

July 31, 2024

Kathy Bushnell, Helena District Ranger
2880 Skyway Dr.
Helena, Montana 59602

Re: Larabee Hat Vegetation Project

Dear Ranger Bushnell,

Thank you for the opportunity to comment on the Larabee Hat Vegetation Project Preliminary Analysis. Please accept these additional comments from me.

According to the attached, National Archives' Code of Federal Regulations:

Environmental document means an environmental assessment, environmental impact statement, documented categorical exclusion determination, finding of no significant impact, record of decision, or notice of intent.

<https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1508/section-1508.1>

For the Larabee Hat project, the Forest Service chose a Preliminary Assessment which is not one of the choices listed above.

The same National Archives website defines the following:

Categorical exclusion means a category of actions that an agency has determined, in its agency NEPA procedures ([§ 1507.3 of this subchapter](#)) or pursuant to [§ 1501.4\(c\) of this subchapter](#), normally does not have a significant effect on the human environment.

Environmental assessment means a concise public document, for which a Federal agency is responsible, for an action that is not likely to have a significant effect or for which the significance of the effects is unknown ([§ 1501.5 of this subchapter](#)), that is used to support an agency's determination of whether to prepare an environmental impact statement ([part 1502 of this subchapter](#)) or a finding of no significant impact ([§ 1501.6 of this subchapter](#)).

Environmental impact statement means a detailed written statement that is required by section 102(2)(C) of NEPA.

Extraordinary circumstances means factors or circumstances that indicate a normally categorically excluded action may have a significant effect. Examples of extraordinary circumstances include potential substantial effects on sensitive environmental resources; potential substantial disproportionate and adverse effects on communities with environmental justice concerns; potential substantial effects associated with climate change; and potential substantial effects on historic properties or cultural resources.

Major Federal action or action means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

(1) Examples of major Federal actions generally include:

(i) Granting authorizations, including permits, licenses, rights-of-way, or other authorizations.

(ii) Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, [5 U.S.C. 551](#) et seq., or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency's policies that will result in or substantially alter agency programs.

(iii) Adoption of formal plans, such as official documents prepared or approved by Federal agencies, which pre-

scribe alternative uses of Federal resources, upon which future agency actions will be based.

(iv) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and related agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(v) Approval of or carrying out specific agency projects, such as construction or management activities.

(vi) Providing more than a minimal amount of financial assistance, including through grants, cooperative agreements, loans, loan guarantees, or other forms of financial assistance, where the agency has the authority to deny in whole or in part the assistance due to environmental effects, has authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which the agency is providing the financial assistance.

(2) Major Federal actions do not include the following:

(i) Non-Federal actions:

(A) With no or minimal Federal funding; or

(B) With no or minimal Federal involvement where the Federal agency cannot control the outcome of the project;

(ii) Funding assistance solely in the form of general revenue sharing funds that do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) Loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action;

(iv) Business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act ([15 U.S.C. 636\(a\)](#) and [\(b\)](#)), or title V of the Small Business Investment Act of 1958 ([15 U.S.C. 695](#) through [697g](#));

(v) Judicial or administrative civil or criminal enforcement actions;

(vi) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States;

(vii) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority; and

(viii) Activities or decisions for projects approved by a Tribal Nation that occur on or involve land held in trust or restricted status by the United States for the benefit of that Tribal Nation or by the Tribal Nation when such activities or decisions involve no or minimal Federal funding or other Federal involvement.

The Forest Service wrote a Preliminary Assessment for the Larabee Hat project which is not one of the choices listed above. A Preliminary Assessment is apparently something that the HLCNF made up and is not legal since it is not one of the options listed above.

The Forest Service could have chosen to write a CE, an EA, or an EIS but not a Preliminary Assessment. The project is clearly a major federal action so choosing a CE is not an option.

An Environmental Assessment (EA) is prepared to determine if a federal action will have significant impacts and to address unresolved environmental issues. The EA may provide the rationale for a decision on a proposed action. Any action that is not categorically excluded and does not require an Environmental Impact Statement (EIS), has impacts that are uncertain, or has unresolved environmental issues, requires preparation of an EA. In addition, an EA may be prepared to assist planning or decision-making, simplify permit approval or help obtain other necessary legal clearances.

An EIS is used by federal agencies, in conjunction with other relevant information, to plan actions and make decisions. The

primary purpose of an EIS is to ensure that a full and fair discussion of all significant environmental impacts occurs and to inform decision-makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.

The Forest Service's failure to provide NEPA analysis in the form of an Environmental Assessment or Environmental Impact Statement violates NEPA and the APA.

The Forest Service's refusal to prepare a full EIS or even an EA for the Larabee Hat project violates NEPA and the APA.

A full EIS or at least an EA is necessary for the Larabee Hat Project because it may have a cumulatively significant impact. The project analysis area encompasses approximately 43,158 acres—within which 17,809 acres, 41% are proposed for logging and or burning, and further includes constructing or reconstructing of 56.4 miles of logging roads. The project will also log and burn an inventoried roadless area and the project area contains habitat for the threatened grizzly bear, lynx, wolverine, bull trout and whitebark pine. To prepare only an EA for a project of this length and magnitude is not consistent with Forest Service practice. For example, the East Reservoir Project on the Kootenai National Forest authorized 8,845 acres of commercial logging, 9 miles of permanent roads, and 4 miles of temporary roads, and the agency prepared an EIS for that Project. Thus, the magnitude and duration of the Larabee Hat Project indicate the potential for significant ad-

verse impacts. Moreover, the high existing road density in this Project area from past activities – in addition to roads and logging activities (past, present, and reasonably foreseeable) and on Federal and State lands and private timber lands in the Project area or nearby – indicate a likelihood of a cumulatively significant impact. Road activities and logging activities at this level have severe displacement effects on native wildlife such as elk and grizzly bears, exacerbate the spread of noxious weeds, and also degrade critical ecological resources such as soil and water quality.

A full EIS is necessary for the Ripley Project because it is likely to adversely affect grizzly bears, lynx, bull trout, white-bark pine, and wolverines.

The Forest Plan direction for the area is to manage the land for grizzlies to be able to connect with grizzlies in the Greater Yellowstone Ecosystem by traveling through the Larabee Hat Project area. Therefore the project is violating the HLCNF Revised Forest Plan.

Roads pose the greatest threat to grizzly bears. The Preliminary Assessment says grizzly bears use this area. The level of logging and roading authorized by the Project will likely displace these bears out of this area for the duration of years long project, thereby eliminating any potential for breeding in this area and further retarding recovery of this population. This factor alone indicates that an EIS is necessary.

The Preliminary Wildlife Report states on page 8:

Grizzly Bear

Potentially Affected Environment

Secure Habitat

Grizzly bear habitat that is considered ‘secure’ is generally considered to be physically removed from areas of recurring human use. Secure habitat has commonly been defined as areas of a specified minimum size that are beyond a specified distance from motorized routes (Mace et al. 1996, Boulanger and Stenhouse 2014, McLellan 2015, Proctor et al. 2018, Proctor et al. 2019). As noted in the Grizzly Bear Methods section, secure habitat includes any patch at least 0.3 miles from any motorized routes. The existing secure habitat within the Spotted Dog Grizzly Bear Analysis Unit (GBAU) and the project area is shown in Table 2. Secure patches range in size from less than an acre to a little more than 16,000 acres with an average patch size of 716 acres.

This is incorrect. The HLCNF Forest Plan defines grizzly secure patches as being at least 2500 acres in size. Page 237 of the Forest Plan states:

secure core (grizzly bear).. an area of the NCDE primary conservation area 500 meters or more from (1) a route open to public wheeled motorized use during the grizzly bear nondenning season, (2) a gated route, or (3) a route closed only with a sign that is greater than or equal to 2,500 acres in size.

The Forest Service has not demonstrated that the project complies with the Forest Plan standards for grizzly secure habitat in

violation of NEPA, the APA, NFMA, the Forest Plan and the ESA.

How much secure grizzly habitat is in the project area now?

How much will secure grizzly habitat is in the project area will be in the project area during and after the project is completed?

What is the total and open road density in the project area now?

What will the total and open road density in the project area during and after the project is completed?

For all of these reasons, we have raised substantial questions whether the Larabee Hat Project may have a significant effect, and an EIS is required under NEPA. The Forest Service has failed to set forth a convincing statement of reasons that the Project will not have a significant impact.

State the Telegraph and Ten Mile Projects on the HLCNF and projects on the Spotted Dog Wildlife Refuge and on and private timber lands in the Project area or nearby – indicate a likelihood of a cumulatively significant impact. Road activities and logging activities at this level have severe displacement effects on native wildlife such as elk and grizzly bears, exacerbate the spread of noxious weeds, and also degrade critical ecological resources such as soil and water quality.

Please find Sells et al. 2023 and Peck et al. 2017 attached which show the project area is in an important corridor for grizzly bears to reconnect with grizzlies in the Greater Yellowstone Ecosystem which is important to recover grizzly bears.

Page 147 of the Forest Plan states the following about the area the Larabee Hat project is in:

The Divide GA provides opportunities for connections for wildlife populations between the expanse of public lands in northern Montana with public lands in the Yellowstone area and southwest Montana. It sits at the southern end of the Northern Continental Divide Ecosystem Recovery Zone for grizzly bears and is an important north/south connectivity corridor.

Page 153 of the Forest Plan states the project area in an important corridor for not only grizzly bears but also lynx, wolverine and other species:

The Divide landscape provides habitat connectivity for wide-ranging species (grizzly bear, Canada lynx, wolverine, and others) between public lands in northern Montana and those in south and southwestern Montana, including lands in the Greater Yellowstone Ecosystem.

The Preliminary Assessment also does not demonstrate that the project complies with the big game standards in the Forest Plan.

Even if it were legal to write a Preliminary Assessment, it violated NEPA for failing to take a hard look at the impacts of the project and for failing to answer our questions submitted in

the scoping process.

The Forest Service has failed to set forth a convincing statement of reasons that the Project will not have a significant impact.

Thank you for your time and consideration of our comments.

Sincerely yours,
Mike Garrity

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