August 1, 2026

Reviewing Officer
Attn: Judith Springs Project,
2880 Skyway Drive, Helena, MT, 59602

Dear Objection Reviewing Officer:

Thank you for considering our Objection against the Draft Decision Notice, FONSI, and Environmental Assessment for the Judith Springs Vegetation Project, Forest Service, Helena-Lewis and Clark National Forest (HLCNF), Judith-Musselshell Ranger District.

Identification of Objectors: Lead Objector:
Michael Garrity,
Executive Director,
Alliance for the Wild Rockies (Alliance)
PO Box 505
Helena MT 59624
406-459-5936

And for
Sara Johnson, Director
Native Ecosystems Council
PO Box 125
Willow Creek, MT 59760

And for
Steve Kelly, Director
Council on Wildlife and Fish
P.O. Box 4641
Bozeman, MT 59772

And for

Clint Nagel, President

Gallatin Wildlife Association

P.O. Box 10571,
Bozeman, MT 59719

And for

Kristine Akland
Center for Biological Diversity

P.O. Box 7274 Missoula, MT 59807

kakland@biologicaldiversity.org

NOTICE IS HEREBY GIVEN that Alliance objects pursuant to 36 CFR section 218 to the Responsible Official's selection of the proposed action alternative which includes all designed features as outlined in the action alternative which includes all designed features as outlined in the Appendix C of the Draft Decision Notice (DDN).

The Alliance is objecting to this project on the grounds that implementation of the Selected Alternative would not be fully in accordance with the laws governing management of the national forests such as the ESA, NEPA, NFMA, the Helena - Lewis and Clark Forest Plan and the APA, and will result in additional degradation in already degraded watersheds and mountain slopes, further upsetting the wildlife habitat, ecosystem and human communities. Our objections are detailed below.

As a result of the Draft DN, individuals and members of the above-mentioned groups would be directly and significantly affected by the logging and associated activities. Appellants are conservation organizations working to ensure protection of biological diversity and ecosystem integrity in the Wild Rockies bioregion (including the HLCNF). The individuals and members use the project area for recreation and other forest related activities. The selected alternative would also further degrade the water quality, wildlife and fish habitat. These activities, if implemented, would adversely impact and irreparably harm the natural qualities of the Project

Area, the surrounding area, and would further degrade the watersheds and wildlife habitat.

1. Objectors names and addresses:

Lead Objector: Mike Garrity, Executive Director, Alliance

for the Wild Rockies

P.O. Box 505; Helena, MT 59624

Phone 406 459-5936

Objector Sara Jane Johnson

Director, Native Ecosystems Council,

P.O. Box 125

Willow Creek, MT;

Augusta, MT 59410

Objector Clint Nagel, President

Gallatin Wildlife Association

P.O. Box 10571,
Bozeman, MT 59719

Objector Steve Kelly

Director, Council on Wildlife and Fish

P.O. Box 4641

Bozeman, MT 59772

Objector Kristine Akland

Center for Biological Diversity (CBD)

P.O. Box 7274
Missoula, MT 59807

kakland@biologicaldiversity.org

2. Signature of Lead Objector:

Signed this 31st day of July, 2026 by Lead Objector,

/s/ Michael Garrity

3. Lead Objector: Michael Garrity, Alliance for the

Wild Rockies

4. Name of the Proposed Project, Responsible Official,

National Forest and Ranger District where Project is:

Judith Springs Vegetation Project.

District Ranger Jason Oltrogge, Judith-Musselshell Ranger District, Helena-Lewis and Clark National Forest is the Responsible Official. The Judith Springs Vegetation project area consists of 81,174 acres in the eastern portion of the Little Belts Mountains in Judith Basin and Meagher Counties, north of Highway 12 in the Spring Creek, Musselshell and South Fork Judith River watersheds. The area is identified in the 2021 Helena-Lewis and Clark Land Management Plan as being within the Little Belts Geographic Area. The decision would authorize the treatment of approximately 13,772 acres (17 percent) of the 81,174-acre project area through a combination of intermediate harvest, regeneration harvest, pre- and non-commercial thinning, and intentional burning.

Approximately 7,600 acres of commercial timber harvest (regeneration or intermediate) would be authorized in the Judith Springs Vegetation Project. In commercial harvest units, one of the following silvicultural harvest methods would be applied: clearcuts with reserves, overstory removal cuts, seed-tree seed cuts, shelterwood establishment cuts, two-aged seed-tree seed and removal cuts, seed-tree final cuts, commercial thinning, and improvement harvest. Following regeneration harvest, site preparation for regeneration could include the following activities: slashing of sub-

merchantable trees or brush, prescribed burning, mechanical or hand piling and burning of activity fuels and slash. Approximately 2,427 acres of prescribed fire treatments or fuels treatments and 3,746 acres of non-commercial thinning (pre-commercial) are authorized in the Judith Springs Vegetation Project. Work would be accomplished by using a combination of hand work, chainsaw work, and controlled ignitions depending on vegetation and fuel characteristics: broadcast burning, pre-commercial thinning, slashing of sub-merchantable trees and brush, hand piling pile burning, and intentional burning.

Ranger Oltrogge chose the proposed Action Alternative in the Draft Decision Notice and FONSI.

NOTICE IS HEREBY GIVEN that Alliance and Native Ecosystems Council (NEC) object pursuant to 36 CFR section 218 to the Responsible Official's adoption of the Action Alternative. As discussed below, the Judith Springs Project as proposed violates the National EnvironmentalPolicy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the Helena Lewis and Clark National Forest (HLCNF) Forest Plan and the Administrative Procedure Act (APA).

Location

The Judith Springs project area encompasses 81,174 acres.

13,772 acres of treatments are proposed including commercial timber harvest (7,600 acres), non-commercial thinning (3,746 acres), and fuels treatments (2,427 acres). The decision would also implement the Little Belt, Castle, and North Half-Crazy Mountains Travel Management Plan (2007) within the project area. The decision authorizes the construction of 60 miles of roads.

5. Specific Issues Related to the Proposed Projects, including how Objectors believes the Environmental Analysis or Draft Decision Notice and FONSI specifically violates Law, Regulation, or Policy: We included this under number 8 below.

Thank you for the opportunity to object on the Judith Springs Project. Please accept this objection from me on behalf of the Alliance for the Wild Rockies,

Council on Wildlife and Fish, Center for Biological Diversity and Native Ecosystems Council.

6. Suggested Remedies that would Resolve the Objection:

We recommend that the "No Action Alternative" be selected. We have also made specific recommendations after each problem.

7. Supporting Reasons for the Reviewing Office to Consider:

This landscape has very high wildlife values, including for the threatened grizzly bear, lynx, big game species, and wildlife dependent upon unlogged forests. The project area will be concentrated within some of the best wildlife habitat in this landscape which is an important travel corridor for wildlife such as lynx, grizzly bears, and wolverine. The agency will also be exacerbating an ongoing problem of displacing elk to adjacent private lands in the hunting season due to a lack of security on public lands. The public interest is not being served by this project.

Suggested Remedies to Resolve the Objection:

The agency can choose the No Action Alternative or withdraw the draft decision and EA/FONSI and write an EIS that fully complies with the law.

The HLCNF must also consult with the Fish and Wildlife Service forest wide on and the impact of the project on lynx, grizzly bears, whitebark pine and wolverines. Without these corrective actions, implementation of the the Judith Springs project, will lead to severe, irretrievable impacts on almost all

wildlife species on the Forest. These impacts, if continued across the HLCNF for other projects, will erode the viability of a huge number of wildlife species across this landscape.

8. Statements that Demonstrates Connection between

Prior Specific Written Comments on the Particular

Proposed Project and the Content of the Objection.

We wrote in our comments:

The best available science, Christensen et al (1993), recommends elk habitat effectiveness of 70% in summer range and at least 50% in all other areas where elk are one of the primary resource considerations. According to Figure 1 in Christensen et al (1993), this equates to a maximum road density of approximately 0.7 mi/sq mi. in summer range and approximately 1.7 mi/sq mi. in all other areas.

Do any of the 6th Code watersheds in the Project area meet either of these road density thresholds? It appears the Project area as a whole also far exceeds these thresholds. Please disclose this type of Project level or watershed analysis on road density.

Christensen et al (1993) state that if an area is not meeting the 50% effectiveness threshold of 1.7 mi/sq mi, the agency should admit that the area is not being managed for elk: "Areas where habitat effectiveness is retained at lower than 50 percent must be recognized as making only minor contributions to elk management goals. If habitat effectiveness is not important, don't fake it. Just admit up front that elk are not a consideration."

We sent a FOIA request to the Forest Service for records of road closure violations between mid-2014 and mid-2019. In response, the Forest Service disclosed over 50 reported road closure violations in the Little Belts in that 5-year time-frame. Significantly, this data only includes the witnessed and reported violations. It is fair to assume that there are many more violations that regularly occur and are not witnessed and reported. It is also fair to assume that you have made no effort to request this available information from your own law enforcement officers, much less incorporate it into your analysis. Considering your own admissions that road density is the primary factor that degrades elk and grizzly habitat, this is a material and significant omission from your analysis– all of your ORD and HE calculations are wrong without this information.

Will the project comply with the Eastside Assessment cover standards designed to protect and conserve elk habitat? The failure to analyze road closure violations even more egregious. Chronic, illegal road use is reasonably foreseeable and must be addressed in the cumulative effects analysis for both the Project and the Forest Plan amendment.

Additionally, your emphasis on elk populations across entire hunting districts is disingenuous and has little relevance to whether you are meeting your Forest Plan obligations to maintain sufficient elk habitat onNational Forest lands. As you note, the Forest Plan estimated that 70% of elk were taken on National Forest lands in 1986. What percentage of elk are currently taken on National Forest lands? Please disclose this information. Have you asked Montana FWP for this information? Any honest biologist would admit that high elk population numbers do not indicate that you are appropriately managing National Forest elk habitat; to the contrary, high elk numbers indicate that you are so poorly managing elk habitat on National Forest lands that elk are being displaced to private lands where hunting is limited or prohibited. Your own Forest Service guidance document, Christensen et al 1993 states: "Reducing habitat effectiveness should never be considered as a means of controlling elk populations."

In the Judith Springs Project area, what is the linear motorized route density on National Forest System lands in the action area and during implementation?

Please clarify what is going on. Have you closed or obliterated all roads that were promised to be closed or obliterated in the Travel Plan? Or, are you still waiting for funds to close or obliterate those roads? This distinction matters because you cannot honestly claim that you are meeting road density standards promised by the Travel Plan if you have not yet completed the road closures/obliterations promised by the Travel Plan. Furthermore, as noted above, you have a major problem with recurring, chronic violations of the road closures created by the Travel Plan, which means that your assumptions in the Travel Plan that all closures would be effective has proven false. For this reason, you cannot tier to the analysis in the Travel Plan because it is invalid. You must either complete new NEPA analysis for the Travel Plan on this issue or provide that new analysis in the NEPA analysis for this Project. Either way, you must update your open road density calculations to include all roads receiving illegal use.

Please produce the full Travel Plan on your website, as well as its full NEPA analysis. Please take a hard look at habitat effectiveness in this Project area.

Christensen et al (1993) states: "Any motorized vehicle use on roads will reduce habitat effectiveness. Recognize and deal with all forms of motorized vehicles and all uses, including administrative use." Please disclose this to the public and stop representing that roads closed to the public should not be included in habitat effectiveness calculations. The facts that (a) you are constructing or reconstructing many miles of road for this project, (b) you have problems with recurring illegal use, and (c) you already admit that you found another 25 miles of illegal roads in the area, as part of the Horsefly project, that you have not committed to obliterating, means that your conclusion that this Project will have no effect on open road density or habitat effectiveness is implausible to the point of being disingenuous. You cannot exclude these roads simply because you say they are closed to the public. Every road receiving motorized use must be included in the HE calculation. You must consider all of this road use in order to take a hard look that is fully and fairly informed regarding habitat effectiveness. In the very least you must add in all "non-system" roads, i.e. illegal roads, as well as recurring illegal road use (violations) in your ORD calculations.

Christensen et al 1993 finds: "Areas where habitat effectiveness is retained at lower than 50 percent must be recognized as making only minor contributions to elk management goals. If habitat effectiveness is not important, don't fake it. Just admit up front that elk are not a consideration."

How many miles of new roads are you planning on building?

You fail to make this admission and instead represent that you are meeting all relevant objectives.

The project will be in violation of NEPA, NFMA, the Forest Plan, The Travel Plan, the APA and the ESA because of the recurring road closure violations. Your assumptions in the Travel Plan that all closures would be effective has proven false. For this reason, you cannot tier to the analysis in the Travel Plan because it is invalid.

The Forest Service should provide an analysis of how much of the Project area, Project area watersheds, affected landscape areas, or affected Hunting Districts provide "elk security area[s]" as defined by the best available science, Christensen et al (1993) and Hillis et al (1991), to be comprised of contiguous 250 acre blocks of forested habitat 0.5 miles or more from open roads with these blocks encompassing 30% or more of the area.

Please provide a rational justification for the deviation from the Hillis security definition and numeric threshold that represent the best available science on elk security areas.

The Forest Service responded on page 8 of the Appendix in the Wildlife report:

Elk/Other Ungulates
The HLC Forest Plan EIS (USFS 2021b), (p. 416) assumes that the coarse filter approach would retain representative habitats and seral stages needed for use by elk to persist in the planning area based on the existence of plan components developed for ecosystem integrity and ecosystem diversity. The analysis concludes that by "providing vegetation composition, structure, and distribution elk life history requirements would be fulfilled allowing elk to continue to be present in the planning area in support of the 2012 Planning Rule requirement to maintain the diversity of native wildlife species" (USFS 2021b), (page 430).
However, the HLC Forest Plan EIS (USFS 2021b), (pages 414, 416) notes that considerations in addition to the coarse filter are required to maintain elk presence and distribution on National Forest System lands for hunting, viewing, and other human uses. These additional considerations focus on minimizing disturbance to ungulates on key ranges and coordinating with Montana Fish, Wildlife, and Parks biologists prior to management actions that would increase or change the location, timing, mileage, or density of wheeled motorized routes open during the archery and rifle hunting seasons to identify possible management actions that may reduce the potential for displacement of big game species. Design features (see table below) that minimize disturbance to ungulate key ranges and required coordination with Montana Fish, Wildlife and Parks biologists prior to management actions would minimize these additional effects to elk and other ungulates.
The project is consistent with all applicable vegetation components that provide key ecosystem characteristics required to maintain habitat for elk and other ungulates in the planning area and the project is either moving towards key vegetative desired conditions or not precluding future attainment as noted in the "Judith Springs Vegetation Report" and Forest Plan consistency table (see the 'Vegetation' tab). See the project record for more information.
There are some effects anticipated to elk and other ungulates from disturbance and vegetation manipulation associated with project implementation. To address those effects, we are relying on

the analyses in the "Coyote Divide Wildlife Report" (pages 35-38) to provide a general description of the effects of vegetation management on elk and by extension other ungulates. The "Coyote Divide Wildlife Report" adequately describes the Judith Springs project effects. We are also relying on the analysis in the elk section of the HLC Forest Plan EIS (USFS 2021b), (pages 414-440) since this provides the overall context of how the plan components achieve the desired conditions that promote the sustainability of habitat for elk and other ungulates. Both of these documents are incorporated by reference. As previously noted, this approach aligns with CFRs 1b.9(e)(8) and 1b.9(e)(8)(iii).

The agency will also be exacerbating an ongoing problem of displacing elk to adjacent private lands in the hunting season due to a lack of security on public lands. The public interest is not being served by this project.

Moreover, in light of the fact that revised Forest Plan eliminated hiding cover standards designed to protect and conserve elk habitat which is a NEPA violation because their is no way to measure the effect of roads on wildlife. The only protection left for elk habitat would be the Forest Plan open road density limits and mandates to maintain existing HE. This makes your failure to analyze road closure violations even more egregious – both in the Project analysis and your analysis of the Forest Plan amendment. Chronic, illegal road use is reasonably foreseeable and must be addressed in the cumulative effects analysis for both the Project and the Forest Plan amendment.

Additionally, your emphasis on elk populations across entire hunting districts is disingenuous and has little relevance to whether you are meeting your Forest Plan obligations to maintain sufficient elk habitat onNational Forest lands. As you note, the Forest Plan estimated that 70% of elk were taken on National Forest lands in 1986. What percentage of elk are currently taken on National Forest lands? You refuse to disclose this information. Have you asked Montana FWP for this information? Any honest biologist would admit that high elk population numbers do not indicate that you are appropriately managing National Forest elk habitat; to the contrary, high elk numbers indicate that you are so poorly managing elk habitat on National Forest lands that elk are being displaced to private lands where hunting is limited or prohibited. Your own Forest Service guidance document, Christensen et al 1993 states: "Reducing habitat effectiveness should never be considered as a means of controlling elk populations."

Nonetheless, you plan to construct 60 miles of new roads. Do your open road density calculations include all of the recurring illegal road use documented in your own law enforcement incident reports?

The Travel Plan for the Little Belts was issued in 2007. You represent that the Travel Plan "analyzed the open road density, as well as elk security as measured by areas at least 250 acres in size and greater than 1⁄2 mile from an open road or motorized trail." You represent that "Open road density (for public access) was reduced in all management areas and road density standards were met or exceeded in the Little Belt . . . Mountains (USDA

Please clarify what is going on. Have you closed or obliterated all roads that were promised to be closed or obliterated in the Belts Travel Plan? Or, are you still waiting for funds to close or obliterate those roads? This distinction matters because you cannot honestly claim that you are meeting road density standards promised by the Travel Plan if you have not yet completed the road closures/obliterations promised by the Travel Plan. Furthermore, as noted above, you have a major problem with recurring, chronic violations of the road closures created by the Travel Plan, which means that your assumptions in the Travel Plan that all closures would be effective has proven false. For this reason, you cannot tier to the analysis in the Travel Plan because it is invalid. You must either complete new NEPA analysis for the Travel Plan on this issue or provide that new analysis in the NEPA analysis for this Project. Either way, you must update your open road density calculations to include all roads receiving illegal use.

In your analysis you set forth a habitat effectiveness estimate in the Travel Plan. It is unclear whether the numbers were based on actual conditions or a promised goal for a future condition.

In 2021, the Forest issued a Revised Forest Plan under the 2012 Planning Rule. However, rather than enhance protections for elk consistent with the mandates of the 2012 Planning Rule discussed above, the Revised Forest Plan removed all standards for elk habitat protection from the Forest Plan.

The original Forest Plan had numeric standards for (1) maintaining a minimum percentage of elk hiding cover (i.e. maintaining a certain amount of tree cover), (2) maintaining a minimum percentage of elk thermal cover (i.e. maintaining a certain amount of tree cover), and (3) maintaining a

minimum percentage of elk habitat effectiveness (i.e. limiting roads to low levels for elk security).

In contrast, the Revised Forest Plan removed all numeric standards for elk that had ensured a minimum amount of tree cover, and limited the number of roads, in elk habitat across the Forest.

In lieu of numeric standards, the Revised Forest Plan now contains only "desired conditions" and a single guideline, with no specific numeric thresholds, to manage elk habitat across the Forest.

The Revised Forest Plan Desired Condition FW-FWL-DC-01 states: "Big game species remain on NFS lands throughout the archery and rifle hunting seasons at levels that support Montana Fish, Wildlife, and Parks recommendations regarding big game distribution, population size, and harvest."

Revised Forest Plan Desired Condition FW-FWL-DC-04 states: "Levels and types of public motorized access during the archery and rifle hunting seasons are balanced with desired conditions for wildlife populations and habitat security, as well as with other resource desired conditions."

Revised Forest Plan Guideline FW-FWL-GDL-01 states: "Prior to management actions that would increase or change the location, timing, mileage, or density of wheeled motorized routes open during the archery and rifle hunting seasons, FS biologists should coordinate with Montana Fish, Wildlife, and Parks biologists to identify possible management actions that may reduce the potential for displacement of big game species from NFS lands during the archery and rifle hunting seasons. Possible management actions may vary on a project-specific or local basis, and should be based on scientific information and the most current recommendations made through agency or interagency efforts (such as that described in the U.S. Forest Service and Montana Department of Fish, Wildlife and Parks Collaborative Overview and Recommendations for Elk Habitat Management on the Custer, Gallatin, Helena, and Lewis and Clark National Forests 2013, or subsequent versions [commonly referred to as the Eastside Assessment]). Also see appendix C section titled "Elk and Other Big Game Species." In the Revised Forest Plan EIS, the Forest Service argued that this sea change in Forest management was valid because purportedly "elk numbers are above established population objectives throughout most of central MT, and elk are

increasingly moving to private lands during hunting season . . . regardless of . . . amounts of security on adjacent NFS lands . . . .”

First, the Project violates the Revised Forest Plan. The Project EA lacks any disclosure or discussion of the two Forest Plan desired conditions and one Forest Plan guideline that apply to this Project: FW-FWL-DC-01 and - 04 and FW-FWL-GDL-01, which are quoted above. It is undisputed that “90-95% of the elk in this HD are located on private land during the general rifle season . . . primarily due to poor elk security.” This is the precise concern that the desired conditions and guideline were supposed to protect against – but there is no meaningful analysis of this fact anywhere in the Project EA. The comments from MFWP, existing lack of elk security (less than 30%) and low habitat effectiveness (less than 50%) on Forest lands in the Project area, and the Forest Service’s refusal to make any improvements with this Project to meet basic minimum requirements for elk habitat indicate that the Forest Service is not complying with either desired condition or the guideline. Further, contrary to the guideline, the Forest Service refused to work with MFWP to implement the Eastside Assessment and reduce elk displacement in the Project area by setting a scientifically-based numeric minimum threshold percentage for elk security and habitat effectiveness, and closing roads to achieve those minimum numeric thresholds. Additionally, contrary to the Eastside Assessment, the Forest Service refused to provide “maximum protection” to elk winter range on NFS lands, and instead authorized over 10 miles of new temporary road construction in elk winter range. Similarly, the Forest Service refused to implement the recommendations of Coordinating Elk and Timber Management regarding maintaining a low road density and not constructing roads in elk winter range. In violation of NFMA, NEPA, and the APA, the Forest Service has failed to comply with its own Forest Plan desired conditions and guideline, and has failed to otherwise establish that the project “is designed in a way that is as effective in achieving the purpose of the applicable guideline[.]”

Second, alternatively or in addition, the Project EA violates NEPA. As noted above, is undisputed that "90-95% of the elk in this HD are located on private land during the general rifle season . . . primarily due to poor elk security." There is no disclosure and meaningful analysis of this fact anywhere in the Project EA. In fact, none of the findings and concerns of MFWP quoted above were shared with the public in the Project EA, which

violates NEPA's requirements that the data and assumptions in an EA cannot be incomplete or false, and that the Forest Service cannot withhold information from the public in the EA. Additionally, none of the proposals for increasing elk security provided by MFWP were considered in an alternative in the Project EA – which means the Project EA did not consider a reasonable range of alternatives. Furthermore, by failing to disclose key facts provided by MFWP, Forest Plan requirements, recommendations from the Eastside Assessment and Coordinating Elk and Timber Management, and a comparison between the well-established default scientific thresholds for security (at least 30%) and habitat effectiveness (at least 50%) as compared to Project conditions (pre-, during-, and post-), the Project EA fails to take a hard look at one of the most important public issues on this National Forest – the exacerbation of elk displacement off public lands from logging projects, and the refusal of the Forest Service to take available action to maintain and restore public elk-hunting habitat on National Forest lands.

Third, alternatively or in addition, the Revised Forest Plan violates the 2012 NFMA Planning Rule. A forest plan must include standards or guidelines to protect habitat for game species commonly used by the public for hunting. As set forth above, the 2012 Planning Rule mandates that a forest plan include "standards or guidelines" that "maintain or restore the ecological integrity of terrestrial . . . ecosystems . . . in the plan area, including plan components to maintain or restore . . . function . . ." 36 C.F.R. §219.8 (a)(1). The 2012 Planning Rule similarly mandates that a forest plan include "standards or guidelines" that address "Habitat conditions . . . for wildlife, . . . commonly enjoyed and used by the public[] for hunting . . . ." 36 C.F.R. §219.10 (a)(5). Regarding 36 C.F.R. §219.10 (a)(5), the 2012 Planning Rule states: "The Agency recognizes the important role of NFS lands in providing the habitat for these species. Plan components . . . will provide the habitat and other ecological conditions necessary to support these species." In implementing these standard or guidelines, the Forest Service must use the best available science. 36 C.F.R. §219.3. The Revised Forest Plan violates the 2012 Planning Rule because elk are a species commonly hunted by the public, but the Revised Forest Plan does not include the scientifically-based standards or guidelines necessary to support functioning elk habitat on Forest lands during the public hunting season. The Revised Forest Plan contains one elk habitat guideline; the Forest Service interprets the guideline to provide no enforceable protections for maintaining a scientifically-based minimum percentage of elk security and elk habitat effectiveness, and interprets the guideline to require no action to restore public land elk hunting

habitat in areas like this Project area, where the elk security is so egregiously low that 90-95% of elk are displaced from public lands during hunting season. If the Revised Forest Plan does not protect, and requires no restorative action, for elk habitat that is in as dire straits as the elk habitat in the Judith Springs Project Area, then the Revised Forest Plan provides no meaningful protection at all for elk habitat and the public elk-hunting experience, which violates the purpose, intent, and plain language of the 2012 NFMA Planning Rule, as well as NFMA and the APA.

The Judith Springs project is not following the best available science for elk security in violation of the Forest Plan, NFMA, NEPA and the APA. The Forest Service needs to write an EIS for the Judith Springs project.

Remedy
Choose the No action Alternative of withdraw the DDN and FONSI and write an EIS that fully complies with the law.

I also wrote in my April 9, 2026 comments:

The Little Belts are an important corridor that species like grizzly bears need to survive over the long run.

A total of approximately 62 miles of temporary road is proposed to be constructed of which about 51 miles would be new construction and 11 miles would be reconstructed on an existing template.

The Project EA fails to fully and fairly disclose accurate available data to the public regarding roads, and fails to take the requisite hard look at the cumulative effects of existing high road density, new Project roads, pervasive illegal motorized use, and roads closed-on-paper-only by the Travel Plans.

Grizzly bears, wolverines ,lynx and elk are all harmed by motorized use, including motorized roads and motorized trails on the Forest. The Forest Service has multiple years of detailed information in its internal files regarding precise locations of illegal motorized use, failed road barriers, and roads "closed-on-paper-only" by the Travel Plans, but it did not disclose this available detailed information to the public in the Project EA.

How many road closure violations have occurred in the Judith-Musselshell Ranger District is the last 5 years?

The cumulative effects analyses for grizzly bears, lynx, wolverines, and elk all state that Travel Plan implementation is a factor that benefits these species, but all three analyses fail to disclose that over 100 miles of closures promised under the Travel Plan have not yet been implemented. Additionally, the cumulative effects analyses for these three species dismiss illegal motorized use as something that "could occur anywhere on the Forest" and represent that "the amount, location, duration, and timing of effects resulting from such unauthorized use is not known" despite the Forest Service having detailed records with latitude/longitude coordinates for dozens of known, documented violations. Accordingly, the Project EA fails to provide the public with a quantified, detailed cumulative effects analysis of the impact of roads on road-sensitive wildlife species such as elk, grizzly bears, and wolverine – in particular, the Project EA fails to provide an accurate analysis of the cumulative effects of existing high open road density and lack of secure habitat, existing known unauthorized motorized use, "closed-on-paper" roads that are accessible to motorized vehicles, the decrease in secure habitat from the Project, and the likely increase in unauthorized motorized use from newly-constructed Project roads.

The Wildlife Resources Report states starting on page 13:

Unauthorized Motorized Use

General Effects of Unauthorized Use on Grizzly Bears

Unauthorized motorized use is not the result of a federal action and therefore not analyzed under effects of the action, but this use may have effects that are considered as part of the environmental baseline. Because of this, we have considered, both qualitatively and through the metrics used to quantify grizzly bear habitat security as described in the following sections, the effects of such unauthorized motorized use on grizzly bears to the best of our ability.

Unauthorized motorized use occurs on National Forest System roads and trails that are restricted seasonally or yearlong, on unauthorized routes, and cross country. Unauthorized routes are defined in 36 C.F.R. 212.1 as "a road or trail that is not a Forest road or trail nor a temporary road or trail and that is not included in a forest transportation atlas" (i.e. Motor Vehicle Use (MVUM) map). The MVUM displays National Forest System routes (roads and trails) or areas designated as open to motorized travel.

Routes not shown on the MVUM are not open to public motor vehicle travel. The MVUM is a legally enforceable map that serves as the basis of enforcement of agency regulations concerning motorized use. According to 36 C.F.R. 261.13

"[a]fter National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations..."

The Forest Service responds to the discovery of unauthorized motorized use when resources allow through actions that may include issuing citations and patrolling certain areas for repeat violations. The Forest addresses unauthorized use through corrective actions such as signing the area with a clear notice that motorized use is prohibited, replacing broken locks, adding physical closure devices, or other actions.

Despite ongoing unauthorized use, the Northern Continental Divide Ecosystem grizzly bear population has more than tripled in size from an estimated 300 bears in 1986 to 1,163 in 2023 since the 1975 listing of grizzly bears as threatened (USDI Fish and Wildlife Service 2022, Costello and Roberts 2022). Their occupied range increased from 9,600 mi^2 in 1975 to 21,487 mi^2 in 2022 with an 11 percent increase alone between 2020 and 2022 (USDI Fish and Wildlife Service 2022, Costello and Roberts 2022). Furthermore, it is not possible to determine whether a grizzly bear was even in the area at the time of the disturbance from the unauthorized motorized use. If a grizzly bear was in the area at the time of unauthorized motorized use, it is not possible to accurately determine the extent of effects as the grizzly bear may have not reacted in any way, it may have been startled, or it potentially fled the area temporarily.

The likelihood of a grizzly bear being in the area of unauthorized motorized access when the unauthorized use occurs would be very low due to their large home range size and relatively low levels of known illegal use in the project area. In addition, not all grizzly bears are affected in the same way by motorized access. Northrup and others (Northrup et al. 2012) looked at various levels of road use (low, medium and high) and found

that during the day bears avoided crossing roads of all use levels; however, the higher the use level the more likely avoidance occurred. Low volume routes were crossed during both day and night hours. As such, the expected short- term, temporary unauthorized motorized use is not likely to significantly affect grizzly bears using the area of the unauthorized motorized use.

The project is in violation of NEPA, NFMA, the Forest Plan, The Travel Plan, the APA and the ESA because of the re-occurring road closure violations. Your assumptions in the Travel Plan that all closures would be effective has proven false. Your assumption that the road closure violations are not the result of a federal action is also false. The Forest Service built the roads. Illegal use of Forest Service roads could not have happened if the Forest Service did not build the roads in the first plan. Finally the following statement is also incorrect, If a grizzly bear was in the area at the time of unauthorized motorized use, it is not possible to accurately determine the extent of effects as the grizzly bear may have not reacted in any way, it may have been startled, or it potentially fled the area temporarily.

The 9th circuit court of appeals has ruled on the Black Ram logging project in the Kootenai National Forest that unauthorized motorized use is a take on grizzly bears.

Please amend the revised Forest Plan to count logging and administrative use as an open road and either complete new NEPA analysis for the Travel Planned the Forest Plan on this issue or provide that new analysis in the NEPA analysis for this Project. Either way, you must update your open road density calculations to include all roads receiving legal and illegal use. Please also amend the revised Forest Plan to include to have a direction for grizzly bears that protects grizzly bear and other wildlife habitat by following the Eastside assessment.

For these reasons, you cannot tier to the analysis in the Travel Plan because it is invalid.

Please see the following article that shows that the NCDE population os expanding and the Little Belt Mountains are in occupied grizzly habitat.

Yellowstone grizzly range contracts by 4%, while N. 'Continental Divide' bears gain 12% more ground

Greater Yellowstone Ecosystem trends — which include another high mortality year — are not a cause for concern, federal and state grizzly bear managers say

BY:
MIKE KOSHMRL
-
DECEMBER 27, 2025

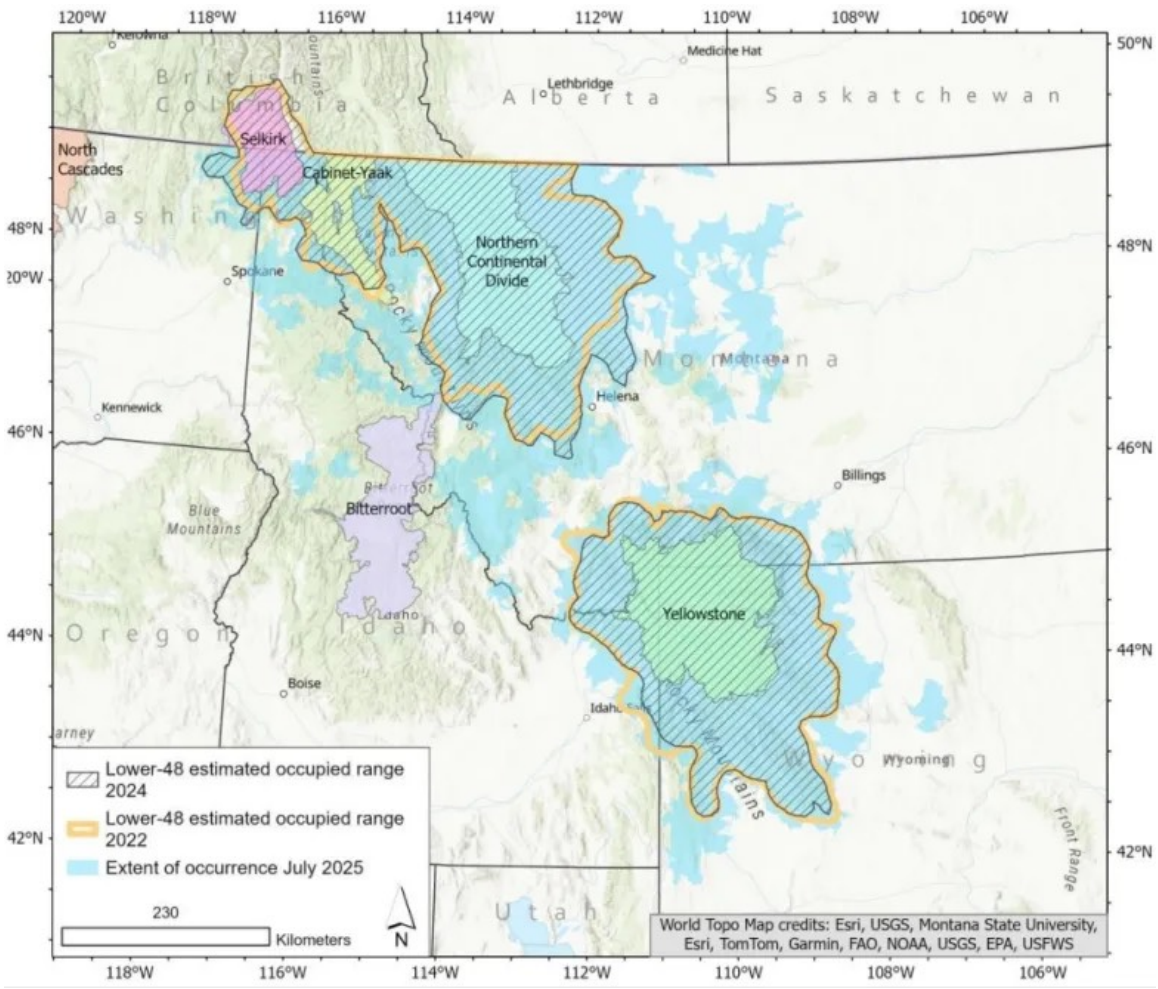
https://idahocapitalsun.com/2025/12/27/yellowstone-grizzly-range-contracts-by-4-while-n-continental-divide-bears-gain-12-more-ground/

This story was first published by WyoFile on Dec. 18, 2025.

The Greater Yellowstone Ecosystem's grizzly population continues to stagnate geographically, a relatively new trend that wildlife managers say is related to bears saturating "suitable habitat" where the species is tolerated.

That finding is described in a new and first-ever rangewide report summarizing where grizzly bears are found in the Lower 48.

Overall, grizzlies, which are classified as "threatened" under the Endangered Species Act, continued their decades-long recovery and reoccupied 4% more habitat over the past two years. That equates to a rangewide expansion of roughly 2,250 square miles, or an area about two-thirds the size of Yellowstone National Park.



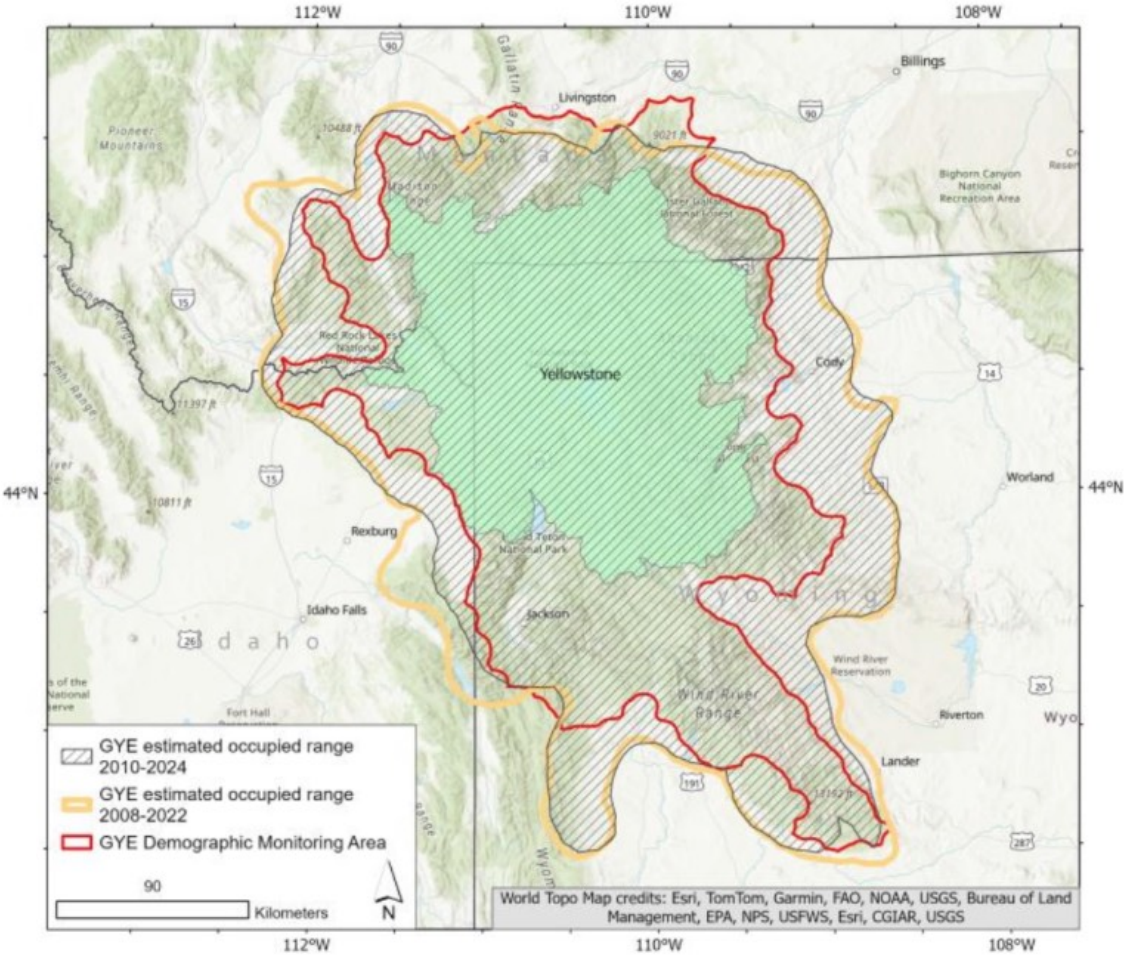
Grizzly bears occupy an estimated 59,000 square miles of habitat throughout all their recovery zones in the Lower 48. (Map courtesy of Cecily Costello)

But bruins that dwell in the tri-state Yellowstone area were the exception. The estimated 1,050 grizzlies there occupied about 3.5% less ground, or about 963 fewer square miles, than they did two years ago. The report does not address what drove the change, but lead author and Montana Fish, Wildlife and Parks research biologist Cecily Costello said it's likely related to grizzlies running out of ideal habitat in the modern West.

"When you look at the habitat to the east of the Yellowstone Ecosystem, to the south of Yellowstone, you're looking at a lot of open prairie," Costello said. "There's not really big river valleys those bears could move into. There's a little bit of a limitation in terms of the range expansion in those directions."

Wyoming grizzly managers see it similarly, attributing the slight retreat to bears losing spaces where they can live without getting into trouble.

"I think it's just indicative of where the population is," said Dan Thompson, large carnivore supervisor for the Wyoming Game and Fish Department. "I don't think we should expect it to expand."



The occupied grizzly bear range in the Yellowstone region is retreating slightly and encompasses an estimated 26,100 square miles, nearly two thirds of which is located in Wyoming. (Map courtesy of Cecily Costello)

Matt Gould, the Interagency Grizzly Bear Study Team's new leader, agreed. His predecessor, Frank van Manen, predicted about a decade ago that the grizzly population in the Yellowstone region would soon stabilize — and now it seems to be doing just that.

"Occupied range has kind of waned up, and now it's kind of slightly decreasing," Gould said. "It'll be interesting to see: 'Does it drastically drop, or is it going to stay steady and bounce around?'"

Range for grizzlies stopped expanding

Biologists first documented the end of a half-century-long era of grizzly range expansion in the Yellowstone area two years ago. At the time, federal scientists observed a 0.5% reduction in the species' overall distribution — a retreat of 142 square miles.

The mapping Costello and her co-authors just completed examined the period from 2010 to 2024. Distribution in the Yellowstone and Northern Continental Divide ecosystem is based on hard data — from tracked bears, conflicts and other verified observations — over a 15-year rolling window.

The data is smoothed out based on the whereabouts of all grizzlies known to exist in any given area. For that reason, bears that make "outlier" movements, like the subadult male that reached the Bighorns in 2024, don't usually influence the distribution maps.

Federal judge strikes down logging project near Yellowstone National Park



A federal judge halted a large logging project near Yellowstone National Park because he said the United States Forest Service submitted plans that made it impossible to judge how it would affect critical grizzly bear habitat.

The 16,500-acre project located in the Custer Gallatin National Forest would have allowed the U.S. Forest Service to select … *Continue reading* *Federal judge strikes down logging project near Yellowstone National Park*



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Contraction in the Yellowstone Ecosystem's occupied range comes at a time when there has been a record number of bears dying, though grizzly biologists say they don't necessarily see the two trends as being related.

Mortality hit a high in 2024, with 72 known grizzlies that died that calendar year, Gould said. The death toll this year is almost the same, at 71, which is about 35% greater than the 10-year average of 54 mortalities.

The leading causes of death, according to Gould, were livestock conflict (21 grizzlies killed as a result), followed by "site conflicts with humans" (16 grizzlies), self-defense killings (12 grizzlies), accidental deaths (nine grizzlies) and natural causes like predation (six grizzlies).

This year, three in four Yellowstone-area grizzly deaths were within a zone in the core of the ecosystem known as the "demographic monitoring area." That's a slightly higher rate than average.

Where grizzly bear habitats are retreating

Wildlife managers count bears in the demographic monitoring area. This area was declared fully occupied by bears in 2019.

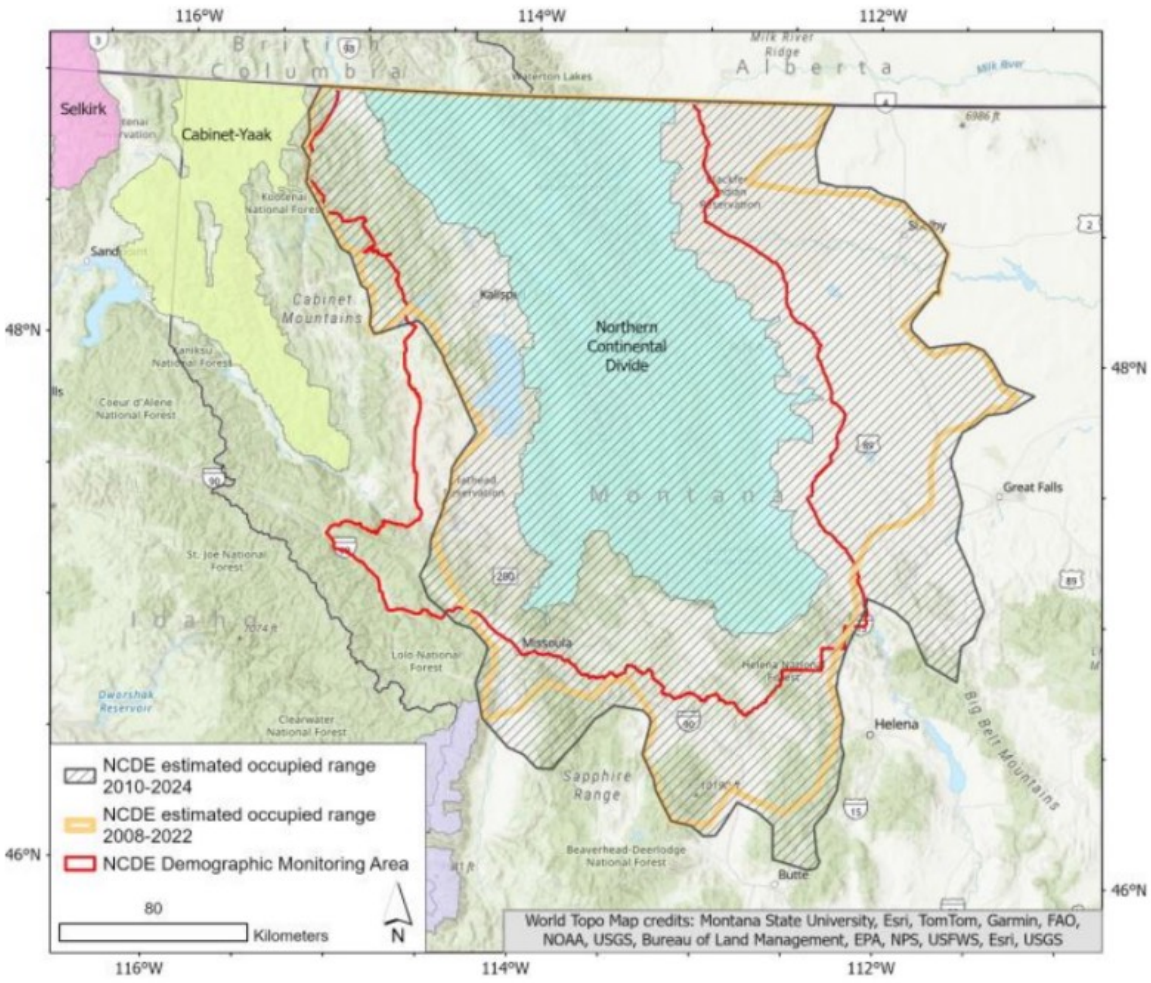
In Costello's distribution report, this "core" area represented 71% of where grizzlies were found in 2024. The other 29% of the occupied range fell outside of this core area on the fringes of the mountainous, public land-dominated ecosystem. This is where grizzly range has been retreating. When Yellowstone ecosystem grizzly distribution reached its peak in 2021, more than 40% of occupied range was mapped outside the core zone.

Last year, the largest contraction in occupied Yellowstone habitat was located in eastern Idaho in the Big Hole Mountains and Snake River Range. Another recession appears in Montana's Ruby Range, maps from the report show, and there's a small loss of occupied range in the South Pass area off the tip of the Wyoming River Range.

Costello, who compiled the maps, said she doesn't put a "whole lot of stock" into small regional changes.

"The edges are a little bit uncertain," she said, "because you have less [grizzly data] about the edges than you do about the middle."

The other major population of grizzly bears in the Lower 48 dwell in Montana's Northern Continental Divide Ecosystem. Occupied grizzly range stretched by 2,500 square miles, a nearly 12% increase. These bears mostly pressed into new habitat on the eastern and southern sides of the ecosystem, gaining ground in the Sapphire Range, and Boulder and Big Belt Mountains, maps show.



There are more than 24,000 square miles of occupied grizzly bear range in the Northern Continental Divide Ecosystem, a 12% increase from an assessment two years ago. (Map courtesy of Cecily Costello)

The Northern Continental Divide Ecosystem's occupied range encompasses much more open prairie than to the south in the Greater Yellowstone Ecosystem.

Partly, that's explained by Montana grizzlies moving down big river corridors, Costello said. When a bunch of them make the movement, the occupied range line can "pull out really quickly." Smoothing of the data can then make it look like they've reoccupied big chunks of open country, she said.

Habitat is another explanation for why western Montana occupied grizzly range keeps stretching while Yellowstone-area bears have held steady and retreated in places.

"When you look at the plant communities and mountains that exist in western Montana, there's still a lot of what could be considered decent bear habitat," Costello said. "It's the expectation that we'll probably continue to see bears moving into those habitats."

A lot of that growth is expected to take grizzly populations toward Idaho's Bitterroot Ecosystem, which has been unoccupied since the species was wiped out there in the 1950s.

The Project violates the Forest Plan; the Project EA violates NEPA; and/ or the Revised Forest Plan violates the NFMA planning regulations regarding grizzlies.

The 2012 Planning Rule mandates: "Ecosystem Integrity. The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial . . . ecosystems . . . in the plan area, including plan components to maintain or restore . . . function . . . and connectivity[.]" 36 C.F.R. §219.8 (a)(1),

The 2012 Planning Rule defines "connectivity:" "Ecological conditions . . . that provide landscape linkages that permit the . . . the dispersal and genetic interchange between populations . . . ." 36 C.F.R. §219.19.

The 2012 Planning Rule defines "ecological conditions" to include "roads" and "human uses." 36 C.F.R. §219.19.

The 2012 Planning Rule further states: "The responsible official shall determine whether or not the [coarse filter, habitat-based] plan components required by paragraph (a) of this section provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened . . . species . . . . If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area." 36 C.F.R. §219.9 (b)(1).

The 2012 Planning Rule explains: "NFS lands are a major contributor to threatened and endangered species recovery plans and actions . . . . As part of the Forest Service mission, the actions needed to recover T&E species . .

. are a high priority. . . . As did the proposed rule, the final rule requires that the plan include plan components to provide ecological conditions in the plan area necessary to contribute to the recovery of T&E species, using coarse-filter plan components and adding species-specific plan components where necessary. While the 1982 rule . . . did have specific requirements . . .the requirement in the final rule that requires plan components to provide ecological conditions to 'contribute to the recovery of' T&E species is more comprehensive."

The Forest Plan Desired Condition BB-WL-DC-03 requiresthe Little Belts [Geographic Area] provides habitat connectivity for wide ranging species (e.g., grizzly bear and others) between public lands in northern Montana and those in south and southwestern Montana, including lands in the Greater Yellowstone Ecosystem."

First, the Project violates the Forest Plan. The Project does not meet Forest Plan Desired Condition because it fails to ensure "connectivity," as that term is defined by the regulations, between the NCDE and Yellowstone grizzly populations. There are an insufficient number of secure habitat blocks, and even those habitat blocks that do exist are likely inaccessible and therefore useless to grizzly bears due to high road densities between habitat blocks. Moreover, if bears were heading south from the NCDE, they would have to cross the most northern part of the Project area first, which has high existing road density and is therefore not likely crossable by a grizzly bear.

In fact, the Project EA concedes that "grizzly bears are already likely being displaced by the current open road system." The facts that (1) grizzly bears are likely displaced from the Project area already due to high road density, (2) the Project allows an increase in roads during the Project, and (3) the Project will not reduce road density after implementation, establish that the Little Belts, including the Project area, is not being managed as a connectivity corridor to facilitate genetic exchange for grizzly bears between the NCDE and Yellowstone, as required by the Forest Plan. Accordingly, the Project violates the Forest Plan, in violation of NFMA.

Second, alternatively or in addition, the Project EA violates NEPA. The Project EA fails to take a hard look at connectivity, including the purpose and intent of Forest Plan Desired Condition, and the ways that the Project could help to restore and achieve connectivity as envisioned by the Forest

Plan. There is no meaningful discussion of the importance of establishing genetic connectivity between NCDE and Yellowstone grizzly populations, the necessity of that genetic connectivity for recovery of the grizzly population as a whole, and the ways in which current Forest Service management practices at the Project level, including this Project, are preventing the Little Belts from providing for connectivity.

The Project area is currently failing every known scientific threshold for elk security (30%), elk habitat effectiveness (50%), and grizzly bear secure habitat (55% or 68%). Additionally, the Project EA does not disclose road density between secure habitat blocks, which is a necessary element of any meaningful analysis of the impacts of roads on grizzly bears according to the best available science. The Forest Service's failure to take a hard look at connectivity, and failure to consider a reasonable range of alternatives that includes an alternative that implements the road closures necessary to allow the area to function as a connectivity corridor, violate NEPA and the APA.

Third, alternatively or in addition, the Revised Forest Plan violates the 2012 NFMA Planning Rule. The Revised Forest Plan does not contain a standard or guideline to ensure "connectivity," as that term is defined by regulation to mean a landscape linkage that allows for dispersal and genetic interchange between populations, for threatened grizzly bears using the Little Belts to genetically connect the Greater Yellowstone and Northern Continental Divide grizzly populations. Restoring the "connectivity" and linkage corridor "function" of the Big Belts would "contribute to the recovery of" grizzly bears in the lower 48 states by genetically connecting the Greater Yellowstone and Northern Continental Divide grizzly populations. The Revised Forest Plan violates the 2012 NFMA Planning Rule because implementing a "desired condition" for this issue is insufficient – the plain language of the regulation requires a standard or guideline. 36 C.F.R. §219.8 (a)(1). Moreover, as indicated by this Project, the Forest Service is simply ignoring the desired condition and making no attempt to consider a reasonable alternative that would take available actions through this Project to reduce road density and increase secure habitat to restore the connectivity function of the Little Belts. Restoring the connectivity function of the Little Belts is the missing link needed to recover the lower 48 grizzly population by facilitating genetic exchange between the NCDE and Yellowstone. The Forest Service's failure to implement a standard or guideline for restoring connectivity in the Little Belts to facilitate genetic interchange between

the NCDE and Yellowstone grizzly populations, and thereby contribute to the recovery of the lower 48 grizzly population, thus violates the NFMA Planning Rule, NFMA, and the APA.

The Forest Service responded:

Thank you for your comment. At this time, the Forest will only be addressing comments specific to the Judith Springs Vegetation Project. Issues or disagreements with the HLF Forest Plan or related amendments are outside the scope rationale and will not be addressed during this comment period.

The Forest Plan Standard is not being met and therefore this is a NEPA, NFMA Forest Plan and APA violations.

The standard is not being met at the project level and their is no evidence provided that it is being met at the Forest Plan level.

The project is in violation of NEPA, NFMA, the Forest Plan, The Travel Plan, the APA and the ESA because of the recurring road closure violations. your assumptions in the Travel Plan that all closures would be effective has proven false. For this reason, you cannot tier to the analysis in the Travel Plan because it is invalid.

The Project violates the Forest Plan; the Project EA violates NEPA; and/or the Revised Forest Plan violates the NFMA planning regulations regarding elk.

In 2012, the Forest Service issued new forest planning regulations, which are referred to as the "2012 Planning Rule."

The 2012 Planning Rule states that its purpose is "to guide the collaborative and science-based development, amendment, and revision of land

management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits." 36 C.F.R. §219.1(c).

The 2012 Planning Rule requires that forest plans "use a complementary ecosystem and species-specific approach to provide for the diversity of plant and animal communities and maintain the persistence of native species in the plan area. Ecosystem plan components would be required for ecosystem integrity and diversity, along with additional, species-specific plan components where necessary to provide the ecological conditions to contribute to the recovery of federally listed threatened and endangered species, sensitive species, conserve proposed and candidate species, and maintain viable populations of species of conservation concern."
150. The 2012 Planning Rule states that "[t]he Department intends to provide for the persistence of all native species by the use of the coarse-filter/fine-filter approach, within Forest Service authority and the inherent capability of the plan area. [The Rule] provides a three-fold treatment of all native species. First, [the Rule] requires coarse-filter plan components for the maintenance and restoration of the ecological integrity and diversity of ecosystems in the plan area. Plan components will support the long-term persistence of most native species in the plan area, including providing for species that are common or secure. Second, species that are federally recognized species under ESA (threatened, endangered, proposed, and candidate species) may not have viable populations on NFS lands and whose recovery, in most cases, cannot be achieved on a single NFS plan area. [The Rule] requires the responsible official to develop coarse-filter plan components, and fine-filter plan components where necessary, to contribute to the recovery of listed species and conserve proposed and candidate species. Third, [the Rule] requires the responsible official to develop coarse-filter plan components, and fine-filter plan components where necessary, to provide the desired ecological conditions necessary to maintain viable populations of conservation concern within the plan area, or to contribute to

maintaining a viable population of a species of conservation concern across its range where it is not within the Agency's authority or is beyond the inherent capability of the plan area to provide the ecological conditions to maintain a viable population of that species within the plan area."

The 2012 Planning Rule states: "The ecosystem integrity and diversity requirements [in the Rule] are meant to provide a coarse-filter designed to maintain biological diversity. By working toward diverse, connected ecosystems with ecological integrity, the Agency expects that over time, management will create ecological conditions which support the abundance, distribution, and long-term persistence of most native species within a plan area, as well as provide for diversity of plant and animal communities.

The 2012 Planning Rule states: "The fine-filter provisions are intended to provide a safety net for those species whose specific habitat needs or other influences on their life requirements may not be fully met under the coarse-filter provisions."

The 2012 Planning Rule similarly mandates: "Ecosystem diversity. The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore: . . . (ii) Rare . . . terrestrial. . . animal communities . . . ." 36 C.F.R. §219.9 (a)(2). Compliance with this provision "is intended to . . . support the persistence of most native species in the plan area." 36 C.F.R. §219.9.

The 2012 Planning Rule mandates: "The plan must include plan components, including standards or guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area. When developing plan components for integrated resource management . . . the responsible official shall consider: . . . (5) Habitat conditions . . . for wildlife, . . . commonly enjoyed and used by the public[] for hunting . . . ." 36 C.F.R. §219.10 (a)(5).

The 2012 Planning Rule explains: "The Department modified the list . . . to emphasize that responsible officials . . . should specifically consider habitat conditions for species that are used or enjoyed by the public for recreational opportunities such as hunting . . . and added a requirement that the responsible official collaborate with other land managers in doing so. . . ."

The 2012 Planning Rule states: "Comment: Game species. Some respondents felt the rule should include requirements for species that are hunted, fished, or trapped . . . . Response: The Agency recognizes the important role of NFS lands in providing the habitat for these species. Plan components . . . will provide the habitat and other ecological conditions necessary to support these species."

The 2012 Planning Rule requires: “The responsible official shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program as required in §§219.6(a)(3) and 219.14(a)(3). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.” 36 C.F.R. §219.3.

The 2012 Planning Rule mandates: “Every project and activity must be consistent with the applicable plan components. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria: (1) Goals, desired conditions, and objectives. The project or activity . . . does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term. (2) Standards. The project or activity complies with applicable standards. (3) Guidelines. The project or activity: (i) Complies with applicable guidelines as set out in the plan; or (ii) Is designed in a way that is as effective in achieving the purpose of the applicable guidelines (§219.7(e)(1)(iv)). (4) Suitability. A project or activity would occur in an area: (i) That the plan identifies as suitable for that type of project or activity; or (ii) For which the plan is silent with respect to its suitability for that type of project or activity.” 36 C.F.R. §219.15

Remedy: Choose the No Action Alternative or write an EIS that fully

complies with the law.

We wrote in our comments, starting with:

The Project violates the Forest Plan; the Project EA violates NEPA; and/ or the Revised Forest Plan violates the NFMA planning regulations regarding old growth.

The 2012 Planning Rule mandates: "Ecosystem diversity. The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore: . . . (ii) Rare . . . terrestrial. . . animal communities . . . ." 36 C.F.R. §219.9 (a)(2). Compliance with this provision "is intended to . . . support the persistence of most native species in the plan area." 36 C.F.R. §219.9.

The primary "rare terrestrial animal community" on the Forest is the old growth dependent wildlife species community.

The Forest Service responded:

Thank you for your comment. At this time, the Forest will only be addressing comments specific to the Judith Springs Vegetation Project. Issues or disagreements with the HLF Forest Plan or related amendments are outside the scope rationale and will not be addressed during this comment period.

The project is therefore in violation of NEPA, NFMA, the APA and the ESA.

Remedy: Please choose the No Action Alternative or withdraw the DN and FONSI and write an EIS that fully complies with the law.

We wrote in our comments:

Disclose the results of the field surveys for threatened, endangered, sensitive, and rare plants in each of the proposed units;

Please disclose whether you have conducted surveys in the Project area for this Project for whitebark pine, Monarch butterflies, wolverines, grizzly

bears, pine martins, northern goshawk bull trout, bull trout critical habitat, lynx critical habitat, and lynx, as required by the Forest Plan.

Please disclose how often the Project area has been surveyed for whitebark pine, wolverines, pine martins, northern goshawks, grizzly bears, and lynx.

Would the habitat be better for whitebark pine, wolverines, pine martins, northern goshawks, grizzly bears, and lynx if roads were removed in the Project area?

Please provide us with the full BA for the whitebark pine, wolverines, pine martins, northern goshawks, grizzly bears, and lynx.

The Forest Service responded:

For monarch butterflies, the project area was treated as if potential habitat modeled by the Montana Natural Heritage Program was potentially occupied habitat, rather than conducting surveys specific for monarchs. During botanical surveys, milkweed was looked for in order to locate more potential monarch habitat. Milkweed was not encountered, but project design features consider milkweed and plan for potential detections during implementation.
The Forest Plan does not require these surveys. Surveys were conducted to validate lynx habitat and mesocarnivore surveys were conducted in 2020 and 2023. See Terrestrial Wildlife Report. Whitebark Pine surveys were conducted. See Forest Vegatation Report.

In regard to grizzlies, page 14 of the Judith Springs states: ***There were two verified (via DNA samples) sightings off Forest north of the Little Belts in***

both 2017 and 2018 (pers. comm. FWS). All were of unknown sex. It's unlikely that female grizzly bears reside within the Little Belts at this time because female dispersal and home range establishment is a slow, 'multi-generational' process (Proctor and others, 2004), (McLellan and Hovey, 2001b).

It is possible that transient grizzly bears would occur in the project area during the life of the project. These bears would likely originate from the Northern Continental Divide Ecosystem,
with subadult bears, particularly males, likely moving into the area first. The project area occurs in Zone 3 where the management emphasis is on conflict response (USFS, 2021a) (pages 52, 218).
Grizzly bear secure habitat occurs in the analysis area and project area, much of it influenced by the amount and location of motorized routes (roads).

Potentially Affected Environment
Secure habitat is important to the survival and reproductive success of grizzly bears (FWS, 1993), (Northern Continental Divide Ecosystem Subcommittee, 2019), (FWS, 2011), and motorized access has been identified as a key factor in the effectiveness and availability of secure habitat for bears (Mace and others, 1996), (Boulanger and Stenhouse, 2014), (McLellan, 2015), (Proctor and others, 2018).

Secure patches range in size from a little more than an acre to approximately 6,900 acres with an average patch size of about 872 acres. Cover is also an important component for grizzly bears. Forested areas provide screening for grizzly bears while traveling and foraging. Grizzly bears use a mix of cover types and tree size classes but generally prefer to forage in areas with some type of hiding cover (Northern Continental Divide Ecosystem Subcommittee, 2018).

Unauthorized Motorized Use
General Effects of Unauthorized Use on Grizzly Bears
Unauthorized motorized use is not the result of a federal action and therefore not analyzed under effects of the action, but this use may have effects that are considered as part of the environmental baseline. Because of this, we have considered, both qualitatively and through the

metrics used to quantify grizzly bear habitat security as described in the following sections, the effects of such unauthorized motorized use on grizzly bears to the best of our ability.

The Project violates the Forest Plan; the Project EA violates NEPA; and/or the Revised Forest Plan violates the NFMA planning regulations.

As discussed above, the 2012 Planning Rule mandates: "Ecosystem Integrity.

The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial . . . ecosystems . . . in the plan area, including plan components to maintain or restore . . . function . . . and connectivity[.]" 36 C.F.R. §219.8 (a)(1), The 2012 Planning Rule defines "connectivity:" "Ecological conditions . . . that provide landscape linkages that permit the . . . the dispersal and genetic interchange between populations . . . ." 36 C.F.R. §219.19. The 2012 Planning Rule defines "ecological conditions" to include "roads" and "human uses." 36 C.F.R. §219.19. The 2012 Planning Rule further states: "The responsible official shall determine whether or not the [coarse filter, habitat-based] plan components required by paragraph (a) of this section provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened . . . species . . . . If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area." 36 C.F.R. §219.9 (b)(1).

The 2012 Planning Rule explains: "NFS lands are a major contributor to threatened and endangered species recovery plans and actions . . . . As part of the Forest Service mission, the actions needed to recover T&E species . . . are a high priority. . . . As did the proposed rule, the final rule requires that the plan include plan components to provide ecological conditions in the plan area necessary to contribute to the recovery of T&E species, using coarse-filter plan components and adding species-specific plan components where necessary. While the 1982 rule . . . did have specific requirements . . .the requirement in the final rule that requires plan components to provide ecological conditions to 'contribute to the recovery of' T&E species is more comprehensive." Forest Plan Desired Condition

requires that the forest provide habitat connectivity for wide ranging species (e.g., grizzly bear and others) between public lands in northern Montana and those in south and southwestern Montana, including lands in the Greater Yellowstone Ecosystem. First, the Project violates the Forest Plan. The Project does not meet Forest Plan Desired Condition because it fails to ensure “connectivity,” as that term is defined by the regulations, between the NCDE and Yellowstone grizzly populations. There are an insufficient number of secure habitat blocks, and even those habitat blocks that do exist are likely inaccessible and therefore useless to grizzly bears due to high road densities between habitat blocks. Moreover, if bears were heading south from the NCDE, they would have to cross the most northern part of the Project area first, which has an existing road density of 2.6 miles/square mile, and is therefore not likely crossable by a grizzly bear. In fact, the Project EA concedes that "grizzly bears are already likely being displaced by the current open road system." The facts that (1) grizzly bears are likely displaced from the Project area already due to high road density, (2) the Project allows an increase in roads during the Project, and (3) the Project will not reduce road density after implementation, establish that the Little Belt Mountains, including the Project area, is not being managed as a connectivity corridor to facilitate genetic exchange for grizzly bears between the NCDE and Yellowstone, as required by the Forest Plan. Accordingly, the Project violates the Forest Plan, in violation of NFMA.

Second, alternatively or in addition, the Project EA violates NEPA. The Project EA fails to take a hard look at connectivity, including the purpose and intent of Forest Plan Desired Condition, and the ways that the Project could help to restore and achieve connectivity as envisioned by the Forest Plan. There is no meaningful discussion of the importance of establishing genetic connectivity between NCDE and Yellowstone grizzly populations, the necessity of that genetic connectivity for recovery of the grizzly population as a whole, and the ways in which current Forest Service management practices at the Project level, including this Project, are preventing the Little Belt Mountains from providing for connectivity. The Project area is currently failing every known scientific threshold for elk security, elk habitat effectiveness, and grizzly bear secure habitat. Additionally, the Project EA does not disclose road density between secure habitat blocks, which is a necessary element of any meaningful analysis of the impacts of roads on grizzly bears according to the best available science. The Forest Service’s failure to take a hard look at connectivity, and failure to consider a reasonable range of alternatives that includes an alternative that

implements the road closures necessary to allow the area to function as a connectivity corridor, violate NEPA and the APA. Third, alternatively or in addition, the Revised Forest Plan violates the 49

2012 NFMA Planning Rule. The Revised Forest Plan does not contain a standard or guideline to ensure "connectivity," as that term is defined by regulation to mean a landscape linkage that allows for dispersal and genetic interchange between populations, for threatened grizzly bears using the Little Belt Mountains to genetically connect the Greater Yellowstone and Northern Continental Divide grizzly populations. Restoring the "connectivity" and linkage corridor "function" of the Little Belt Mountains would "contribute to the recovery of" grizzly bears in the lower 48 states by genetically connecting the Greater Yellowstone and Northern Continental Divide grizzly populations. The Revised Forest Plan violates the 2012 NFMA Planning Rule because implementing a "desired condition" for this issue is insufficient – the plain language of the regulation requires a standard or guideline. 36 C.F.R. §219.8 (a)(1). Moreover, as indicated by this Project, the Forest Service is simply ignoring the desired condition and making no attempt to consider a reasonable alternative that would take available actions through this Project to reduce road density and increase secure habitat to restore the connectivity function of the Little Belt Mountains. Restoring the connectivity function of the Little Belt Mountains is the missing link needed to recover the lower 48 grizzly population by facilitating genetic exchange between the NCDE and Yellowstone. The Forest Service's failure to implement a standard or guideline for restoring connectivity in the Little Belts and Castles to facilitate genetic interchange between the NCDE and Yellowstone grizzly populations, and thereby contribute to the recovery of the lower 48 grizzly population, thus violates the NFMA Planning Rule, NFMA, and the APA.

The Project EA fails to fully and fairly disclose accurate available data to the public regarding roads, and fails to take the requisite hard look at the cumulative effects of existing high road density, new Project roads, pervasive illegal motorized use, and roads closed-on-paper-only by the Travel Plans.

Grizzly bears, wolverines, and elk are all harmed by motorized use, including motorized roads and motorized trails on the Forest.

As discussed above, the Forest Service has multiple years of detailed information in its internal files regarding precise locations of illegal

motorized use, failed road barriers, and roads "closed-on-paper-only" by the Travel Plans, but it did not disclose this available detailed information to the public in the Project EA. Does the Travel Plans disclose that there are roads "closed-on-paper-only" with no physical barriers? This information is not disclosed to the public in the Project EA, which violates the agency's obligations to fully and fairly inform the public, disclose accurate available data, and take a hard look at this issue in the Project EA.

Furthermore, the cumulative effects analyses for grizzly bears, wolverines, and elk all state that Travel Plan implementation is a factor that benefits these species, but all three analyses fail to disclose that over 100 miles of closures promised under the Travel Plan have not yet been implemented. Additionally, the cumulative effects analyses for these three species dismiss illegal motorized use as something that "could occur anywhere on the Forest" and represent that "the amount, location, duration, and timing of effects resulting from such unauthorized use is not known" despite the Forest Service having detailed records with latitude/longitude coordinates for dozens of known, documented violations. Accordingly, the Project EA fails to provide the public with a quantified, detailed cumulative effects analysis of the impact of roads on road-sensitive wildlife species such as elk, grizzly bears, and wolverine – in particular, the Project EA fails to provide an accurate analysis of the cumulative effects of existing high open road density and lack of secure habitat, existing known unauthorized motorized use, "closed-on-paper" roads that are accessible to motorized vehicles, the decrease in secure habitat from the Project, and the likely increase in unauthorized motorized use from newly-constructed project roads.

Grizzly bears depend on areas of habitat security. These are patches of secure habitat that are relatively undisturbed by human influence and provide cover for shelter, high-caloric foods to feed and breed, dens as winter shelter, and areas for dispersal.

Ensuring there are is a sufficient number of large areas of "secure habitat" is critical to the conservation of grizzly bears in the lower-48 States.

A key component to providing secure habitat for grizzly bears is limiting motorized route density. Areas away from motorized routes are more secure for grizzly bears. Grizzly bears under-use habitat near roads and motorized routes.

Motorized access is one of the most important parameters affecting secure habitat for grizzly bears. Other factors affecting secure habitat for grizzly bears include vegetation (food, cover), concentrated human use locations (campgrounds, townsites), and areas of high-level human use.

Areas of "secure habitat" should, at a minimum, be large enough to allow a female grizzly bear to forage over a 24-48 hour period without having to cross a motorized route and human disturbance. The one acre secure habitat definition used in the Judith Springs project does not do this. The one acre grizzly bears secure habitat definition also violates the Forest Plan.

In the Northern Continental Divide Ecosystem ("NCDE"),where the HLCNF is located, secure habitat for grizzly bears is generally defined as areas at least 2,500 acres in size and at least 500 meters from a motorized route.

The availability of secure habitat for grizzly bears influences the ability of individual grizzly bears to reproduce, grow, and survive at different life stages.

Female grizzly bear dispersal is important for grizzly bear range expansion. The amount of secure habitat on the landscape helps facilitate female grizzly bear dispersal.

The frequency of long-distance dispersal by females is important for establishing demographic connectivity and range expansion between populations. Range expansion and demographic connectivity is needed for the long-term recovery of the species in the lower-48 States.

Connectivity influences the genetic diversity of grizzly bears in the lower-48 States. Male and female movements within and between ecosystems enhances genetic diversity and reduces genetic fragmentation. The amount of secure habitat on the landscape helps facilitate movement and connectivity for grizzly bears.

Threats to Grizzly Bears
Historically, an estimated 50,000 grizzly bears were distributed in one large contiguous area throughout all or portions of 18 western states in the lower-48 States. With the arrival of Europeans, grizzly bears were seen as a threat to livestock and human safety. Due to government-funded bounty programs focused on the eradication of the species, grizzly bears were shot, poisoned, trapped, and killed wherever they were found.

By the 1930s, grizzly bears were reduced to roughly two percent of their historic range in the lower-48 States.

Grizzly bears in the lower-48 States were listed under the ESA due to loss of habitat and range, isolated populations (and loss of connectivity), and mortality from humans.

Recovery and conservation efforts for grizzly bears in the lower-48 States are focused on six "recovery zones" or "recovery ecosystems." These include the North Cascades, Selkirk, Cabinet-Yaak, NCDE, Bitterroot, and Greater Yellowstone Ecosystem ("GYE").

Each grizzly bear recovery zone represents an area large enough and of sufficient habitat quality to support a recovered grizzly bear population. FWS has recognized that grizzly bears would eventually need to occupy areas outside the six recovery zones and that connectivity between the recovery zones is necessary for the species long-term survival in the lower-48 States.

Grizzly bear movement and connectivity between the various recovery zones in the lower-48 states, which is needed for long-term recovery, has yet to be restored. The GYE remains isolated. FWS considers there to be no resident grizzly bears in the Bitterroot.

In January, 2021, FWS published a species status assessment ("Grizzly SSA") for grizzly bears in the lower-48 states. The Grizzly SSA was updated in January, 2022.

In the Grizzly SSA, FWS determined that grizzly bears in the lower-48 states have certain individual, ecosystem, and species-level needs.

Individually, grizzly bears need sufficient habitat, including large and relatively undisturbed blocks of land for all life stages (breeding, feeding, shelter and dispersal). Grizzly bears need access to denning sites, cover, and high-caloric foods. Grizzly bears need adequate amounts of secure habitat.

At the ecosystem level, grizzly bears need sufficient

abundance, positive population trends, adult female survival, genetic diversity, and sufficient connectivity between various recovery zones. Secure habitat for grizzly bears helps facilitate connectivity between recovery zones.

At the species level, grizzly bears in the lower-48 States need multiple resilient ecosystems (recovery zones) that are distributed across a wide geographic area and with sufficient connectivity to ensure genetic and ecological diversity.

FWS reported in the Grizzly SSA that the main threats or stressors to grizzly bears and grizzly bear recovery in the lower-48 States include: human-caused mortality (due to management removals, accidental killings, illegal killings, mistaken identity kills); motorized access; livestock grazing allotments; developed recreational sites and recreational activities; timber, energy, and mineral development; private land development; climate change; loss of connectivity and poor genetic health; and the loss of important food sources.

In the Grizzly SSA, FWS recognized that the primary factors affecting grizzly bears (at both the individual and ecosystem levels) are excessive human-caused mortality and human activity in areas of "secure habitat" which reduces the quality and quantity of habitats and increases the potential for human-caused mortality. Creating and protecting areas of "secure habitat" away from humans and motorized routes is critical to conserving the species in the lower 48 States.

In the Grizzly SSA, FWS recognized the lack of connectivity and genetic interchange between the grizzly bear recovery zones as a threat to bears and an impediment to long-term viability and recovery. The isolated nature of grizzly bears in the GYE and Bitterroot Ecosystem was also identified as a potential threat to grizzly bears in the species' 1975 ESA listing.

In the Grizzly SSA, FWS determined that natural connectivity between the recovery zones is needed for long-term grizzly bear conservation to allow for genetic exchange and demographic augmentation of isolated populations. Grizzly bears need "secure habitat" in dispersal areas to facilitate connectivity.

FWS stated in the Grizzly SSA that connectivity or dispersal and successful immigration of males or females enhances genetic diversity and reduces genetic fragmentation. The best available science reveals at least one to two effective migrants per generation is needed to maintain and enhance genetic diversity in isolated populations.

FWS noted that while the GYE remains isolated, all of the recovery zones are currently within "dispersal distance of existing populations" and "connectivity" needed for long-term viability and recovery "is possible."

FWS said the expanding grizzly bear population in the NCDE is very close to reaching the Bitterroot and is "expected to be within female dispersal distance in the future." FWS noted that the distance between grizzly bears dispersing from the GYE and NCDE are now very close (roughly 30 miles) with "multiple verified sightings in between" the recovery zones. FWS said it is likely that natural connectivity needed for recovery "will occur in the near future."

FWS explained that a recent paper (Peck 2017, attached) modeled potential dispersal paths for grizzly bears between the GYE and NCDE recovery zones, including large portions of the Helena Forest where conservation efforts designed to facilitate and foster connectivity should be focused.

Because of its location in between the NCDE and GYE recovery zones, the HLCNF plays an important role in grizzly bear conservation and management.

In order to facilitate grizzly bear movement and restore connectivity, Peck (2017) recommended various conservation efforts on the HLCNF (as well as other dispersal paths) be implemented, including efforts to provide more secure habitat for grizzly bears and reduce human conflict situations that result in grizzly bear removals and/or mortalities.

Human-caused mortality (due to management removals, accidental killings, illegal killings, mistaken identity kills) and motorized access and human intrusions into grizzly bear habitat are the main threats to grizzly bears and grizzly bear recovery in the lower-48 States.

Human activities (and human access to grizzly bear habitat via roads) are the primary factor impacting grizzly bears and the ability of bears to find and access food, mates, cover, and den sites.

Grizzly bears are only able to survive where the frequency of contact with humans is very low.

Grizzly bears need areas of "secure habitat" without human presence or with low levels of human presence. Areas with more secure habitat result in significantly lower amounts of human-caused mortality. Nearly all human-caused mortality of grizzly bears occurs near motorized routes.

Protecting large blocks of secure habitat for grizzly bears that are free from human intrusion and influence is critical to grizzly bear conservation in the lower-48 States. Female grizzly bears select areas with greater secure habitat. Survival is higher in these areas. Secure habitat is important for grizzly bear connectivity between recovery zones.

A grizzly bear's individual habitat needs and daily movements are largely driven by the search for food.

Secure habitat for grizzly bears is an area large enough for a grizzly bear to forage for 24–48 hours without incurring (significant) hazards associated with roads.

The average size of areas used by grizzly bears for foraging during a 24–48-hour period varies by study.

Scientific studies recommend grizzly bear secure habitat blocks be between 2,000 to 7,000 acres in size.

Mattson (1993) recommends secure habitat patches be roughly 7,000 acres in size.

Gibeau (2001) recommends secure habitat patches be roughly 2,224 acres in size.

Proctor (2019) recommends secure habitat patches be roughly 2,471 acres in size.

Secure habitat patches in the NCDE are a minimum of 2,500 acres in size.

In 1994, the Interagency Grizzly Bear Committee ("IGBC") published a Taskforce Report on grizzly bears and motorized access management. In 1998, the IGBC published a revised Taskforce Report on grizzly bears and motorized access management.

The IGBC recognized the importance of managing motorized access to conserve grizzly bear habitat and protect grizzly bears from human interactions, human-caused mortality, and displacement.

The IGBC recognized the importance of providing areas of secure habitat for grizzly bears away from humans.

The IGBC recommended developing standards to identify and protect "core" areas of secure habitat for grizzly bears. The IGBC recommended these secure habitat areas be at least 0.3 miles (500 meters) from any open road or motorized trail. The IGBC recommended these secure habitat areas be large enough to support a female grizzly bear for 24 hours of foraging.

The IGBC recognized that managing motorized access in grizzly bear habitat is the most effective tool available to manage human use levels and create habitat security where it is needed.

Managing motorized access to maintain large blocks of secure habitat is important to the survival and reproductive success of grizzly bears, especially adult female bears. FWS's 1993 grizzly bear recovery plan recommended that road management be given the highest priority for grizzly bear recovery.

Motorized routes bring humans into grizzly bear habitat and reduce the quality and quantity of large-intact blocks of grizzly bear habitat. Most grizzly bear deaths occur within 500 meters (0.3 miles) of roads. Nearly all grizzly bear deaths occur within 1,000 meters (0.6 miles) of roads.

Roads may have compounding or long-lasting impacts on

grizzly bear behavior. Roads may displace grizzly bears into degraded or lower quality habitat, or to developed areas resulting in an increased risk of human-bear conflicts. Grizzly bears may pass avoidance behavior along to their cubs. After a road is closed, grizzly bears may continue to avoid habitat around that road for more than one generation.

Roads fragment habitat and effectively cut grizzly bears off from important resources. Habitat fragmentation and isolation increase the vulnerability to threats such as decreased demographic or genetic connectivity.

Female grizzly bears are more susceptible to habitat fragmentation than males because female dispersal is gradual, usually significantly shorter distances than males, and holds potential for small population augmentation and/or demographic rescue through their ability to produce off-spring post-immigration into small, isolated populations. Dispersal patterns suggest that to enhance or re-establish female connectivity, female occupancy of connectivity areas with sufficient secure habitat is necessary to facilitate inter-generational connectivity.

The best available science indicates secure habitat is the best tool for managing and assessing the impacts of motorized access on grizzly bears and grizzly bear habitat.

Grizzly bears' risk of mortality from human conflict is inversely related to secure habitat levels. Grizzly bears are at high risk of human conflict in areas with low amounts of secure habitat. Grizzly bears are at low risk of human conflict in areas with high amounts of secure habitat.

The best available science indicates secure habitat is an important metric for evaluating a project's impacts on grizzly bears.

The Forest Service uses secure habitat as a metric for evaluating a project's impact on grizzly bears.

FWS uses secure habitat as metric for evaluating a project's impact on grizzly bears.

A project that decreases secure habitat (through, for example, road construction or increased vehicular traffic) degrades grizzly bear habitat. A project that decreases secure habitat increases the risk of grizzly bear mortality.

The HLCNF includes a portion of the NCDE recovery zone and part of the only public lands corridor connecting the NCDE and GYE recovery zones.

The HLCNF's provides a critical connectivity area for grizzly bears between the NCDE and GYE recovery zones. The Helena Forest is critical to grizzly bear conservation.

The EA states:
Management Zone 3 (including the Highwoods, Little Belts, Castles, and Crazies geographic areas in the Helena forest) is where grizzly bear occupancy is not known to occur nor expected in the future due to lack of sufficient habitat (depicted in pink).

This is incorrect. Please see the following article that ran KRTV in Great Falls on March 26, 2025, titled, "Grizzly bears in the Little Belt Mountains."

Grizzly bears in the Little Belt Mountains



Photo by: MTN News
GRIZZLY BEAR (undated file photo)

By: Tommy Lynch

Posted 6:02 PM, Mar 26, 2025 and last updated 9:31 AM, Mar 28, 2025
GREAT FALLS — Since 2017, there has been an increase in grizzly bear reports in the Little Belts Mountains southeast of Great Falls, and Montana Fish, Wildlife, and Parks wants to make sure that everyone is staying safe.

David Kemp, grizzly bear management specialist with FWP, said, "We've had bears moving off of the Rocky Mountain front out of the Northern Continental Divide ecosystem for several years now. And they're expanding east, more into central Montana."

Kemp wants to make sure the people of the Little Belts are aware that grizzly bears are in the area.

Kemp said, "We want the public to be educated on what they should do when they encounter a grizzly bear. We're particularly interested in preventing human bear conflicts."

He says to make sure there are no attractants on your property for bears, such as unsecured trash or ripe fruit trees.

Kemp said, "We don't want the bear to come by your place, find something it wants to eat there that's available to them, learns that [it] is available there, and then it repeatedly sticks around."

John Juras has a cabin in the Little Belts, and knows his fair share about bear encounters.

He noted, "In the Little Belts I've had black bear encounters. In the Rocky Mountain Front, I've had numerous grizzly bear encounters."

Juras stays mindful of the bears, keeping himself hazard-free, and staying calm when he comes across them.

Juras said, "The key is you don't want to panic. You want to act cool and be confident."

And, if Juras is being honest, he does not mind others being afraid of the animals.

Juras said, "I actually think it's great that there are bears in the Little Belts. Gives me more quiet and peace on the trails."

In the current conditions, Kemp expects bear populations to continue spreading east, especially as waterways coming off the Rocky Mountain Front flow east themselves.

The Judith Springs EA, DDN ignore the Wildlife report when it states:
Grizzly bear secure habitat occurs in the analysis area and project area,

much of it influenced by the amount and location of motorized routes (roads).

The EA and DDN then proceeds to tell the public that they can build 62 miles of new roads in the project area and one acre secure grizzly habitat with no effect on grizzlies ability to connect to the Greater Yellowstone Ecosystem. The EA and DDN offer no evidence that one acre is enough habitat for a female grizzly to sue for one day.

The Forest Service prepared a biological assessment for the 2021 Helena Forest Plan.

In accordance with the best available science, the Forest Service's 2021 biological assessment defined the minimum patch size for grizzly bear secure habitat on the Helena Forest as 2,500 acres. This patch size definition applied in all areas of the Helena Forest, both inside and outside the NCDE recovery zone, where grizzly bears may be present, including within Management Zones 1, 2, and 3.

The Forest Service prepared a detailed memorandum in October, 2020 explaining its decision and approach to defining secure habitat on the Helena Forest, including its decision to adopt a 2,500-acre patch size for all areas where grizzly bears may be present in accordance with other forests in the NCDE.

The Forest Service prepared an environmental impact statement ("EIS") for the Helena Forest Plan under NEPA in October 2021. In accordance with the best available science, the Forest Service's EIS defined the minimum patch size for grizzly bear secure habitat as 2,500 acres. This patch size definition applied in all areas of the Helena Forest, both inside and outside the NCDE recovery zone, where grizzly bears may be present, including within Management Zones 1, 2, and 3.

FWS issued a biological opinion for the 2021 Helena Forest Plan. In accordance with the best available science, FWS defined the minimum patch size for grizzly bear secure habitat as 2,500 acres. This patch size definition applied in all areas of the Helena Forest, both

inside and outside the NCDE recovery zone, where grizzly bears may be present, including within Management Zones 1, 2, and 3.

In the 2021 biological opinion, FWS concluded that implementation of the proposed Helena Forest Plan was not likely to jeopardize the continued existence of the grizzly bear. This finding was premised, in part, on how secure habitat for grizzly bears was defined, managed, and analyzed in the Helena Forest.

The 2021 Helena Forest Plan EIS, biological assessment, and biological opinion used "secure habitat" as a key metric for establishing the pre-project status of grizzly bears in the Forest Plan area, as well as evaluating a project's effects on the species.

The 2021 Helena Forest Plan EIS, biological assessment, and biological opinion defined grizzly bear "secure habitat" throughout the Helena Forest Plan area as "areas more than 500 meters (0.3 miles) from any motorized route and at least 2,500 acres in size." This definition is consistent with the best available science. An area of secure habitat at least 2,500 acres in size provides an individual female grizzly bear adequate space to meet her daily foraging needs without having to cross or forage near motorized routes.

In January 2022, FWS completed a revised biological opinion on the effects of the Helena Forest Plan on grizzly bears, which reached the same no jeopardy conclusion as the previous biological opinion.

In the 2022 revised biological opinion, FWS once again defined the minimum patch size for grizzly bear secure habitat as 2,500 acres in accordance with the best available science. This patch size definition applied in all areas of the Helena Forest, both inside and outside the NCDE recovery zone, where grizzly bears may be present, including within Management Zones 1, 2, and 3.

In 2024, the Forest Service reinitiated consultation with FWS on the potential effects of the Helena Forest Plan on grizzly bears.

In June, 2024, the Forest Service prepared a new biological assessment on the effects of the Helena Forest Plan on grizzly bears.

In the Forest Service's 2024 biological assessment, the Forest Service explained that it decided to change the minimum patch size for

grizzly bear secure habitat to one-acre (from 2,500 acres) for all areas outside the NCDE recovery zone, including the Divide Landscape on the Helena Forest (which is important for connectivity) and within Management Zones 1,2, and 3.

The Forest Service provided no scientific support for this change. The Forest Service provided no scientific support for having two different patch sizes for grizzly bear secure habitat on the same forest. One-acre patch sizes are too small to provide security for grizzly bears.

In April 2025, FWS issued another revised biological opinion on the Helena Forest Plan's effects on grizzly bears.

FWS's 2025 biological opinion evaluated the ongoing implementation of the Helena Forest Plan and did not reflect any change in the underlying agency action.

FWS's 2025 biological opinion adopted the Forest Service's new one-acre minimum patch size for secure habitat for all areas outside the NCDE recovery zone, including within Management Zones 1, 2, and 3.

The Forest Service and FWS's new one-acre patch size definition of secure habitat for grizzly bears applies in all areas outside the NCDE recovery zone, where grizzly bears may be present, including all GBAUs within Management Zones 1, 2, and 3 on the Helena Forest.

The Forest Service and FWS's decision to redefine secure habitat for grizzly bears as one-acre patch sizes changes how grizzly bear habitat is managed on the Helena Forest.

The Forest Service and FWS's decision to redefine secure habitat for grizzly bears as one-acre patch sizes changes how impacts to grizzly bears and grizzly bear habitat and connectivity are analyzed on the HLCNF.

The Forest Service and FWS's decision to redefine secure habitat for grizzly bears as one-acre patch sizes artificially inflates the amount of secure habitat that actually exists.

The Forest Service and FWS's decision to redefine secure habitat for grizzly bears allows the agencies to count small islands of habitat as "secure,"– including football field size patches – even though they are in a fragmented landscape and grizzly bears would be at a high risk of mortality from crossing roads to access these islands of habitat.

In the 2025 HLCNF Forest Plan biological opinion, FWS did not analyze the effects of changing the definition of secure habitat to one-acre patch size on grizzly bears.

In the 2025 Helena Forest Plan biological opinion, FWS did not make a jeopardy determination on the change in secure habitat definition from 2,500 acres to one acre.

The change in secure habitat definition from 2,500-acre patch size to one-acre patch size was first disclosed in the Forest Service's biological assessment and then included in the 2025 Forest Plan

biological opinion. No other consultation document for the Helena Forest Plan reflects the change from 2,500-acre secure habitat patch size to one-acre patch size. Prior consultation documents on the Helena Forest Plan did not analyze the effects of changing the definition of secure habitat to one-acre patch size outside of the NCDE recovery zone on grizzly bears. Prior consultation documents on the Helena Forest Plan did not make a jeopardy determination on the change in secure habitat definition to one-acre patch size on grizzly bears.

140. In May 2025, one month after the 2025 biological opinion was issued, the Forest Service updated its October, 2020 internal guidance titled "Documentation for Development of Secure Habitat Analysis for Grizzly Bears Outside of the NCDE Recovery Zone/PCA on the Helena-Lewis and Clark National Forest (Oct. 2020)." The Forest Service redefined secure habitat minimum patch size on the Helena Forest outside the NCDE recovery zone as one-acre.

Following the 2025 biological opinion on the Helena Forest Plan, the Forest Service now uses the one-acre patch size when defining, managing, and analyzing impacts to grizzly bear secure habitat for site-specific projects in the Helena Forest (that occur outside the NCDE recovery zone).

Please find attached Vucetich et al 2022 which states on page 5,

The ESA's findings:

The Congress finds and declares that (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation; (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction; (3) these species of fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people... [4]

Based on those findings, Congress expressed the ESA's purpose:
The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section. [5]

To summarize: While the Director of the FWS has discretion in interpreting SPR, that discretion is constrained by the ESA's statutory purpose.

II. THE BIODIVERSITY CRISIS

The findings and purposes of the ESA describe what scientists now refer to as the biodiversity crisis. Understanding the purpose of the ESA requires understanding the best-available science as it pertains to the biodiversity crisis.

Humans have increased the rate of species extinction by three orders of magnitude or more.[6] *Consequently, of ~40,000 known species of vertebrates, 20% are believed to be at elevated risk of extinction.*[7] *Those statistics are important and grim. But they also represent a deeply inadequate understanding of the biodiversity crisis.*

According to best-available science, an adequate description of the biodiversity crisis requires taking account of the widespread loss of species' geographic range for at least three reasons:

o Extinction risk is directly related to the extent of a species' geographic range.[8]

The Judith Springs project is in violation of the ESA, NFMA NEPA and the APA for not protecting the project are in the Little Belts, not only for grizzlies but also for lynx, whitebark pine, monarch butterflies, and wolverines. The ESA requires the Forest Service to recover listed species and the ecosystems upon which they depend. The project does not do this.

Under Section 7 of the ESA, the Forest Service and FWS shall ensure agency actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the species' critical habitat. 16 U.S.C. § 1536(a)(2).

To fulfill this duty, the Forest Service must consult with FWS on how its HLCNF Forest Plan and Judith Springs project may affect grizzly bears.

Under Section 7 of the ESA, if the HLCNF Forest Plan and Judith Springs project may adversely affect grizzly bears, then FWS must prepare biological opinions to determine whether the actions are likely to jeopardize the continued existence of the species. 16 U.S.C. §§ 1536(a)(2), (b); 50 C.F.R. § 402.14.

Under Section 7 of the ESA, biological opinions must be based on "the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(8).

The Fish and Wildlife Service (FWS) issued a 2025 biological opinion for grizzly bears for the HLCNF Forest Plan. This biological opinion redefines secure habitat for grizzly bears outside the NCDE recovery zone as patches of land at least one-acre in size. The previous biological opinions for the Helena Forest Plan defined the minimum patch size as 2,500 acres.

The FWS issued a 2025 biological opinion for grizzly bears for the Judith Springs project. This biological opinion redefines secure habitat for grizzly bears outside the NCDE recovery zone as patches of land at least one-acre in size. This biological opinion tiers to the 2025 HLCNF Plan biological opinion.

One-acre patch sizes of "secure habitat" for grizzly bears does not provide habitat security for grizzly bears. The best available science reveals one-acre patch sizes for "secure habitat" for grizzly bears does not provide habitat security for grizzly bears. There is no scientific support for one-acre patch sizes of secure habitat for grizzly bears.

FWS's failure to utilize and apply the best available science on grizzly bears and secure habitat when issuing its 2025 biological opinion for the HLCNF Forest Plan is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

The Forest Service's reliance on the HLCNF Forest Plan and Judith Springs biological opinions despite these legal flaws is arbitrary, capricious, and violates Section 7 of the ESA. 5 U.S.C. § 706(2)(A).

Under Section 7 of the ESA, if the Forest Service's Under Section 7 of the ESA, if the Forest Service's HLCNF Forest Plan and Judith Springs project may adversely affect grizzly bears, then FWS must prepare biological opinions to determine whether the actions are likely to jeopardize the continued existence of the species. U.S.C. §§ 1536(a)(2), (b); 50 C.F.R. § 402.14.
The FWS can only issue a "no jeopardy" finding after evaluating and adding up the environmental baseline, the effects of the action, and the cumulative effects. 50 C.F.R. § 402.02.

The "environmental baseline" is the condition of the listed species before the proposed action. 50 C.F.R. § 402.02. The baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action

area, the anticipated impacts of all proposed Federal projects in the action area, and the impact of State or private actions which are contemporaneous with the consultation in process. *Id*.

The "effects of the action" are "all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action." 50 C.F.R. § 402.02

The FWS's biological opinions for the HLCNF Forest Plan fails to properly define and analyze the environmental baseline on grizzly bears and secure habitat in the analysis areas.

By adopting a one-acre minimum patch size for secure habitat, FWS created a distorted environmental baseline that fails to capture the current status of grizzly bears in the action area and conflicts with the best available science. FWS's one-acre patch size characterizes small areas of habitat, which are far below what the best available science considers "secure" for grizzly bears, as secure habitat.

This creates the impression that conditions are better for grizzly bears than they actually are by artificially inflating the amount of available "secure" habitat for grizzly bears in the action area.

FWS's biological opinions for the Forest Plan failed to properly define and analyze the "effects of the action."

FWS's biological opinions utilize secure habitat to analyze the effects of motorized access on grizzly bears. FWS's use of a one-acre secure habitat patch size, which is unsupported by the best available science, distorts this analysis. FWS's approach fails to capture and minimizes the impacts of the HLCNF Forest Plan project on actual grizzly bear habitat security.

FWS's failure to properly define the environmental baseline and effects of the action undermines its "no jeopardy" findings for the 2025 HLCNF Forest Plan biological opinion.

FWS's biological opinions and related "no jeopardy" findings for the 2025 HLCNF Forest Plan is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA. 5 U.S.C. § 706(2)(A).

The Forest Service's reliance on the HLCNF Forest Plan and Judith Springs biological opinions despite these legal flaws is arbitrary, capricious, and violates Section 7 of the ESA. 5 U.S.C. § 706(2)(A).

The FWS's reliance on a one-acre secure habitat patch size for its use of secure habitat as a surrogate is improper. The one-acre secure habitat patch size is not in accordance with the best available science.

FWS's surrogate does not align with a female's ability to meet its habitat and foraging needs.

The FWS's biological opinion and related ITS for the continued implementation of the HLCNF Forest Plan is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA. U.S.C. § 706(2)(A).

The Forest Service's reliance on the HLCNF Forest Plan and Judith Springs biological opinions despite these legal flaws is arbitrary, capricious, and violates Section 7 of the ESA. 5 U.S.C. § 706(2)(A).

The ESA Section 7(a)(2)'s consultation requirement applies to any "agency action" that "may affect listed species or critical habitat." 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). "Agency action" includes "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies."

50 C.F.R. § 402.02. The ESA's use of the term "agency action" is to be construed broadly. Whether an agency action "may affect" a listed species or its habitat is a "relatively low threshold" such that "any possible effect, whether beneficial, benign, adverse or of an undetermined character" triggers the requirement.

The FWS and the Forest Service's adoption of the new one-acre definition of secure habitat is an agency action under the ESA, triggering the ESA's Section 7 consultation requirement.

FWS and the Forest Service's new one-acre definition of secure habitat may affect grizzly bears. The new one-acre definition allows the agencies to count small islands of habitat in a fragmented landscape as "secure," even though these areas are too small to support a female grizzly bear's foraging needs for 24 to 48 hours.

FWS and the Forest Service's adoption of this new one-acre definition influences the agencies' effects analyses and jeopardy determinations of the HLCNF Forest Plan and Judith Springs project.

FWS and the Forest Service's adoption of the new one-care definition of secure habitat portrays the situation for grizzly bears on the landscape as better than it actually is by artificially inflating the amount of "secure" habitat throughout the Helena Forest Plan area, and by minimizing an action's effects on secure habitat.

The FWS and the Forest Service failed to consult on the change to grizzly bear secure habitat patch size in violation of the ESA.
196. FWS and the Forest Service's failure to consult on its decision to change the minimum patch size for grizzly bear secure habitat from 2,500 to one acre in size in the HLCNF Forest is arbitrary, capricious, and violates Section 7 of the ESA. 5 U.S.C. § 706(2)(A).

When changing their existing policies, including how they

define and manage secure habitat for grizzly bears, FWS and the Forest Service must articulate a satisfactory explanation for their action, including a rational connection between the facts found and the choice made.

While an agency may change existing policies, it must display awareness that it is changing position and provide a reasoned explanation for the change. An agency has a heightened burden to provide a more detailed justification when a new policy relies upon factual findings that contradict those underlying its prior policy. An agency must explain its decision for disregarding facts and circumstances that underlay or were engendered by the prior policy.

The FWS and the Forest Service's new definition of secure habitat in large portions of the Helena Forest is inconsistent with the agency's previous findings and support for a minimum patch size of 2,500 acres on the HLCNF. There is no reasonable or rational explanation for making this change. This change conflicts with the best available science. This change conflicts with the Forest Service's own detailed findings in an October, 2020 memorandum on this topic.

The FWS and the Forest Service's new definition of secure habitat in large portions of the Helena Forest is inconsistent with the agency's own decision to keep the minimum patch size at 2,500 acres in the NCDE recovery zone. There is no reasonable or rational explanation for having two different, minimum patch size requirements for secure habitat on the same forest (one definition inside the recovery zone and one outside the recovery zone). A one-acre minimum size for secure habitat is contrary to the best available science. A one-acre minimum patch size for secure habitat has no scientific support.

The FWS and the Forest Service's adoption of a new secure habitat definition (and related adoption of conflicting definitions in the same forest) in the absence of any reasonable or rational

explanation is arbitrary, capricious, and not in accordance with law, in violation of the law. 5 U.S.C. § 706(2)(A).

Under NEPA, Federal agencies are required to analyze the environmental effects of each "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C).

The Forest Service's adoption of the new one-acre secure habitat patch size constitutes a "major Federal action significantly affecting the quality of the human environment."

Redefining minimum secure habitat patch size to one acre has affected and will affect the agencies' decision making and effects analyses because secure habitat is the central metric governing grizzly bear management and recovery. Secure habitat plays a critical role in evaluating a project's effects under NEPA, like with the Judith Springs project, and determining if a project will jeopardize the species under the ESA.

In failing and/or deciding not to prepare any environmental analysis as required by NEPA, the Forest Service failed to adequately consider and evaluate the potential direct, indirect, and cumulative environmental effects of the new one-acre secure habitat definition on grizzly bears and grizzly bear habitat in the Helena Forest.

The Forest Service's decision not to prepare and/or failure to prepare any environmental analysis for the change in secure habitat definition from 2,500 acres to one acre on the Helena Forest qualifies as agency action unlawfully withheld or unreasonably delayed and/or is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with NEPA. 5 U.S.C. §§ 706(1), (2)(A).

The "effects of the action" are "all consequences to listed species or critical habitat that are caused by the proposed action,

including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action." 50 C.F.R. § 402.02

The FWS's biological opinions for the HLCNF Forest Plan and the Judith Springs project fail to properly define and analyze the environmental baseline on grizzly bears and secure habitat in the analysis areas.

By adopting a one-acre minimum patch size for secure habitat, FWS created a distorted environmental baseline that fails to capture the current status of grizzly bears in the action area and conflicts with the best available science. FWS's one-acre patch size characterizes small areas of habitat, which are far below what the best available science considers "secure" for grizzly bears, as secure habitat.

This creates the impression that conditions are better for grizzly bears than they actually are by artificially inflating the amount of available "secure" habitat for grizzly bears in the action area.

How will this project impact wolverine habitat, denning, foraging or displacement?

Wolverine have been given Endangered Species Act protection, the Flathead must consult with the US Fish and Wildlife Service over the impacts to wolverine. Scientific studies are emerging about landscape effects from logging and other human activities so assumptions about habitat usage, prey availability and motorized use might change.

For example, Fisher, et al Wolverines (Gulo gulo luscus) on the Rocky Mountain slopes: natural heterogeneity and landscape alteration as predictors of distribution found: Wolverines were more abundant in rugged areas protected from anthropogenic development. Wolverines were less likely to occur at sites with oil and gas exploration, forest harvest, or burned areas, even after accounting for the effect of topography.

Wolverines elsewhere avoid human-disturbed areas (Carroll et al. 2001; Rowland et al. 2003; May et al. 2006) and recreational and industrial activity (Krebs et al. 2007). Human activities such as trapping, poaching, and road mortality have accounted for 46% (North America; Krebs et al. 2004) to 52% (Scandinavia; Persson et al. 2009) of known-cause wolverine mortalities across their range.

Wolverines avoid roads and other human development in British Columbia (Krebs et al. 2007), Norway (May et al. 2008), Idaho (Copeland et al. 2007), Montana (Carroll et al. 2001), and throughout the northwestern United States (Rowland et al. 2003).

Wolverine occurrence also increases with topographic ruggedness, where there is a combination of low- and high-elevation habitats. Bighorn sheep (Ovis canadensis Shaw, 1804) (Festa-Bianchet 1988), mule deer (Odocoileus hemionus (Rafinesque, 1817)) (D'Eon and Serrouya 2005), and other ungulates winter at lower elevations; in Scandinavia, wolverines showed significant selection for lower elevation habitats during winter months (Landa et al. 1998). It is possible that wolverines require lower elevations for foraging and higher elevations for predation refuge. Persistent spring snow cover has been hypothesized as important (Schwartz et al. 2009; Copeland et al. 2010) but is not a good predictor at this scale, since spring snow cover was sufficiently persistent across our study landscape to prevent modelling but wolverine occurrence still varied.

Southwest Crown of the Continent monitoring detected wolverines at elevations ranging from 3,346-7,567 feet.

The Northern Rockies Lynx Management Direction is inadequate to ensure conservation and recovery of lynx. The amendments fail to use the best available science on necessary lynx habitat elements, including but not limited to, failing to include standards that protect key winter habitat.

The Endangered Species Act requires the FS to insure that the GRLA project is not likely to result in the destruction or adverse modification of critical habitat. 16 U.S.C. §1536(a) (2). Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for lynx. 74 Fed. Reg. 8644. The Northern Rockies Lynx Management Direction (NRLMD) as applied in the project violates the ESA by failing to use the best available science to insure no adverse

modification of critical habitat. The NRLMD carves out exemptions from Veg Standards

S1, S2, S5, and S6. In particular, fuel treatment projects may occur in the WUI even though they will not meet standards Veg S1, S2, S5, or S6, provided they do not occur on more than 6% of lynx habitat on each National Forest. Allowing the agency to destroy or adversely modify any lynx critical habitat has the potential to appreciably reduce the conservation value of such habitat. The agency cannot simply set a cap at 6% forest-wide without looking at the individual characteristics of each LAU to determine

whether the project has the potential to appreciably reduce the conservation value. The ESA requires the use of the best available science at the site-specific level. It does not allow the agencies to make a gross determination that al- lowing lynx critical habitat to be destroyed

fo- rest-wide while not appreciably reduce the conservation value.

The FS violated NEPA by applying the above-mentioned exception without analyz- ing the impacts to lynx in the individual LAUs. The Project violates the NFMA by failing to in- sure the viability of lynx. Ac- cording to the 1982 NFMA regulations, fish and wildlife must be managed to maintain vi- able populations of Canada lynx in the planning area. 36 C.F.R. 219.19. The FS has not shown that lynx will be well distributed in the planning area. The FS has not addressed how the project's adverse modification of denning and foraging habitat will impact distribution. This is important because the agency readily admits that the LAUs already contain a "relatively large percentage of unsuitable habitat."

The national forests subject to this new direction will provide habitat to maintain a viable

population of lynx in the northern Rockies by maintaining the current distribution of occupied lynx habitat, and maintaining or enhancing the quality of that habitat.

The FS cannot insure species viability here without addressing the impacts to the already low amount of suitable habitat. By cutting in denning and foraging habitat, the agency will not be "maintaining or enhancing the quality of the habitat."

This project is in Canada lynx habitat. In order to meet the requirements of the FS/USFWS Conservation Agreement, the FS agreed to insure that all project activities are consistent with the Lynx Conservation Assessment and Strategy (LCAS) and the requirements of protecting lynx critical habitat. The FS did not do so with its project analysis. This project will adversely affect lynx critical habitat in violation of the Endangered Species Act. The BA/BE needs to be rewritten to reflect

this information to determine if this project will adversely modify proposed critical habitat for lynx and if so conference with USFWS.

The Helena-Lewis and Clark National Forest (HLCNF) is home to the Canada lynx, listed as a Threatened species under the Endangered Species Act (ESA). In December 1999, the Forest Service and Bureau of Land Management completed their "Biological Assessment Of The Effects Of National Forest Land And Resource Management Plans And Bureau Of Land Management Land Use Plans On Canada Lynx" (Programmatic Lynx BA). The Programmatic Lynx BA concluded that the cur- rent programmatic land management plans "may affect, and are likely to adversely affect, the subject population of Canada lynx."

The Lynx BA team recommended amending or revising Forest Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects on lynx. The Programmatic Lynx BA's determination means that Forest Plan implementation is a "taking" of lynx, and makes Section 7 formal consultation on the Helena-Lewis and Clark Forest Plan mandatory, before actions such as the proposed project are approved.

Continued implementation of the Forest Plan constitutes a “taking” of the lynx. Such taking can only be authorized with an incidental take statement, issued as part of a Biological Opinion (B.O.) during of Section 7 consultation. The Helena-Lewis and Clark National Forest must incorporate terms and conditions from a programmatic B.O. into a Forest Plan amendment or revision before projects affecting lynx habitat, such as this one, can be authorized.

The Programmatic Lynx BA’s “likely to adversely affect” conclusion was based upon the following rationale. Plans within the Northern Rockies:

• Generally direct an aggressive fire suppression strategy within developmental land allocations. ...this strategy may be contributing to a risk of adversely affecting the lynx by limiting the availability of foraging habitat within these areas.

• Allow levels of human access via forest roads that may pre- sent a risk of incidental trapping or shooting of lynx or access by other competing carnivores. The risk of road-related adverse effects is primarily a winter season issue.

• Are weak in providing guidance for new or existing recreation developments. There- fore, these activities may contribute to a risk of adverse effects to lynx.

• Allow both mechanized and non-mechanized recreation that may contribute to a risk of adverse effects to lynx. The potential effects occur by allowing compacted snow trails and plowed roads which may facilitate the movements of lynx competitors and predators.

• Provide weak direction for maintaining habitat connectivity within naturally or artificially fragmented landscapes. Plans within all geographic areas lack direction for coordinating construction of highways and other movement barriers with other responsible agencies. These factors may be contributing to a risk of adverse effects to lynx.

• Are weak in providing direction for coordinating management activities with adjacent landowners and other agencies to assure consistent management of lynx habitat across the landscape. This may contribute to a risk of adverse effects to lynx.

• Fail to provide direction for monitoring of lynx, snowshoe hares, and their habitats. While failure to monitor does not directly result in adverse effects, it makes the detection and assessment of adverse effects from other management activities difficult or impossible to attain.

• Forest management has resulted in a reduction of the area in which natural ecological processes were historically allowed to operate, thereby increasing the area potentially affected by known risk factors to lynx. The Plans have continued this trend. The Plans have also continued the process of fragmenting habitat and

reducing its quality and quantity. Consequently, plans may risk adversely affect- ing lynx by potentially contributing to a reduction in the geographic range of the species.

• The BA team recommends amending or revising the Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects to lynx. The programmatic conservation measures listed in the Canada Lynx Con- servation Assessment and Strategy (LCAS) should be considered in this regard, once finalized. (Programmatic Lynx BA, at 4.)

The Programmatic Lynx BA notes that the LCAS identifies the following risk fac-tors to lynx in this geographic area:

- Timber harvest and pre-commercial thinning that reduce denning or foraging habitat or converts habitat to less desirable tree species

- Fire exclusion that changes the vegetation mosaic maintained by natural disturbance processes

- Grazing by domestic livestock that reduces forage for lynx prey

The Forest Service responded on page 22 of the DDN:

Due to the small magnitude of habitat changes relative to availability, the determination for implementation of the project is “may affect, not likely to adversely affect” for Canada lynx.

The DDN and EA do not adequately explain how openings bigger than 75 acres provides for habitat that contributes to long-term persistence of lynx in violation of NEPA, NFMA, the APA, the ESA and the revised Forest Plan.

The DDN and EA did not adequately consider the cumulative impacts of the clearcutting, intensive logging, and road building on native species including lynx, grizzly bears and old growth dependent species. None of these species benefit from more logging roads and more logging and clearcuts.

Recent scientific findings undermine the Forest Plan/NRLMD direction for management of lynx habitat. This creates a scientific controversy the FS fails to resolve, and in fact it essentially ignores it.

For one, Kosterman, 2014 found that 50% of lynx habitat must be mature undisturbed forest for it to be optimal lynx habitat where lynx can have reproductive success and no more than 15% of lynx habitat should be young clearcuts, i.e. trees under 4 inched dbh. Young regenerating forest should occur only on 10-15% of a female lynx home range, i.e. 10-15% of an LAU. This renders inadequate the agency's assumption in the Forest Plan/NRLMD that 30% of lynx habitat can be open, and that no specific amount of mature forest needs to be conserved. Kosterman, 2014 demonstrates that Forest Plan/NRLMD standards are not adequate for lynx viability and recovery.

Also, the Forest Plan essentially assumes that persistent effects of vegetation manipulations other than regeneration logging and some intermediate treatments are essentially nil. However, Holbrook, et al., 2018 "used univariate analyses and hurdle regression models to evaluate the spatio-temporal factors influencing lynx use of treatments." Their analyses "indicated ...there was a consistent cost in that lynx use was low up to ~10 years after all silvicultural actions." (Emphasis added.) From their conclusions:

First, we demonstrated that lynx clearly use silviculture treatments, but there is a ~10 year cost of implementing any treatment (thinning, selection cut, or regeneration cut) in terms of resource use by Canada lynx. This temporal cost is associated with lynx preferring advanced regenerating and mature structural stages (Squires et al., 2010; Holbrook et al., 2017a) and is consistent with previous work demonstrating a negative effect of precommercial thinning on snowshoe hare densities for ~10 years (Homyack et al., 2007). Second, if a treatment is implemented, Canada lynx used thinnings at a faster rate post- treatment (e.g.,~20 years posttreatment to

reach 50% lynx use) than either selection or regeneration cuts (e.g., ~34–40 years post-treatment to reach 50% lynx use). Lynx appear to use regeneration and selection cuts similarly over time suggesting the difference in vegetation impact between these treatments made little difference concerning the potential impacts to lynx (Fig. 4c). Third, Canada lynx tend to avoid silvicultural treatments when a preferred structural stage (e.g., mature, multi-storied forest or advanced regeneration) is abundant in the surrounding landscape, which highlights the importance of considering landscape-level composition as well as recovery time. For instance, in an area with low amounts of mature forest in the neighborhood, lynx use of recovering silvicultural treatments would be higher versus treatments surrounded by an abundance of mature forest (e.g., Fig. 3b). This scenario captures the importance of post-treatment recovery for Canada lynx when the landscape context is generally composed of lower quality habitat. Overall, these three items emphasize that both the spatial arrangement and composition as well as recovery time are central to balancing silvicultural actions and Canada lynx conservation.

So Holbrook et al., 2018 fully contradict Forest Plan assumptions that clearcuts/regeneration can be considered useful lynx habitat as early as 20 years post-logging.

Results of a study by Vanbianchi et al., 2017 also conflict with Forest Plan/ NRLMD assumptions: “Lynx used burned areas as early as 1 year postfire, which is much earlier than the 2–4 decades postfire previously thought for this predator.” The NRLMD erroneously assumes clearcutting/regeneration logging have basically the same temporal effects as stand-replacing fire as far as lynx re-occupancy.

Kosterman, 2014, Vanbianchi et al., 2017 and Holbrook, et al., 2018, Holbrook 2019 demonstrate that the Forest Plan direction is not adequate for lynx viability and recovery, as the FS assumes. Holbrook 2019 such all lynx habitat must be surveyed. You have not done demonstrated that this was done. The Forest Service did minimal lynx surveys but they did not need the requirements in Holbrook.

Please find Holbrook 2017, 2018, and 2019 attached.

The EA claims that lynx are only transitory so they are not required to follow the ESA. This is in correct. The project area is in lynx habitat and their duty under the ESA to recover species and protect their habitat not keep them in a threatened state.

Page 23 of the final EA/Draft Decision Notice states:

- Habitat for a transient lynx would remain in the analysis area across 3 LAUs as demonstrated above.

Did the Forest Service eliminate or reduce any lynx analysis units (LAUs) without taking public comment? The EA does not mention if the Forest Service did this or not. If the Forest Service eleminated or reduced the size of LAUs without taking public comment then the Coyote Divide Project in in violation of NEPA.

The Forest Service is violating NEPA by failing to prepare a stand-alone NEPA analysis, either an EA or an EIS, for remapping of lynx habitat and LAUs on the Helena-Lewis and Clark National Forest.

NEPA requires federal agencies to prepare a detailed EIS for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(c).

1. Major Federal actions "include new and continuing activities, including
projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals." 40 C.F.R. § 1508.18(a) (2020).

2. Major Federal actions typically fall into one of four categories:

    - (i) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an

agency's policies which will result in or substantially alter agency programs.

- (ii) Adoption of formal plans, such as official documents prepared or approved by Federal agencies, which prescribe alternative uses of Federal resources, upon which future agency actions will be based.

- (iii) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive. (d. iv) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities. Id. § 1508.18(b).

- An EIS must provide a "full and fair discussion of significant environmental impacts," and inform "decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." Id. § 1502.1.

1. Remapping of lynx habitat on the Forest removes mapped lynx habitat and thereby stripping the legal protections of the NRLMD from those acres.

2. If the Forest Service did this it was an official agency action that was reviewed and approved by the Forest Service Region One office.

3. Remapping of lynx habitat and removal of LAUs is a major federal action that requires NEPA analysis.

Remedy:

Choose the No Action alternative of withdraw the DDN and FONSI and write an EIS that fully complies with the law.

We wrote in our comments starting with:

Pinyon Jays
The project is in Pinyon jay habitat.

Regarding PJ habitats. Of course, they are critical for Pinyon Jays, a species whose population is catastrophically plummeting – in significant part due to federal agency projects just like this Boulder landscape scale habitat destruction and fragmentation. Jays have been petitioned for ESA listing. The USFS has found the ESA petition may be Warranted, but USFS is slow-walking a listing decision – prompting Defenders of Wildlife to file a lawsuit over the delay.

The Abstract for a survey of Pinyon Jay habitat states: "Distribution of pinyon-juniper woodlands within the state of Idaho is limited to the southeastern boundary region. A number of high-priority bird species utilize pinyon-juniper and juniper woodlands as primary breeding habitat, yet these habitats are rarely managed in light of their inherent value to birds and other western wildlife. Pinyon pine and juniper are frequent targets of vegetative treatments, largely in attempts to increase livestock forage. Although a number of pinyon-juniper birds are of high conservation concern, little information exists for breeding populations of Neotropical migrants and other birds found within pinyon-juniper or juniper woodlands. Cumulative losses of pinyon-juniper, juniper, and associated riparian habitats could conceivably exclude a number of birds …". Agencies have long viewed PJ forests as sacrifice areas, despite the large number of avian species that nest in them.

How will this project effect pinyon jays? The wildlife Resources Report doesn't even mention pinyon jays and barely mentions any other birds in violation of NEPA, NFMA, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

Please see the attached petition to list the pinyon jay for protection under the Endangered Species Act.

Please find the FWS 90-DAY FINDING ON A PETITION TO LIST THE PINYON JAY (Gymnorhinus cyanocephalus) AS A THREATENED OR ENDANGERED SPECIES UNDER THE ENDANGERED SPECIES ACT attached.

The FWS wrote on page 8 of their findings: The petition presents credible evidence that reducing the extent and density of piñon-juniper woodlands, often with complete tree removal, is taking place across the majority of the range of the pinyon jay (Bombaci et al. 2017, 63; Defenders of Wildlife 2022, 66-78) (1) to improve wildlife habitat (e.g. Greater Sage-Grouse, mule deer) (Bender et al. 2013, 55-56; Bergman et al. 2014, 449; Bombaci and Pejchar 2016, 40; Kramer at al. 2015, 30 and 33; Boone et al. 2018, 191) and livestock forage (Aro 1971, entire), (2) to reduce fuels and support fire mitigation plans (Schoennagel and Nelson 2011, 273-275), (3) to improve watershed function and reduce soil erosion (Jacobs 2015, 1427), and (4) increase plant community heterogeneity (Miller et al. 2014, 479).

The project will violate NEPA, NFMA, the Forest Plan and the APA. Pinyon jay's will be affected by more than just burning nesting habitat. The project will also burn up their food source, pinyon pines.

The project will destroy pinyon jay habitat throughout the project area. Pinyon Jays

The Forest Service failed to even acknowledge the presence of pinyon jay in the Project area, let alone analyze the Project's impacts on the bird, despite scientific evidence before it that demonstrates the Project would impact pinyon jays.

Pinyon jay populations have nose-dived — plummeting by over 85 percent in the last 50 years — mainly due to habitat loss caused by Forest Service

and BLM deforestation projects like this one. This project will exacerbate that decline by destroying the very juniper trees that pinyon jays rely on to survive.

Cumulative Effects
The Forest Service also failed to take a "hard look" at cumulative effects of this burning and tree cutting project along with similar projects on adjacent lands, including the Forest Service's Coyote Divide logging and burning project.

The Forest Service responded:

S***ee Appendix A "Judith Springs Species Not Analyzed in Detail" of the Terrestrial Wildlife Report for discussion of wildlife diversity. The project is consistent with the Coyote Divide Terrestrial Wildlife report's analysis. More specifically, the report states, "The 2021 Forest Plan provides the framework to ensure those species and their habitats are provided for across the plan area within the natural range of variation. As such, compliance with Forest Plan direction for terrestrial wildlife and habitat ensures that those species are provided for through Forest Plan components. Thus, there need not be a species-specific approach in those instances."***
WLD-23 Surveys for widlife species, including birds, suggests that the project would have adverse impacts on the species. WLD - 23 AWR - Letter 12

Migratory birds and wildlife biodiversity were not analyzed in detail for this project, however, see the "Diversity" section of Appendix A of the Terrestrial Wildlife Report. Report from the Montana Natural Heritage Program will be added to the project record for the project area. The project is consistent with the Coyote Divide Terrestrial Wildlife report's analysis. More specifically, the report states, "The 2021 Forest Plan provides the framework to ensure those species and their habitats are provided for across the plan area within the natural range of variation. As such, compliance with Forest Plan direction for terrestrial wildlife and habitat ensures that those species are provided for through Forest Plan components. Thus, there need not be a species-specific approach in those instances."

The EA and DDN show no evidence that the Forest Service surveys for birds nor did it even mention the word “pinyon jay.”

The golden eagle and bald eagle, both federally protected by the Bald and Golden Eagle Protection Act, also frequent visitors to the project area.

The act offers the following protections:

- Prohibited Actions:
  The act prohibits taking, possessing, selling, purchasing, bartering, offering to sell, purchase, or barter, transporting, exporting, or importing bald or golden eagles, their parts, nests, or eggs.

- Definition of "Take":
  "Take" is defined as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb".

- Disturbance:
  Regulations further define "disturb" as causing injury, decreasing productivity, or nest abandonment.

  The EA and DDN do not demonstrate that any monitoring of eagle nests has occurred to ensure that there will be no take of bald and golden eagles.

The EA and DDN provides no estimates whatsoever of how many birds will die, including goshawks, the largest and most scarce of forest raptors.

Birds are even more sensitive to air pollution than are humans. Wildfire smoke can directly kill birds or reduce their fitness due to smoke toxicity. Please find Olivia V Sanderfoot and Tracey Holloway 2017 Environ. Res. Lett. 12 083002 attached. Yet, the EA and DDN shows no evidence that the Forest Service surveyed for birds.

According to Dr. Olivia Sanderfoot, birds’ respiratory systems are incredibly efficient at producing the oxygen required to fly. But they are also more vulnerable to the effects of smoke due to their higher metabolism and oxygen extraction combined with a lack of mechanisms to clear particles

from their airways. Carbon monoxide poisoning is a common cause of death in birds exposed to smoke, and other compounds in smoke can cause respiratory issues like pneumonia.

According to the attached paper by Johnston et al. 2025, 75% of bids species are declining in North America.

Please also find attached Rosenberg 2019 that documents declining bird populations in North America.

Slashing and burning forests, aspen stands, pinyon-juniper woodlands and sagebrush with fires occurs year-round in the southwest and every season except the winter in the north. But despite burning millions of acres, these agencies refuse to consider how burning up so much wildlife habitat will affect the wildlife they're supposed to be maintaining and recovering.

Please find attached: Conservation Strategy for the Pinyon Jay by Somershoe, S. G., E. Ammon, J. D. Boone, K. Johnson, M. Darr, C. Witt, and E. Duvuvuei.2020. Conservation Strategy for the Pinyon Jay (Gymnorhinus cyanocephalus). Partners in Flight Western Working Group and U.S. Fish and Wildlife Service.

The map in the above paper shows that inhabiting the pinyon-juniper woodland are the pinyon jay, a bird species in perilous decline throughout the American West and Montana that rely on pinyon/juniper nuts for its primary food source.

In 2023, the U.S. Fish and Wildlife Service ("FWS") issued a 90-day Finding that listing the pinyon jay under the Endangered Species Act may be warranted because of habitat manipulation projects like the one challenged here. However, even though the Project's environmental analysis concluded that pinyon jays are present in the Project area, the Forest Service never considered – let alone analyzed – the impacts from the Project on the pinyon jay and their habitat in violation of the National Environmental Policy Act ("NEPA"). We asked the Forest Service to analyze impacts to pinyon jays. You did not. The pinyon jay is a bird that inhabits pinyon-juniper woodlands throughout Montana and the American West.

The pinyon jay is also a bird of conservation concern, according to

FWS. The pinyon jay is also on the Red List as vulnerable to extinction by the International Union for the Conservation of Nature ("IUCN"). The IUCN bases its determination on the best available science.

On April 25, 2022, the pinyon jay was petitioned for listing under the Endangered Species Act. Among other reasons, the petition cited ongoing and extensive pinyon-juniper habitat manipulation by federal agencies like the Forest Service and a lack of environmental analysis under NEPA.

On February 23, 2023, FWS issued its 90-Day Finding, concluding that, among other reasons, listing the pinyon jay under the Endangered Species Act as a threatened or endangered species may be warranted because "certain habitat treatments are potentially having negative effects on pinyon jay occupancy and nesting colony sites[.]" Moreover, the 90-Day Finding concluded that NEPA, the Migratory Bird Treaty Act, and FWS's Birds of Conservation Concern list, among other regulatory mechanisms, are inadequate to ameliorate the impacts of woodland management on pinyon jays.

The Project Violates NEPA By Failing to Take a Hard Look At Impacts to Pinyon Jay and Its Habitat.

NEPA and its implementing regulations require federal agencies,

including the Forest Service, to take a "hard look" at the environmental consequences of proposed actions and the reasonable alternatives that would avoid or minimize such impacts or enhance the quality of the human environment. *See* 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. Parts 1502 and 1508 (1978). Agencies must take a hard look at the direct, indirect, and cumulative impacts of a proposed agency action and all alternatives in an EA. 40 C.F.R. §§ 1508.7, 1508.8 (1978). The information presented in the EA must be of high quality and include "accurate scientific analysis," and disclose that information and analysis, and its limitations, to the public. 40 C.F.R. § 1500.1(b)–(c) (1978).

NEPA also requires environmental analysis to disclose existing conditions in the project area to provide a baseline against which the impacts of alternative courses of action can be compared. The Forest Service's hard look analysis must utilize "public comment and the best available scientific information." *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1171 (10th Cir. 1999). Conclusory statements regarding impacts without adequate discussion do not meet the required "hard look" under NEPA. *Davis v. Mineta*, 302 F.3d 1104, 1122-23 (10th. Cir. 2002).

The EA, DDN, and FONSI failed to

disclose the Project's impacts on the pinyon jay because the agency entirely failed to consider an important aspect of the problem. Specifically, the Final EA, Decision Notice, and supporting documentation in the Project file never mention impacts from the project specifically on the pinyon jay, even though public comment and the best available science indicates that listing under the Endangered Species Act is imminent. Given the 90-Finding from FWS made in February 2023 that found listing may be warranted for the pinyon jay, and the best available science indicating that the project will occur in – and destroy—its habitat, the Forest Service's omission of any analysis of impacts to pinyon jay violates NEPA by failing to take a hard look.

In 2008, the Forest Service and FWS signed a Memorandum of Understanding ("MOU") to strengthen migratory bird conservation. In this MOU, the Forest Service agreed to "evaluate the effects of agency actions on migratory birds, focusing first on species of management concern along with their priority habitats and key risk factors." See Final EA at 25 (discussing MOU). In addition, in the MOU the Forest Service agreed to "evaluate the long-term benefits of projects against any short-or long-term

adverse effects when analyzing, disclosing and mitigating effects of actions."

As a bird of conservation concern according to FWS, the pinyon jay is also a bird of management concern and should have been thoroughly analyzed pursuant to the MOU between the Forest Service and FWS.

Forest Service Manual objectives (2670.22) also states that the Forest Service must ensure that species do not become threatened or endangered because of Forest Service actions.

Even though the Forest Service was well-aware of the decline in the pinyon jay and aware of FWS's 90-Day Finding that listing may be warranted, the Project's biological evaluation and Final EA do not mention the Project's impacts to the pinyon jay, its habitat, or its precipitous decline towards an Endangered Species listing.

Despite the Project's impact a large amount number of pinyon-juniper woodlands that the pinyon jay inhabits; FWS's 90-Day Finding that highlights the precipitous decline of the pinyon jay because of projects like the one challenged here; the Forest Service's MOU regarding migratory birds and; and Forest Service policy that Forest Service actions do not contribute to a species decline toward listing under the Endangered Species Act, the Project fails to analyze – let alone mention – impacts to pinyon jay

and their habitat. This glaring omission from the Final EA and supporting documentation does not adequately examine and identify the relevant data and then articulate the rational connection between the Project's impacts to the pinyon jay and the decision made.

By ignoring the impacts to pinyon jay and its habitat, the Forest Service fails to take a hard look in violation of NEPA and defeats the "look before you leap" mandate of NEPA through informed decision-making and public comment.

Remedy:
Please choose the No Action Alternative or write an EIS that fully complies with the law.

Roadless Areas and Wilderness Study Areas

We wrote in our comments:

EEE. Disclose how Project complies with the Roadless Rule;

Please analyze the wilderness characteristic of the both the inventoried and uninventoried roadless areas and wilderness study areas in the project area. Page 6 of the Roadless Report states: Project activities would include thinning of small diameter trees (under 9.9 inches diameter at breast height), fuel re- arrangement, fire line construction, and prescribed burning. But there is no analysis of how removing all trees under 10 inches dbh will effect wildlife.

The draft decision authorizes unlimited logging of trees 10 inches duh and smaller and burning but explains little. It is the opposite of NEPA look before you leap purpose.
The Forest Service responded in the Roadless Report:

Issues

The proposed action includes activities that fall within an exception to activities that are prohibited under the 2001 Inventoried Roadless Rule (Roadless Rule) such as prescribed fire or activities falling under exceptions allowing the cutting, sale, or removal of timber. The roadless areas, proposed acres and anticipated treatment exceptions for these areas are outlined below:

- ***36 CFR 294.13 (b)(1) The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in 36 CFR 294.11***
  o (ii) to maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;

- ***36 CFR 294.13 (b)(2) the cutting, sale or removal of timber is incidental to implementation of management activity not otherwise prohibited***
  No temporary roads are being proposed in inventoried roadless areas. There are 3.5 miles of classified roads within the Spring Creek, North Fork Smith and Middle Fork Judith Inventoried Roadless areas that will receive maintenance before project implementation.

The massive disturbances, including motorized activity throughout IRAs, is a violation of the Roadless Area Rule. Why is the public expected to avoid motorized use in IRAs when the agency can do so? This motorized use may include bulldozer construction of fire lines, and mastication motorized equipment. The miles of fire lines that will be constructed in IRAs was not disclosed. The acres of significant ground disturbance, such as from bull dozers and mastication

machinery, was not addressed. The impact of burn piles and tree stumps to the public was not addressed. The significant potential for increases in noxious weeds and invasive annuals was not addressed. The PEA notes that repeated treatments will be required in many areas. Thus IRAs may experience ongoing disturbances. These ongoing disturbances will also include fire line rehabilitation, as well as continued weed inventory and control activities. Many of these disturbances, such as burn piles, ATV trails, tree stumps, fire lines, may be relatively permanent and will make IRAs no different from other areas of the forest where management activities are expected.

It is highly likely that the massive intervention planned in IRAs will also result in a massive increase in noxious weeds and invasive annuals. This does not constitute "restoration."

The acres of expected weed increases is never identified in the PEA.

The overall rationale for massive intervention by the agency into IRAs is simply a dismissal of the Roadless Area Rule, which had huge public support. This claim that IRAs need massive intervention in order to restore ecological function was never identified in the FEIS for this Rule. At a minimum, the Rule and associated FEIS need to undergo additional analysis and public involvement, to change the current public perception of IRAs.

The reason why early post-burn conditions for vegetation need to dominate IRAs needs to be addressed in an EIS, as well, for this prescribed burning/ fuels reduction proposal, including how wildlife will be impacted by the re- quired repeated disturbances (e.g., wolverine, elk).

The Forest Service responded:

Contrary to assertions made by commenters, prescribed fire, and management actions like those proposed, are not precluded by exceptions provided in the 2001 Roadless Rule (see 36 CFR 294). Specifically, cutting of trees as part of prescribe fire treatments can be permitted when part of a project such as the proposal that would maintain or improve roadless characteristics. In this case, to restore ecosystem composition and structure. To minimize any potential effects to roadless character or wilderness attributes, design Forestwide elements were developed to reduce impacts, and an implementation plan was developed to ensure the minimum level of treatment would occur in inventoried roadless areas.

Design element 1 (environmental assessment appendix C) minimizes mechanical use in these areas. There are other design elements that apply to all areas that reduce effectsfrom motorized and mechanized use under the proposed action, as well as effects from invasive species and weeds. Additionally, the Recreation and Scenery section in the implementation plan (environmental assessment appendix D) ensures that additional specific inventoried roadless area review is completed when a treatment area is proposed within an inventoried roadless area to identify all treatment types in the implementation area. General effects of motorized and mechanized use in inventoried roadless areas are covered in both the roadless area review and the wilderness character worksheets located in the project record.

There is still no adequate analysis in the EA or DDN that defines why forest thinning and prescribed burning will not significantly affect the area's value to wildlife. We contend that the proposed logging and burning will have significant adverse impacts on many wildlife species, impacts that are not currently present within IRAs. The EA and DDN did not identify any adverse impacts that have been identified to wildlife from the current habitat conditions in IRAs. Since the current conditions arebeneficialto wildlife, and the proposed conditions will be detrimental to
wildlife, this means that the proposed action will eliminate existing values of the IRA.

The Forest Service recognizes the value of forestland unencumbered by roads, timber harvest, and other development. Sometimes these areas are known as "inventoried roadless areas" if they have been inventoried through the agency's various Roadless Area Review Evaluation processes, or "unroaded areas" if
they have not been inventoried but are still of significant size and ecological significance such that they are eligible for congressional designation as a Wilderness Area.

Roadless areas provide clean drinking water and function as biological strongholds for populations of threatened and endangered species. Special Areas; Roadless Area Conservation; Final
Rule, 66 Fed. Reg. 3,244, 3,245 (Jan. 12, 2001) (codified at 36
C.F.R. Part 294). They provide large, relatively undisturbed
landscapes that are important to biological diversity and the
long- term survival of many at-risk species.

Roadless areas provide opportunities for dispersed outdoor recreation, opportunities that diminish as open space and natural settings are developed elsewhere. Id.They also serve as bulwarks against the spread of non- native invasive plant species and provide reference areas for study and research. Id.

Other values associated with roadless areas include: high quality or undisturbed soil, water, and air; sources of public drinking water; diversity of plant and animal\ communities; habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation; reference landscapes; natural appearing cultural properties and sacred sites; and other locally identified unique characteristics.

The Roadless Rule mandates:
Prohibition on timber cutting, sale, or removal in inventoried roadless areas.
(a) Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section.
(b) Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in inventoried roadless areas if the Responsible Official determines that one of the following circumstances exists.
The cutting, sale, or removal of timber in these areas is expected to be infrequent.
(1) The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11.
(i) To improve threatened, endangered, proposed, or sensitive species habitat; or
(ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;
(2) The cutting, sale, or removal of timber is incidental to the implementation of a management activity nototherwise prohibited by this subpart;

... .
36 C.F.R. §294.13 (2005).
The Roadless Rule further explains the meaning of the phrase “incidental to” in subsection (b)(2) above as follows:

Paragraph (b)(2) allows timber cutting, sale, or removal in inventoried roadless areas when incidental to implementation of a management activity not otherwise prohibited by this rule. Examples of these activities include, but are not limited to trail construction or maintenance; removal of hazard trees adjacent to classified road for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road construction andreconstruction where allowed by this rule.

The EA does not demonstrate that the roadless areas in the project area currently within the natural historic range of variability? Is the project area within natural range for wildfire conditions? Will this prescribed Fire Project substantially alter the Roadless characteristics in the inventoried roadless areas within the project area?

Use of an EA for this project is also invalid because the proposed vegetation treatments would occur within InventoriedRoadless Areas (IRA). This qualifies as an extraordinary circumstance that invalidates use of a EA. It is the existence of a cause- effect relationship between a proposed action and the potential effects on these resource conditions and if such a relationship exists, the degree of the potential effects of a proposed action on these resource conditions that determine whether extraordinary circumstances exist (36 CFR 220.g(b).

In relevant part, regarding the prohibition on tree cutting, the Roadless Rule mandates: Prohibition on timber cutting, sale, or removal in inventoried roadless areas. 1. Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this sec-tion. 2. Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in

inventoried roadless areas if the Responsible Official determines that one of the following circumstances exists. The cutting, sale, or removal of timber in these areas is expected to be infrequent. 1. The cut- ting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in § 294.11. 1. To improve threatened, endangered, proposed, or sensitive species habitat; or 2. To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;

2. The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this subpart; 36 C.F.R. §294.13 (2005).

The Roadless Rule further explains the meaning of the phrase "incidental to" in subsection (b)(2) above as follows: Paragraph (b)(2) allows timber cutting, sale, or removal in inventoried roadless areas when incidental to implementation of a management activity not otherwise prohibited by this rule. Examples of these activities include but are not limited to trail construction or

maintenance; removal of hazard trees adjacent to classified road for public health and safety reasons; fire line construction forwildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activi-

ties such as ski runs and utility corridors;or for road construction and reconstruction where allowedby this rule.

The Project EA is not clear how the Forest Service will access those units. It is unclear whether the Forest Service will be reconstructing old roads, using illegal user-created roads, or using roads already closed by the Travel Plan in the Inventoried Roadless Area in order to conduct these activities. Please clarify what roads will be used.. The proposed action includes limited cross-country motorized vehicle travel, where resource conditions al- low, but no construction of roads.

Re:-cutting is not "incidental to" another management activity; it is the management activity.

The Forest Service fails to acknowledge that the Roadless Rule provides a narrow definition of the phrase "incidental to" in the (b)(2) exemption:

Paragraph (b)(2) allows timber cutting, sale, or removal in inventoried roadless areas when incidental to

implementation of a management activity not otherwise prohibited by this rule. Examples of these activities include but are not limited to trail construction or maintenance; removal of hazard trees adjacent to classified road for public health and safety reasons; fire line construction for wildland fire suppression or control of prescribed fire; survey and maintenance of property boundaries; other authorized activities such as ski runs and utility corridors; or for road construction and reconstruction where allowed by this rule. 66 Fed. Reg. 3258. Every one of these examples shows that the management activity itself is not any form of vegetation management, i.e. tree-cutting - instead the management activities are things like trail management, road management, firefighting, land surveys, ski runs, utility corridors, or lawful road construction. In contrast, here the management activity itself is vegetation management, i.e. tree cutting. The Forest Service's interpretation of exemption (b)(2) is contrary to the explanation of "incidental to" in the Roadless Rule, and ifadopted, would swallow the rule. The Forest Service could simply avoid the tree-cutting ban by labeling every tree-cutting activity in a Roadless Area as something other than tree-cutting - such as “restoration" - and thereby circumvent the ban with euphemisms. This is clearly not the intent of the Roadless Rule. 66 Fed. Reg. 3258. Accordingly, the (b)(2) exemption does not apply here

The Forest Service did not show that roadless areas were outside the normal range of variability. Since the majority of suitable habitat for TES species is found in roadless areas in the HLCNF, it seems that the habitat is fine.

The Roadless Report does not show that the roadless areas are outside the normal range of variability.

The Forest Service has not demonstrated that the project complies with the roadless rule and appears to be violating the roadless rule in violation of NFMA, NEPA, and the APA.

The agency is violating the Roadless Area Rule by burning in inventoried roadless lands; specific measurable criteria were not provided as to why these cutting and burning will promote natural processes and wildlife. Instead the agency DDN destroys the best habitat for wildlife, roadless areas and wilderness study area. 3 million acres of the 4 million acre project areas in in roadless areas or wilderness study areas. Wilderness areas are supposed

to be managed to not impair the wilderness quality of the land until Congress decides to designate them as wilderness or not. Cutting, masticating and burning trees will leave a bunch of charred tree stumps which in the past the Forest Service has claimed makes areas unsuitable for wilderness.

Parts of this very large project area are big game winter range as per the Forest Plan. The scoping notice failed to define what the specific habitat objectives are for this winter range, including hiding and thermal cover, as well as forage. What are the objectives for tforage species in big game winter range? The Forest Plan direction for this management area is binding. If the agency is going to claim that the Forest Plan is being implemented, you need to specifically define how this is being done, instead of simply claiming that tree removal is improvement on big game winter range. Also, the science and monitoring behind this claim need to be provided.

The project also violates the Wilderness Study Act by proposing cutting and burning of trees without showing how it would effect the wilderness characteristics of the Wilderness Study Area.

We wrote in our comments starting with:

Please find attached a paper titled, "**Three-decade record of contiguous-U.S. national forest wildfires indicates increased density of ignitions near roads**" by Aplet et at. 2026. The project is violating the 2012 planning rule because it is not following the best available science and also not meeting the purpose and need of the project.

Please see the paper by Baker et al. 2023. This landmark study found a pattern of "Falsification of the Scientific Record" in government-funded wildfire studies.

Dr. Baker's paper is the best available science. Please explain why this project is not following the best availablescience. The Draft Decision Notice is in violation of NEPA.

This unprecedented study was published in the peer- reviewed journal Fire, exposing a broad pattern of scientific misrepresentations and omissions that have caused a "falsification of the scientific record" in recent forest and wildfire studies funded or authored by the U.S. Forest Service with regard to dry forests of the western U.S. Forest Service related articles have presented a falsified narrative that historical forests had low tree densities and were dominated by low-severity fires, using this narrative to advocate for its current forest management and wildfire policies.

However, the new study comprehensively documents that a vast body of scientific evidence in peer-reviewed studies that have directly refuted and discredited this narrative were either misrepresented or omitted by agency publications. The corrected scientific record, based on all of the evidence, shows that historical forests were highly variable in tree density, and included "open" forests as well as many dense forests. Further, historical wildfire severity was mixed and naturally included a substantial component of high-severity fire, which creates essential snag forest habitat for diverse native wildlife species, rivaling old- growth forests.

The Forest Service responded:

The purpose and need statement of the EA highlights the need to contribute timber products to regional harvesting and milling infastructure. A breakdown of the local market and affected environment can be found in the Timber Resource Report pg 3.

The Forest Service response did not answer the issues we raised. The project is in violation of NEPA, NFMA, the Forest Plan, and the APA.

Remedy

Choose the No Action alternative or withdraw the EA, DDN and FONSI and write an EIS that fully complies with the law.

Thank you for your attention to these concerns.

Sincerely yours,

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And for

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And for

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