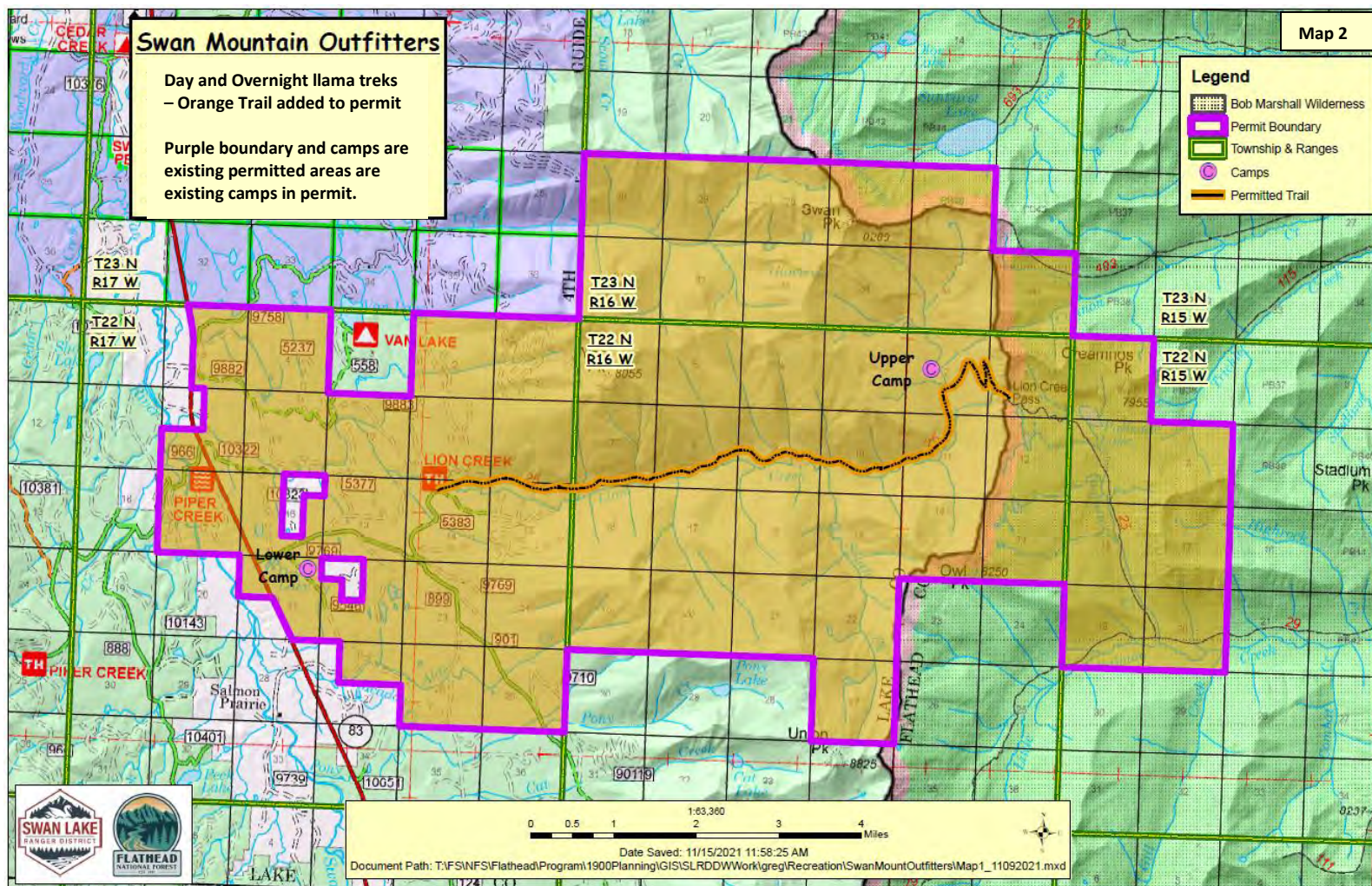
The proposal is to increase the permitted area for multiple types of outfitter and guiding activities in the Swan Valley on the Swan Lake Ranger District. These deer/elk hunting and llama trek activities are already permitted with the outfitter, however this proposal would expand the area for permitted activities on the Flathead National Forest. The proposal does not include an increase of service days to the existing permit. The permit would not include pursuit of black bear or other game species other than deer/elk. Linear activities would be on permitted existing open yearlong and seasonal roads and existing trails. No motorized use would occur on restricted roads or non-motorized trails. Activities would be consistent with all direction in the Flathead LMP.

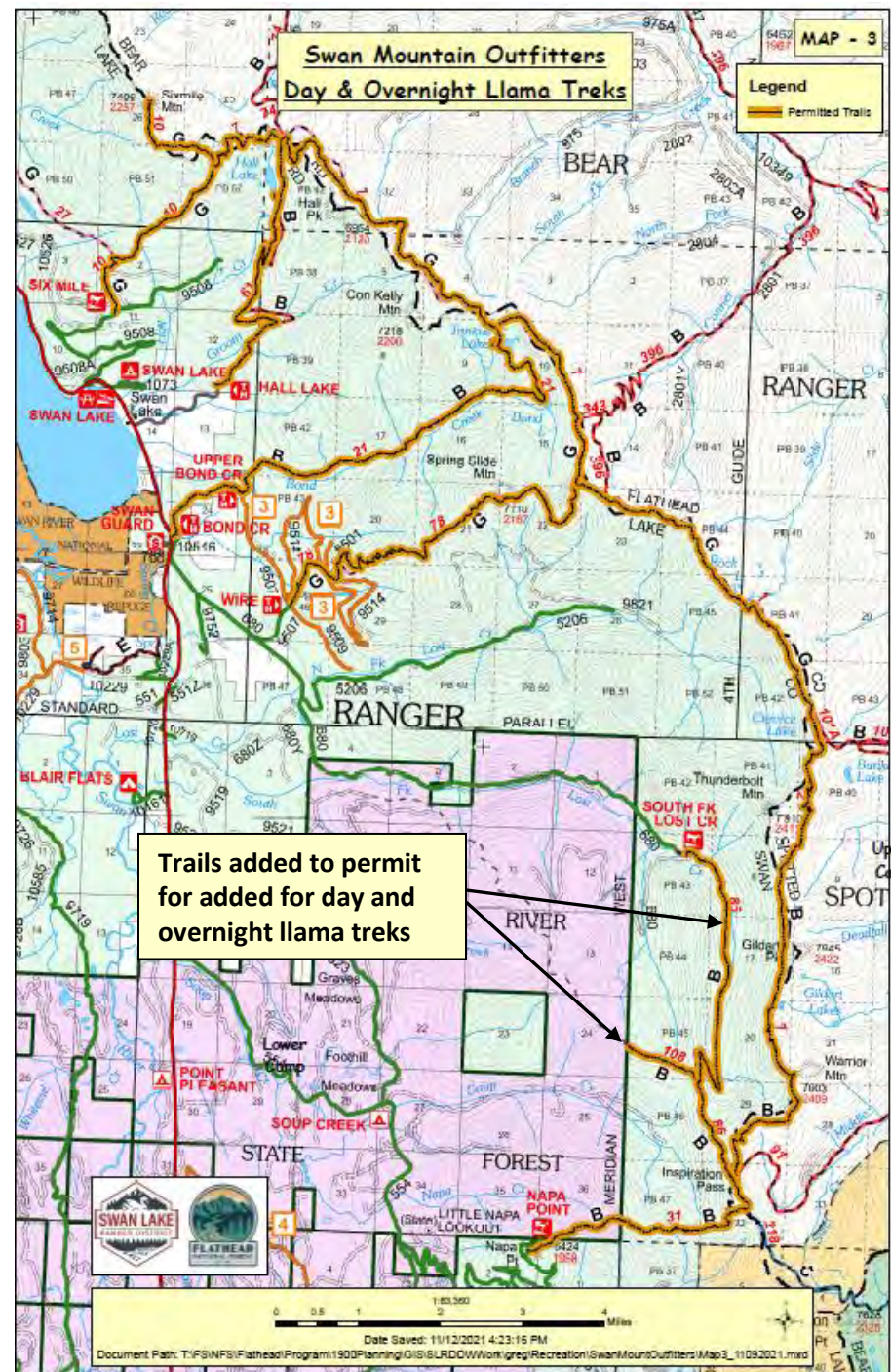
The following activities are proposed for expansion in the permit with Swan Mountain Outfitters:

- Hunting – Deer and Elk (Map 1 below)
 - Fall Hunting Deer and Elk with and without stock – Both Overnight and Day Use in the north east portion of the Swan Valley.
- Guided llama treks with overnight use (Maps 2 and 3 below)
 - The project would add the Lion Creek Trail (#23) to the Wilderness boundary, South Fork of Lost Creek (#83) and Soup Creek trail (#105) to the permit for guided overnight llama treks.

The following design criteria are relevant for the evaluation of effects on threatened and endangered wildlife species:

- 1.) Overnight camping at dispersed sites will be limited to ≤ 20 individuals for and for equal to or less than 5 days per campsite.
- 2.) Any food or equipment caching would be consistent with recommendations of the Interagency Grizzly Bear Committee for storing of attractants and the Flathead Food Storage Order.
- 3.) Limit one-way trips on each non-motorized trail to less than 20 trips per week.
- 4.) Report bear conflicts (*e.g.* aggressive bear encounters, deployment of bear spray or firearm in self-defense or food rewards received by bears) to the Flathead Forest in a timely manner so actions may be taken to avoid potential repeated conflicts.
- 5.) During the fall, to avoid potential bear-human conflict and protect important foraging habitats dispersed campsites would be selected to avoid important seasonal habitats and forage by selecting sites as least 500 feet from:
 1. Ridgelines (*where bears do much of their cross-country travel*),
 2. Avalanche slopes (*where bears eat a variety of plants as well as animals killed by avalanches*),
 3. Wet meadows, wetlands, lakes, streams, and other riparian habitats from April 1 to June 30 (*where bears focus on a variety of plants*),
 4. Concentrations of ripe huckleberries from June 15 to August 15 (*where bears focus on eating berries*), AND
 5. Talus slopes from June 15 to September 15 (*where bears eat cutworm moths and ladybugs*)
- 6.) Additional recommendations for locating a camp include: where cooking and attractant storage areas can be 100 yards from sleeping areas, away from trails (including obvious trails, away from noisy streams, away from fresh or concentrated bear sign, away from animal carcasses and smells of dead animals).
- 6.) All participants would be informed of procedures for safely recreating in country shared with grizzly bears, mountain lions, wolves, moose, and other wildlife. This would include recommendations for a) vigilant observation for these species and their sign, b) carrying bear spray and to knowing how to use it, c) making noise, d) hiking in groups of three or more, e) avoiding travel when light is limited, and f) recommended actions to take if encountering wildlife. Educational resources can be found at <http://igbconline.org/bear-safety/>.





ATTACHMENT 7

BIOLOGICAL ASSESSMENT FOR BULL TROUT (*Salvelinus confluentus*)

Spring/Summer/Fall Outfitter and Guide Project
Flathead National Forest
Swan Lake Ranger District and Hungry Horse Ranger District

X

Elizabeth Gardner
Fisheries Biologist

Prepared by:

I. PROJECT DESCRIPTION

This project is a programmatic coverage of outfitter and guide use on the Swan Lake and Hungry Horse Ranger Districts. It is not specific to any particular outfitter and guide. The project would cover unlimited service days for temporary and priority service use days. The actual number would be decided later based on proposals. This project can be categorically excluded from environmental assessment and a decision memo if it does not have significant effect on species protected by the Endangered Species Act. This Biological Assessment reviews project affects to bull trout, a listed species.

The project would authorize hunting deer and elk with and without stock, for both day use and overnight use. The project would also authorize non-hunting with and without stock for groups of 20 people or less for up to 5 days and 4 nights in progressive travel. The project would also authorize miscellaneous days use (such as dog walking, hiking, educational classes, sightseeing, picnics, wagon rides, mountain biking) for either full day, half day or quarter day. All of the above activities would be located in the “north” or “south” geographic areas described below. Additionally, mountain lion hunting with or without stock, day use or overnight would be authorized in Lion Management “Unit 140”. Only mountain lion hunting is authorized with this project is unit 140 area. Stock is defined as horses, mules and llamas. Recreational fishing is not included in this project.

The project has three general geographic areas. The “north” area consists of all National Forest system lands of the Swan Lake district between the southern boundary of Swan River State Forest and MT Highway 209. The “south” area consists of all National Forest system lands of the Swan Lake district between the southern boundary of the Swan

River State Forest to the Clearwater divide, excluding the Mission Mountains Wilderness. The Island Unit area and the far northern tip of the Swan Lake district beyond MT Highway 209 is not included. The Lion Management “Unit 140” area is on National Forest system lands of the Hungry Horse Ranger District west of the Hungry Horse Reservoir but excluding the Jewel Basin hiking area.

II. AFFECTED AREA

This programmatic analysis covers land use within five core populations. The following table lists all affected areas that include known bull trout occupancy. This list is based on list of bull trout critical habitat, US Fish and Wildlife Service bull trout recovery plan (2015), bull trout Conservation Strategy (USDA Forest Service 2013), and other observations from population inventories conducted by the Flathead National Forest between 1990 and present (data available at Ranger District files). Lakes and streams within the three project geographic areas that are not listed (such as Bond Creek or Van Lake) do not have bull trout occupancy and not considered further.

Table 1 delineates the five bull trout core populations that area potentially affected by this project. Spawning and rearing streams are delineated as SR. Foraging, migratory or overwinter habitat is noted as FMO. Resident (non-migratory) life forms have not been confirmed in any of these core areas but it is a possibility. Bull trout have been documented in Kraft Creek, Cooney Creek and Middle Fork Cold Creek although no redds typical of large bodied migratory spawners have been observed there. It is unknown if or where any spawning habitat is located in these streams.

Table 1. List of affected core populations and habitat

| Geographic Area | Core Population | Stream/Lake Name | Critical Habitat? | Type of Use by bull trout |
|-----------------|-----------------|------------------------------------|-------------------|--------------------------------------|
| North | Flathead | Flathead Lake | Yes | FMO |
| North | Swan | Swan Lake | Yes | FMO |
| North | Swan | Lost Creek (North and South) | Yes | SR |
| North | Swan | Soup Creek | Yes | SR |
| North | Swan | Woodward and South Woodward Creeks | Yes | SR |
| North | Swan | Goat and Squeezer Creeks | Yes | SR |
| South | Swan | Lion Creek | Yes | SR |
| South | Swan | Cooney Creek | No | Possible resident or SR |
| South | Swan | Piper Creek | Yes | SR |
| South | Swan | Jim Creek | Yes | SR |
| South | Swan | Cold Creek | Yes | SR. Possible resident in Middle Fork |

| | | | | |
|-----------------|--------------|------------------------|-----|-------------------|
| South | Swan | Elk Creek | Yes | SR |
| South | Swan | Kraft Creek | No | Possible resident |
| South | Holland | Holland Creek | Yes | SR |
| South | Holland | Holland Lake | Yes | FMO |
| North and South | Swan | Swan River | Yes | FMO |
| South | Lindbergh | Lindbergh Lake | Yes | FMO |
| Lion 140 | Hungry Horse | Wounded Buck Creek | Yes | SR |
| Lion 140 | Hungry Horse | Wheeler Creek | Yes | SR |
| Lion 140 | Hungry Horse | Hungry Horse Reservoir | Yes | FMO |

III. ANALYSIS OF EFFECTS

As long as certain mitigation measures are followed (as described in section V), this project has no impact to bull trout. Consideration is given to the fact that the requested outfitter and guide use does not involve any new ground disturbance. No new trails or trail heads or parking areas or campsites are included in this programmatic review. The outfitters and guides may use existing trails and undeveloped backcountry just like any other forest user. Without ground disturbance, there is no means for sedimentation or other habitat modifications. I also consider that this project does not authorize any fishing or floating use. There is no potential for hooking mortality or harassment to bull trout.

I note the potential impact of disturbance to bull trout during spawning season at spawning habitats. Bull trout may be highly sensitive to disturbance and abandon their spawning effort. I regard the most sensitive areas as within 300 feet of each side of stream within spawning patches. I use 300 feet as the width corridor since it matches the Riparian Management Zones of the Forest Plan. My experience has taught me that bull trout normally spawn in this area around the end of September. They do not all spawn at once, it is a bell-shaped curve over many days. Given that bull trout may arrive early September to stage, I recommend that no disturbance takes place from September 1 to October 15. This matches the sensitive timeframe used in the Forest Plan for other habitat constraints in bull trout spawning streams. Bull trout typically depart immediately after spawning and not as sensitive to disturbance afterwards.

I don't think small groups of individuals cause much disturbance since most users (hunters or non-hunters) are not eager to get feet wet in cold trout streams in September and October. But livestock will not hesitate to enter the stream and could create noise, turbidity and trampling. Therefore I narrow the potential impact to livestock use within 300 feet of spawning habitats during a 6 week period that bull trout spawn. Any outfitter and guide proposal that takes clients with stock *to these areas* could adversely impact bull trout. However if the outfitter and guide is merely using an existing open road or open trail *to pass through* is not likely to impact bull trout. For example; an outfitter

leading a pack string across the trail bridge at Lion Creek will not have any further impact beyond what already takes place on this open trail. But an outfitter who intends to hunt deer within the riparian corridor of Lion Creek, using stock, may adversely harm bull trout.

Table 3 (in Section V) itemizes sensitive areas that need exclusion from harassment. All known SR habitats on National Forest system lands are excluded (except those in Mission Mountains Wilderness because it is not part of the project area). Because spawning habitat location is unknown in Kraft and Cooney Creeks, these streams will not have special exclusions. The Middle Fork Cold Creek also has unknown spawning habitat (if any) but since it is listed as critical habitat, it will be excluded. There is no need to exclude FMO habitats such as Swan River or Hungry Horse Reservoir since bull trout do not spawn in FMO habitat. With this mitigation measure in place, I can think of no other potential impact to bull trout.

The project would have no impact to the Primary Constituent Elements of bull trout. The project has no ground disturbance or any impact on physical habitat. The following table reviews the 9 Primary Constituent Elements.

Table 2. Primary Constituent Elements and project impacts.

| PCE Number and Description | Project impact |
|--|---|
| 1. Permanent water having low levels of contaminants such that normal reproduction, growth and survival are not inhibited. | The project has no potential to impact any base flows or peak flows. No contaminants would be generated by this project. |
| 2. Water temperatures ranging from 2 to 15C with adequate thermal refugia available for temperatures at the upper end of this range. | The project has no potential to impact water temperature in critical habitat. |
| 3. Complex stream channels with features such as wood debris, side channels, pools, and undercut banks to provide a variety of depths, velocities and instream structures. | The project has no potential to impact large woody debris, pool frequency and quality, large pool frequency, refugia, width/depth ratios, stream bank condition, riparian conservation areas and floodplain connectivity. |
| 4. Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-year and juvenile survival. A minimal amount of fine substrate less than 0.63mm in diameter and minimal substrate embeddedness are characteristics of these conditions. | The project has no potential impact on stream substrates and does not increase fine substrates. |

| PCE Number and Description | Project impact |
|--|--|
| 5. A natural hydrograph, including peak, high, low and base flows within historic ranges or, if regulated, a hydrograph that demonstrates the ability to support bull trout populations. | The project has no potential to change peak flows, increase the drainage network, change disturbance history or disturbance regime. |
| 6. Springs, seeps, groundwater sources, and subsurface water connectivity to contribute to water quality and quantity. | The project has no potential to impact floodplain connectivity, change peak or base flows, increase drainage network, or impact riparian conservation areas. |
| 7. Migratory corridors with minimal physical, biological, or chemical barriers between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows. | The project has no potential to alter life history diversity or isolation, it would not alter genetic integrity, does not impact water temperature, does not cause chemical/nutrient contamination, does not build a physical barrier, does not alter width/depth ratio, does not change peak flows and does not reduce refugia. |
| 8. An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish | The project has no potential to impact floodplain connectivity, riparian conservation areas, growth and survival, or life history diversity and isolation. |
| 9. Few or no predatory, interbreeding, or competitive nonnative species present. | The project has no potential impact to persistence and genetic integrity and does not create any physical barriers. |

IV. DETERMINATION

There are no anticipated direct or indirect to bull trout or bull trout critical habitat. Therefore I determine this project will have “**no effect**” on bull trout and “**no effect**” on bull trout critical habitat.

V. MANDATORY MITIGATION MEASURES

No stock use within 300 feet of each side of the following streams from September 1 to October 15. Does not matter if trail exists or not. However travel on existing open roads is acceptable. Restrictions only apply to National Forest system lands. Because spawning habitats on Soup, Squeezer and Woodward are not found on National Forest system lands, no restrictions apply.

Table 3. List of areas that must be excluded from stock activity from September 1 to October 15.

| Geographic Area | Stream | Description |
|-----------------|----------------|---|
| North | Lost (N and S) | All designated critical habitat on North Fork. This is from confluence with Spring Slide tributary to |

| | | |
|-----------------------|--------------|---|
| | | confluence with South Fork. All designated critical habitat on South Fork on NFS lands. This is from state lands boundary to confluence with Swan river. |
| North | Goat | All designated critical habitat on NFS lands. This is from headwaters to state forest boundary and also 1 mile in section 17. |
| South | Lion | All designated critical habitat. From waterfall to confluence with Swan River |
| South | Piper | From Piper Creek trailhead to confluence with Swan River. Actual spawning habitat is much less than designated critical habitat. |
| South | Jim | From confluence with West Fork Jim Creek to confluence with Swan River. Actual spawning habitat is much less than designated critical habitat |
| South | Cold | All designated critical habitat on NFS lands, both North and Middle Fork, from the headwaters to Swan river. Small patch of private land is not included. |
| South | Elk | All designated critical habitat on NFS lands. From confluence of N and S tributaries to private land boundary about 1 mile above Swan river. |
| South | Holland | All designated critical habitat. From waterfall to lake. |
| Lion Hunting Area 410 | Wounded Buck | All designated critical habitat. Beginning 1 mile upstream of Wildcat Creek and going to reservoir |
| Lion Hunting Area 410 | Wheeler | All designated critical habitat. From confluence of Trapper Creek to reservoir |

Figure 1-3 show the general area of the exclusion zones. These maps are based on designated critical habitat, shown in red lines. However the actual exclusion areas are smaller than critical habitat (such as Piper Creek) and the Swan River itself is not exclusion area. Table 3 should be regarded as the exclusion areas, not the maps.

Figure 1. North geographic area with critical habitat on National Forest system lands (not in wilderness) shown in red. Although the Swan River itself is not excluded, the critical habitats generally are the exclusion areas.

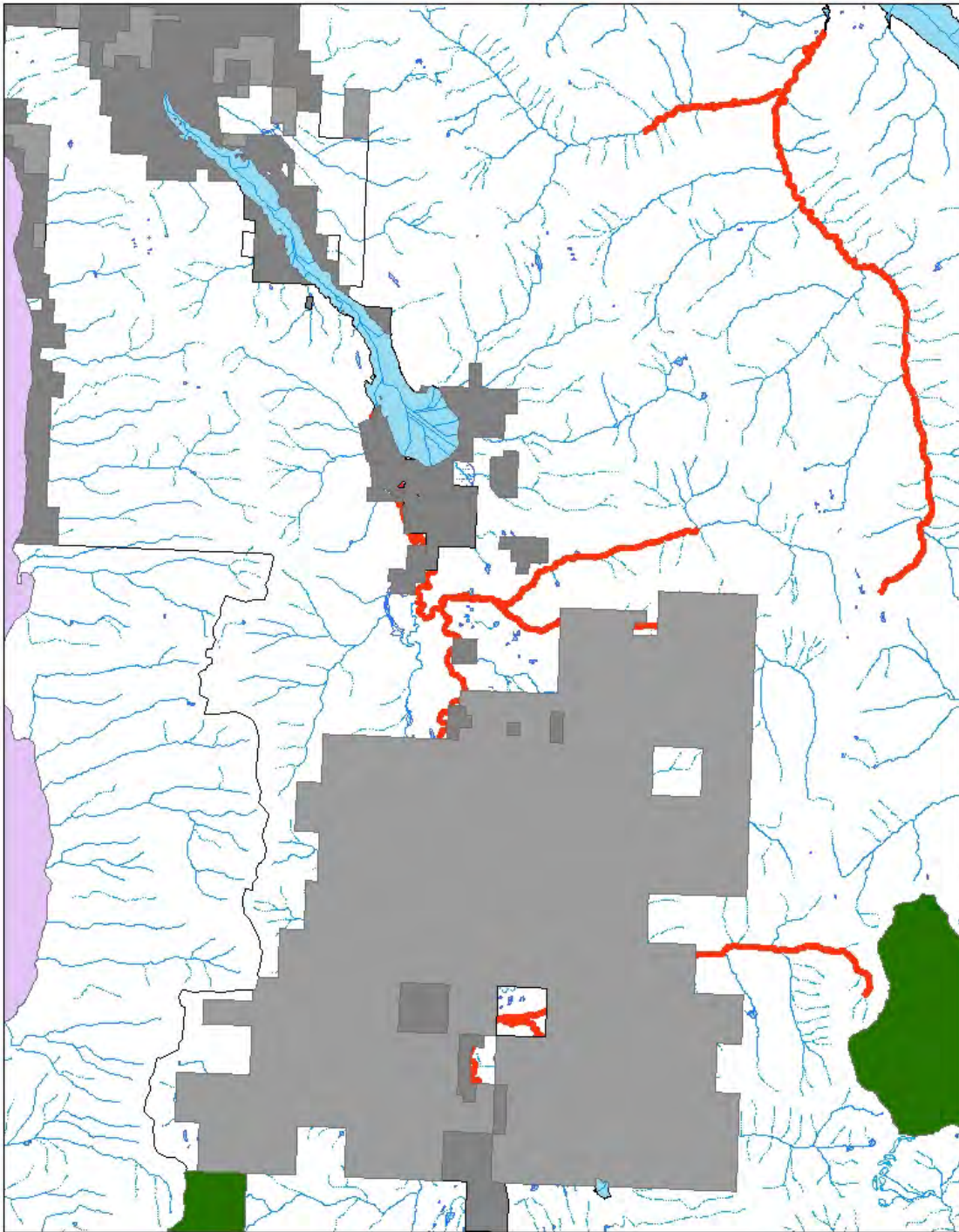


Figure 2. South geographic area with critical habitat on National Forest system lands (not in wilderness) shown in red. Although the Swan River itself is not excluded, the critical habitats generally are the exclusion areas.

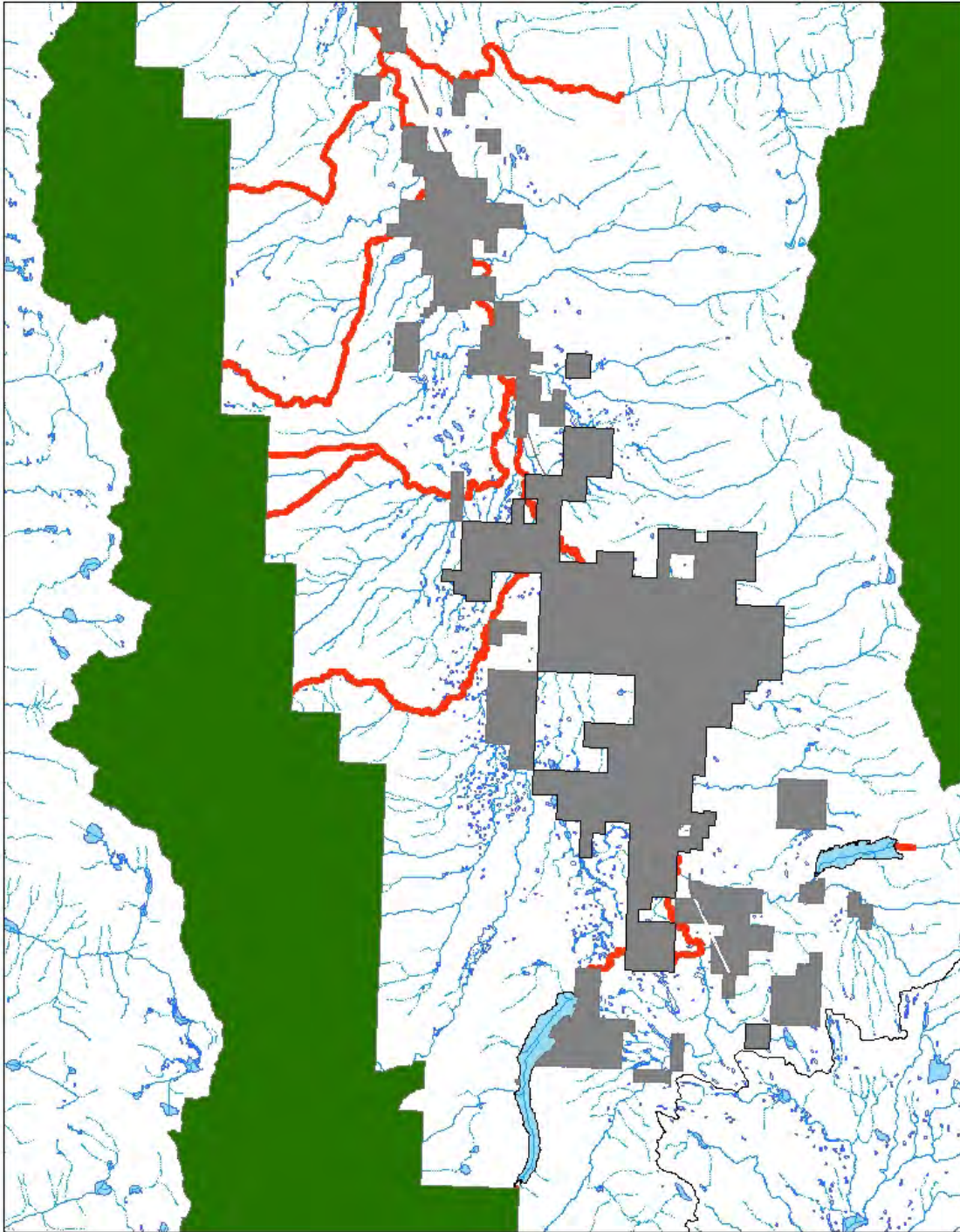
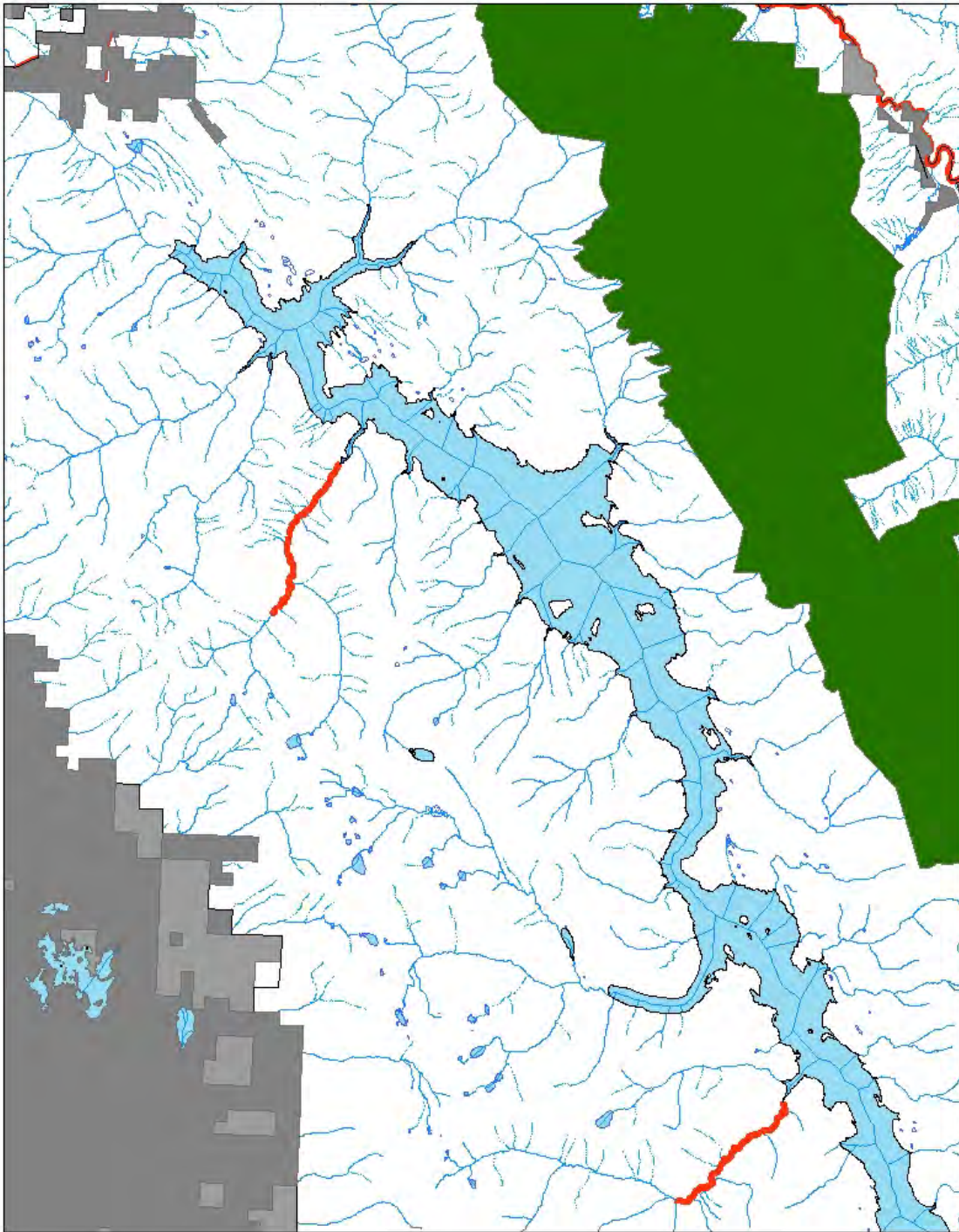


Figure 3. Unit 410 geographic area with critical habitat on National Forest system lands (not in wilderness) shown in red.



VI. RESPONSIBILITY FOR A REVISED BIOLOGICAL ASSESSMENT

This Biological Assessment has been prepared based on present available information. If the final project design is changed so as to have effects on bull trout, or if new

information becomes available that reveals impacts not considered in this biological assessment, a revised, or new biological assessment will be required.

VII. CONSULTATION

Because of the determination that this project has no effect, consultation with the U.S. Fish and Wildlife Service is not required (50 CFR 402.10).

VIII. REFERENCES CITED

USDA Forest Service. 2013. Conservation Strategy for Bull Trout on USFS lands in Western Montana. USDA Forest Service Northern Region, US Fish and Wildlife Service, Montana Field Office, Lolo National Forest, Bitterroot National Forest, Flathead National Forest, Beaverhead-Deerlodge National Forest, Kootenai National Forest, Helena National Forest.

USDI Fish and Wildlife Service. 2015. Recovery Plan for the Coterminous United States Population of Bull Trout (*Salvelinus confluentus*). Pacific Region, Portland Oregon. Xii + 179 pp.

ATTACHMENT 8



File Code: 2360

Date: July 6, 2021

Route To: Darlene Bridges, Recreation Program Manager, Swan Lake Ranger District,
Flathead National Forest

Subject: Heritage Consultation: 2021 Spring, Summer, Fall O&G Permits
(R2021011001008)

To: Chris Dowling, Swan Lake District Ranger

This memo to the file documents consultation between the Flathead National Forest and the Montana State Historic Preservation Office (MtSHPO) on the effects to cultural resources of the Swan Lake Ranger District's proposed 2021 Spring, Summer, Fall O&G permits project.

The above referenced project meets one of the following conditions of the Region One Programmatic Agreement (R1PA) with MtSHPO and the Flathead National Forest's Site Identification Strategy (SIS). According to the R1PA, this project is:

X An undertaking with no potential to effect cultural resources and therefore no inventory was completed,

Or

An undertaking with no effects to cultural sites because a field inventory identified there are no sites in the APE,

Or

An undertaking with no effects to cultural sites through project redesign,

Or

The proposed undertaking may effect a significant cultural resource and formal consultation with SHPO will follow.

Consultation for a project meeting one of the first three conditions is completed and will be included in the Annual Report to MtSHPO. Consultation for projects meeting the fourth condition is completed in the traditional method. If you have any questions please call Ryan Powell at 758-5258.

/s/ Ryan Powell

Ryan Powell
Heritage Program Manager



ATTACHMENT 9

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. FOREST SERVICE, NORTHERN REGION,
THE IDAHO STATE HISTORIC PRESERVATION OFFICER
AND
THE MONTANA STATE HISTORIC OFFICER
REGARDING
THE MAINTENANCE OF HISTORIC PROPERTIES
BY THE NORTHERN REGION HISTORIC PRESERVATION TEAM
IN IDAHO AND MONTANA
(March 2015)**

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**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. FOREST SERVICE, NORTHERN REGION,
THE IDAHO STATE HISTORIC PRESERVATION OFFICER
AND
THE MONTANA STATE HISTORIC OFFICER
REGARDING
THE MAINTENANCE OF HISTORIC PROPERTIES
BY THE NORTHERN REGION HISTORIC PRESERVATION TEAM
IN IDAHO AND MONTANA**

WHEREAS, the U.S. Department of Agriculture, U.S. Forest Service, National Forests of the Northern Region in the states of Idaho and Montana (FS) manage a wide range of historic administrative, recreational, and interpretive buildings and structures that qualify as historic properties listed in or eligible for listing in the National Register of Historic Places (NR) as defined at 36 C.F.R. 800.16; and

WHEREAS, the FS has the authority to maintain, repair, rehabilitate, restore, reconstruct and use buildings and related facilities, including historic properties, across the Northern Region of Idaho and Montana in order to protect irreplaceable cultural resources and ensure their useful life and original or adaptive purpose under the authority of 7 U.S.C §2250; 16 U.S.C §571c; and Forest Service Manual (FSM) 7310; and

WHEREAS, the FS has determined that certain maintenance, repair, preservation, rehabilitation, restoration, and reconstruction activities affecting historic properties are Undertakings, as defined in Section 301(7) of NHPA; and

WHEREAS, the FS established the Northern Region Historic Preservation Team (HPT) in 1992 to perform historic preservation work at historic properties; create efficiencies in meeting compliance for FS undertakings in accordance with Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. §470f) and its implementing regulations at 36 C.F.R 800; train employees in preservation skills and techniques; and expand historic preservation knowledge, interest and capacity; and

WHEREAS, the FS has consulted with the Idaho and Montana State Historic Preservation Officers (SHPO) pursuant to 36 C.F.R. part 800.14(b) (2) (i), and both SHPOs have chosen to participate as signatories to this Programmatic Agreement (PA) in correspondences dated December 29, 2014 and December 3, 2014, respectively; and

WHEREAS, FS has notified the Advisory Council on Historic Preservation (ACHP) pursuant to 36 C.F.R. part 800.14, and the ACHP has chosen not to participate as a signatory to this PA, per their letter to the FS Northern Region dated March 13, 2015; and

WHEREAS, the FS has invited the Bureau of Land Management-Central Montana District; Forest Fire Lookout Association; Friends of Rock Creek; Montana Preservation Alliance; Montana Fish, Wildlife and Parks; National Museum of Forest Service History; and Preservation Idaho to consult in the development of this PA pursuant to 36 C.F.R. part 800.14(b) (2) (i); and

NOW, THEREFORE, the FS and Idaho and Montana SHPOs agree that certain undertakings conducted by the FS will be implemented in accordance with the following PA conditions and stipulations in order to take into account the effects of their undertakings on historic properties; and when so administered under the direction and guidance of the HPT, these processes will satisfy the FS's responsibilities under Section 106 of the NHPA for qualifying Undertakings.

I. APPLICABILITY, SCOPE AND EFFECT

The purpose of this agreement is to streamline compliance with federal regulations, entitled Protection of Historic Properties (36 C.F.R. part 800), implementing Section 106 of the NHPA, for historic preservation work directed or guided by the HPT on historic properties (building, structures) in the states of Idaho and Montana whenever:

- A. The undertaking is located entirely on National Forest System lands and the FS is the only agency participating in the undertaking; or
- B. The nature of the undertaking is such that it is unlikely to affect historic properties and therefore does not warrant further consideration under the provisions of 36 C.F.R. part 800.3(a) (1); or
- C. The affected building or structure is of recent construction (i.e., less than 45-50-years old); is not a property of exceptional importance that has attained significance within the past 50 years; or is ineligible for listing in the NR based on formal evaluation; or
- D. The undertaking, including building operation, maintenance, repair, preservation, rehabilitation, restoration, and reconstruction conforms to criteria, standards and procedures stipulated by this PA.

An undertaking that does not qualify for review under the terms of the agreement, including projects involving major electrical or mechanical upgrades, repairs, or new construction, shall be reviewed in accordance with the standard procedures set forth in 36 C.F.R. part 800.

II. DEFINITIONS

Definitions applicable to this PA are found in Appendix I; the NHPA; 36 C.F.R. parts 60, 68 and 800; the Secretary on the Interior's (SOI) Stands and Guidelines for Archaeology and Historic Preservation; FS Manual 2360; FS Handbook 2309.12; and ACHP and National Park Service (NPS) CRM technical guides. Should these documents be significantly revised following execution and implementation, the signatories agree to formally amend this PA to correspond with revisions.

III. UNDERTAKING INITIATION AND SHPO CONSULTATION

All proposed FS historic preservation work on historic properties will be identified, prioritized, initiated and guided by the *USDA Forest Service Northern Region Historic Structure Assessment and Historic Preservation Plan* (2009) and Forest Heritage Program and Historic Property Plans. Preservation projects will be supported by Northern Region Heritage Program, Capital Improvement, Heritage Stewardship Enhancement, Resource Advisory Committee, other agency and partnership funding, and public volunteerism. Forest Heritage Program Managers (HPM) will collaborate with the HPT in the identification of historic preservation priorities and projects.

The HPMs and HBT will initiate consultation with the SHPOs at the earliest stages in project planning in accordance with the procedures in this PA and *Basic Guidance for Consulting with the Idaho State Historic Preservation Office* and *Consulting with the Montana SHPO: Guidelines and Procedures for Cultural Resource Review and Consultation under the National Historic Preservation Act and the Montana State Antiquities Act* (SHPO Planning Bulletin No. 21)

IV. QUALIFYING UNDERTAKINGS

Undertakings that will be implemented by the HPT or a Certified Employee (Appendix C) under the terms of this PA and SOI Standards for the Treatment of Historic Properties at 36 CFR 68, and which do not require SHPO or ACHP review under standard NHPA Section 106 procedures, include:

- A. In-kind repairs unless replacement is necessary to halt material loss; or
- B. In-kind repairs and maintenance that do not damage or alter existing materials, trim, or details, and do not require replacement or repair; or
- C. Repair, preservation, rehabilitation, restoration, or reconstruction that match the original features in design, materials, and construction techniques based on written photographic or surviving physical evidence or matches the design, materials, and construction techniques of the existing features; or
- D. Repair, preservation, rehabilitation, restoration, or reconstruction follow recommendations in Historic Property Plans that have been previously reviewed and approved by the Regional Office (RO) Engineering Staff, HPT, RO Heritage Program Leader, and the appropriate SHPO in accordance with FSM 2361.21 R1 supplements 78.96; or
- E. Repair, preservation, rehabilitation, restoration, or reconstruction on buildings/structures that are less than 50 years of age; are not a property of exceptional importance that has attained significance within the past 50 years; or which have been determined ineligible for inclusion in the NR in consultation with the SHPO; or
- F. Repair, preservation, rehabilitation, restoration, or reconstruction methods that are routine; are

hidden from normal viewing; are safety items; or will extend the life of the building. These methods include:

1. Replacing log floor joists with dimensional lumber when the joists occupy inaccessible crawl spaces;
2. Installing inconspicuous D-rings on roofs in order to facilitate safety harnesses to be used during roof work;
3. Introducing low-profile foundations using local materials and made to match local buildings where no foundation or an inadequate foundation exists;
4. Using ice and water shield on roofs with solid sheathing that originally had no vapor barrier or a tar felt paper barrier; and
5. Installing rubber tube and/or nylon brush weather stripping in windows and doors, as long as the weather stripping is installed in an unobtrusive manner that does not affect door or window use or functionality.

V. HPT QUALIFICATIONS AND RESPONSIBILITIES

The HPT will comprise, at minimum, two professional-level preservation specialists (Exhibits Specialist [Restoration] 1010 series) as part of the HPT. The Historic Preservation Team Leader and an Exhibit Specialist will, at minimum, meet the developmental qualifications of the National Park Service (NPS) Essential Competencies for Exhibit Specialists (Restoration) (Appendix B). These positions will be supervised by the RO Facilities Engineer and/or Heritage Program Leader. These HPT positions will be responsible for:

- A. Directing and performing hands-on maintenance, repairs, stabilization, preservation, rehabilitation, restoration, and reconstruction work at the behest of the RO, Forests, Ranger Districts, or project proponent based on project scopes of work (SOW).
- B. Completing building and structure condition assessments as requested by the RO, Forests, and Ranger Districts.
- C. Training, certifying, and monitoring FS employees, public volunteers, and preservation partners in historic preservation skills including traditional skills training.
- D. Guiding and assisting the RO, Forests and Districts in historic preservation planning, building condition assessment, structural analyses, and maintenance.
- E. Certifying to the RO and SHPOs that work was carried out in accordance with the Standards, including maintaining permanent records for each project to document compliance with this PA.

- F. Assisting in the development of project SOWs and contracts for out-sourced historic preservation work.
- G. Reporting annual historic preservation accomplishments to the RO and SHPOs.

VI. PA COMPLIANCE PROCEDURES: FS and SHPO Consultation

The FS shall comply with the following procedures for all undertakings involving the repair, maintenance, stabilization, preservation, rehabilitation, restoration, or reconstruction of historic properties under the terms of this PA.

- A. The Undertaking's Area of Potential Effect (APE) will be limited to the individual building or historic structure when a proposed project is limited to the maintenance, stabilization, preservation, rehabilitation, restoration, or reconstruction of its existing interior or exterior features. The APE will be defined by the HPM in consultation with the HPT and SHPOs, as necessary.
- B. Cultural resources will be identified and planned for in the development of the preservation work by the HPM. During project planning, measures will be taken to avoid or mitigate impacts to any cultural resource that may be affected by a preservation project, in accordance with 36 C.F.R. 800 procedures.
- C. If previously unidentified historic or prehistoric archaeological remains are discovered as a result of ground disturbance caused by historic preservation activities, the project will be halted by the HPT and the appropriate HPM will be immediately contacted to determine the appropriate course of action, in accordance with protocols in the *Heritage Protection Plan, Region 1 U.S. Forest Service* (2012).
- D. Historic buildings previously identified and evaluated for National Register eligibility by the FS in compliance reports that have been provided to and reviewed by SHPOs will not be reevaluated as part of the undertaking unless conditions have changed substantially since the original evaluation; new research indicates their likelihood to be now considered significant for National Register listing; or the property has passed the 50 year old mark in the interim.
- E. The HPM and HPT shall provide the SHPO with clear description of the proposed Undertaking and affected Historic Property, including purpose and need; SOW; structural drawings and plans; photographs; materials; schedule and other pertinent details. Some undertakings may require the planning and design services of an historic architect/engineer as determined by the RO Facilities Engineer, RO Heritage Program Leader and the HPT Leader.
- F. The HPT, in consultation with the HPM, will apply the Criteria of Effect and Adverse Effect, 36 CFR 800.9, to determine if the undertaking has the potential to adversely affect a Historic Property. The evaluation will be based on the project proposal and/or SOW provided by the

National Forest and will be used to determine if the project conforms to the requirements of this PA and SOI Standards for the Treatment of Historic Properties (Standards) or falls outside the purview of this PA:

1. If the HPT and HPM determine that the undertaking will have no effect, the FS shall notify SHPO of this finding in writing. If the SHPO does not object in writing within 30 days, the undertaking will proceed as submitted without further review.
 2. If the HPT and HPM determine that the undertaking conforms to stipulations of this PA, the FS shall notify the SHPO in writing of this finding. If the SHPO does not object in writing within 30 days, the undertaking will be considered to not adversely affect historic properties and will proceed as submitted without further review.
 3. If the HPT, HPM or the SHPO finds that project does not conform to stipulations of this PA, the project will be considered to be an adverse effect. The HPM shall initiate consultation with the SHPO and ACHP in accordance with 36 C.F.R. part 800.5. The SHPO may recommend modifications to the SOW or conditions under which the project would be found to conform to the Standards in its response to the FS.
- G. The HPT and/or HPM shall notify the SHPO of any changes to the undertaking's SOW and shall provide an opportunity to review and comment on such changes. The FS will make every attempt to allow SHPO 30 calendar days for this review. If the construction schedule requires a shorter time period, the FS will immediately notify the SHPO of these time constraints and work with the SHPO to facilitate their review. If the changes do not conform to the PA standards, consultation under 36 C.F.R. 800 is required.
- H. The SHPO is permitted 30 calendar days after the receipt of undertaking documentation submitted under the provisions of this PA to review and comment on the project. Absent mitigating circumstances, if the SHPO does not provide comments to the HPT or HPM within this time frame, the FS may assume that the SHPO concurs with its determination and the project may be implemented as submitted. Comments may be provided by phone, but must be immediately followed up with electronic or hard copy mail or fax. The SHPO will provide timely technical advice, assistance and training on the application of the Standards specific to the undertaking as necessary and appropriate.
- I. Any reviews required by this agreement shall be completed prior to the FS's final approval of any project which may affect a historic building or structure and prior to the Forest Service altering the property or initiating or making an irrevocable commitment for construction that may affect historic properties.

VII. PA REPORTING

The HPT will annually submit reports in both written and electronic formats to the SHPOs documenting the results of individual FS projects. The report will include a brief SOW, a narrative and dates of work completed, personnel involved, photo documentation of the work, relevant correspondence, information about prior work, and plans for future work. In addition, the building's name and Smithsonian number will be provided. The FS will maintain a hard copy and electronic copy of the reports and supporting documentation as part of the permanent record.

Completion reports will be submitted to the RO and SHPOs by **March 1st** for projects completed in the preceding calendar year.

In addition, the HPT will submit a comprehensive list of all projects undertaken pursuant to this agreement over the preceding calendar year, along with the requisite SHPO forms.

VIII. PA REVIEW: FS and SHPO

The FS shall meet regularly with the SHPOs while this agreement remains in force.

- A. The FS and SHPOs will meet biennially to review completed projects; assess the effectiveness of the agreement; and discuss any concerns regarding its implementation. The parties may identify PA modifications or amendments which would increase its effectiveness and value. The FS will notify the ACHP of any changes that may be recommended and will follow Stipulation XIII to finalize and execute the amendment or addendum.
- B. Attendees at the meeting will include the RO Heritage Program Leader, the RO Engineering Facilities Group Leader, at least one member of the HPT, and a selection of Certified Employees, agreed upon by the SHPO and HPT, and HPM's, as appropriate, to present and discuss the completed projects.

IX. PROJECT AND PA MONITORING

HPM's and the RO Engineering Group and Heritage Program leaders will annually monitor HPT preservation activities conducted under the terms of this PA. The SHPOs may also monitor and review any activities carried out pursuant to this PA. The FS will cooperate with the SHPO in carrying out these monitoring and review responsibilities, including meetings and on-site visits and inspections.

HPM's and the HPT will monitor the Certified Employee Program by annually coordinating the review of selected projects completed by certified employees during the current year. The review will involve a representative from the HPT, the SHPO, and FS Heritage and Facilities staff as appropriate, and may include office reviews or on-site visits, or both.

X. DISCOVERIES AND UNFORESEEN EFFECTS

If, during the implementation of any undertaking, a previously unidentified property that may be eligible

for inclusion in the National Register is encountered, or a known historic property may be affected in an unanticipated manner, the FS will assume its responsibilities pursuant to 36 CFR 800.11, Forest Service Manual 2364.13 – Unanticipated Discovery, and the *Heritage Protection Plan, Region 1 U.S. Forest Service* (2012).

XI. EMERGENCY UNDERTAKINGS

In the case of a declared emergency, the FS will fulfill its NHPA Section 106 responsibilities under the procedures set out in 36 CFR 800.12.

XII. DISPUTE RESOLUTION

Should the SHPO object within the time period provided under this agreement to any SOW or actions proposed by FS, the FS shall consult with the SHPO to resolve the objection. If the FS determines that the objection cannot be resolved, the FS shall forward all documentation relevant to the dispute to the ACHP. Within 30-calendar days after receipt of all pertinent documentation, the ACHP will either:

- A. Provide the FS with recommendations, which the FS will take into account in reaching a final decision regarding the dispute; or
- B. Notify the FS that it will comment pursuant to 36 C.F.R. 800.6 and proceed to comment. Any recommendation, provided by the Council, will be understood to pertain only to the subject of the dispute and the FS's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

XIII. AMENDMENTS

Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 C.F.R. 800.13 to consider such amendment. No amendment to this agreement will become effective without the written concurrence of all the parties.

XIV. TERMINATION

Any party to this agreement may terminate it by providing 30 days' notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FS will comply with 36 C.F.R. 800.4 – 800.6 with respect to individual undertakings covered by this agreement.

XV. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

In the event the FS cannot carry out the terms of this agreement, it shall not take or sanction any action or make any irreversible commitment that would foreclose the Council's consideration of modifications or alternatives to the undertakings, and the FS will comply with 36 C.F.R. 800.4 – 800.6 with regard to each individual undertakings covered by this agreement.

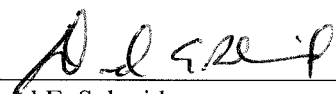
XVI. EXECUTION AND IMPLEMENTATION

Execution and implementation of this PA satisfies the FS's responsibilities under Section 106 of the NHPA for all individual Undertakings on National Forest System lands in Idaho and Montana, when treated in conformance with the stipulations herein.

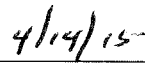
The PA becomes effective on the date of the last signature below and will be implemented immediately.

SIGNATORIES

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. FOREST SERVICE, NORTHERN REGION,
THE IDAHO STATE HISTORIC PRESERVATION OFFICER
AND
THE MONTANA STATE HISTORIC OFFICER
REGARDING
THE MAINTENANCE OF HISTORIC PROPERTIES
BY THE NORTHERN REGION HISTORIC PRESERVATION TEAM
IN IDAHO AND MONTANA**

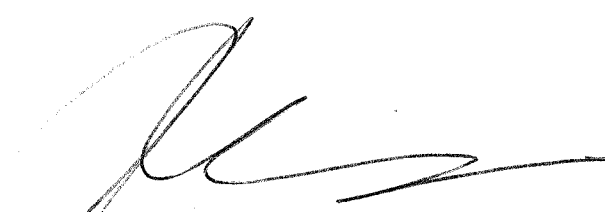


David E. Schmid
Acting Regional Forester
US Forest Service, Northern Region



Date

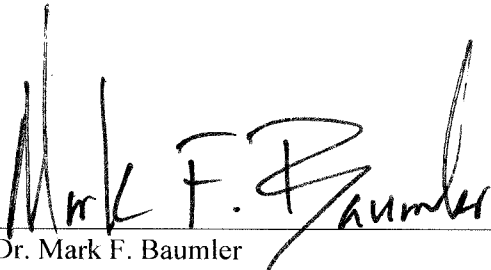
**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. FOREST SERVICE, NORTHERN REGION,
THE IDAHO STATE HISTORIC PRESERVATION OFFICER
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IN IDAHO AND MONTANA**

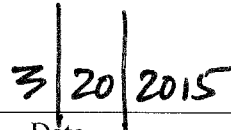


Ms. Janet Gallimore
Executive Director – State Historic Preservation Officer
Idaho Historical Society

April 24, 2015
Date

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. FOREST SERVICE, NORTHERN REGION,
THE IDAHO STATE HISTORIC PRESERVATION OFFICER
AND
THE MONTANA STATE HISTORIC OFFICER
REGARDING
THE MAINTENANCE OF HISTORIC PROPERTIES
BY THE NORTHERN REGION HISTORIC PRESERVATION TEAM
IN IDAHO AND MONTANA**


Dr. Mark F. Baumler
State Historic Preservation Officer
Montana Historical Society


Date

APPENDIX A – DEFINITIONS

Certified Employee: A FS employee on a District or Forest level that meets the Entry Level qualifications for Exhibit Specialist (Restoration) as described in NPS Essential Competencies and has received training in each aspect of work they will be performing (see Appendix C). Certification is approved by the HPT, HPM, and SHPO.

Heritage Program Manager (HPM): a FS employee meeting professional qualifications in archaeology, history, cultural resource management or related disciplines who is responsible for the full range of Heritage Program activities on a National Forest and who provides recommendations and services to help agency Line Officers (Forest Supervisors, District Rangers) meet their heritage program responsibilities.

Heritage Program: The comprehensive program of responsibilities related to historic preservation. The purpose of the FS Heritage Program is to manage prehistoric and historic cultural resources for the benefit of the public through preservation, public use, and research.

Historic Preservation Team (HPT): a specialized Forest Service team in the Northern Region comprised of two Exhibit Specialists (Restoration) (the Historic Preservation Team Leader and an Exhibit Specialist) meeting at least the developmental qualifications of the NPS Essential Competencies for Exhibit Specialists (Restoration) who complete hands on projects and supervise and monitor the FS Certified Employee program.

Historic Preservation Team Leader: an Exhibit Specialist (Restoration), OPM series 1010, meeting the Full Performance level of the NPS Essential Competencies (Attachment B) and assigned to the Northern Region Engineering Staff Group.

Historic Property Plan: a written plan prepared by a Forest Service Heritage professional for historic properties on National Forest System lands with an emphasis on Priority Heritage Assets. The plan documents the existing resource condition; management goals, objectives, and desired future condition; maintenance standards and guidelines; needed actions; proposed budget, and timeframes and schedules.

Secretary's Standards and Guidelines: The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the National Historic Preservation Act, provide technical information about archaeological and historic preservation activities and methods for all federal agencies.

APPENDIX B – HPT QUALIFICATIONS

National Park Service

Exhibits Specialist (Restoration) 1010 Series

Essential Core Competencies

Entry Level

Description: These competencies identify the knowledge, skills, and abilities required to perform basic preservation maintenance, repair, and treatment of historic structures. Work is performed under close supervision with emphasis on safety and developing knowledge of historic preservation.

I. Trade/Craft skills

- A. Tool maintenance, use, and operation
- B. Identify period vs. contemporary work
- C. Use of period tools, materials, and methods

II. Project Planning/Supervision

- A. Following construction documents and instructions
- B. Documenting project work
- C. Assist in day-to-day direction of project work
- D. Safety considerations
- E. Conduct inventory and condition assessments of historic structures

III. Preservation Policies, Standards, and Guidelines

- A. Follow FSM 2360; FSM 46.22; and the Secretary of Interior's Standards for the Treatment of Historic Properties.
- B. Differentiate levels of preservation treatment

Knowledge, Skills, and Abilities

1. Journey level skill in two contemporary building trades (e.g., carpentry, masonry, painting, etc.)
2. Ability to maintain hand tools, portable power tools, and stationary power tools in safe operating condition
3. Ability to differentiate contemporary and period fabrication/construction, and take appropriate steps to protect period work
4. Skill in assisting higher graded employees in repair or replacement of period elements
5. Ability to work accurately from blueprints, sketches, shop lists, and written and oral instructions to procure equipment and materials for project work
6. Ability to accurately and completely document project work through photography, as-built drawings, and written narratives
7. Skill in assisting project supervisors in day-to-direction of day labor crews
8. Knowledge of the levels of preservation treatment as specified in the Secretary of the Interior's Standards for Treatment of Historic Properties; Cultural Resources Management Guidelines; FSM 2360, Heritage Program, and FSM 46.22, Historic Buildings and Structures
9. Ability to properly use and maintain personal protective equipment

10. Ability to recognize materials safety, environmental, or other workplace hazards and respond appropriately

Developmental Level

Description: These competencies identify the knowledge, skills, and abilities required to perform advanced level preservation maintenance, repair, and treatment of historic structures. Work is performed under normal supervision with continued emphasis on safety and historic preservation treatment techniques. All Competencies at the Entry Level plus:

I. Trade/Craft Skills

- A. Diagnosis of deterioration/defects
- B. Recommend treatments
- C. Repair/replacement of period elements

II. Project Planning/Supervision

- A. Prepare scopes of work (SOW) and cost estimates
- B. Perform condition assessments
- C. Direct project work

II. Preservation Policies, Standards, and Guidelines

- A. Interpret and apply FSM 2360, FSM 46.22, and the Secretary of Interior's Standards for the Treatment of Historic Properties
- B. Apply requirements for Section 106 compliance

Knowledge, Skills, and Abilities

1. All Knowledge, Skills, and Abilities at the Entry Level plus:
2. Journey level skill in at least one contemporary building trade and the ability to demonstrate basic skills in at least one other trade applicable to repair of historic building fabric
3. Skill in developing and using tools, devices, or procedures required for fabrication or repair of historic architectural fabric
4. Ability to detect deterioration or defects in period work and to diagnose probable causes and recommend treatments
5. Demonstrate knowledge of period construction tools, materials, and methods in determining evolution of historic fabric
6. Ability to use period tools, methods, and materials
7. Skill in preparing written scopes of work (SOW), cost estimates, procuring equipment and materials, and completing post-construction documentation
8. Ability to assist in performing condition assessments on historic structures
9. Ability to provide day-to-day supervision and technical direction of day labor crews
10. Ability to serve as a construction inspector on preservation construction projects
11. Demonstrate the ability to interpret preservation policies, standards, and guidelines, and apply them to the definition and execution of preservation projects
12. Skill in completing Section 106 documentation for preservation projects

13. Ability to assess material, environmental, and other workplace hazards, and develop safety programs

Full Performance Level

Description: These competencies identify the knowledge, skills, and abilities required for the preservation maintenance, repair, and treatment of historic structures at the full performance level. Work is performed with little direct supervision and with oral and written instruction. Individual will be able to schedule work, lead crews to perform tasks, and determine types and amounts of material. All competencies at the Entry and Developmental Levels plus:

- I. Trade/Craft Skills
 - A. Develop and offer preservation training
 - B. Evaluate/apply state-of-the-art techniques
- II. Project Planning/Supervision
 - A. Develop treatment guidelines
 - B. Supervise preservation programs
- III. Preservation Policies, Standards, and Guidelines
 - A. Instruct others in interpretation/application

Knowledge, Skills, and Abilities

1. All Knowledge, Skills, and Abilities at the Entry and Developmental Levels plus:
2. Demonstrate journey level skills in at least one contemporary building trade and the ability to apply preservation skills in a broad range of crafts related to the practice of historic preservation
3. Ability to assess, evaluate, and direct the work of journey level workers in the range of trades applied to historic preservation
4. Ability to develop comprehensive training in a range of preservation related trades
5. Ability to evaluate and apply state-of-the-art materials and technologies to the conservation and repair of period architectural fabric
6. Ability to function as part of a team of preservation professionals to assess complex structural and architectural fabric conditions and recommend comprehensive treatment programs
7. Ability to develop guidelines for treatment of historic structures
8. Ability to manage a preservation program
9. Ability to manage a preservation project within its financial limits
10. Ability to serve as a Contracting Officers Technical Representative (COTR) on complex preservation projects
11. Ability to instruct others in the interpretation and application of preservation policies, standards, and guidelines
12. Ability to develop and administer a workplace safety program

APPENDIX C – R1 EMPLOYEE CERTIFICATION PROGRAM

FS employees may be certified by the HPT to work on a single preservation task or numerous tasks in accordance to the training standards and stipulations below. Only the HPT has the authority to certify FS employees under the terms of this PA.

A Certified Employee will meet the Entry Level Essential Core Competencies for Exhibits Specialist (Restoration) job series, as shown in Appendix B.

Prior to HPT certification, an Entry Level candidate must successfully complete training elements 1 through 3:

1. One course in basic historic preservation concepts, including historic integrity, as offered by universities, federal agencies, and historic preservation organizations.
2. Field training in each aspect of preservation that is being certified, including hands-on application of those skills. Such courses are regularly provided by the HPT at the FS Nine Mile Training Center and by the National Park Service. Additional on-the-job training and skills enhancement may be available by working directly with the HPT.
3. Develop a project SOW; coordinate field logistics including the use of public volunteers if applicable; implement SOW stipulations; prepare a completion report; and formally report the work to the HPT, SHPOs, HPMs, and FS Line Officers.

HPT certification will be acknowledged, monitored, documented, and tracked in the employee's official training plan and performance record.

The Certified Employee will only work within the knowledge, skills and ability criteria in the NPS Entry Level core competencies and those preservation skills for which they are specifically qualified; for example, sill log replacement in a historic cabin or shingle roof replacement. The Certified Employee will work under close supervision of the HPT or HPM, with emphasis on safety and developing knowledge of historic preservation goals, techniques, and practices.

A Certified Employee may advance to higher NPS essential core competencies and preservation qualifications through the appropriate training and field experience. Advancement will be acknowledged in the Certified Employee's training plan and record. The Certified Employee may then conduct historic preservation work commensurate with the knowledge, skills and ability criteria at the training level under the supervision of the HPT or HPM.

The Certified Employee will coordinate with the HPM in project development, and submit a description of the proposed project to the HPT and SHPO no later than **April 1**, prior to the work being carried out. The SHPO and the HPT will review the projects to insure that the employee performing the work is

certified in all aspects of the proposed project and meets all provisions of this PA. Projects led by a Certified Employee must be carried out under the close supervision of the HPM and HPT staff.

If a Certified Employee's work or performance is found to be deficient by the HPM, engineering staff or SHPOs, the HPT will coordinate and assist with the District and/or Forest to supply the necessary training or oversight. If the Certified Employee's performance cannot be addressed through these actions, certification will be terminated by the HPT.

Further, certification will be terminated by the HPT in consultation with the HPM and SHPO, if a Certified Employee has not been directly involved in a preservation project for longer than a 3-year period. The HPT, in consultation with the appropriate Forest/District and HPM, will determine what training is necessary to re-certify the employee (i.e., new work procedures or equipment, new preservation treatments).

Certification of employees of other agencies or private-sector and non-profit preservation entities by the HPT, in order to work more collaboratively and expand preservation capacity, will require a separate agreement among that agency or entity, the FS, SHPOs, and the ACHP as appropriate, outside the scope of this PA.

A Certified Employee may assist other state and federal agencies and preservation entities in historic preservation projects but will not be responsible for (or assume) project planning, oversight, supervision, documentation or SHPO reporting unless specifically authorized under a participating or other formal agreement.